

The Senate

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Senate Select Committee on the  
Scrafton Evidence

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Report

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## List of Abbreviations

<b>ABBREVIATION</b>	<b>MEANING</b>
AVM	Air Vice Marshal
CDF	Chief of the Defence Force
CMDR	Commander
CMI	Certain Maritime Incident
COMAST	Commander, Australian Theatre
DFAT	Department of Foreign Affairs and Trade
EOTS	Electro-Optical Tracking System
HQ	Headquarters
MAJGEN	Major General
MOPS	Member of Parliament (Staff)
PACC	(Department of Defence) Public Affairs and Corporate Communication
PM&C	Department of the Prime Minister and Cabinet
ONA	Office of National Assessments
Oprep	Operation Report
SIEV	Suspected Illegal Entry Vessel
SUNCS	Suspected Unauthorised Non-Citizens





## Introduction

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

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

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

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

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

1.6 In 2002, the Senate established the Select Committee on a Certain Maritime Incident to examine issues surrounding the 'children overboard' incident. That Committee's majority report found conclusively that no children were thrown overboard from the SIEV 4.<sup>1</sup> It also found that then Defence Minister Peter Reith had deceived the Australian people in the 2001 election campaign on the state of evidence to support the 'children overboard' claim.<sup>2</sup> However, it was not able to make a finding on what the Prime Minister or other ministers knew, as Cabinet directed ministerial staff not to give evidence.<sup>3</sup>

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

### **Conduct of inquiry**

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

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

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

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

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

2 CMI Report, p.xxiv

3 CMI Report, p.xxiv

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

5 CMI Report, p.124

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

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

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

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

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

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

## **Report structure**

1.15 This report is structured as follows:

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

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

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

## Chapter 2

### The 'Children Overboard' Incident

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

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

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

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

#### **The incident**

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

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

#### ***Sunday 7 October 2001 – man overboards and the video***

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

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

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

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

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

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

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

2 Commander Joint Taskforce 639

3 CMI Report, p.49

4 CMI Report, p.46

5 CMI Report, p.40

6 CMI Report, p.53

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

### ***Monday 8 October 2001 – SIEV 4 sinks and the photographs***

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

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

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

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

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

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

8 CMI Report, p 36

9 CMI Report, p 39

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

### ***9 October 2001***

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

### ***10 October 2001***

- Commander Banks tells Brigadier Silverstone that no one could yet confirm that a child had been recovered from the water.
- Rear Admiral Smith<sup>11</sup> passes on advice from Commander Banks to Rear Admiral Ritchie<sup>12</sup> that the Electro Optical film – ie. the video – shows no children being thrown overboard.
- Rear Admiral Ritchie advises Mr Scrafton, the senior military adviser in the Defence Minister's office, that the video does not show a child being thrown overboard, but that Defence still believes that evidence would show up to confirm the incident.

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10 CMI Report, chapters 4-6.

11 Naval Component Commander

12 Commander Australian Theatre



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

### **11 October 2001**

- Admiral Barrie contacts Mr Reith and tells him that he has been advised that the photographs do not represent the incident of 7 October.
- Brigadier Bornholt<sup>13</sup> and Ms Jenny McKenry<sup>14</sup> give the same advice to Mr Scrafton. Later, Ms McKenry sends Mr Scrafton the photographs with captions attached that show they are of the sinking.
- Commander Banks forwards copies of the witness statements by email to Rear Admiral Smith and Brigadier Silverstone, and the latter emails them to Rear Admiral Ritchie.

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

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

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

### ***17 October 2001***

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

### ***31 October 2001***

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

### ***7 November 2001***

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

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

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

### ***8 November 2001***

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

### **Unanswered questions in the CMI evidence**

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

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

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

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

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

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

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

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

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

17 CMI Report, pp.115-116

18 CMI Report, p.117

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

The question of the extent of the Prime Minister's knowledge of the false nature of the report that children were thrown overboard is a key issue in assessing the extent to which the Government as a whole wilfully misled the Australian people on the eve of a Federal election. Its inability to question Mr Scafton on the substance of his conversations with the Prime Minister therefore leaves that question unresolved in the Committee's mind.<sup>20</sup>

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

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19 CMI Report, p.124

20 CMI Report, p.124



## Chapter 3

### The Scafton Evidence: Conversations with the Prime Minister

3.1 The Select Committee on a Certain Maritime Incident (CMI) was unable to make a finding on what the Prime Minister or other ministers were told about the children overboard claims. A Cabinet directive ordering ministerial staff not to give evidence meant that key witnesses, who were privy to crucial information, were prevented from telling the CMI Committee what they knew. The CMI Committee found its inquiry had been 'significantly hampered' by Mr Scafton's refusal to testify before it.<sup>1</sup> This is what makes Mr Scafton's new evidence so important.

3.2 Mr Scafton was a ministerial adviser to then Defence Minister Peter Reith at the time of the 'children overboard' affair. In this role, he was privy to conversations between Mr Reith, his advisers and the Prime Minister about the children overboard story and the evidence used to substantiate it. Crucially, he had a number of conversations with the Prime Minister before the National Press Club function on 8 November 2001 at which the Prime Minister contended that the original advice that children had been thrown overboard had never been contradicted. Although the CMI Committee knew these conversations had taken place, it was not able to take evidence on what was said. It simply found it 'difficult to believe' that it had taken two separate conversations for Mr Scafton to convey to the Prime Minister that the video was 'inconclusive'.<sup>2</sup> What Mr Scafton has now put on the public record, albeit belatedly, about what he told the Prime Minister during those conversations has, in a sense, filled some of the gaps in the jigsaw puzzle carefully pieced together by the CMI inquiry.

3.3 This chapter focuses on the key part of Mr Scafton's new evidence, namely the content of his conversations with the Prime Minister on 7 November 2001. First, it sets out Mr Scafton's claims of what he told the Prime Minister during those conversations, both in *The Australian* newspaper and in evidence before this Committee. Second, it looks at the implications of Mr Scafton's claims for the veracity of some of the Prime Minister's subsequent statements in the media and in Parliament about what advice he received on 'children overboard'. Third, in light of the continued denial of Mr Scafton's version of events by the Prime Minister, it looks at the credibility of Mr Scafton's evidence. Other issues brought to light during Mr Scafton's appearance before this Committee are addressed in the next chapter.

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1 Select Committee on a Certain Maritime Incident, *Report* (CMI Report), p.123

2 CMI Report, p.124

### **Mr Scafton's letter to *The Australian***

3.4 On 16 August 2004, *The Australian* newspaper published an open letter from Mr Mike Scafton. In that letter, Mr Scafton stated that he talked to the Prime Minister by his mobile phone on 3 occasions on the night of 7 November 2001. In the course of those phone calls, he told the Prime Minister 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 [he] dealt with on the matter still believed any children were thrown overboard.<sup>3</sup>

3.5 Mr Scafton's letter also said that during the last conversation the Prime Minister had asked how it was that an ONA report confirmed the children overboard incident. Mr Scafton replied that he had gained the impression that the report had as its source the public statements of the then Minister for Immigration, Philip Ruddock. When the Prime Minister queried how this could be, Mr Scafton suggested that question was best directed to the head of ONA, Mr Kim Jones.

3.6 As soon as this letter was published, the Prime Minister issued a press release stating:

It is a matter of public record that I did speak to Mr Mike Scafton 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 Scafton 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 Scafton until now. I have been informed that Mr Scafton 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 Scafton 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".

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3 Mike Scafton, Letter to *The Australian*, 16 August 2004



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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 Scafton: "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 Scafton replied "No".

A record of the interview of 14 December 2001 was signed by Mr Scafton 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 Scafton were made available to the Senate Inquiry. These documents are attached.

I stand by the previous statements I have made on this matter.<sup>4</sup>

3.7 Mr Scafton's letter to *The Australian* created significant media interest for two reasons. First, his account added substantial extra weight to the CMI inquiry's original findings. Second, his account implies that the Prime Minister was directly told of doubts about the 'children overboard' story, and misled the Australian people about it on the eve of the 2001 federal election.

### **The Prime Minister's public statements on 8 – 9 November 2001**

3.8 On 8 November 2001, the day following his conversations with Mr Scafton and two days before the 2001 federal election, Prime Minister Howard gave a speech at the National Press Club in Canberra. After that speech, he was asked a number of questions relating to the alleged 'children overboard' incident and the evidence used by the government as proof it took place. First, ABC journalist Fran Kelly asked about rumours then emerging from Defence that the photos released by the government on 10 October were not in fact of children who had been thrown in the water on 7 October but of people in the water on 8 October because the boat was sinking. The Prime Minister did not respond directly to the question, and asserted that the claim that children had been thrown overboard was based on advice received from Defence sources, not the photos or the video. To support this, he quoted from the ONA report of 9 October. He said:

...if the Defence Minister and Immigration Minister get verbal advice from defence sources and the Prime Minister gets that kind of written advice I

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4 Prime Minister, Media Release, Claims by Mr Mike Scafton, 16 August 2004, found at: [www.pm.gov.au/news/media\\_releases/media-Release1074.html](http://www.pm.gov.au/news/media_releases/media-Release1074.html), accessed 30 August 2004. Mr Scafton's statements to the Bryant Inquiry are at Appendix 4.

don't think it's sort of exaggerating or gilding the lily to go out and say what I said.<sup>5</sup>

3.9 The Prime Minister's reliance on the ONA report as a source of the 'children overboard' story does not incorporate Mr Scrafton's alleged advice that this report was very likely to have been based on ministers' media statements, not intelligence. It also ignores advice from the head of ONA, Kim Jones, who had faxed that report to the Prime Minister's office that very evening with a covering note stating that the original source of the 'children overboard' advice could not have been ONA, that ONA could not identify the report's sources, and that it may have been based solely on media comments by Mr Ruddock and Mr Reith.<sup>6</sup>

3.10 The Prime Minister's answer also fails to acknowledge the significant doubts about the 'children overboard' incident that flowed from Mr Scrafton's alleged advice that no-one in Defence still believed such an event had occurred.

