

## **Appendix 4**

### **Witness Statements**

#### **Statements from witnesses before the Select Committee**

##### ***Mr Michael Scrafton***

Letters to *The Australian*

- 16 August 2004
- 4 September 2004

Opening statement to Select Committee on 1 September 2004

Record of interview from Bryant inquiry (14 December 2001 and 3 January 2002)

##### ***Major General Roger Powell (retired)***

Record of discussion with Vice Admiral R.E. Shalders, 26 August 2004, released by the Prime Minister on 27 August 2004

##### ***Commander Michael Noonan***

Record of discussion with Vice Admiral R.E. Shalders, 26 August 2004, released by the Prime Minister on 27 August 2004

#### **Statements by the Prime Minister and his staff**

##### ***Prime Minister's media releases***

- 16 August 2004
- 27 August 2004

##### ***Statements released by the Prime Minister on 27 August 2004 by:***

Mr Paul McClintock, Secretary to Cabinet and Head of Cabinet Policy Unit

Mr Arthur Sinodinos, Chief of Staff to the Prime Minister

Mr Tony Nutt, Principal Private Secretary to the Prime Minister

Mr Tony O'Leary, Press Secretary to the Prime Minister



## **Text of Mike Scrafton's Letter to *The Australian* of 16 August 2004**

The controversy around the issues raised by 43 signatories of the recent open letter has at its centre the vital issue of truth in government. It is perhaps timely that I add to the public record on this matter.

The report of the Senate committee inquiring into a Certain Maritime Incident – the children overboard affair found the inquiry had been "significantly hampered" by my "refusal" to testify before it.

The salient issue for the committee was "the extent of the Prime Minister's knowledge of the false nature of the report that children were thrown overboard" and therefore "the extent to which the Government as a whole wilfully misled the Australian people on the eve of a Federal election".

The report noted that the committee's "inability to question Mr Scrafton on the substance of his conversations with the Prime Minister therefore leaves that question unresolved".

The reasons for my non-appearance are mixed. Prominent among them was the failure of the committee to subpoena me to appear.

It was also significant that both then secretary of defence (Allan Hawke) and the office of the former minister for defence, Peter Reith,<sup>1</sup> advised me there had been a cabinet decision directing that I not appear.

Having resumed my position in Defence as a public servant following the election, these factors naturally weighed heavily in my decision. I have since retired from the commonwealth public service.

Also, I hold the conviction that public comments on controversial matters by senior public servants should only be made with reluctance and then only in exceptional circumstances.

However, a small footnote to the history of the "children overboard" affair may now be appropriate.

For the record, I was in Peter Reith's office as a seconded public servant on the same basis that I was attached to the previous defence minister's office (John Moore).

The conditions were that I had no involvement in electoral politics and dealt only with matters of Defence policy and public administration. During the election campaign, I remained in the Canberra office managing the ongoing business of the "caretaker

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1 The reference to Mr Reith was an editing error by *The Australian*. It was in fact the office of Defence Minister Robert Hill that advised Mr Scrafton of the cabinet directive.

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period" while Reith and the political staffers, except for the chief of staff, relocated to Melbourne.

I did not see the minister in person during that period. Consequently, as the Senate report demonstrates, I was involved in many conversations with the minister, his press secretary, the chief of staff, the Prime Minister's Office, the Department of Defence and the Australian Defence Force from the first release of the photographs purporting to be of children in the water.

What would I have told the Senate committee? On the evening November 7, 2001, after having viewed the tape from the HMAS Adelaide at Maritime HQ in Sydney, I spoke to the Prime Minister by mobile phone on three occasions.

In the course of those calls I recounted to him that: a) the tape was at best inconclusive as to whether there were any children in the water but certainly didn't support the proposition that the event had occurred; b) that the photographs that had been released in early October were definitely of the sinking of the refugee boat on October 8 and not of any children being thrown into the water; and c) that no one in Defence that I dealt with on the matter still believed 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 that the report had as its source the public statements of the then minister for immigration, Philip Ruddock.

When queried by the Prime Minister as to how this could be, I suggested that question was best directed to Kim Jones, then the director-general of the Office of National Assessments.

**Mike Scrafton**

Melbourne, Vic

## **Text of Mike Scafton's Letter to *The Australian* of 4 September 2004**

At Wednesday's Senate hearing, George Brandis did a good job of highlighting the weakness in my recollection regarding the number and duration of the telephone conversations I had with the Prime Minister on November 7, 2001. He also made the issue of the number and duration of the calls the only test for my credibility.

There seem to be three propositions that could be tested against the available information. They are that, with regard to the number of calls and the substance of the discussions:

1. The Prime Minister's account is accurate and mine is not.
2. My account is accurate and the PM's is not.
3. I am wrong about the number and duration of calls, but right about the substance of what was discussed.

I think I'm right in asserting the uncontested facts are:

- We spoke on the morning of November 7 and at a minimum discussed the HMAS Adelaide tape.
- I spoke to Jenny McKenry on the morning of November 8, before the Prime Minister's Press Club appearance, and indicated I had told the Prime Minister no children had been thrown overboard.
- I made a statutory declaration reporting the claims made in my August 16 letter to *The Australian* and had a polygraph test to examine the veracity of the contents of that statutory declaration.

If the first proposition were true that I would have had to have some reason to tell Ms McKenry a lie on the morning of November 8. If either proposition 2 or 3 were true then it would have been unremarkable of me to tell Ms McKenry because I would have been expecting the Prime Minister to correct the record the next day.

