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SELECT COMMITTEE ON THE SCRAFTON EVIDENCE

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SENATE
SELECT COMMITTEE ON THE SCRAFTON EVIDENCE

Wednesday, 1 September 2004

Members: Senator Ray (*Chair*); Senator Brandis (*Deputy Chair*); Senators Bartlett, Faulkner and Ferguson

Senators in attendance: Senators Bartlett, Brandis, Faulkner, Ferguson and Ray

Terms of reference for the inquiry:

To inquire into and report on:

matters arising from the public statements made by former ministerial staffer, Mr Mike Scrafton, 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.

WITNESSES

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POWELL, Major General Roger Anthony, (Retired) 74
SCRAFTON, Mr Michael John, (Private capacity) 2, 92

Committee met at 9.10 a.m.

CHAIR—I declare open this meeting of the Senate Select Committee on the Scrafton Evidence, and I call the committee to order. On 30 August 2004 the Senate established the Select Committee on the Scrafton Evidence to inquire into and to report by 24 November 2004 on matters arising from the public statements made by former ministerial staffer Mr Mike Scrafton about the conversations he had with the Prime Minister, Mr Howard, on 7 November 2001 on the ‘children overboard’ affair and the implications of these statements for the findings of the Senate Select Committee on a Certain Maritime Incident. Today the committee has opened its public hearings on the inquiry. The terms of reference, mentioned already, are available from the secretariat staff. Today’s hearing is open to the public. This could change if the committee decides to take any evidence in private.

The committee has authorised the broadcast of the public aspects of the proceedings. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege under the Parliamentary Privileges Act 1987. The giving of evidence and the production of documents by a witness have the same legal status as a senator’s participation in Senate proceedings and therefore attract the very wide protection that is given to the proceedings of parliament against prosecution, suit, examination or question before any court or tribunal. The actions of a witness in giving evidence and producing documents therefore cannot be used against the witness in any sense in subsequent proceedings by a court or a tribunal. Standing order 181 declares:

A witness examined before the Senate or a committee is entitled to the protection of the Senate in respect of the evidence of the witness.

This is a declaration by the Senate that it will use its powers to protect witnesses against any adverse consequences arising from giving evidence. It is important for witnesses to be aware that giving false or misleading evidence to the committee may constitute a contempt of the Senate. If at any stage a witness wishes to give part of their evidence in camera, they should make that request to me as chair and the committee will consider that request. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should give consideration to giving that evidence in camera. The committee is obliged to draw to the attention of a person any evidence which in the committee’s view reflects adversely on that person and to offer that person an opportunity to respond. An officer of the department of the Commonwealth shall not be asked to give opinions on any matters of policy. However, they may be asked to explain government policy, to describe how it differs from alternative policies and to provide information on the process by which a particular policy was arrived at.

[9.13 a.m.]

SCRAFTON, Mr Michael John, (Private capacity)

CHAIR—Welcome. I invite you to read your opening statement.

Mr Scrafton—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 the consequences that 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, in the worst case, I could be subjected 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 am seeking to discredit the government in the lead-up to the election. Nor was I surprised at 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 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 time provides the strength of our system. As a public servant, I have striven to understand and be conscious of the political culture and be cognisant of the mandate and authority accorded to ministers through the democratic political process.

As a public servant, I have striven to maintain an apolitical stance in all of my dealings with ministers, their advisers and 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 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 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 had

that statement tested by polygraph. While the polygraph may not be considered to be totally infallible, nobody 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 per cent. There is not much more I could do.

I never expected nor encouraged former colleagues to come forward and support me. I would not ask anybody 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, I will outline 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, I will address 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 16 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. Finally, I will outline to the best of my recollection the salient events of 7 November 2001 concerning the 'children overboard' incident.

Prior to October 2000 I was 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 the 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 involve management of his office and the relationship with Defence and providing advice on matters of defence policy and administration.