3.11 In response to a question from Louise Dodson about the uncertainty around the 'children overboard' video, Mr Howard said:

Well in my mind there is no uncertainty because I don't disbelieve the advice I was given by defence. And can I just say again Louise when you get defence giving advice, and the statements I made were based on advice, I wasn't there, neither of the ministers were there. They get advice, it is then confirmed in writing in terms that I have described. I think in those circumstances it's perfectly reasonable and legitimate of me to say what I said and I don't disbelieve the defence advice.<sup>7</sup>

3.12 On the other hand, Mr Scrafton says he had relayed to the Prime Minister only the previous evening that there was no evidence that the incident took place, that no-one in Defence still believed it had happened, and that the 'confirmation in writing' was based on dubious sources. As the CMI Report noted, the Minister for Defence, had been informed of these doubts some four weeks previously.<sup>8</sup>

3.13 On talkback radio on 8 and 9 November 2001, the Prime Minister maintained that his claim that asylum seekers had thrown their children from the SIEV 4 was based on Defence advice and a written ONA report, and that the original advice had

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5 Transcript of the Prime Minister, Questions and Answers at the National Press Club Canberra, 8 November 2001, p.3, found at: [www.pm.gov.au/news/speeches/2001/speech1325.htm](http://www.pm.gov.au/news/speeches/2001/speech1325.htm), accessed 23 August 2004

6 ONA Minute to the Prime Minister's office of 7 November 2001, tabled as Additional Information no. 21 by the Select Committee on a Certain Maritime Incident. See also Senate Finance and Public Administration Legislation Committee, *Transcript of Evidence*, Estimates, 18 February 2002, pp.137-142 (Jones)

7 Transcript of the Prime Minister, Questions and Answers at the National Press Club Canberra, 8 November 2001, p.4

8 CMI Report, p.84

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never been contradicted. In an interview with ABC Radio's Catherine McGrath, he said:

My understanding is that there has been absolutely no alteration to the initial advice that was given. And I checked that as recently as last night.<sup>9</sup>...

I was informed by both Mr Ruddock and Mr Reith that this had occurred, I subsequently was informed in writing from intelligence sources that it had happened, now in those circumstances I was perfectly justified in making the claim, I don't retreat from it and in a sense it's got nothing to do with the video, the video came along a couple of days after the 10<sup>th</sup> of October...<sup>10</sup>

3.14 Asked directly whether the Navy had reviewed the initial advice, he said:

I have no information or suggestion that they have reviewed their advice, no, I haven't.<sup>11</sup>

3.15 Cathy van Extel of Radio National asked the Prime Minister whether anyone from either the Navy or the Defence Department had rung his office or the offices of Peter Reith or Philip Ruddock to advise that the initial information about children being thrown overboard was incorrect. Mr Howard replied:

Cathy, nobody rang my office to that effect and I'm not aware that they rang the offices of the other two ministers... The situation is that I have operated in the belief based on advice that there were children thrown overboard and that advice was originally given to me by two ministers on Sunday the 7<sup>th</sup> of October and it was confirmed in writing by the Office of National Assessment on Tuesday the 9<sup>th</sup> of October. I therefore have no reason to doubt its believity [*sic*] as to the question of the video, I never saw the video as being the primary source of evidence...the initial advice apparently was conveyed by the captain of the vessel from one of his superior officers. But at no stage was I told that that advice was wrong and in fact to this day nobody is saying that that advice is wrong.<sup>12</sup>

3.16 Also in that interview, he said:

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9 Transcript of the Prime Minister, Interview with Catherine McGrath, AM Program, 8 November 2001, p.2, found at [www.pm.gov.au/news/interviews/2001/interview1454.htm](http://www.pm.gov.au/news/interviews/2001/interview1454.htm), accessed 23 August 2004

10 Transcript of the Prime Minister, Interview with Catherine McGrath, AM Program, 8 November 2001, p.2

11 Transcript of the Prime Minister, Interview with Catherine McGrath, AM Program, 8 November 2001, p.4

12 Transcript of the Prime Minister, Interview with Cathy van Extel, Radio National, 9 November 2001, p.1, found at: [www.pm.gov.au/news/interviews/2001/interview1457.htm](http://www.pm.gov.au/news/interviews/2001/interview1457.htm), accessed 23 August 2004

...can I just remind you that it was stated as fact in the advice given to me in writing by the Office of National Assessments. There was no qualification that it was a bare belief. It was a bald statement...<sup>13</sup>

I have no doubt about the general quality of advice I've received from Defence. I mean it's not, I mean it remains the case that we received advice that children were thrown overboard, I have not received any advice from Defence to this moment which countermands or contradicts that.<sup>14</sup>

...you are making a statement which is based on the premise that Defence's initial advice was wrong. There is no evidence to establish that. As I speak, Defence has not said to me, or to Mr Reith or Mr Ruddock, look we've got this completely wrong, there was never any basis for these claims that children were thrown overboard.<sup>15</sup>

...if there had have [*sic*] been something wrong with the original advice, something fundamentally wrong, then I would have assumed that the Navy would have got in touch with the Minister and said 'look, what you said then is wrong because the facts are as follows'. Now that did not occur, so I am told. I have not been given different advice. If I were given different advice I'd make it public.<sup>16</sup>

3.17 Mr Scafton's claims suggest these comments were deliberately misleading. Mr Scafton has stated that he told the Prime Minister that the sources of the ONA were suspect.<sup>17</sup> This is in addition to the head of ONA himself giving similar written advice the same evening.<sup>18</sup> The Prime Minister nonetheless quoted from the ONA report as evidence of the original 'children overboard' advice without admitting that he had been told of doubts about its sources. Mr Scafton has said that he left the Prime Minister in no doubt that there was no evidence to support the claim that children were thrown overboard.<sup>19</sup> At no stage did the Prime Minister acknowledge these doubts or retreat from his original claim.

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13 Transcript of the Prime Minister, Interview with Cathy van Extel, Radio National, 9 November 2001, p.1

14 Transcript of the Prime Minister, Interview with Cathy van Extel, Radio National, 9 November 2001, p.2

15 Transcript of the Prime Minister, Interview with Cathy van Extel, Radio National, 9 November 2001, p.3

16 Transcript of the Prime Minister, Interview with Cathy van Extel, Radio National, 9 November 2001, p.3

17 Mike Scafton, Letter to *The Australian*, 16 August 2004, *Transcript of Evidence*, 1 September 2001, p.6 (Scafton)

18 ONA Minute to the Prime Minister's office of 7 November 2001, tabled as Additional Information no. 21 by the Select Committee on a Certain Maritime Incident

19 *7.30 Report* transcript, 'Scafton stands by children overboard claim', 16 August 2004, found at: [www.abc.net.au/7.30/content/2004/s1177955.htm](http://www.abc.net.au/7.30/content/2004/s1177955.htm), accessed 31 August 2004

3.18 Nor does it appear that, having been alerted to these doubts, the Prime Minister made any serious effort to check the original story. Had he wanted to do so, other information was readily available in his own office as well as several government agencies that would have confirmed the lack of evidence for the 'children overboard' report.<sup>20</sup>

### **The Prime Minister's statements to Parliament – February 2002**

#### ***Claim that there was no advice contradicting the 'children overboard' story***

3.19 Mr Scrafton's claims also have implications for the Prime Minister's answers to questions in Parliament on the 'children overboard' affair. During the sittings commencing 12 February 2002, the Prime Minister faced repeated questioning and several censure motions on his failure to correct the record about the 'children overboard' story. He maintained that the original claims were made in good faith based on advice and:

I never received any advice from my department or from any other official or from any of my colleagues indicating that that advice was untrue.<sup>21</sup>

3.20 Other versions of the Prime Minister's statement included:

At no stage was I told by my department or was I told by any member of my staff or was I told by any minister or was I told by any official in any other department that the original advice tendered was wrong. I had no grounds to believe it was.<sup>22</sup>

3.21 These and similar statements avoid mentioning ministerial advisers. However, the following statement is all-embracing:

At no stage was I told by Defence, by Mr Reith or by anybody else that the original advice was wrong.<sup>23</sup>

3.22 In short, there is a clear conflict between Mr Scrafton's testimony that he told the Prime Minister on 7 November that there was no evidence to support the original claim, and nobody in Defence believed it, and Mr Howard's denial in Parliament that anyone had told him the original advice was wrong.

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20 The CMI Report details unsuccessful attempts by the Prime Minister's senior adviser Miles Jordana to locate evidence to support the 'children overboard' claims on 7 November. During this process, Mr Jordana received advice that PM&C could not find material supporting the 'children overboard' report, advice from Jane Halton that there were doubts about the photographs, and a note from Kim Jones saying that the ONA report could not have been the source of the 'children overboard' claims. CMI Report, pp.122-125. Advice from several Defence officials to the Defence Minister to the effect that the 'children overboard' reports were unsubstantiated is described in Chapter 6 of the CMI Report.

21 For example, *House Hansard*, 14 February 2002, p.269 (Howard)

22 *House Hansard*, 19 February 2002 p.437 (Howard)

23 *House Hansard*, 14 February 2002, p.255 (Howard)

### ***Claims about the ONA report***

3.23 On 19 February 2002 Mr Howard was asked specifically:

...were you told at any stage before the election, either in writing or orally, that there was any doubt about the veracity of the source of the ONA report, which you relied on at the Press Club to back your 'children overboard' claim?<sup>24</sup>

3.24 In the course of his answer, Mr Howard said:

I was not told until after the election that the ONA report had been based on media reports. I was not told that and, as I indicated to the press today, if I had known that before the press conference, I would not have used it.<sup>25</sup>

3.25 This statement is in direct conflict with Mr Scafton's claim that he told the Prime Minister on the night of 7 November 2001 (three days before the federal election) that the 9 October ONA report may have been based on ministers' media statements. This advice was also conveyed in writing by the head of ONA, Mr Kim Jones, to the Prime Minister's office on the evening of 7 November.

### ***Content of conversation with Mr Scafton***

3.26 Mr Howard was also asked about whether he had discussed the date of the photos in his conversations with Mr Scafton on 7 November. He said:

From recollection, I spoke to Mr Scafton entirely about the video. The reason I spoke to Mr Scafton was that he was on Mr Reith's staff and he had been asked by Mr Reith to go to Maritime Command in Sydney and have a look at it. I may have spoken to Mr Scafton a couple of times.<sup>26</sup>

3.27 This answer is in conflict with Mr Scafton's recollection that Mr Howard did discuss the photos with him, and was told that they were taken on 8 October, not 7 October.

### **Mr Scafton's evidence of his conversations with the Prime Minister on 7 November 2001**

3.28 Mr Scafton's account of his telephone conversations with the Prime Minister on 7 November 2001 is a crucial piece of evidence that was not available to the CMI inquiry. As seen above, Mr Scafton's account of those conversations in his letter to *The Australian* would suggest that many of Mr Howard's subsequent statements on the 'children overboard' incident were misleading or untrue.