The reason for me repeating the same account to Major-General Roger Powell many weeks later would also need to be explained. Of course, I could have made up the whole thing and been concerned McKenry and Powell would compare notes and I would be revealed as a liar. Not telling Powell anything would have achieved the same objective.

If I were misrepresenting the facts, making a statutory declaration and taking a polygraph would have been risky. If the polygraph was reliable then only

propositions 2 and 3 would be supported by the outcome of the test. For proposition 1 to be supported I would have had to beat the polygraph.

If Brandis's detailing of the phone records from The Lodge is correct, and I have no reason to doubt him, then proposition 3 is the most likely. I am wrong about the number and duration of the calls, but right about what was discussed.

**Mike Scrafton**

Melbourne, Vic

## **Opening Statement by Mike Scrafton at Select Committee hearing, 1 September 2004**

At the time that I drafted the letter that appeared in The Australian on 16 August I understood in general terms what the likely reactions might be and what sort of consequences might flow. Clearly, it was inevitable that the media would develop a significant level of interest and that the issue might develop an unpredictable life of its own. I am not so naive that I did not anticipate the possibility that I could be subjected, in the worst case, to attacks on my character, my credibility and my motives.

I am not surprised that recently I have been the subject of imputations by senior ministers that I am politically motivated and seek to discredit the government in the lead up to an election. Nor was I really surprised by the re-emergence of the former head of the Prime Minister's department to accuse me of being morally weak and untruthful.

I recall that, in the aftermath of the events of October and November 2001, the Senate inquiry, the media and the authors of various books saw my failure to speak up as indicative of my active political support for the coalition parties. Whereas now I am depicted as an Opposition stooge, then I was portrayed as part of a conspiracy to enhance the government's election prospects.

These and other experiences have left me with no illusions about the strong tendency of those in politics to view the actions of all around them through a political prism. To some all actions appear political.

Nevertheless, I recognise that it is the democratic process that both generates this political culture and at the same provides the strength of our system. As a public servant I have strived to understand and be conscious of the political culture, and cognisant of the mandate and authority accorded to ministers through the democratic political process.

As a public servant I have strived to maintain an apolitical stance in all my dealings with ministers, their advisers and with my colleagues.

Therefore, I can only repeat that my desire in this matter was to correct the public record. This is not done without context and I will address this subsequently.

I have not forensically gone through all the transcripts and reports in order to challenge the accounts given by others of what occurred during the frantic and confused period leading up to the last election. I have neither the resources nor the inclination to do this and only seek to ensure that my version of the conversations with the Prime Minister is known.

While it was possible that the Prime Minister would concur with my account, this was not likely. I have availed myself of the limited range of options available to establish the veracity of my claims. I was prepared to repeat my version of the event in a

statutory declaration and have that statement tested by polygraph. While the polygraph may not be considered totally infallible, no one has contested that the test was conducted in a professional and disinterested manner. The expert advice indicated that the certainty that I was not being deceitful was in excess of 90 percent. There was not much more I could do.

I never expected nor encouraged former colleagues to come forward and support me. I would not ask anyone else to undergo the intense media scrutiny to which I have been subjected and the attempts to discredit me. However, now three people have individually corroborated parts of my account and I am very grateful to them.

In the remainder of this opening statement I will address four matters:

- First, how I came to be in Minister Reith's Office at the time of the "Children overboard" affair and the nature of my role.
- Second, the question of timing – that is, the reasons why I did not reveal what I knew about the "children overboard" incident at any time before the 16th of August this year;
- Third, a related matter, I will outline those factors that influenced the timing of my decision to write the letter to the editor; and
- Finally, I will outline to the best of my recollection the salient events of 7 November 2001 concerning the "children overboard" incident.

### *In the Minister's Office*

Prior to October 2000 I had been approached on a number of occasions by the then Minister for Defence John Moore with offers to join his staff. I declined because of the difficult relationship between his then chief of staff and senior military and civilian staff in Defence and because I had no taste for the inevitable political involvement.

Eventually, he offered me the chief of staff position. The offer was until the 2001 election and on the basis that, as he did not intend to seek re-election, there would be no political involvement. My role would be management of his office and the relationship with Defence and providing advice on matters of Defence policy and administration.

After consulting with the Secretary and CDF I agreed to a secondment under the Ministerial and Other Parliamentary Staff (MOPS) Act.

When John Moore was replaced by Peter Reith as Defence Minister I agreed to take up the position of Senior Adviser-Defence for the new Minister on the same terms – no involvement in electoral politics and return to Defence following the next election.

These conditions were adhered to during my time in Parliament House. During the 2001 election campaign, I remained in the Canberra office managing the ongoing



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business of the “caretaker period” while Minister Reith and the political staffers, except for the chief of staff, relocated to Melbourne.