After consulting with the then secretary in CDF, I agreed to a secondment under the Members of Parliament (Staff) Act, or MOP(S) 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 business of the caretaker period while Minister Reith and the political staffers, except for the chief of staff, relocated to Melbourne.

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 canvass the actions of ministerial advisers operating under the MOP(S) 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, are some indication that the little that I had revealed was not welcome.
- Similarly, the terms of reference of Major General Powell's investigation did not cover advisers employed under the MOP(S) 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 with 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 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.
- 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 the Department of Defence and the 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 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.

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 marketplace 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 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.

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 43 I was established in a new domestic relationship, had settled into a new job and had 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.

The records of the 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 SIEV4. 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 been thrown overboard. If these matters remain of interest to 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 to 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 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:

- 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.

The following morning Mr O’Leary from the Prime Minister’s office rang me on my mobile phone as I was driving back to Canberra and asked that I arrange for copies of the EOTS tape to 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 statement at the Press Club lunch, that he had used the ONA report in such an 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.

CHAIR—Thank you for your opening statement. I will just let everyone—you, Mr Scrafton, and the people in the audience—know the way we are going to proceed. The call for questioning this morning will first go to Senator Bartlett, then to Senator Ferguson, Senator Faulkner and Senator Brandis, and then to me. If on any particular matter another senator wants to intervene, they can ask for leave and, if it is conceded by the person who is questioning, we will proceed to the intervention; otherwise it can be followed up later. At the end of those five periods of questioning, the proceedings will then be opened up to other senators to follow up matters that may have arisen during the morning. I now invite Senator Bartlett to direct questions to the witness.

Senator BARTLETT—Thank you, Mr Scrafton, for appearing and making yourself available to answer questions. First, just for the record, will you outline your experience and history within the Public Service?

Mr Scrafton—I joined the Department of Defence in 1985 as a graduate. I worked initially on the Dibb review of Defence policy and then in the intelligence organisation, DIO. I was executive assistant to two secretaries of Defence—Sir William Cole and Allan Woods. I spent a period in the International Policy Division working on ANZUS matters after that. Following doing a masters in management economics, I had a secondment to the refugees area in Immigration for about 20 months. I came back on promotion to Defence in the force development and analysis area. I was promoted into the SES in the mid-1990s to run the capability development area. Subsequent to that I had a range of SES jobs including in the military strategy area, in the regional engagement policy branch and in international policy. I headed up the East Timor policy unit during INTERFET in Defence and, following returning from the minister's office, I headed up the infrastructure division managing the defence estate for the last two years before leaving in December.

Senator BARTLETT—So it would be fair to say you had a wide range of experience in a number of senior levels across both Labor and Liberal governments for number of years.

Mr Scrafton—That is right, yes.

Senator BARTLETT—In the period with the current government there was no suggestion, expectation or belief that you were aware of that somehow or other you were politically aligned or had career paths blocked because of political activities.

Mr Scrafton—No. I can only say that the last words Peter Reith spoke to me at his farewell lunch were would I declare myself politically yet.

Senator BARTLETT—Do you believe there is a culture at high levels within Defence and the Public Service of avoiding saying things that ministers or government do not want to know about?

Mr Scrafton—Terms like 'culture' are very difficult to define. Do I think that some senior people find it difficult and are reluctant to provide advice on occasions? Yes.

Senator BARTLETT—Given your outlining of your motivation for why you have spoken out now, and particularly linking it to the expressions of concern about honesty in government

and the impact on effective government, do you believe that that has deteriorated and reached a stage where that culture is compromising effective government?

Mr Scrafton—I think it is always a grey area of difficult judgment as to what governments, ministers and public servants reveal publicly and how they describe things. I think that I can only comment on the incident that I was involved in, and I think the line was stepped over at that point.

Senator BARTLETT—So you think that incident was relatively isolated in that sense of clearly stepping over the line.

Mr Scrafton—In my experience, yes. I cannot speak more broadly than that.