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24 *House Hansard*, 19 February 2002, p.416 (Crean)

25 *House Hansard*, 19 February 2002, p.417 (Howard)

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

3.29 In his written statement to this Select Committee on 1 September 2004, Mr Scafton repeated the substance of his letter to *The Australian*, with the caveat that he was uncertain about the number of phone calls. The relevant part of his statement is as follows:

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:

- 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.<sup>27</sup>

3.30 Mr Scafton also said that the next day he had discussed his conversation with the Prime Minister with Ms Jenny McKenry from the Defence Department. He said he felt surprised on reading a transcript of the Prime Minister's 8 November Press Club appearance that the Prime Minister had used the ONA report in an unqualified manner and did not 'correct the record with respect to the truth of the claimed 'children overboard' incident.<sup>28</sup>

3.31 Mr Scafton said the only other people he had told of the conversations were Major General Roger Powell and Commander Michael Noonan, to whom he had spoken in the context of the military inquiry.<sup>29</sup> He said he had told Dr Allan Hawke, then Secretary of the Defence Department, and Admiral Chris Barrie, then Chief of the Defence Force, that he had had discussions with the Prime Minister that he was not going to reveal publicly.<sup>30</sup>

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27 *Transcript of Evidence*, 1 September 2004, p.6 (Scafton)

28 *Transcript of Evidence*, 1 September 2004, p.6, p.45 (Scafton)

29 *Transcript of Evidence*, 1 September 2004, p.44 (Scafton)

30 *Transcript of Evidence*, 1 September 2004, p.44 (Scafton)

## **The credibility of Mr Scafton's evidence**

3.32 The Prime Minister's response to Mr Scafton's claims, set out at 3.6 above, disputes Mr Scafton's version of events. Their conflicting accounts meant that much of this Committee's public hearing time was devoted to testing the credibility of Mr Scafton's evidence. This is considered below.

### ***Statements by Jenny McKenry***

3.33 Soon after Mr Scafton's letter was published in *The Australian* newspaper, a former senior Defence official, Ms Jenny McKenry, made a statement to reporters from *The Australian* that: 'she had received a phone call from Mr Scafton on the morning of 8 November 2001, in which he discussed the release of HMAS Adelaide video of the incident'. She is quoted as saying:

He said to me in the course of that conversation that he'd told the Prime Minister there had been nothing conclusive about the video and that there was no evidence to support the children overboard story.<sup>31</sup>

3.34 Ms McKenry repeated this statement on ABC radio, stating that, while the main focus of the conversation was the release of the video, Mr Scafton said he had conveyed to the Prime Minister that there was no evidence to support the children overboard story. When asked about Mr Scafton's claim that he told the Prime Minister that no one he spoke to in Defence believed that children had been thrown overboard, she said:

I had no reason to believe children were thrown overboard.<sup>32</sup>

3.35 Asked whether she was concerned about the way the issue was played out in the last days of the election campaign, Ms McKenry replied:

I...well, I had private concerns as an individual. I believe now as I did then that it was not my role at that time as a public servant to enter the debate, or to talk about the...or volunteer information about the private workings or goings on of Government at the time.<sup>33</sup>

3.36 The Prime Minister, in media interviews, dismissed Ms McKenry's statements, saying:

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31 Steve Lewis and Patrick Walters, "Ex-colleague backs Scafton on PM's call", *The Australian*, 18 August 2004, p.1

32 ABC radio *AM* transcript, "Former senior defence bureaucrat backs Scafton claims", 18 August 2004, found at [www.abc.net.au/content/2004/s1179011.htm](http://www.abc.net.au/content/2004/s1179011.htm), accessed 24 September 2004

33 ABC radio *AM* transcript, "Former senior defence bureaucrat backs Scafton claims", 18 August 2004



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Well, his [Mr Scafton's] version of the events is not corroborated because she wasn't present at our discussion.<sup>34</sup>

3.37 Mr Scafton told Ms McKenry of his conversations with the Prime Minister before he knew what the Prime Minister would say at the National Press Club, and consequently the importance that would be placed on his comments.

***Mr Scafton's statement to the Powell inquiry: Evidence of Major General Powell and Commander Noonan***

3.38 Subsequent to the publication of Mr Scafton's letter, the Prime Minister sought statements from Major General Powell and Commander Noonan. They had interviewed Mr Scafton in December 2001 during the military inquiry into advice provided to government on the 'children overboard' incident.<sup>35</sup> The statements of both Major General Powell and Commander Noonan tended to support what Mr Scafton said in his letter to *The Australian*.

3.39 Major General Powell's record of interview read in part as follows:

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.<sup>36</sup>

3.40 Commander Noonan's statement contained the following:

On the details contained in Mr Scafton's published letter, CMDR Noonan recalled Mr Scafton 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 Scafton 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 Scafton speaking in general terms about the

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34 ABC television *Lateline* transcript, "Public servant backs 'overboard' claims", 18 August 2004, p.2, found at [www.abc.net.au/lateline/content/2004/s1179809.htm](http://www.abc.net.au/lateline/content/2004/s1179809.htm), accessed 24 September 2004

35 Prime Minister, Media Release, "Claims by Mr Scafton", 27 August 2004, found at: [www.pm.gov.au/news/media\\_releases/media\\_Release1103.html](http://www.pm.gov.au/news/media_releases/media_Release1103.html), accessed 31 August 2004. Major General Powell and Commander Noonan were interviewed by the Acting Chief of the Defence Force, Vice Admiral Shalders, on 26 August 2004. On 1 September 2004, the Committee accepted records made of those interviews as evidence before it (*Transcript of Evidence* pp.79 and 89). They were subsequently published on the Committee's website.

36 Major General Powell's statement, p.1

video tape and pictures, and specifically that Mr Scafton said he had told the Prime Minister that the photographs did not relate to the alleged 7 October children overboard incident. Mr Scafton 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.<sup>37</sup>

3.41 Appearing before this Committee, both officers confirmed their statements. Major General Powell could not remember the detail of his interview with Mr Scafton in December 2001, but said:

I only recall a clear understanding of the fact that, if what Mr Scafton had told me was accurate, the Prime Minister would have been in no doubt that children had not been thrown overboard.<sup>38</sup>

3.42 Commander Noonan said that Mr Scafton's evidence to this Committee:

...was certainly quite consistent with my recollection of the conversation that took place between him and General Powell.<sup>39</sup>

3.43 Commander Noonan stated that he had no reason to doubt the veracity of anything Mr Scafton said at the interview. He said:

I certainly left the interview feeling that he was committed to and believed the contents of the conversations that he had had. I felt that he had been very open with the general and I assumed that that was as a result of their prior relationship. I did not have any reason to think that there was anything but a frank and honest conversation between the general and Mr Scafton.<sup>40</sup>

3.44 The Prime Minister's response to Major General Powell and Commander Noonan's statements was:

They are not evidence of what Mr Scafton said to me. They merely record what Mr Scafton told others, some weeks later, of his conversations with me.<sup>41</sup>

3.45 One question emerging from Major General Powell's evidence is why the information Mr Scafton provided to that inquiry did not emerge earlier. Major General Powell gave two reasons for not mentioning it in his report: first, he viewed the comments as falling outside his terms of reference; second, his report was based on written statements only and Mr Scafton, although asked to do so, did not provide a written statement.

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37 Commander Noonan's statement, p.1

38 *Transcript of Evidence*, 1 September 2004, p. 78 (Scafton)

39 *Transcript of Evidence*, 1 September 2004, p.90 (Noonan)

40 *Transcript of Evidence*, 1 September 2004, p.90 (Noonan)

41 Prime Minister, Media Release, "Claims by Mr Scafton", 27 August 2004

3.46 On the question of the terms of reference, Major General Powell said that:

From CDF's point of view, my terms of reference were very much to do...with the tactical, operational and strategic passage of information and decision making within the ADF but influenced by the broader defence department organisation.<sup>42</sup>

3.47 Major General Powell did not think it appropriate to pass this information up the chain of command, as:

In a formal sense I was given very clear terms of reference. My profession, and certainly the broader defence community, were under quite a considerable amount of pressure throughout this whole period and I saw it as my role to stick very much to my terms of reference in a formal sense.<sup>43</sup>

3.48 The other point of note is that Mr Scafton recounted his conversations with the Prime Minister on the clear understanding that this would be kept confidential. Commander Noonan's statement said that:

...Mr Scafton had told MAJGEN Powell that he was privvy [*sic*] to things and could tell the inquiry things that he would deny if they were ever raised.<sup>44</sup>

3.49 Mr Scafton was assured that his conversations with Major General Powell would be off the record, as only written evidence would be used to write the report.<sup>45</sup> This guarantee of confidentiality apparently allowed Mr Scafton to tell things to the Powell inquiry that he was unwilling to state publicly.<sup>46</sup> In the end, Mr Scafton did not provide a written statement to the Powell inquiry. He told this Committee that both Admiral Barrie and Dr Hawke:

...were aware of the fact that, in the end, I did not cooperate with the Powell inquiry and they were comfortable with that as an outcome. They simply were conscious of the fact that I could not speak about issues that had taken place in the minister's office and they did not push me to do so.<sup>47</sup>

3.50 Mr Scafton's unwillingness to go on the record about his conversations with the Prime Minister suggests he understood his professional obligations to mean that he should not talk publicly about conversations within and between ministerial offices. This is important when considering Mr Scafton's evidence to the Bryant inquiry discussed below.

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42 *Transcript of Evidence*, 1 September 2004, p. 75 (Powell)

43 *Transcript of Evidence*, 1 September 2004, pp. 76-77 (Powell)

44 Commander Noonan's statement, p.1

45 *Transcript of Evidence*, 1 September 2004, p.91 (Noonan)

46 *Transcript of Evidence*, 1 September 2004, p.91 (Noonan)

47 *Transcript of Evidence*, 1 September 2004, p.19 (Noonan)

### *Finding*

3.51 *The Committee accepts the evidence of both Major General Powell and Commander Noonan that Mr Scafton told them in December 2001 that he had advised the Prime Minister there was no substance to claims that children had been thrown overboard.*

#### ***Mr Scafton's statement to the Bryant inquiry***

3.52 One issue that has brought the credibility of Mr Scafton's version of events into question is his statement to the Bryant inquiry in 2001. The Prime Minister's media statement of 16 August 2004 cited Mr Scafton's statement to the Bryant inquiry in 2001 in support of the Prime Minister's version of events.<sup>48</sup> Mr Scafton acknowledged before this Committee that parts of his statement to the Bryant inquiry were misleading or untrue.<sup>49</sup>

3.53 The Bryant inquiry was a public service inquiry carried out within the Department of the Prime Minister and Cabinet (PM&C). Its terms of reference were contained in a letter from the Prime Minister to then Secretary of PM&C, Mr Max Moore-Wilton, and read in part as follows:

I refer to the recent public debate about the advice tendered to Ministers regarding the vessel (SIEV 04) carrying unauthorised boat arrivals which was first sighted north of Christmas Island on 6 October 2001. In particular, I am concerned about the advice provided in relation to the question of children being thrown in the water from the vessel.