***Failure to correct the record***

Separate, but related and mutually reinforcing reasons, prevented me from telling Jennifer Bryant my account of the “children overboard” affair, and stopped me from appearing before the Senate inquiry. These were;

- A Cabinet decision directing that ministerial and prime ministerial staff and public servants serving in ministerial offices at the time were not to appear before the Senate. As a serving Commonwealth public servant such a significant and formal action by the government naturally carried great weight with me. The legal advice provided to me at the time was that unless compelled by the Senate to appear before the inquiry my situation was clear.
- I recall that the Bryant report had constrained and specific terms of reference that restricted her to examining advice provided by the public service to Ministers and did not canvas the actions of ministerial advisers operating under the MOPS Act. Despite claims that I lied to or misled Ms Bryant, the truth is that in even acknowledging that there were conversations that I was not prepared to discuss that had taken place between advisers and ministers, including the Prime Minister, went beyond what I believe were her terms of reference. The consternation and reaction from the Prime Minister’s staff, who I recall chased Ms Bryant to clarify what I meant, is some indication that the little that I had revealed was not welcome.
- Similarly, the terms of reference of MAJGEN Powell’s investigation did not cover advisers employed under the MOPS Act. However, Roger was well known to me professionally and I regarded him as a trusted colleague. He is an accomplished military officer with a good record of achievement. On a not to be repeated basis, I discussed a range of issues to provide him some background and context for his inquiry.
- The reality was that the Howard government had been re-elected for another term and as a senior public servant I would be required to work closely with Ministers and Parliamentary Secretaries. My position would have been unworkable if, irrespective of the Cabinet decision, I had made full disclosure about my conversations with the Prime Minister on the evening of 7 November 2001. Apart from any personal enmity toward me that may have arisen in government ranks, I would not have been able to secure the trust and confidence essential to an effective relationship between public servants and ministers.
- No direct threats were ever made to me about any consequences for my career if I were to go against the Cabinet decision. The then Secretary of Defence and CDF both acted with sensitivity, integrity and understanding to my circumstances at the time of the Senate inquiry.

- However, the prevailing atmosphere in Defence, and in particular the methods and expectations of Max Moore-Wilton as Secretary PM&C and his close association with the Prime Minister, gave me every confidence that publicly casting doubts on the Prime Minister's Press Club statements would eventually have had a negative professional impact.

### ***Decision to reveal details of 7 November conversations with PM***

Without any evidence there has been a degree of speculation about the motives behind the timing of my letter, with senior government ministers implying I have acted for political reasons.

I have never belonged to a political party or participated in electoral politics. My reasons for acting when I did are more complex and varied and cover both the personal and professional dimensions of my life.

As indicated in my letter the final catalyst and determinant of the exact timing was the derogatory manner with which the 43 signatories to the letter to Prime Minister were dismissed and the way in which the issue they raised had been trivialised.

I have worked for and with some of the signatories and am well aware of the very significant contribution they have made collectively and singly to Australia's security and advancing Australia's national interests. For me the government's response demeaned and devalued the efforts of past and serving public servants and military officers.

But more importantly the government sidestepped a critical issue, which is somewhat trivialised and distorted by the slogan "truth in government".

I have been cleared for access to the most highly classified intelligence, and have been deeply involved in the development of strategic policy. I understand full well that governments cannot reveal all that they know for fear of giving away an important advantage or revealing the sources of intelligence. There are occasions when it is in the national interest to withhold information or to actually provide misinformation. The capacity to develop options and test competing advice in confidence is an essential element in the effective conduct of government business. Governments also act in the market place and commercial in-confidence, privacy, probity and competition issues also complicate the application of transparency and accountability principles.

However, in the context of the open letter I was of the view that a legitimate debate was being avoided over the potentially corrosive effect on good government of appearing to mislead for narrow electoral advantage or to justify the most important of policy decisions, such as committing to war.

The obligations and accountabilities of ministers, ministerial advisers, and public servants are a central element of that debate.

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The timing was also influenced by my decision to leave the Commonwealth public service and relocate to Melbourne. At the time of the letter of the forty three I was established in a new domestic relationship, had settled into a new job and purchased a new home.

Yet, it has been my intention since the Senate inquiry to correct the public record with respect to my position in the Minister's Office and the impression conveyed in the media and various monographs of my complicity in a deliberate attempt to mislead the public before the last election.

Along with some of my colleagues, I have felt "tainted" by my involvement and disappointed in my own failure to act more courageously at the time. As the Public Service Commissioner has pointed out, this was not a time of which public servants can be proud.

There is a cathartic aspect to my actions.

### ***7 October until the 2001 Election***

The records of last inquiry show that I was involved in the web of actions that relate to the release of the photographs that purported to be of children thrown overboard from SIEV 4. In addition, they show that I was active in trying to establish the nature of the evidence available to support the fact that the children had be thrown overboard. If these matters remain of interest to the Senators I may be able to assist in completing the record.

Late afternoon on 7 November 2001 Peter Reith called me on my mobile phone. He made no mention of any discussion with Air Marshal Angus Houston, but referred to the story in The Australian that morning on the children overboard matter. He said that he had spoken to the Prime Minister and that they wanted somebody they could trust go to Maritime Headquarters in Sydney and view the EOTS tape from the HMAS Adelaide.

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 he had given my mobile number to the Prime Minister and that I could expect a call later that 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 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 that:

- the tape was at best inconclusive as to whether there were any children in the water but certainly didn't 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 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 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 question was best directed to Kim Jones, then the Director-General ONA.

The following morning Mr O'Leary from the Prime Minister's Office rang on my mobile phone as I was driving back to Canberra and asked that I arrange for copies of the EOTS tape be made available for the media in Canberra. This was the reason that I rang Ms McKenry and we discussed my conversation with the Prime Minister the previous evening.

Later that day I was surprised on reading a transcript of the Prime Minister's statements at the Press Club lunch that he had used the ONA report in such and unqualified manner and did not correct the record with respect to the truth of the claimed "children overboard" incident.

In this opening statement I have restricted my comments primarily to the events of 7 November. I am prepared to respond to questions on any other matter in which I was involved.