Senator BARTLETT—On the statement you have made, along with some of your colleagues, about feeling tainted by your involvement and disappointed in your own failure to act more courageously, firstly, do you expect that there are still more people—no names, obviously—who may speak out or have more that could be revealed? I do not mean during the election; I just mean in time.

Mr Scrafton—I do not know if there is anybody else who would speak out. I have had significant indication from a large number of former and serving public servants and military officers following what I have done that there is considerable support for this and a sense that it was about time something like this was done.

Senator BARTLETT—What I am trying to get a sense of—and I am not trying to get you to make a broad political statement but trying just to define the extent of the problem—is the broader nature, beyond the specific of the moment with the Prime Minister that you have identified, of the legitimate debate about the potentially corrosive effect on good government, such as of appearing to mislead for narrow electoral advantage and, as you have mentioned, committing to war. I do not want to go into that debate either, but the issue is whether there is a growing danger of governments being more likely or more able to appear to mislead, and the Public Service and Defence in particular being more and more pressured and more likely to feel like they have to go along with that.

Mr Scrafton—It is difficult to generalise on these things. My experience both in Defence and in ministers' offices is that there is an increasing tendency to represent material that was not intended for public usage for political reasons or for public explanation reasons—for ways that they were not intended to be used. The whole experience that I had during the period of 'children overboard', for example, involved a lot of finding positions to deny evidence rather than analytically looking at what was being provided.

Senator BARTLETT—You have mentioned the prevailing atmosphere in Defence and, in particular, the methods and expectations of Mr Max Moore-Wilton as secretary. Do you believe that that atmosphere or those methods have changed either with the change in the secretary or, indeed, the change in the Minister for Defence?

Mr Scrafton—I have very little experience of Senator Hill as a minister. I worked primarily to Fran Bailey as parliamentary secretary during the last couple of years in the Public Service.

My experience of the Public Service under Peter Shergold is that it is much more professionally managed than it was, perhaps, under his predecessor. I think the incredible reluctance of people like Chris Barrie to give definitive bad advice during the ‘children overboard’ affair and the fact that the head of the Prime Minister’s department would ring him directly to try and force issues which are really military command issues are indicative of what sort of atmosphere there was at the time.

Senator BARTLETT—Are you able to make any informed comment on whether the atmosphere is better now?

Mr Scrafton—No, I have been out of it for some time.

Senator BARTLETT—You made it pretty clear in your statement, and also in previous statements prior to today, that one of the reasons why you did not say more even internally rather than publicly was negative professional impact. I do not know whether that includes career opportunities or even just your ability to do the job effectively. Without getting too starry-eyed about the good old days of frank and fearless advice, because I imagine it always looks more rosy in retrospect, how big a problem is it that there is that recognition that you just do not say things because it will stuff your prospects for the future?

Mr Scrafton—That is a complex set of issues. Put simply, from within Defence’s perspective, I would say that on one hand there is nowhere near the rigour and analysis put into the advice that goes forward now. It is much more tailored, I think, in lots of ways, to what wants to be heard. There is not the same strength internally to critically filter out bad advice.

Senator BARTLETT—Within Defence that is a fairly serious issue, surely—in relation to security issues, way beyond the individual issue that has generated this. If Defence as a whole is less rigorous in its advice and internal strength, that is a significant problem in a security sense, surely.

Mr Scrafton—That is a big call to make. I do not want to get into defence policy issues. Quite often in Defence decision making is a matter of preference. One jet will deliver a bomb as easily as another jet; it is quite often a matter of preference. I think I am not the only person who has said this. People like Dibb and Brabin-Smith and others have argued that there is not enough rigour in the process these days.

Senator BARTLETT—I noticed your comment on whether a policy decision was right or wrong—the statement you made about there being less internal strength and less rigour and analysis in the advice that is provided to government about defence issues. That may be about what plane to buy but it may be about—

Mr Scrafton—If I could be more specific—

CHAIR—Could I interrupt for a moment. People are having a bit of difficulty hearing; I am not, at the moment, but I notice people in the audience are straining a bit. If you would not mind upping the level a bit, we will not take it as stridency but will understand.