I request that the People Smuggling Task Force currently chaired by PM&C to [*sic*] conduct a full examination of:

- the advice that was provided by Australian personnel involved in the sighting and handling of the vessel, as well as any other relevant information;
- how that advice was obtained, and conveyed to authorities in Australia;
- the nature of advice provided to Government ministers, and how it was transmitted.

Should the examination point to shortcomings in the collection and transmission of this advice, I would also appreciate your recommendations on how such shortcomings might be avoided in the future.

3.54 These terms of reference make no mention of communication within ministerial offices. The Committee accepts public servants may have assumed the letter was seeking a report on advice provided by public officials to ministers.

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48 Prime Minister, Media Release, Claims by Mr Mike Scafton, 16 August 2004, found at: [www.pm.gov.au/news/media\\_releases/media-Release1074.html](http://www.pm.gov.au/news/media_releases/media-Release1074.html)

49 For example, *Transcript of Evidence*, 1 September 2004, p.57, p.69, p.70 (Scafton)

3.55 Mr Moore-Wilton's comments about the establishment of Bryant inquiry confirm that it was designed to examine departmental advice to ministers, not the actions of ministerial advisers. In explaining why the inquiry took the form it did, Mr Moore-Wilton said:

The Prime Minister indicated that because the task force had charge of the whole-of-government issue and because the issue might involve *departments* wider than Defence, he wished the task force to undertake an investigation and report to him.<sup>50</sup> [Emphasis added]

3.56 Ms Bryant's investigation was never designed to be an independent inquiry. Mr Moore-Wilton himself made this point clear at a Senate estimates hearing in 2002, saying:

You use the word 'independence' of Ms Bryant's report. Ms Bryant's report was never to be an independent report. It was a request by the Prime Minister to me for the task force to give him a report.<sup>51</sup>

3.57 Being an internal investigation, Ms Bryant did not have powers to compel witnesses. Ms Bryant told the original CMI inquiry that:

My investigation took place under general executive power and relied on the cooperation of individuals. Individuals were not on oath and were not compelled to tell me all that they knew.<sup>52</sup>

3.58 Moreover, as an internal inquiry, Ms Bryant's inquiry could not offer the same sort of protection for witnesses as, for example, a parliamentary inquiry.

3.59 These points are relevant to considering Mr Scrafton's statement to Ms Bryant. As noted above, Mr Scrafton acknowledged to this Committee that he did not tell everything he knew to the Bryant inquiry and that parts of his statement to that inquiry are untrue.<sup>53</sup> He put forward several reasons for this, namely:

- A Cabinet direction that ministerial advisers not appear before the Senate;
- The Bryant inquiry's constrained terms of reference;
- The need, as a senior public servant, to maintain a relationship of trust with ministers; and

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50 Senate Finance and Public Administration Legislation Committee, *Transcript of Evidence*, Estimates, 18 February 2002, p.41 (Moore-Wilton)

51 Senate Finance and Public Administration Legislation Committee, *Transcript of Evidence*, Estimates, 18 February 2002, p.129 (Moore-Wilton)

52 Select Committee on a Certain Maritime Incident, *Transcript of Evidence*, 18 April 2002, p.1258 (Bryant)

53 For example, *Transcript of Evidence*, 1 September 2004, p.57 (Scrafton)

- Concerns about the professional consequences of publicly casting doubts on the Prime Minister's Press Club statements.<sup>54</sup>

3.60 In front of this Committee, Mr Scafton said he had never seen the 'Cabinet decision' referred to above, but conceded he may have in mind a Cabinet directive that post-dated the Bryant inquiry, and related to the Senate CMI inquiry.<sup>55</sup>

3.61 Mr Scafton said he felt justified in withholding certain information from the Bryant inquiry because he understood that inquiry to be about advice provided *by departments* to ministers and their offices, not the flow of information within and between ministerial offices.<sup>56</sup> He said that Ms Bryant made this clear in her letter to witnesses,<sup>57</sup> and also in her opening discussion with him, where:

...we discussed this letter. We discussed the fact that I had been a ministerial adviser. She said that that was not in the area that she was covering, that this inquiry was about official advice going forward from agencies to government formally, to ministers formally.<sup>58</sup>

3.62 Mr Scafton told Ms Bryant upfront that he could not pass on knowledge of conversations with ministers or the Prime Minister that he gained while a MOPS staffer. His record of interview for her inquiry noted that:

Mr Scafton 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.<sup>59</sup>

3.63 This is consistent with the evidence that has emerged from his interview with Major General Powell, that Mr Scafton was unwilling to comment on his conversations with the Prime Minister if there was a possibility those comments would be made public.<sup>60</sup>

3.64 Mr Scafton's said that another factor influencing his evidence to Ms Bryant was his need to maintain trust between him and the government. He told this Committee:

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

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54 *Transcript of Evidence*, 1 September 2004, p.4 (Scafton)

55 *Transcript of Evidence*, 1 September 2004, pp.47-49

56 *Transcript of Evidence*, 1 September 2004, p.4, p.53 (Scafton)

57 *Transcript of Evidence*, 1 September 2004, pp.52-53 (Scafton)

58 *Transcript of Evidence*, 1 September 2004, p.117 (Scafton)

59 Enclosure to Bryant Report, Statement by Mr Mike Scafton, 14 December 2001

60 *Transcript of Evidence*, 1 September 2004, p.82 (Powell) and p.91 (Noonan)

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full disclosure about my conversations with the Prime Minister on the evening of 7 November 2001. Apart from any personal enmity towards 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.<sup>61</sup>

...

The reality was that it would have been completely irrational of me to have declared that I thought that the Prime Minister had misled the country prior to an election and then still expect to work with that government for the rest of the period they were in office.<sup>62</sup>

3.65 He said that, while he felt obliged to participate in an inquiry that was being conducted at the behest of the Prime Minister by the head of the Public Service, in answering questions he avoided revealing anything critically damaging or controversial about his time in the Minister's office.<sup>63</sup> He said:

I went as far as I thought I reasonably could in discussing with Jennifer the things that happened in the minister's office without actually contravening any confidences there.<sup>64</sup>

3.66 He suggested this led to some misleading answers as he sought to prevent certain topics being thoroughly canvassed.<sup>65</sup>

3.67 A fourth reason why Mr Scafton stated he misled the Bryant inquiry was that he feared professional consequences if he gave Ms Bryant a full and frank account of his conversations with the Prime Minister. He said in his opening statement that:

...the prevailing atmosphere in Defence, and in particular the methods and expectations of Max Moore-Wilton as Secretary of 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.<sup>66</sup>

3.68 Mr Scafton said under questioning:

...I am somebody who has been personally abused and threatened by Max Moore-Wilton for daring to provide frank and fearless advice to my minister, which was seen to be superior to the advice that Max was giving

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61 *Transcript of Evidence*, 1 September 2004, p.4 (Scafton)

62 *Transcript of Evidence*, 1 September 2004, p.57 (Scafton)

63 *Transcript of Evidence*, 1 September 2004, p.55 (Scafton)

64 *Transcript of Evidence*, 1 September 2004, p.54 (Scafton)

65 *Transcript of Evidence*, 1 September 2004, p.18, p.70 (Scafton)

66 *Transcript of Evidence*, 1 September 2004, p.4 (Scafton)

forward...I was confronted in an abusive way. He swore at me in quite derogatory terms, in front of witnesses.<sup>67</sup>

...I had about three engagements with Mr Moore-Wilton, all of which were characterised by the same sort of bullying approach to dealing with people.<sup>68</sup>

3.69 He said he believed that Mr Moore-Wilton would carry a grudge against someone who acted contrary to the Prime Minister's interests.<sup>69</sup> He said:

The way in which that inquiry was conducted was in a context in which it was almost impossible for me to open up doors which would divulge things that I was being forbidden to do by the government. Did I phrase answers to Jennifer Bryant in a sense the way that closed off those options? Yes, I did. Did I do it for the reasons I have stated: that I think that this was not a genuine inquiry, that in fact it was being conducted at Max's behest in support of the Prime Minister's position? Yes, I did. I was reluctant to say a whole range of things to Jennifer Bryant. And, as I have said in my opening statement, the reaction from ministers' offices, including the Prime Minister's office, about what I might have said is a clear indication that, had I acted as courageously as perhaps an idealistic public servant might have, I would not be sitting here before you today as a former head of infrastructure division; I would have been in the regions somewhere looking after lawn cutting. There was a whole range of reasons why Jennifer Bryant's inquiry was not fully cooperated with by me. I am prepared to accept that.<sup>70</sup>

3.70 Mr Scrafton was concerned that full disclosure would compromise his work as a public servant. As he said:

...after about 16 years of being in the Public Service, with about seven or eight of those years being in senior positions, and a year in Parliament House, ...I fully understood the consequences of calling the Prime Minister a liar under any circumstances.<sup>71</sup>

### *Finding*

3.71 *The Committee accepts Mr Scrafton's evidence that he felt constrained by various factors in his submissions to the Bryant Inquiry.*

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67 *Transcript of Evidence*, 1 September 2004, p.62 (Scrafton)

68 *Transcript of Evidence*, 1 September 2004, p.63 (Scrafton)

69 *Transcript of Evidence*, 1 September 2004, pp.62-63 (Scrafton)

70 *Transcript of Evidence*, 1 September 2004, p.18 (Scrafton)

71 *Transcript of Evidence*, 1 September 2004, p.60 (Scrafton)



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### *Number and timing of phone calls*

3.72 Another matter which was considered in relation to the credibility of Mr Scrafton's evidence overall is his uncertainty over the number and timing of his phone calls with the Prime Minister on 7 November 2001. In his initial letter to *The Australian*, Mr Scrafton said that he spoke to the Prime Minister three times that evening. This is different to what he told the Bryant inquiry, where he said that he spoke to the Prime Minister 'a couple of times'. Commander Noonan recalled him telling the Powell inquiry there were 'at least two' mobile phone calls with the Prime Minister or his adviser.<sup>72</sup> In his opening statement to this Committee, Mr Scrafton said that he recalled three phone calls, but could have conflated the number of issues discussed with the number of phone calls.<sup>73</sup>

3.73 At the public hearing on 1 September, this issue was canvassed at length. It was put to Mr Scrafton that the Prime Minister's mobile phone record shows that there were only two conversations between him and the Prime Minister on the evening of 7 November 2001.<sup>74</sup> It was asserted that the first of these started at 8:41 pm and lasted 9 minutes and 36 seconds, and the second started at 10.12 pm and lasted 51 seconds.<sup>75</sup>

3.74 The phone records used as a basis for questioning Mr Scrafton were not tabled before the Committee as evidence, and the Committee has not been able to verify the assertions about the number, timing and duration of phone calls. The documents were not provided to Mr Scrafton to view whilst he was being questioned, although due process and normal Senate Committee practice would dictate that this would be appropriate.