Mike Scrafton

1 September 2004

## SIEV 4 Investigation

### Interview with Mike Scrafton (former Senior Adviser (Defence) to Mr Reith)

**Location:** Department of Defence

**Time and Date:** 4.15pm, 14 December 2001

**Attendees:** Mike Scrafton, Jenny Bryant, Rachel Stephen-Smith

**Introduction:** Ms Bryant showed Mr Scrafton a copy of the Prime Minister's 13 November 2001 letter to Mr Max Moore-Wilton.

Mr Scrafton started the interview by clarifying his position in Mr Reith's office. He stated that he was a senior adviser responsible for 'Defence business', with Mr Borgu responsible for 'strategic and operation issues'. Mr Scrafton noted that he was not a political staffer and therefore took over responsibility for a lot of 'non-political' issues during the election campaign, including unauthorised boat arrivals.

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

#### Advice on children in the water

Mr Scrafton noted that Mr Reith's office was operating out of Melbourne for most of the relevant period and Mr Scrafton had been in the Canberra office. He stated that he had been directly involved in some but not all discussions related to this incident, and knew of others second hand. He said he had few if any records.

Mr Scrafton noted that initially the claims of children being thrown in the water did not seem like a big issue for him, as he had a number of other issues he was working on. He stated that he was first aware of the claim when he heard Mr Ruddock's statements in the news.

Following Mr Ruddock's statements, Mr Scrafton stated that he was involved in a number of telephone discussions with AVM Titheridge, Rear Admiral Ritchie, and Commodore Gately, in which he was querying whether there was certainty around the facts in this case. Mr Scrafton said that advice often didn't come directly back to him, as these people were often not prepared to give answers without checking with CDF, and then information was usually passed directly from CDF to Mr Reith. However, the discussions Mr Scrafton did have, particularly with AVM Titheridge and Rear Admiral Ritchie, indicated that the story was true (Admiral Ritchie's statements indicate that there was still the possibility of sailors on the disengaged side picking up children in the water).

Mr Scrafton said he also understood that Mr Reith had also had the CDF confirm that the reports were true, and that he was also aware that Dr Nelson had been at Maritime Headquarters at the time with Rear Admiral Smith, who had also told him that the incident had happened.

Mr Scrafton noted that ONA reporting was seen as re-confirmation of the incident.

Mr Scrafton 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 advice was not correct.

#### Photographs

Mr Scrafton stated that he was not aware of the existence of the photographs until they were sent to Ms Liesa Davies in the Canberra office at the time of their release on 10 October. He said that the media came into the Canberra office to see the pictures as soon as they arrived. Mr Hampton was working from the Melbourne office at the time.

Mr Scrafton said that he was later contacted by Ms McKenry (on 11 October), who advised him that the photographs were being misrepresented, and that they related to the sinking rather than the "children thrown overboard" incident.

Mr Scrafton stated that he discussed this advice with Mr Hampton, including the issue of whether Mr Hampton had directed that the 'captions' be removed. Mr Hampton said that he had asked for titles to be removed because they contained people's names.

Mr Scrafton stated that he then had another discussion with Ms McKenry, and was told that the photos were all over the Defence "Restricted" system and asked her to compile a record of events, including the advice received by Mr Bloomfield from Mr Hampton.

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

Mr Scrafton said that he was aware of some discussion of retraction within the office (including between Mr Hampton and Mr Hendy). However, he noted that it was a political issue and that therefore Mr Scrafton was not involved in any decision making.

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

Mr Scrafton noted that Mr Hampton and Mr Hendy may have comments to make in these areas.

#### Correction of information

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

Mr Scrafton said that he had never been formally advised that it wasn't true. However, he noted that he obviously spent time talking to people from the Department and got the feeling that the claims may not have been correct.

Mr Scrafton 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 Rear Admiral Smith respectively.

In regard to the statutory declarations made by the Adelaide sailors on 10 October, Mr Scrafton said that his understanding was that these had been given to CDF, but he stated that neither he nor Mr Reith had received them. He said that he was unable to comment on whether anyone else knew that they existed.

#### Video

Mr Scrafton stated that he (or the office more generally) had become aware fairly early that there was a tape 'confirming that the incident had happened', but that it was of poor quality. The office asked to see the tape initially, but this was then overtaken by other issues and not followed up.

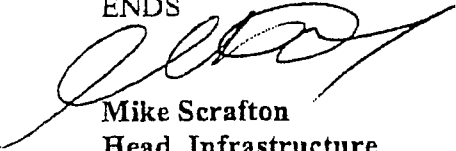
Mr Scrafton said that the day before the tape was released (ie the day of or after the Prime Minister's appearance at the Press Club where he had agreed to release the tape), Mr Reith rang Mr Scrafton asking him to view one copy of the tape which was held at Maritime Headquarters. Mr Scrafton went to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

Mr Scrafton said that he was advised that the video would be released and arranged for Commodore Hancock to make copies for release to the media. He advised Ms McKenry, or had Commodore Hancock advise her, that the release would be going ahead the next morning. Mr Scrafton stated that he had a number of discussions with PACC about arranging this, including getting the tapes to Canberra.

Mr Scrafton said he did not recall being told clearly by Admiral Ritchie in their conversation on 10 October that children had not been thrown overboard. He did recall that statutory declarations were being collected from the sailors. Mr Scrafton said that his recollection was that Rear Admiral Ritchie stated that he had not seen the tape.