Mr Scrafton—Yes. If I could get to your point, Senator: going back to the ‘children overboard’ affair, I think evidence of poor advice comes from the fact that Defence knew for quite a considerable time—certainly from the second week in October—that almost certainly the event had not occurred, but at no point did anybody put formal advice before government to make it unequivocal that that was the position of Defence. Why they did not do that was, I think, for a range of reasons, but part of it was because they did not think it would be received very well if they had.

Senator BARTLETT—So it is, at least to some extent, the culture of ‘don’t tell people what they don’t want to hear’?

Mr Scrafton—Certainly in that incident I think that was the case.

Senator BARTLETT—You would not say that it was unique to that incident?

Mr Scrafton—It is difficult for me to speculate.

Senator BARTLETT—With the incident of ‘children overboard’ related to that particular refugee vessel, SIEV4, are there any other matters regarding that incident or the activities surrounding SIEV4 that we should be aware of or that you believe are appropriate to mention? We have only got today, but if there is anything specific—

Mr Scrafton—That is a pretty open question—

Senator BARTLETT—Yes, it is.

Senator FAULKNER—We call that long-line, I think.

Mr Scrafton—I would prefer to answer more specific questions.

Senator BARTLETT—Okay. For example, the decision was made to leave the refugees on the vessel and take it under tow until, literally, it sank and the children and everybody else ended up in the water. Was Minister Reith, or were you, consulted or informed on that decision being taken?

Mr Scrafton—Again, I have to clarify my position in the office. At that point in time, Minister Reith and the other staff were in Melbourne. I was in the office during the caretaker period. My position was not advising the minister on operational issues; that was another adviser’s job. I only became involved in the ‘children overboard’ issues that blew up after the sinking and the issue of the photographs because of my position in the office. I am not in a position to say what advice was provided to the minister on operational grounds.

Senator BARTLETT—So you would not be aware of who made decisions, when decisions were made, or who was informed about those sorts of decisions not to rescue the refugees from the boat but to leave them?

Mr Scrafton—No, but my impression was that that would be a whole-of-government decision. Certainly National Security Committee ministers, even if not formally, were constantly consulting on those issues.

Senator BARTLETT—You have stated that advice to you at the time, when the original inquiry was under way, was that, unless you were compelled to appear before the inquiry, it was clear you should not do so. It is a bit of a hypothetical, but had you determined in your mind, if there had been a subpoena issued, whether you would have appeared at that time?

Mr Scrafton—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.

Senator BARTLETT—From my understanding of your statement and what you have said elsewhere, basically your main interest with this whole incident really came towards the end, particularly with that request to view the video.

Mr Scrafton—Not really. I was involved initially when the photographs were released, in the sense that as soon as there was a problem identified by the Public Affairs and Corporate Communication division—PACC—I was approached by Tim Bloomfield, who was the director-level officer at that stage. He advised me that he thought that Mr Hampton, in Reith's office, was not taking advice that the photographs might be about the wrong thing and that there was some confusion occurring about who had what photographs and what captions had been put on or left off, because there were a number of versions of the photographs flying around. Subsequent to that I was in discussions with Brigadier Bornholt and Jenny McKenry over their very strong view that the photographs did not represent children overboard. I passed that information on to Ross Hampton. Subsequently the minister rang me. We had a long discussion about the photographs. He—

Senator BARTLETT—What day was that?

Mr Scrafton—I am casting back now—probably 11 October, at which point he was telling me that the CDF was still telling him that they were genuine and he was not prepared to accept other advice unless it was conclusive. Shortly after that, I think a day or so later, we became aware there was a tape. There was some confusion over whether it was daylight or dark, and when the photos were taken. I again had a long discussion with Minister Reith and then did some work for him on the Internet, working out when sunrise was at the location of the SIEV and confirming for him the Defence advice that all events had taken place in daylight and so the photographs could have been of either event, if just based on the criteria of whether they were taken in daylight or not.