3.75 Senator Brandis cited security and privacy issues as reasons for declining to table material, purporting to be a complete set of mobile phone records from those present at The Lodge on the evening of 7 November 2001, supplied to him by an unidentified source. Senator Brandis, privately, offered Senator Ray and Senator Faulkner the opportunity to examine these records, but his offer was declined as the original supplier of the records would not be available to verify them by way of evidence before the Committee.

3.76 As these supposed records were used as a premise for questioning Mr Scrafton, the Committee has considered whether this line of questioning cast any new light on Mr Scrafton's evidence. In earlier evidence, Mr Scrafton had given the following account of his conversations with the Prime Minister on 7 November:

I was sitting down to entrée when 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

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72 Commander Noonan's statement, p.1

73 *Transcript of Evidence*, 1 September 2004, p.6 (Scrafton)

74 *Transcript of Evidence*, 1 September 2004, pp.103-104 (Brandis)

75 *Transcript of Evidence*, 1 September 2004, pp.105-106 (Brandis)

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.<sup>76</sup>

3.77 Mr Scafton later said it was possible that the third point about the ONA report may have been made in the same phone call as the first two points, not in a separate conversation as he initially recalled.<sup>77</sup> He said on several occasions that he was not certain about the number of phone calls.<sup>78</sup>

3.78 Mr Scafton also said that during the first phone call the Prime Minister repeated verbatim what Mr Scafton said to him to others in the room, who included Arthur Sinodinos, Tony Nutt and Tony O'Leary.<sup>79</sup> He said that the Prime Minister did not adopt this practice with the later conversation or conversations.<sup>80</sup>

3.79 Mr Scafton said of the second conversation that he got the sense he was being interrogated over something. His words were:

I am not sure I reflected on it at the time but, thinking about it subsequently, in the first instance he [the Prime Minister] was simply receiving information from me and in the second instance he was interrogating me over something.<sup>81</sup>

3.80 While admitting his uncertainty about the number of phone calls, Mr Scafton was adamant about the accuracy of his memory of what he told the Prime Minister. He said:

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.<sup>82</sup>

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76 *Transcript of Evidence*, 1 September 2004, p.36 (Scafton)

77 *Transcript of Evidence*, 1 September 2004, p.98 (Scafton)

78 For example, *Transcript of Evidence*, 1 September 2004, pp.6, 93

79 *Transcript of Evidence*, 1 September 2004, p.39 (Scafton)

80 *Transcript of Evidence*, 1 September 2004, pp.39,96 (Scafton)

81 *Transcript of Evidence*, 1 September 2004, p.96 (Scafton)

82 *Transcript of Evidence*, 1 September 2004, p.94 (Scafton)

3.81 When faced with questioning based on the phone records, Mr Scafton accepted there were probably only two phone calls.<sup>83</sup> Challenged with the proposition that he could not have covered all the topics he said were discussed in 51 seconds, he said 'I suspect you are right...'.<sup>84</sup> However, he maintained his position on what was discussed in those phone calls. He said:

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 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.<sup>85</sup>

3.82 Despite Mr Scafton's uncertainty, the brevity of the second phone call does not prove that these points were not covered in that call. Mr Scafton said that the phone calls were conducted with 'no pleasantries'<sup>86</sup> and he did not engage in much detail.<sup>87</sup> Apart from discussing the video, the other three points Mr Scafton says he made to the Prime Minister that evening are 1) that the photos of children in the water were from the sinking of the boat on 8 October, not 7 October; 2) that no-one in Defence that he dealt with still believed children had been thrown overboard, and 3) that the ONA report of 9 October may have been based on ministers' media statements, not intelligence. Some have argued it is possible to make all these points in 51 seconds.<sup>88</sup>

3.83 As noted above, Mr Scafton also allowed the possibility that more topics were covered in the first conversation. He thought it unlikely that he had spent nearly ten minutes discussing only the video.

3.84 Although admitting his recollection of the timing and order of topics discussed in his phone calls with the Prime Minister was hazy, Mr Scafton remained adamant about the content of those phone conversations. He said:

Could I be mistaken about which phone call those conversations took place in? Yes. Am I mistaken about that discussion? No.<sup>89</sup>

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83 *Transcript of Evidence*, 1 September 2004, p.106 (Scafton)

84 *Transcript of Evidence*, 1 September 2004, p.106 (Scafton)

85 *Transcript of Evidence*, 1 September 2004, p.107 (Scafton)

86 *Transcript of Evidence*, 1 September 2004, p.107 (Scafton)

87 *Transcript of Evidence*, 1 September 2004, p.40 (Scafton)

88 This point was made by professional script writer Bill Garner in a letter to *The Age* newspaper, 9 September 2004

89 *Transcript of Evidence*, 1 September 2004, p.108 (Scafton)

3.85 When it was put to Mr Scafton that, if he could not recall how many telephone conversations he had that evening, he may not be able to recall very clearly a lot of other events that happened, Mr Scafton's response was:

I do not know if you have ever been in the position of having to explain to a Prime Minister that the position he has been taking for a month is wrong. That is not something that somebody with my length of time in the Public Service would ever forget. I am absolutely clear that what I have said in the letter, in the statutory declaration I have made and in the statement I have made before you represents exactly what I have said to the Prime Minister in terms of substance.<sup>90</sup>

3.86 The phone records cited, but not accepted as evidence, during the Committee's proceedings neither prove nor disprove Mr Scafton's claims about what he told the Prime Minister on 7 November 2001.

### *Finding*

3.87 *The Committee notes Mr Scafton's lack of certainty about the number and timing of his phone calls with the Prime Minister on 7 November 2001 and his certainty about the key points discussed during those conversations.*

### ***Statements by the Prime Minister's staff***

3.88 Following Mr Scafton's letter to *The Australian*, the Prime Minister had a number of his staff make statements on their recollections of 7 November 2001.<sup>91</sup> Their recollections vary, and they were not subject to scrutiny before this Committee. None of the staff who made statements say that the Prime Minister told them that issues other than the video were discussed. Paul McClintock's recollection was that the result of the first phone call 'was that Mr Scafton would look at the video and let us know what it contained.'<sup>92</sup> This clearly cannot be the case, as Mr Scafton had already viewed the video by the time this first conversation took place. Several of the staff members do not recollect how many conversations the Prime Minister had with Mr Scafton. Mr Sinodinos said there were 'a number of phone calls', Mr O'Leary spoke only of 'telephone contact'.<sup>93</sup>

3.89 One common point to emerge from the statements of the Prime Minister's staff is none of them actually heard what Mr Scafton said to the Prime Minister. This is consistent with Mr Scafton's evidence before this Committee. Mr McClintock

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90 *Transcript of Evidence*, 1 September 2004, p.15 (Scafton)

91 Prime Minister, Media Release, "Claims by Mr Scafton", 27 August 2004, found at: [www.pm.gov.au/news/media\\_releases/media\\_Release1103.html](http://www.pm.gov.au/news/media_releases/media_Release1103.html), accessed 31 August 2004.

92 Statement by Mr Paul McClintock, attachment to Prime Minister's media release of 27 August 2004

93 Statements by Arthur Sinodinos and Tony O'Leary, attachment to Prime Minister's media release of 27 August 2004

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could not recall whether the phone calls actually took place in the same room that the staff were sitting in. The staff were therefore only able to recall what the Prime Minister relayed of those conversations, and the subsequent discussion between the staff and the Prime Minister. In the Prime Minister's own reasoning, the statements of his staff are not evidence of what Mr Scafton told the Prime Minister, only of what the Prime Minister told his staff of those conversations. Even if, as the staff seem to agree, the focus of their discussion with the Prime Minister was the video, this does not prove that Mr Scafton did not raise other issues with the Prime Minister.

## **Finding**

*3.90 The Committee accepts the evidence of both Major General Powell and Commander Noonan that Mr Scafton told them in December 2001 that he had advised the Prime Minister there was no substance to claims that children had been thrown overboard.*

*3.91 The Committee accepts Mr Scafton's evidence that he felt constrained by various factors in his submissions to the Bryant Inquiry.*

*3.92 The Committee notes Mr Scafton's lack of certainty about the number and timing of his phone calls with the Prime Minister on 7 November 2001 and his certainty about the key points discussed during those conversations.*

*3.93 The Committee finds Mr Scafton's claim that he told the Prime Minister on 7 November 2001 that there was no evidence to substantiate the 'children overboard' story credible. The clear implication of his evidence is that the Prime Minister misled the Australian public in the lead up to the 2001 federal election.*



## Chapter 4

### The Scrafton Evidence: Handling of evidence to support 'children overboard' claims

4.1 Mr Scrafton had knowledge of a number of aspects of the 'children overboard' incident that the CMI Committee was aware of but unable to fully investigate due to the unavailability of MOPS staff to appear before the Committee. In particular, Mr Scrafton was one of Mr Reith's advisers told about the misrepresentation of the supposed 'children overboard' photos soon after they were released on 10 October. The CMI Committee knew this, but was not able to ask him what he did with this information. Mr Scrafton was also aware of the existence of witness statements by members of the *Adelaide's* crew – statements that show that no-one on the *Adelaide* actually saw children being thrown into the water, although some did see a teenage boy in the water. His willingness to appear before this Committee enabled it to add to the CMI Committee's knowledge of the handling of evidence used in support of the 'children overboard' claims.

4.2 This chapter presents Mr Scrafton's evidence on his involvement in 'children overboard' related events in October and early November 2001, including conversations with defence officials, within Mr Reith's office and with the Prime Minister's office. It then considers the implications of Mr Scrafton's evidence for the findings of the original CMI inquiry on the government's control and use of information about the incident, including photos and written reports.<sup>1</sup>

4.3 After hearing from Mr Scrafton on 1 September 2004, the Committee resolved to invite a further four witnesses to appear before it to give their version of events and potentially clarify some of these outstanding issues. As noted in Chapter 1, none of these four accepted the Committee's invitation to appear. The evidence presented in this chapter is therefore limited to Mr Scrafton's account. Unfortunately, this means that several key questions remain unanswered.