ENDS



**Mike Scrafton**  
Head, Infrastructure  
3 January 2002

**SIEV 4 Investigation**  
**Responses to additional questions**

**(1) Are you aware of Minister Reith seeking advice from Defence at any time on whether the initial advice on the children overboard incident was correct?**

My recollection is that a number of requests for clarification took place. As previously stated, once I became aware of Mr Ruddock's public statements I did discuss the issue with the Minister and at his request had discussions seeking clarification and confirmation of the events with AVM Titheridge and RADM Ritchie among others. I am also aware that Mr Reith, as was his style, separately discussed the events with a number of people, including I believe CDF, in an attempt to get a full briefing on the reports and some indication of the nature of the evidence.

**(2) Did you write to Defence requesting formal clarification of what was depicted in the photographs, or are you aware that anyone else in Minister Reith's office did so?**

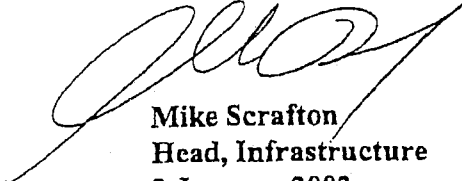
I do not recall writing and would have been surprised if anyone else had been so formal. At the time the Office became aware of the reported incident the Department seemed confident that it had occurred and seeking formal confirmation in writing would not have seemed necessary. Nor was it normal practise. However, as I said at interview at the time the incident was just on aspect of a larger and complex operation and did not seem to have priority at the time. If there were formal correspondence copies would exist in the Office or in the Defence Parliamentary Liaison Section.

**(3) Do you recall discussions in the Minister's Office regarding a desire to clarify how many children had been thrown in? Did you seek information on this issue from Defence and, if so, from whom?**

This is was speculated upon in general discussion about the issue but I cannot recall seeking information specifically on that matter and I am unaware of anyone else in the Office doing so.

**(4) Do you recall being advised at any stage that there were no children among those in the water on 7 October?**

No.



**Mike Scrafton**  
**Head, Infrastructure**  
3 January 2002



**STAFF-IN-CONFIDENCE  
LIMITED DISTRIBUTION**

**Record of Discussion between VCDF - VADM R.E. Shalders AO, CSC, RAN  
and MAJGEN R.A. Powell AM (rtd): 1100 hours on 26 August 2004**

VADM Shalders advised MAJGEN Powell that a record of discussion would be prepared for the Minister for Defence.

MAJGEN Powell noted that he had not and would not choose to come forward with information relating to Mr Scafton's statement in his letter to *The Australian* on 16 August. He did not see that he had anything to divulge in relation to the terms of reference of his inquiry, nor did he believe that this process was in Defence's interests. Given that Defence had chosen now to ask him these questions, he would answer with complete honesty.

MAJGEN Powell recalled interviewing Mr Scafton in the course of his inquiry into the interception and boarding of SIEV IV by HMAS Adelaide, but could not recall the date. He had made no record of his conversation with Mr Scafton, either during or after the interview, and could not recall whether Commander Noonan was present during the interview. While Commander Noonan had been present as a notetaker at most interviews, MAJGEN Powell recalled that he had been excluded from at least one or two sensitive interviews. Had he been present, it is likely he would have made some notes. MAJGEN Powell could not recall if anyone else had been present at the meeting but thought it unlikely. He could not recall whether or not he discussed any aspects of his interview with Mr Scafton with any other inquiry staff, or with Ms Bryant.

MAJGEN Powell recollected that Mr Scafton had not provided him with a written statement, although he believed Mr Scafton had undertaken to do so. He had approached the interview with Mr Scafton on the same basis as all others: that there would be no attribution of comments to individuals. He had used the interview process to gain his own insights into the environment in which this matter unfolded and to provide individuals with the opportunity to discuss issues or points of detail not covered by his scoping questions or their written statements. MAJGEN Powell could not recall any discussion with Mr Scafton about attribution of comments, nor any reference by Mr Scafton to his responsibilities under the MOPS Act. He could not recall any specific ground rules or undertakings such as agreement to "off the record" comments between him and Mr Scafton.

MAJGEN Powell confirmed that he had read Mr Scafton's letter, published in *The Australian* on 16 August. It had reminded him that Mr Scafton had mentioned that he had spoken to the PM on numerous occasions when he was working for Mr Reith regarding the veracity of the information passed by Defence to the Defence Minister's office. MAJGEN Powell could not recall the exact focus of these conversations, only that Mr Scafton recounted that the calls had taken place and that they had made it evident that there was no substance to the earlier claims that children had been thrown overboard. MAJGEN Powell deduced that the Prime Minister should have been in no doubt that the claims had no basis. On the details outlined in Mr Scafton's letter in *The Australian*, MAJGEN Powell could not recall whether Mr Scafton discussed the inconclusive nature of the video tape, that the photographs related to the 8 October sinking and not to children being thrown overboard on 7 October, or the ONA report. Mr Scafton's statement that no one in Defence with whom he was dealing still



**STAFF-IN-CONFIDENCE  
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believed any children had been thrown overboard accorded with MAJGEN Powell's recollection that Mr Srafton said he had told the Prime Minister that there was no substance to the claims that children had been thrown overboard.

MAJGEN Powell could not recall discussion of any detail of what transpired within the Defence Minister's office, and saw that as less significant given his Terms of Reference. He did not reflect Mr Srafton's statements about what the Prime Minister knew in relation to the truth of the children overboard claim in his report because the report covered only information that was relevant to the effectiveness of the tactical, operational and strategic levels of the Defence organisation. He did not see it as his responsibility, or indeed within his authority, to report to CDF on alleged conversations that had taken place between ministerial staff and other government ministers (in particular the Prime Minister) and their staffs. It was MAJGEN Powell's recollection that the informal discussions he had conducted with Mr Srafton contributed to his finding that the Defence Minister's office had been advised orally that, by 11 October, Defence had concluded that at no time had a child been thrown from SIEV IV.