I was then involved in chasing up through Strategic Command and through Headquarters Australian Theatre where the tape was, what was on it. The discussion between Admiral Ritchie and me was on record, that there was some confusion as to what we thought we told each other. I then was involved on a number of occasions in tracking down where the sworn statements and the tape had got to. It was difficult to understand the layers to why the tapes had not got to us, because we had asked for them. I did inform, on about 11 October, Miles Jordana in the Prime Minister's office that there were serious doubts about the photographs. I chased up the tapes and

the sworn statements with Air Vice Marshal Titheridge on around 14 or 15 October. He told me they were moving slowly towards Canberra and I should not ask any more about what was happening to them. I dropped out of the process at that point, until early November.

Senator BARTLETT—When did Minister Reith become aware that the photos did not portray or were very unlikely to portray what they were said to portray?

Mr Scrafton—I have avoided throughout this process trying to speculate about what people knew, because Peter Reith was in Melbourne receiving separate sets of advice to what I was seeing in Canberra, and it is very difficult for me to know what he knew. What I can say is that I had discussions with him on the 10th, the 11th and probably the 12th—a series of discussions—about the validity of the photographs.

Senator BARTLETT—With Mr Reith personally?

Mr Scrafton—Yes, with Minister Reith personally. At no time during the election campaign or even until shortly after he left Canberra did I actually physically see the minister. He was in Melbourne; I was in Canberra.

Senator FAULKNER—Could I just interpolate here? You indicated that you had discussions with Mr Reith on the 10th, 11th and 12th about the photographs. Did this go to the validity of the photographs—

Mr Scrafton—Yes.

Senator FAULKNER—and whether they actually represented the incident?

Mr Scrafton—I was passing on to him the advice that I was receiving from Jenny McKenry and Brigadier Bornholt that they did not believe that the photographs represented any children being thrown overboard but believed they were of the rescue of the refugees from the sinking boat.

Senator FAULKNER—So this is a number of conversations with the then defence minister on 10, 11 and 12 October 2001 and you clearly passing on information from others in Defence that the photographs were a misrepresentation?

Mr Scrafton—That is correct. Can I correct that? They may not have been what they were portrayed to be. Misrepresentation implies something deliberate in this. I think at this point in time there was still considerable confusion in ministers' offices and even in senior military officers' minds. There was probably a chain of people who had been close to the photograph issue in their provenance who knew these things, Jenny and Brigadier Bornholt being two of them, but there was a lot of other advice and views flashing around the place.

Senator FAULKNER—I do not want to interrupt Senator Bartlett except to ask one other clarifying issue. I will follow these up when I have the call. But I want to be clear on what you said a moment ago. Did I hear you correctly to say that you told Mr Miles Jordana, one of the Prime Minister's staffers, something similar on 11 October?

Mr Scrafton—Yes.

Senator FAULKNER—Could you be quite clear in your evidence, please, Mr Scrafton, on what you said to Mr Jordana on 11 October?

Mr Scrafton—As normal practice working between the two offices, as soon as I had had the discussions with Jenny, 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.

Senator FAULKNER—Thank you for that. Mr Chairman, I will obviously follow those up. I just wanted to get that clarified.

Senator BARTLETT—Are you able to tell me what Mr Jordana's reaction was to that information?

Mr Scrafton—No, he just noted it. That sort of conversation about emerging issues is normal business in the office. You would say, 'Thanks for that,' and hang up.

Senator BARTLETT—Do you keep file notes about those sorts of conversations?

Mr Scrafton—No, I never keep file notes. Hugh White has taught me that that is not a really good idea.

Senator BARTLETT—Is that a change in practice over recent years?