#### Mr Scrafton's involvement in the 'children overboard' issue: chronology

4.4 The following table gives a chronological account of Mr Scrafton's recollection of 'children overboard' related events he was involved in as recounted in his evidence before this Committee.

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1 The CMI inquiry's terms of reference instructed that Committee to examine: '(b)(iii) Federal Government control of, and use of, information about the incident, including written and oral reports, photographs, videotapes and other images'.

Date	Mr Scrafton's account of events <sup>2</sup>
10 October	Photos released
10 October	Mr Scrafton receives phone call from Tim Bloomfield <sup>3</sup> who says there has been a number of 'very difficult' conversations with Ross Hampton <sup>4</sup> over the captions and photographs. [p.22] Mr Bloomfield says Mr Hampton has been difficult to deal with and will not take advice that the photographs might be about the wrong thing. He says there is some confusion about who has what photographs and what captions have been put on or left off. [p.11, p.22]
10 October	Mr Scrafton speaks to Mr Hampton about the photos, and makes it clear to him that they may not represent the purported incident. Mr Hampton is 'difficult', and says Defence is giving him confusing information but he has grounds for believing the photos are of children overboard. [p.22]
10 October	Mr Scrafton speaks again to Mr Bloomfield, who is quite concerned. Mr Scrafton suggests Mr Bloomfield keep on file an accurate record of all his discussions with Mr Hampton. [p.22]
10 October	Mr Scrafton speaks to Mr Reith (?) [p.12]
11 October	Mr Scrafton speaks to Brigadier Bornholt <sup>5</sup> and Jenny McKenry <sup>6</sup> about the photos. They express their very strong view that the photographs do not represent children overboard. [p.11]
11 October	Mr Scrafton passes Brigadier Bornholt and Ms McKenry's views (that the photos are not of children overboard) on to Mr Hampton. [p.11]
11 October	Mr Scrafton receives a phone call from Mr Reith. They have 'a very long discussion about the photographs'. Mr Reith says that the CDF is still telling him that the photos are genuine and he is not prepared

2 This table presents the evidence given by Mr Scrafton in front of this Committee, and should be read in conjunction with the evidence of witnesses to the CMI inquiry presented in Chapter 2. Page references in square brackets refer to this Committee's *Transcript of Evidence*, 1 September 2004

3 Director of Media Liaison, Department of Defence

4 Media Adviser to Mr Reith

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

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



	to accept other advice unless it is conclusive. [p.11]
11 October	Mr Scafton rings Miles Jordana <sup>7</sup> in the Prime Minister's office to inform him that there are serious doubts about the photographs. [p.11, p.13] He gives 'prudent rather than categorical' advice. [p.13]
11-12 October?	Mr Reith's staff become aware there is a tape of the incident. [pp.11, 23] Mr Scafton speaks to Strategic Command about what is on the tape and what sort of tape it was. AVM Titheridge <sup>8</sup> thinks the tape may be infra-red. [p.23] This causes some confusion about whether the incident occurred during daylight hours. Mr Scafton has another 'long discussion' with Mr Reith, and at Mr Reith's request does some internet research to establish the time of sunrise at the SIEV's location. [p.11]
11-12 October?	Mr Scafton is asked by Mr Reith and Mr Hendy to chase up what was really happening. Mr Scafton speaks to Rear Admiral Chris Ritchie <sup>9</sup> and AVM Titheridge. He is informed that there is an instruction to take statements from all crew members of the <i>Adelaide</i> . [p.24] Mr Scafton is told the tape is still at sea, but arrangements will be made to get it across once the ship gets to port. [p.24] Mr Scafton is subsequently involved on 'a number of occasions' in tracking down where the sworn statements and tape had got to. [p.11]
11-12 October	Mr Scafton becomes aware of 'very significant' doubts about the children overboard reports in talking to Rear Admiral Ritchie and subsequent conversations with AVM Titheridge. [pp.15-16]
12-13 October	Mr Scafton discusses the issue of whether photos should be retracted with Peter Hendy. <sup>10</sup> He says a retraction should be considered, but it is a political decision, so not for him to make. Mr Hendy comes back 'later on' and says 'we have decided' not to retract them. [p.31] Mr Scafton is not sure who is meant by 'we'.
14-15 October	Mr Scafton chases up witness statements with AVM Titheridge. He is told they are moving slowly towards Canberra and he should not ask any more about them. [p.12] (In early to middle October) AVM Titheridge tells Mr Scafton that the witness statements are not

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7 Senior Adviser (International) to the Prime Minister

8 Head Strategic Command, Department of Defence

9 Commander Australian Theatre, Royal Australian Navy

10 Chief of Staff to Defence Minister, Peter Reith

	getting moved as quickly as they might normally. [p.25]
15-16 October (?)	Jane Halton <sup>11</sup> rings Mr Scafton and talks about the position of the Defence Minister's office on the photographs. [p.30]
5-6 November	Miles Jordana from PMO calls Mr Scafton to discuss reports of problems with 'children overboard' advice. Mr Scafton reinforces the point that the photos do not represent a 'children overboard' incident. He gives 'unqualified and categorical' advice to this effect. [p.13, pp.33-35]
7 November	Mr Scafton views the tape of the SIEV 4 incident at the Maritime Headquarters in Sydney. [p.36]
7 November - evening	Mr Scafton has telephone conversations with the Prime Minister.

4.5 A number of the points in this chronology contradict what Mr Scafton told the Bryant inquiry, and hence differ from the CMI Committee's understanding of events. Specifically, Mr Scafton's statement to the Bryant inquiry says:

- He did not advise Mr Reith about the misrepresentation of the photos as this would have been Mr Hampton's role, and he did not know whether Mr Reith was informed about the true nature of the photos.
- The discussions he had with AVM Titheridge and Admiral Ritchie following Mr Ruddock's statements in the news indicated that the 'children overboard' story was true.

4.6 The previous chapter presented Mr Scafton's reasons for not giving a fully accurate account of his involvement in these events to the Bryant inquiry. Without being in a position to question the other people involved to test Mr Scafton's account of events, the Committee has based the remarks below on his evidence to this Committee rather than his contribution to an internal government inquiry.

### **Misrepresentation of the photographs – attempts to correct the record**

4.7 The CMI Committee considered at length the government's failure to correct the record after it became clear that photos released as evidence that children were thrown overboard on 7 October were in fact of children being rescued from the sinking vessel on 8 October.<sup>12</sup> The CMI Committee was aware that Mr Scafton was one of the ministerial advisers whom departmental officials told the photos were being misrepresented. The CMI report criticised Mr Scafton for not taking responsibility for ensuring that the Minister (Mr Reith) was made aware of the advice about the

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11 Deputy Secretary and Chair of People Smuggling Taskforce, Department of the Prime Minister and Cabinet

12 CMI Report, pp.113-117

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misrepresentation and for not advising the Minister to retract the claim that the photos were evidence of the children overboard report.<sup>13</sup>

4.8 As can be seen from the above chronology, Mr Scafton's evidence to this Committee filled in some of the gaps of the CMI inquiry's evidence. The key points to emerge are that Mr Scafton not only alerted Mr Reith's staff to advice he received of doubts about the photos, but also conveyed these doubts to Mr Reith himself and to the Prime Minister's senior adviser on international relations, Mr Miles Jordana. His evidence suggests that a conscious decision was made between Mr Reith's then chief of staff, Peter Hendy, and another person, not to retract the photos even once they were known to have been misrepresented.

### ***Handling of the photos in the Defence Minister's office***

4.9 Mr Scafton was alerted to problems with the captions on the photographs on the day the photos were released. Tim Bloomfield, then Director of Media Liaison in the defence department, called Mr Scafton that day to say there had been a number of 'very difficult' conversations with Mr Reith's media adviser Ross Hampton about the captions and the photographs. Mr Scafton then talked to Mr Hampton, who, again, was 'difficult'.<sup>14</sup>

4.10 The next day, Brigadier Bornholt and Jenny McKenry contacted Mr Scafton to express their strong view that the photographs did not represent children overboard. Ms McKenry also sent an email of the photographs to Mr Scafton which 'quite clearly had the date on it', that is, 8 October.<sup>15</sup> Mr Scafton told this Committee that he passed this information on to Mr Reith's media adviser Mr Ross Hampton.<sup>16</sup> He said he made clear to Mr Hampton that the photos may not have represented the purported incident.<sup>17</sup>

4.11 Mr Scafton also told this Committee that on 10, 11 and possibly 12 October he had 'a series of discussions' with Mr Reith about the validity of the photos. During these discussions he passed on the advice of Brigadier Bornholt and Jenny McKenry that they believed the photos were not of children being thrown overboard but were of the rescue of asylum seekers from the sinking boat.<sup>18</sup> Mr Reith told Mr Scafton that he was getting other advice from Admiral Chris Barrie, who believed the photos may have been of a 'children overboard' incident.<sup>19</sup> (This conflicts with Admiral Barrie's evidence to the CMI inquiry that he informed Mr Reith on 11 October that the photos

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13 CMI Report, p.117

14 *Transcript of Evidence*, 1 September 2004, p.22 (Scafton)

15 CMI Report, p.83

16 *Transcript of Evidence*, 1 September 2004, p.11 (Scafton)

17 *Transcript of Evidence*, 1 September 2004, p.22 (Scafton)

18 *Transcript of Evidence*, 1 September 2004, p.12, p.27 (Scafton)

19 *Transcript of Evidence*, 1 September 2004, p.12, p.28 (Scafton)

were not of the 7 October 'children overboard' event.)<sup>20</sup> While Mr Scrafton was not in a position to know what Mr Reith believed about the photos, he stated that:

There were a number of discussions when I said to him that the advice that I was receiving was that these were not the photos.<sup>21</sup>

4.12 The third person in Mr Reith's office that Mr Scrafton discussed this matter with was Peter Hendy, then Mr Reith's chief of staff. It was with Mr Hendy that Mr Scrafton discussed retracting the photos. He told this Committee:

In the office there was no clear understanding or really serious questioning about whether the event had taken place, but it became clear in the office – and I will say who was there in a moment – that the photos did not represent the 'children overboard' event. Peter Hendy and I had a discussion, in which I said, 'This is not an issue for me but you need to know that these photographs are available on the "restricted" network in Defence, so lots of people will get access to them.' I am not sure what messages surrounded the photographs as they went out, but the question for Peter to think about was whether or not we retracted them. Later on, Peter came back to me and said, 'We have decided' – and I do not know who he meant by 'we' – 'that we'll just leave them out there, seeing as they're out there.'<sup>22</sup>

4.13 In other words, Mr Scrafton felt that the decision of whether to retract the photos was not his to make, but suggested to Mr Reith's chief of staff that he should consider retracting them. Despite it being 'clear' in the office that the photos were not of a 'children overboard' event, Mr Reith's chief of staff, in consultation with unidentified persons, made a conscious decision not to correct the public record. Mr Scrafton believed this took place around 12 or 13 October. He was not aware of whether Mr Reith was involved in that decision or not.<sup>23</sup>

4.14 Mr Scrafton's evidence contradicts Mr Reith's statement to the Bryant inquiry, which stated that it was not that he 'made a decision not to change the public record' but rather that 'there was continuing uncertainty and he was not willing to make further public comments which may themselves not have been correct'.<sup>24</sup>

4.15 This Committee hoped to test Mr Scrafton's account of events by questioning Mr Hendy on his involvement and knowledge of the 'children overboard' photos and the decision not to retract them once the misrepresentation was known. Mr Scrafton's evidence suggests that Mr Hendy was involved in this decision, and could tell this

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20 CMI Report, pp.132-133

21 *Transcript of Evidence*, 1 September 2004, p.27 (Scrafton)

22 *Transcript of Evidence*, 1 September 2004, p.31 (Scrafton)

23 *Transcript of Evidence*, 1 September 2004, p.32 (Scrafton)

24 CMI Report, p.116

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Committee who else was involved. Mr Hendy's refusal to appear before this Committee means that once again this question remains unanswered.