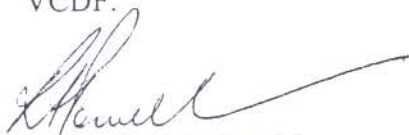
MAJGEN Powell did not recall talking to anyone formally during the course of his inquiry about the matters mentioned by Mr Srafton. He believed he might have given CDF an informal (oral) progress report on his inquiry but could not recall this in any depth, and could not recall whether or not he advised CDF or Secretary Hawke of Mr Srafton's account of his conversations with the Prime Minister. He noted that this was not to say he had not done so. MAJGEN Powell spoke informally with Secretary Hawke who indicated he had nothing to contribute to the inquiry. Dr Hawke was not among those whom CDF had nominated to MAJGEN Powell as witnesses.

MAJGEN Powell was very clear that the CDF had seen the report as being focused on Defence, reporting to him on Australian Defence Organisation matters. CDF had instructed him, for example, that he was not to conduct collective interviews with the parallel process in the Department of the Prime Minister and Cabinet being lead by Jennifer Bryant.

On being invited to offer any other relevant information, MAJGEN Powell advised that he had nothing else to say which would add value to this process.

Notetaker:                   Stephanie Foster

I agree that this summary reflects the matters discussed on 26 August 2004 with VCDF.



**R.A. POWELL, AM**  
MAJGEN Rtd  
26 August 2004



**STAFF-IN-CONFIDENCE  
LIMITED DISTRIBUTION**

**Record of Discussion between VADM R.E. Shalders AO, CSC, RAN and CMDR M.J. Noonan, RAN: 1300 hours on 26 August 2004**

VADM Shalders advised CMDR Noonan that a record of discussion would be prepared for the Minister for Defence.

CMDR Noonan confirmed that he had been present at the 5 December interview between MAJGEN Powell and Mr Scrafton conducted in the course MAJGEN Powell's inquiry into the interception and boarding of SIEV IV by HMAS Adelaide. He had not made a formal record of conversation but had made some handwritten notes after the meeting to prompt his memory for the chronology of events he was preparing as an annex to the inquiry report. These notes, together with those from other interviews, were in a notebook which CMDR Noonan was "80 per cent sure" he had destroyed. He did not believe that the notes would contain much of use, but would be able to establish quickly upon his return to Melbourne on 28/29 August whether or not they still exist.

CMDR Noonan noted that only MAJGEN Powell, Mr Scrafton and he were present for the discussion. He had not mentioned the content of Mr Scrafton's interview to anyone other than MAJGEN Powell, and did not believe anyone other than he had made any notes of the meeting, although he could not speak for Mr Scrafton himself. CMDR Noonan had been under riding instructions from MAJGEN Powell not to take detailed notes. MAJGEN Powell had made it clear to Mr Scrafton, as he had to all others interviewed, that he would use only written submissions as the basis for his report, and that the interviews were to set the scene only.

CMDR Noonan had not read Mr Scrafton's letter, published in *The Australian* on 16 August, but he had seen Mr Scrafton interviewed on *The 7:30 Report*. He had been surprised to see Mr Scrafton "come out" after such a long time, having formed the impression during Mr Scrafton's interview that Mr Scrafton would not reveal these details to too many people. In fact, Mr Scrafton had told MAJGEN Powell that he was privvy to things and could tell the inquiry things that he would deny if they were ever raised. CMDR Noonan recalled MAJGEN Powell reassuring Mr Scrafton that he would not produce any material on the basis of oral advice, but draw only on written submissions.

On the details contained in Mr Scrafton's published letter, CMDR Noonan recalled Mr Scrafton saying that he had had at least two mobile phone calls with either the Prime Minister or his adviser (CMDR Noonan could not recall whether Mr Scrafton specified with whom the calls took place, but had given the impression that he had a direct line to the Prime Minister). CMDR Noonan recalled Mr Scrafton speaking in general terms about the video tape and pictures, and specifically that Mr Scrafton said he had told the Prime Minister that the photographs did not relate to the alleged 7 October children overboard incident. Mr Scrafton had given a clear indication that he had given oral advice to the Prime Minister or to his principal adviser that children had not been thrown overboard, and said the Prime Minister knew that children had not been thrown overboard. CMDR Noonan did not recall Mr Scrafton making a broad statement that no one in Defence with whom he had dealt believed that children had been thrown overboard. He recalled that Mr Scrafton had singled out the Prime Minister, Ms McKenry and Brigadier Bornholdt as knowing the claim not to be true.

**STAFF-IN-CONFIDENCE  
LIMITED DISTRIBUTION**

He had no recollection of any discussion of the ONA report, nor any recollection of advice being passed to the Defence Minister or to CDF.

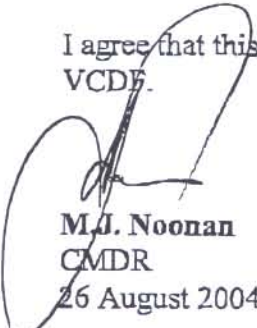
CMDR Noonan had played a significant role in drafting the report. He believed the substance of Mr Scrafton's interview had not been used in the report because MAJGEN Powell had committed to use only written statements. It was in this context that CMDR Noonan raised the issue of Mr Scrafton's statement that he would deny what he had said should it be made public. CMDR Noonan believed he had sent one or two emails, either himself or on behalf of MAJGEN Powell, prompting Mr Scrafton for his promised written statement but did not believe he had received any response to the emails. Nor had Mr Scrafton provided a written statement by the time the inquiry concluded. For this reason, all references to Mr Scrafton in the chronology of events appended to the report were drawn from the written statements of others.