CHAIR—Tony Ayers taught Hugh White.

Mr Scrafton—That is right. In any event, in the minister's office at that time you are not keeping files that are independent of the department. It was not the practice to keep files.

Senator BARTLETT—That conversation with Mr Jordana in the PM's office was specifically about—

Mr Scrafton—Yes, I rang him specifically to tell him that.

Senator BARTLETT—Serious doubts about the photographs being what they were portrayed to be.

Mr Scrafton—Yes.

Senator BARTLETT—Were there any future conversations with Mr Jordana?

Mr Scrafton—I spoke to Miles on a regular basis but not about this issue, I do not think, until there was some discussion with him in early November because of a whole range of reports and indications coming up that there might be some problem with the veracity of whether children were thrown overboard. We just reinforced at that point that the photos were not evidence.

Senator BARTLETT—You mentioned your conversations with Minister Reith about the photographs—I think you said 10, 11 and 12 October. Were there future conversations with him surrounding the incident?

Mr Scrafton—I had very little contact with the minister after that initial flurry over the photographs before early November.

Senator BARTLETT—And then in early November the contact was along the lines you have outlined?

Mr Scrafton—That is right, yes. When there were discussions about the photographs, which were really about whether we should retract the photographs and make that decision—a decision which I removed myself from because by that point it was very political—most of that connection with the minister was done through Peter Hendy, who was chief of staff at that stage.

Senator BARTLETT—You would be aware of a reasonably well-known reported comment of Minister Reith’s about the video and what might be on it, where he was reported to have said, ‘We’d better not see the video, then.’ Does that seem credible to you?

Mr Scrafton—I know Mike Silverstone and I know that he would not have misled anybody about that. You cannot get a more upright brigadier than Mike Silverstone. On the question of the tape, that was also discussed with the minister at the same time I discussed it with Chris Ritchie, who had explained to me that there was no evidence from the tape that had been reported to him from the maritime commander that proved the case that anybody had been thrown overboard. That was discussed with the minister as well—that it looked like it was in bad condition, and I think the minister actually said that at one point. ‘It’s in bad condition. It looks like a 17-year-old might be thrown over. It’s hard to tell. We haven’t had it analysed,’ I think was pretty much the advice that was given to the minister at that point.

Senator BARTLETT—Again about the broader incident—the situation that ended with lots of children in the water by virtue of the boat being towed around until it sank and them not being taken off beforehand and plenty of other refugees and, of course, Navy personnel risking their lives to save them all—are you aware of any concern expressed to, or indeed by, Minister Reith about Defence personnel being put in that situation and that it should be changed?

Mr Scrafton—No, I am not aware of him expressing any views on that.

Senator BARTLETT—I might leave it there for now.

CHAIR—You may return to questions later if they crop up. I invite Senator Ferguson to ask some questions.

Senator FERGUSON—Mr Scrafton, there are a couple of different issues at stake here. One is the accuracy of what you say of the events of 7 November; the other is the accuracy of your recollections after three years, when in fact you had the opportunity at an earlier stage to give evidence just one month after and then again at another stage. How many phone calls were made on 7 November?

Mr Scrafton—As I said, my recollection is three; I may be mistaken.

Senator FERGUSON—You say here that your recollection was three and then you say it was two. When you are talking with Mark Colvin you say, ‘My very clear recollection is that there were three.’ Then, when you are asked why your clear recollection to Jenny Bryant was that there were only two, you say, ‘I can’t recall.’ Isn’t it possible that, if you cannot recall how many telephone conversations you had, you may not be able to recall very clearly a lot of other events that happened?

Mr Scrafton—I suppose the answer to that is: 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.

Senator FERGUSON—So you do recollect some things but not others?

Mr Scrafton—Isn’t that human nature?

Senator FERGUSON—Sometimes. Also, in Commander Noonan’s statement last week he said that he was invited to offer any other relevant information and he said, ‘It’s in references in the media to the Prime Minister being at Kirribilli,’ and yet he recalled you saying that the Prime Minister and his party were at a restaurant in Lygon Street, Carlton.