***Prime Minister's office informed of doubts about photos***

4.16 Mr Scafton's claims that these doubts were conveyed to the Prime Minister's office would confirm the findings of the CMI Report that, by the evening of 7 November, Mr Jordana and the Prime Minister were aware of doubts about the provenance of the photos.<sup>25</sup> Mr Scafton's new evidence suggests that the Prime Minister's office was alerted to 'doubts' as early as 11 October, when he spoke with Miles Jordana, then the Prime Minister's senior adviser on international policy.<sup>26</sup> Mr Scafton told this Committee:

As normal practice working between the two offices, as soon as I had had the discussions with Jenny [McKenry], with the Minister and with Ross Hampton I rang Miles and gave him a heads-up saying that there are serious doubts about the photographs that everybody is talking about and you need to be aware of this in case the Prime Minister thinks about using them.<sup>27</sup>

4.17 Mr Scafton's evidence also suggests that the Prime Minister's office should have been certain by 8 November that the photos were not of a 'children overboard' event. Mr Scafton said his advice to Mr Jordana in October was 'prudent rather than categorical'.<sup>28</sup> However, when Mr Jordana rang Mr Scafton on 5 or 6 November 2001 to clarify what the photos represented,<sup>29</sup> Mr Scafton said he gave categorical advice that 'the photos did not represent the children overboard incident'<sup>30</sup> but were of the sinking of the vessel.<sup>31</sup>

4.18 Thus, according to Mr Scafton, the Prime Minister's office received categorical advice that the photos had been misrepresented before the Prime Minister's Press Club appearance on 8 November. This advice was in addition to the warning Ms Halton of PM&C gave to Mr Jordana on the evening of 7 November that there were rumours in Defence that the photos were not of the 'children overboard' incident.<sup>32</sup> As discussed in Chapter 3, the Prime Minister did not take the opportunity at the Press Club, when asked specifically about the photos, to set the record straight.

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25 CMI Report, pp.124-126

26 *Transcript of Evidence*, 1 September 2004, p.11 and p. 23 (Scafton)

27 *Transcript of Evidence*, 1 September 2004, p.13 (Scafton)

28 *Transcript of Evidence*, 1 September 2004, p.27 (Scafton)

29 *Transcript of Evidence*, 1 September 2004, p.34 (Scafton)

30 *Transcript of Evidence*, 1 September 2004, p.33 (Scafton)

31 *Transcript of Evidence*, 1 September 2004, p.34 (Scafton)

32 CMI Report, p.124

4.19 The Committee had hoped to question Mr Jordana on exactly what information he passed to the Prime Minister and when he did so. This could help answer some of the outstanding questions from the CMI inquiry on what information and advice about 'children overboard' was given to the Prime Minister before the 2001 election. The Cabinet decision blocking former MOPS staffers from appearing has hampered the work of this Committee.

### **Delays to witness statements and video tape reaching Canberra**

4.20 One of the key pieces of evidence suggesting that the original report of children overboard was inaccurate was the witness statements gathered from crew members of the *Adelaide* soon after the incident. These led senior Defence personnel to conclude on 11 October that the 'children overboard' report was not true.<sup>33</sup> Likewise, the video footage of the incident did not show children being thrown overboard, as discussed in Chapter 3. The length of time the video and statements took to reach the hands of those responsible for passing this information to ministers is an issue worthy of attention, especially when contrasted with the lightening speed at which the initial 'children overboard' report was transmitted.

4.21 Mr Scrafton said that in the days following the 'children overboard' report he spoke with Rear Admiral Ritchie and Air Vice Marshal Titheridge, and through this was informed of an instruction to take statements from crew members of the *Adelaide* and of the existence of the video footage.<sup>34</sup> He expected Strategic Command to get back to him with advice on the statements and video once they were available.<sup>35</sup> However, Strategic Command did not alert Mr Scrafton to the arrival of the video at Maritime Headquarters in Sydney. Nor did the statements themselves make their way to the Defence Minister's office in Canberra.

4.22 Despite not actually seeing the statements, Mr Scrafton's evidence suggests that the Defence Minister's office became aware that these statements cast significant doubt on the original report very early in the piece. He said:

I became aware that there were very significant doubts about [reports of 'children overboard'] when talking to Admiral Ritchie on, I think, 11 or 12 October – I forget the exact dates – and in subsequent discussions with Air Vice Marshal Titheridge, who are people I was talking to on a regular basis every day. They were firming up the fact that the sworn statements by the *Adelaide* crew, which Admiral Smith at that stage knew, indicated that at no stage did anybody clearly see children being thrown into the water.<sup>36</sup>

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33 CMI Report, p.65

34 *Transcript of Evidence*, 1 September 2004, p.24 (Scrafton)

35 *Transcript of Evidence*, 1 September 2004, p.24 (Scrafton)

36 *Transcript of Evidence*, 1 September 2004, p.16 (Scrafton)

4.23 Yet the sluggish speed at which these statements and video made their way to relevant people in Canberra is of concern. Mr Scafton says he followed up the sworn witness statements and video with Air Vice Marshal Titheridge on around 14 or 15 October, to be told that:

...they were moving slowly towards Canberra and I should not ask any more about what was happening to them.<sup>37</sup>

4.24 Mr Scafton says Air Vice Marshal Titheridge also told him that 'things were not moving as quickly as they might normally'.<sup>38</sup>

4.25 While the slow progress of the video may be understandable, the same cannot be said of the statements, which were available by email from as early as 11 October. On 11 October they were emailed to several senior Navy officers who concluded on seeing them that no children were thrown overboard from the SIEV 4.<sup>39</sup>

4.26 The Committee invited Air Vice Marshal Titheridge to appear before it as it had hoped to ask him about the delay in getting the witness statements and video tapes to Canberra. In declining the invitation to appear, AVM Titheridge stated:

I have nothing to add to this issue. Requests received by me from Mr Scafton were passed to the chain of command for action, in this instance to HQ Australian Theatre and then, I presume, to Maritime HQ where the tape was held. You would have to seek information about those delays from those responsible for custody of the tape.

4.27 This means that this Committee can only speculate about the reasons for the delays in the statements and video reaching relevant people in Canberra. It notes with concern the failure of this material to reach the Defence Minister's office in a timely way.

### **People Smuggling Taskforce not alerted to doubts about 'children overboard' story**

4.28 The CMI Committee noted AVM Titheridge's failure to relay doubts about the 'children overboard' incident to the People Smuggling Taskforce, on which he was the Defence representative.<sup>40</sup> AVM Titheridge told the CMI Committee that it was not until 25 November 2001 that he had had cause to doubt the 'children overboard' story.<sup>41</sup> This was in direct conflict with several senior Navy officers, who believed they had told AVM Titheridge on 11 and 17 October that children had not been

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37 *Transcript of Evidence*, 1 September 2004, p.12 (Scafton)

38 *Transcript of Evidence*, 1 September 2004, p.25 (Scafton)

39 CMI Report, p.65

40 CMI Report, p.142

41 CMI Report, p.139

thrown overboard.<sup>42</sup> Mr Scrafton's new evidence that his conversations with AVM Titheridge were one factor leading him to doubt the initial report lends weight to the CMI Committee's belief that AVM Titheridge was made aware of problems with the 'children overboard' story much earlier, even if he did not realise the import of that advice, and could not recall it later on.

4.29 Without further opportunity to obtain AVM Titheridge's version of events, this Committee can make no further comment on this matter, but notes the findings of the CMI report mentioned above.

## **Conclusion**

4.30 Mr Scrafton's new evidence has added to the public record on the handling of information relating to the 'children overboard' incident.

4.31 Of particular interest is his knowledge of the Defence Minister's failure to retract the 'children overboard' photos despite being told that they were of a different incident. This is in addition to the Defence Minister's reluctance to view the video, as previously established by the CMI inquiry<sup>43</sup> and noted in Chapter 2. Mr Scrafton's evidence suggests that Mr Reith, his chief of staff and his media adviser all knew that the photos were being misrepresented, but decided not to correct the public record. His evidence also corroborates the CMI report's findings that the Prime Minister's office was alerted to the misrepresentation of the photographs before the Prime Minister's Press Club appearance on 8 November.

4.32 In a wider sense, Mr Scrafton's evidence also highlights two further concerns.

4.33 First, Mr Scrafton's account of how information was handled in the Defence Minister's office illustrates concerns about the ambiguity and potential confusion surrounding what constitutes 'formal advice' to ministers. This has become particularly problematic with the proliferation of lines and modes of communication between officials and ministers and their advisers.<sup>44</sup> Mr Scrafton's evidence reinforces the impression that despite the minister's office receiving multiple reports about the misrepresentation of the photos, the minister was able to avoid publishing this unwelcome information on the ground that he had not been advised 'formally' in writing from an appropriately senior officer that the original children overboard report was wrong.<sup>45</sup> As another recent Senate report has observed, in cases involving tight time frames, political controversy and high operational activity like the children

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42 CMI Report, p.139

43 CMI Report, pp.86-87

44 Senate Finance and Public Administration References Committee, *Staff employed under the Members of Parliament (Staff) Act 1984*, October 2003, pp.78-80

45 See also CMI Report, Chapter 6



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overboard incident, problems are likely to arise if formal communication procedures are not in place.<sup>46</sup>

4.34 Mr Scafton's evidence underlines the necessity for establishing proper communication protocols between departments and ministerial offices to ensure that both parties understand clearly when official communications have passed from one to the other. A formal system of communications may not overcome entirely the 'accountability gap' that the children overboard affair exposes, but it would provide a framework for, and help reduce the ambiguity with, the handling of sensitive information between public servants and ministers and their advisers.