CMDR Noonan did not know of anyone else in Defence who might be aware of the content of Mr Scrafton's interview, although he noted it was possible MAJGEN Powell could have discussed it with the legal officer assisting the inquiry, MAJ Watson. CMDR Noonan was not present at MAJGEN Powell's interview with CDF (the only interview he was excluded from), and could not be sure whether or not MAJGEN Powell had raised these issues with either CDF or Secretary Hawke.

On being invited to offer any other relevant information, CMDR Noonan noted a discrepancy between his recollection and media reporting on the location of the Prime Minister and his party during the mobile telephone calls. He had seen references in the media to the Prime Minister being at Kirribilli, while he recalled Mr Scrafton saying that the Prime Minister and his party were at a restaurant in Lygon St, Carlton.

Notetaker: Stephanie Foster

I agree that this summary reflects the matters discussed on 26 August 2004 with VCDF.



**M.J. Noonan**  
CMDR  
26 August 2004



## Media Releases



### CLAIMS BY MR MIKE SCRAFTON

It is a matter of public record that I did speak to Mr Mike Scrafton on the night of Wednesday 7 November 2001. I told the House of Representatives of this in answer to a question on 19 February 2002, some 2½ years ago. I said in that answer that I had spoken to Mr Scrafton entirely about the video. This was reported in the media the following day.

My sole purpose in ringing him on 7 November 2001 was to obtain his assessment of the video which he had just viewed. He gave me a description of the video and expressed the view that it was inconclusive.

I decided that the video should be released. This occurred the next day.

My answer to the House was given more than 2½ years ago. It has not been disputed by Mr Scrafton until now. I have been informed that Mr Scrafton left the employ of the Public Service on 13 December 2003 ie. nine months ago.

It is also particularly relevant that on 14 December 2001, in an interview with Ms Jenny Bryant of the Department of Prime Minister and Cabinet, who had been appointed to conduct a departmental inquiry into the matter at my request, Mr Scrafton said " ... that the Prime Minister rang him later that evening. He said he spoke to the Prime Minister a couple of times that evening about the tape and informed him that it was inconclusive".

That was the only reference he made in the interview to his discussions with me on 7 November. He did not refer to the matters mentioned under (b) and (c) in his letter to The Australian newspaper published today viz that the photographs had been of events on 8 October and that nobody in Defence believed any longer that children had been thrown overboard.

In a follow up question the Bryant Inquiry asked Mr Scrafton: "Do you recall being advised at any stage that there were no children among those in the water on the 7 October?" To this question Mr Scrafton replied "No".

A record of the interview of 14 December 2001 was signed by Mr Scrafton on 3 January 2002. His response to the above additional question as well as some other specific questions was also signed on 3 January 2002.

Both of the documents signed by Mr Scrafton were made available to the Senate Inquiry. These documents are attached.

I stand by the previous statements I have made on this matter.

Record of interview of 14 December 2001 (PDF 180KB)  
Record of response to additional questions (PDF 56KB)

16 August 2004

## Media Releases



### CLAIMS BY MR MIKE SCRAFTON

Given the claims made by Mr Mike Scrafton concerning our telephone discussions on the night of 7 November 2001 I asked the Defence Minister to arrange for Major General Powell (who conducted the parallel military inquiry to that of the Bryant inquiry) and his assistant Commander Noonan to be interviewed concerning their recollections of their discussions with Mr Scrafton in December 2001. Those interviews took place yesterday.

In the interests of transparency I am making the records of interview available to the public.

I also make available the written recollections of my three staff and the then head of the Cabinet Policy Unit, Mr Paul McClintock who were present at the Lodge with me that night.

The records of interview with Major General Powell and Commander Noonan do not alter the substance of this issue. They are not evidence of what Mr Scrafton said to me. They merely record what Mr Scrafton told others, some weeks later, of his conversations with me. I should also emphasise the point that my staff and Mr McClintock were with me on the night in question.

I continue to strongly dispute Mr Scrafton's recollections of his discussions with me.

[Major General Powell's Statement \(PDF 408KB\)](#)

[Commander Noonan's Statement \(PDF 401KB\)](#)

[Mr Paul McClintock's Statement \(PDF 241KB\)](#)

#### **Other Staff Statements**

[Authur Sinodinos, Chief of Staff \(PDF 150KB\)](#)

[Tony Nutt, Principal Private Secretary \(PDF 192KB\)](#)

[Tony O'Leary, Press Secretary \(PDF 86KB\)](#)

27 August 2004

**Statement by Paul McClintock dated 27<sup>th</sup> August 2004.**

From July 2000 to March 2003 I served as Secretary to Cabinet and Head of the Cabinet Policy Unit.

That position included responsibility for advising the Prime Minister on the policies released by the Government parties as part of the 2001 election campaign. In order to carry out that task I was part of the Prime Minister's team that travelled with him during the election period.

On the night of 7 November, 2001 I attended a dinner meeting at the Prime Minister's Lodge. The meeting was to finalise the speech that the Prime Minister was giving to the National Press Club on the following day, the purpose of which was to pull together the major themes of the campaign.

The dinner was attended by Mr. and Mrs. Howard, Arthur Sinodinos, Tony Nutt, Tony O'Leary and myself.