Mr Scrafton—How can I be accountable for what the commander said?

Senator FERGUSON—It is just that he is recalling, after three years, what he believed you said.

Mr Scrafton—I will just go back to what I have said. I have signed a statutory declaration, I have submitted myself to a polygraph and I have had two corroborations from very senior public servants. There is nothing more I can say on the question of whether I remember this accurately or not. I think that I do.

Senator FERGUSON—You have also given evidence to the Bryant inquiry.

Mr Scrafton—And the Bryant inquiry was into what, Senator? Do you have the terms of reference there?

Senator FERGUSON—Let me just ask you a couple of questions. You say you do not keep any file notes, which means that there is no substantiation to your recollections. In other words, nobody can question your recollections either. In your response to Senator Bartlett, you claimed, I think, that Defence almost certainly knew in early October—a few days after the event—that the reports were not true. When did you first become aware that the reports were not true?

Mr Scrafton—I became aware that there were very significant doubts about them 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.

Senator FERGUSON—This was during October?

Mr Scrafton—Yes, through the course of October this evidence gradually mounted.

Senator FERGUSON—In your written response on 4 January 2002, when you were asked whether you recalled being advised at any stage that there were no children among those in the water on 7 October, you said no.

Mr Scrafton—I am sorry—in response to what?

Senator FERGUSON—During the Bryant inquiry you gave a written response to a question. The question was: ‘Do you recall being advised at any stage that there were no children among those in the water on 7 October?’ You said no.

Mr Scrafton—I understand that all the evidence indicates that there was never any formal advice to government. The position taken by ministers was that there was no formal advice given to the government that that situation did not happen. I think I just said the same thing to Senator Bartlett: one of the failures in the whole process was that there was never any formal advice given.

Senator FERGUSON—But you were not asked whether there was formal advice. It says, ‘Do you recall being advised at any stage?’ Are you talking about talking to all these other people?

Mr Scrafton—If I could just answer that, Senator. In the context of that inquiry, if you go back to the terms of reference, I think what they were asking about was formal advice to ministers from the Public Service. That is the context in which I would have answered that question.

Senator FERGUSON—You also said in the statement that you made publicly in your letter, and you keep on saying, that no-one you had dealt with in Defence and nobody in Defence still believed that children were thrown overboard. That was on 7 November.

Mr Scrafton—No-one I dealt with, yes.

Senator FERGUSON—Did you deal with Admiral Barrie at any stage? You said you had discussions with him.

Mr Scrafton—Not directly on this issue, no.

Senator FERGUSON—But didn’t you say that on the 10th you had conversations with Admiral Barrie?

Mr Scrafton—When did I say that?

Senator FERGUSON—In the question to—

CHAIR—I do not recall.

Mr Scrafton—No.

CHAIR—I do not think so. We will check the record.

Senator FERGUSON—I understand that—

Mr Scrafton—I spoke on a regular basis to Air Vice Marshal Titheridge, on occasion to Admiral Ritchie and on occasion, I think, to Admiral Smith, who was the maritime commander. I spoke to Jenny McKenry and Brigadier Bornholt and, in the course of my normal business, I spoke to a range of one-star, two-star and three-star officers across Defence. Would I, in the normal course of my business, have spoken during the election period to Chris Barrie? I cannot recall having done it. Chris was mostly focused on the minister, who was in Melbourne at that stage. I saw very little of anybody who was senior in Defence while I was sitting there in caretaker mode.

Senator FERGUSON—Do you think it is rather strange that you say that nobody still believed that children were thrown overboard and yet the Chief of the Defence Force, Admiral Barrie, still believed the original story in February 2002?

Mr Scrafton—You would have to ask Chris why he thinks that. From my reading, the evidence that the inquiry gathered previously shows that all the way up the chain of command to Chris Barrie there was certainty that the event had not taken place.