4.35 An obvious point emerging from this inquiry is that verbal communications are uniquely vulnerable to confusion, misunderstanding, ambiguity and to simply being forgotten or ignored. It is recommended that public servants record the essence of key messages or concerns that pass between them and ministers' offices. A follow-up email or a diary note may help ensure that important features of a conversation are marked as such and may result in potentially significant dividends in terms of accuracy, accountability and public confidence.

4.36 The second area of concern, as discussed in Chapter 1, relates to the way in which strict centralisation of all public communications for Operation Relex in the minister's office meant that misinformation about the original incident and the photos remained uncorrected far longer than might have been the case if normal Defence communication protocols had operated. As the CMI report stated, with the minister's office acting as the gatekeeper between the Australian Defence Force and public,

...this substantially undermined both the CDF and the Secretary [of the Defence department] in that they could not exercise their own discretion concerning information provided to the public. The result was that an important aspect of public accountability evaporated.<sup>47</sup>

4.37 Such centralisation of communications in a minister's office not only risks misinformation remaining inadvertently uncorrected, but makes all information susceptible to manipulation according to political convenience. At the very least, by restricting public servants from publishing, in accordance with standard practice, accurate facts and advice about operations they have administrative responsibility for, this strategy reduces the chances that errors will be identified and corrected at the earliest opportunity. More seriously, it creates a perception of politicisation of the public service, as public servants are seen to be responsible for politically convenient

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46 Senate Finance and Public Administration References Committee, *Staff employed under the Members of Parliament (Staff) Act 1984*, October 2003, p.79

47 CMI Report, p.152

misinformation going uncorrected. Ultimately, it undermines public confidence in the integrity of the information being published about a controversial matter. The 'children overboard' affair is a classic illustration of this point.

.....  
**Senator Jacinta Collins**  
**Chair**

## GOVERNMENT SENATORS' REPORT

1. On the evening of 7 November 2001 Mr. Mike Scafton, 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.<sup>1</sup> At the time of the conversations, the Prime Minister was at The Lodge in Canberra and Mr. Scafton was at a restaurant in Sydney. On each occasion, the calls were initiated by the Prime Minister to Mr. Scafton's mobile telephone. Mr. Scafton 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.

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1 The number of telephone conversations is a significant and controversial issue. Mr. Scafton'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.<sup>2</sup> The record of interview relevantly contained the following statements:

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2 *Scafton Inquiry Hansard* p.64

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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 advice<sup>3</sup> was not correct.

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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

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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

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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.<sup>4</sup>

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.<sup>5</sup> 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.

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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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup> 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:

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6 *Scafton Inquiry Hansard* p.48

7 *ibid.*

8 *ibid.* p.54



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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.<sup>9</sup>

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".<sup>10</sup> 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.

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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.<sup>11</sup>

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:

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11 *ibid.* p.6

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- 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 Scafton.

Mr Scafton—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.<sup>12</sup>

...

Senator FAULKNER—So the Prime Minister rang?

Mr Scafton—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 Scafton—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 Scafton—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 Scafton—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.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

...

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—

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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.<sup>16</sup>

...

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.<sup>17</sup>

...

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.

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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.<sup>18</sup>

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

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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.<sup>19</sup>

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."<sup>20</sup>

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.<sup>21</sup>

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."<sup>22</sup>

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.<sup>23</sup>

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

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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.<sup>24</sup>

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.<sup>25</sup>

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",<sup>26</sup> 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

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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

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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.<sup>27</sup>

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**

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



## 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





# **Appendix 1**

## **Statements Received**

1. Mr Michael Scrafton
2. Major General Roger Powell (Retired)
3. Commander Michael Noonan

\* Statements are included in Appendix 4.



## **Appendix 2**

### **Public Hearings**

**Wednesday, 1 September 2004 - Canberra**

Commander Michael Noonan

Major General Roger Powell (Retired)

Mr Michael Scrafton



## **Appendix 3**

### **Correspondence from invited witnesses**

Mr Peter Hendy

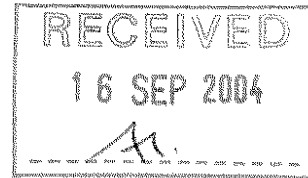
Mr Miles Jordana

Air Vice Marshal Alan Titheridge (Retired)



AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

15 September, 2004



Mr Alistair Sands  
Secretary  
Senate Select Committee on the Scafton Evidence  
Parliament House  
CANBERRA ACT 2600

Dear Mr Sands

I refer to your letter dated 2 September 2004 inviting me to attend a public hearing of the Senate Select Committee on the Scafton Evidence.

I must decline this invitation.

It is my understanding that the Cabinet of the Australian Government came to a decision on 11 March 2002 that, inter alia, ministerial staff and people who were ministerial staff at the relevant time, were not to attend the hearings of the Senate Select Committee on a Certain Maritime Incident. The matters that are the subject of the Senate Select Committee on the Scafton Evidence are exactly the same as the earlier Senate Select Committee. As a former ministerial staffer at the relevant time I believe that I am bound by this decision of the Australian Government.

Yours sincerely

  
Peter Hendy  
Chief Executive

Commerce House, 24 Brisbane Ave, Barton ACT 2600  
PO Box 6005, Kingston ACT 2604 Australia  
Telephone: 61-2-6273 2311 Facsimile: 61-2-6273 3286  
Email: [acc@acciasn.au](mailto:acc@acciasn.au) Website: [www.acciasn.au](http://www.acciasn.au)  
ABN 85 008 391 795

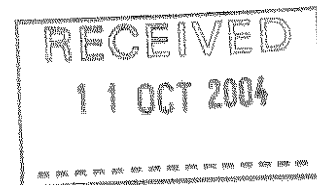




**Australian Government**  
**Attorney-General's Department**

**Deputy Secretary**  
**Criminal Justice and Security**

6 October 2004



Mr Alistair Sands  
Secretary  
Select Committee on the Scafton Evidence  
Australian Senate  
Parliament House  
CANBERRA ACT 2600

Dear Mr Sands

**Re Invitation to Give Evidence at a Public Hearing**

I refer to your letter of 2 September 2004 inviting me to give evidence to the Senate Select Committee on the Scafton Evidence.

The enquiries of the Committee, as they would involve me, relate to my time as Senior Advisor (International) in the Prime Minister's Office (PMO) from February 2001 to mid-2003, a position in which I was engaged under the Members of Parliament (Staff) (MoPS) Act.

For the period I worked in the PMO, the Government's policy was that it was not appropriate for MoPS ministerial staff to appear before, or give evidence to, parliamentary committees on matters relating to their work in ministerial offices.

At the time of writing, I am not aware of any change to that policy.

In light of the foregoing, I wish to inform you that I will not be able to accept your invitation to give evidence before the Committee

Yours sincerely

  
Miles Jordana

Telephone: 6250 6654  
Facsimile: 6250 5945  
E-mail: miles.jordana@ag.gov.au

PO Box 7132  
Yarralumla ACT 2600

14 October 2004

Mr Alistair Sands  
Secretary  
Select Committee on the Scafton Evidence  
Parliament House  
Canberra ACT 2600



Dear Alistair,

Thank you for the invitation to give evidence to the Committee at a public hearing at a date to be fixed. I have given this issue a significant amount of consideration to judge whether I have a contribution to make that would add to the Committee's body of knowledge. On reflection, and given my previous evidence, I do not believe I do, and my attendance would be a waste of both my, and more importantly, the Committee's, time.

I do note, however, a reference during the most recent hearing to the issue of delays in access to the video-tape. I have nothing to add to this issue. Requests received by me from Mr Scafton were passed to the chain of command for action, in this instance to HQ Australian Theatre and then, I presume, to Maritime HQ where the tape was held. You would have to seek information about those delays from those responsible for custody of the tape.

Yours sincerely

  
A. W. Titheridge



## **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.

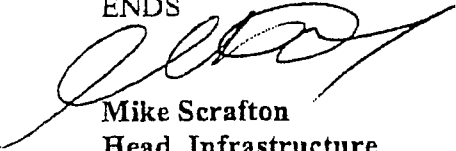
Mr Scrafton said that the day before the tape was released (ie the day of or after the Prime Minister's appearance at the Press Club where he had agreed to release the tape), Mr Reith rang Mr Scrafton asking him to view one copy of the tape which was held at Maritime Headquarters. Mr Scrafton went to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

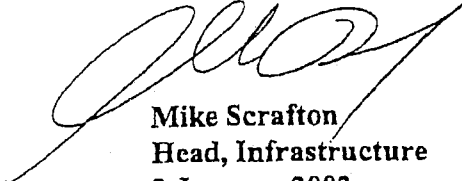
I do not recall writing and would have been surprised if anyone else had been so formal. At the time the Office became aware of the reported incident the Department seemed confident that it had occurred and seeking formal confirmation in writing would not have seemed necessary. Nor was it normal practise. 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



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**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



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believed any children had been thrown overboard accorded with MAJGEN Powell's recollection that Mr Scrafton 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 Scrafton'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 Scrafton 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.

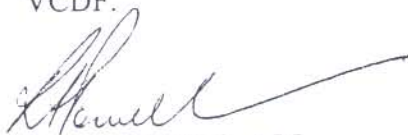
MAJGEN Powell did not recall talking to anyone formally during the course of his inquiry about the matters mentioned by Mr Scrafton. He believed he might have given CDF an informal (oral) progress report on his inquiry but could not recall this in any depth, and could not recall whether or not he advised CDF or Secretary Hawke of Mr Scrafton'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



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**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  
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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.

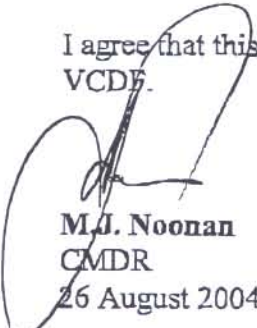
CMDR Noonan had played a significant role in drafting the report. He believed the substance of Mr Scrafton's interview had not been used in the report because MAJGEN Powell had committed to use only written statements. It was in this context that CMDR Noonan raised the issue of Mr Scrafton's statement 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 fluid and cursive, with the first name "Paul" being the most prominent.

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 date in black ink, appearing to read '27-8-01'.

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 under the "t" in "Nutt".

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, consisting of a stylized 'A' followed by a long horizontal line that curves upwards at the end.

(Tony O'Leary)