During the evening the discussion turned to an article that I believe was carried by The Australian suggesting that photos released by Defence purporting to show children in the water who had been thrown overboard from their vessel were in fact photos taken on the following day after the boat had sunk. There was then a discussion about whether the questions raised by the article could be resolved by the video that had been taken by the Navy during the relevant period.


Mr. Howard spoke by telephone outside the room to Mr. Reith and on his return advised us that Mr. Reith had not seen the video. We were told that one of his staff members, Mike Scafton, could look at the video that night and let us know whether it resolved the matter as had been suggested.

Mr. Howard spoke to Mr. Scafton. I do not recall whether that call was taken in the room, but my memory of the result was that Mr. Scafton would look at the video and let us know what it contained.

Later in the evening the Prime Minister spoke again to Mr. Scafton. Again, I do not recall whether that call was taken in the room. Mr Howard advised us that Mr. Scafton did not believe that the video showed children being thrown overboard – there was only clear evidence that a child had been held up near the side of the vessel. Mr Howard made no suggestion that he had discussed other matters with Mr Scafton, or had received advice beyond the content of the video.

Discussion took place on what should happen with the video, with the Prime Minister deciding that it should be released the following day. Some discussion then took place on the timing of that event, and how it should be handled.

I think there was then some short discussion about the general policy themes for the speech, and we left to go home.



2.

This event took place nearly three years ago, and was at the end of a long campaign. I do not remember the details of precisely where calls were taken, but I do have a clear recollection of the issues that were discussed and the key decision made.

A handwritten signature in black ink, appearing to read "Paul M. McClintock". The signature is written in a cursive style with a large initial "P" and "M".

Paul McClintock  
27 August 2004





OFFICE OF THE PRIME MINISTER  
CANBERRA

**STATEMENT BY MR ARTHUR SINODINOS  
ON THE EVENTS OF 7 NOVEMBER 2001  
AT THE LODGE, CANBERRA**

The Prime Minister has asked that I record my recollection of the evening of 7 November 2001.

I was present at The Lodge on this evening with the Prime Minister, Mrs Howard, Tony Nutt, Tony O'Leary and Paul McClintock. The purpose of our meeting was to discuss the Prime Minister's preparations for his National Press Club address the next day.

During the course of the evening the Prime Minister was involved in a number of telephone conversations with Mr Mike Scafton, then Senior Adviser, Office of the Minister for Defence. The purpose of the calls was to ascertain what was on a video relating to the vessel which is known as SIEV 4. The Prime Minister wanted to know what was on the video and whether to release it or not.

The Prime Minister spoke to Mr Scafton and relayed the contents of the conversations to us. The Prime Minister indicated that Mr Scafton, having viewed the video, thought that it was inconclusive as to whether any children had been thrown overboard from SIEV 4.

The focus of the discussions with us was on the pros and cons of releasing the video. The Prime Minister decided that the video should be released, notwithstanding Mr Scafton's advice that it was inconclusive, because otherwise the Government would be accused of seeking to suppress material on this matter. I have a very strong recollection that at no stage did the Prime Minister say to me or anyone else in my hearing that Mr Scafton had discussed other matters with him.

A handwritten signature in black ink, appearing to read 'Arthur Sinodinos'.

Arthur Sinodinos  
Chief of Staff

A handwritten number '27-8-08' in black ink, likely representing the date 27 August 2008.

C/- Suite MG 8  
Parliament House  
CANBERRA ACT 2600

27 August 2004

Hon John Howard MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

*Dear Prime Minister,*

As requested I set out below my recollections of events on the evening of 7 November 2001 at The Lodge in Canberra in the ACT as they relate to Mr Michael Scafton.

Together with Arthur Sinodinos, Paul McClintock and Tony O'Leary I attended a working dinner at the The Lodge as you prepared for your appearance before the National Press Club the next day and to finalise various other campaign issues in the run up to polling day on 10 November 2001.

Earlier you had spoken to the then Minister for Defence, the Hon Peter Reith, who had advised you that he had instructed Mr Michael Scafton, a member of his private office staff, to travel to Maritime Headquarters in Sydney to view a video relating to SIEV 4.

During the course of the dinner you rang Mr Scafton. My recollection is that you rang him on two occasions. I could not hear what Mr Scafton said.

My recollection is that you talked about the video. Although I do not recall the precise words there were discussions about whether he had yet seen the video, what the video showed, how clear the pictures were, whether he had seen all the relevant parts of the video and what was his general assessment of what it showed.

We had a collective discussion about the video. You told us what Mr Scafton said, ie, that it was inconclusive. You said that it ought to be released the next day so that it was available for public scrutiny.

I am confident that at no stage following your discussions with Mr Scafton did you tell us that he had raised the concerns he subsequently claimed in his letter to *The Australian* of 16 August 2004.

Yours sincerely

A handwritten signature in black ink that reads "Tony Nutt". The signature is written in a cursive style with a prominent horizontal line underlining the name.

Tony Nutt



OFFICE OF THE PRIME MINISTER  
CANBERRA

**Statement by Tony O'Leary, Press Secretary  
27 August 2004**

I was present at The Lodge on the evening of November 7, 2001. It is my clear recollection that the contents of a Defence Department video and its release were the only issues discussed during telephone contact with a member of the Defence Minister's office dispatched to view the tape and report on its contents. The officer reported the tape was inconclusive and a decision was made that it should be released the following day. I contacted the Department on November 8 to ensure the tape could be accessed by the Canberra press gallery and I believe it was issued mid to late morning.

A handwritten signature in black ink, appearing to be 'Tony O'Leary', written in a cursive style.

(Tony O'Leary)