Senator BRANDIS—We have actually asked Admiral Barrie that.

Senator FERGUSON—Excuse me!

Senator BRANDIS—Sorry, Mr Chair, I should go through the chair.

CHAIR—Yes, I assumed you had made those arrangements.

Senator BRANDIS—We did ask Admiral Barrie that at the first ‘children overboard’ inquiry and he gave a very persuasive explanation as to why he continued to believe the original advice. But you have to wait until you get to the government senators’ report in the first ‘children overboard’ report to see any mention of Admiral Barrie’s explanation.

CHAIR—That was more an editorial than a question. We will allow that editorial and let it be noted. I do not think you can ask the witness to respond to that.

Senator FERGUSON—I just want to go back to the Bryant inquiry where you were asked, ‘Did you recall being advised?’ and your answer was, ‘No’. You cannot get much more emphatic than that. Then you had a signed record of the interview where you said that you never had a

sense that the original advice was not correct. That is different from getting formal advice—you said you never had a sense that the original advice was not correct. That interview was on 14 December. Is that true or not? Did you ever have a sense that it was not correct?

Mr Scafton—The way in which that inquiry was conducted was in a context in which it was almost impossible for me to be able 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 admit that.

Senator FERGUSON—Not fully cooperated with? You actually signed off on an interview where what you signed off on you claim is now not the truth.

Mr Scafton—That is true.

Senator FERGUSON—So you would ask us to believe everything else that you say?

Mr Scafton—I am not asking you to believe anything. I am simply stating what my version of the events was. If you want to contest every single written record, that is fine. I will simply stand by the fact that I have an absolutely clear recollection of what I told the Prime Minister in substance, and I will not resile from that. If at some point there are records that show that I manoeuvred to avoid the obvious consequences of making myself vulnerable through cooperating with an inquiry that everybody had a clear view about, well, so be it. But I am not resiling from the fact that I have a very clear memory of what I told that the Prime Minister on the evening of 7 November.

Senator FERGUSON—This is the first time that I have ever heard someone who says that they have signed off on a document knowing that it was not true and calling it a manoeuvre.

Mr Scafton—That is fine, Senator.

Senator FERGUSON—You say that you were given an instruction by the government not to make comment. That word 'instruction' was not your exact word; I forget the exact word you used a minute ago. You said that you were not allowed by the government to comment publicly. When did you get that instruction?

Mr Scafton—It was passed on to me by Dr Allan Hawke, as secretary, by Matt Brown, as chief of staff to Senator Hill, and Peter Hendy, here in the restaurant, following the Senate estimates hearing sometime after the election.

Senator FERGUSON—What did they actually say to you?

Mr Scafton—They said there has been a cabinet decision made and that the government is not going to support the appearance or testifying of MOP staff—people who are employed under MOP(S)—over anything that happened in the offices during that time.

Senator FERGUSON—When was that cabinet decision made?

Mr Scafton—I do not know, actually. I asked for that. I was informed of the cabinet decision and never saw it.

Senator FERGUSON—Chair, I think I will cede to Senator Faulkner. I may want to come back to this issue later.

CHAIR—You can come back to it, certainly.

Senator FERGUSON—Okay. I just want to check on a couple of things first.

Senator FAULKNER—Mr Scafton, I have a couple of general questions that arise from your opening statement. Could I ask you to turn to page 3 of that statement. At the first dot point on that page, the last sentence reads:

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.

Is 'chased Ms Bryant' a view you came to as a result of evidence you adduced at the Senate estimates committee or the CMI select committee, or was this something that you were separately aware of?

Mr Scafton—It is not something that I was separately aware of.

Senator FAULKNER—That is all I wanted to check. Thank you for that. Mr Scafton, on that same page, in the second sentence of the second last dot point, you say:

The then Secretary of Defence and CDF both acted with sensitivity, integrity and understanding to my circumstances at the time of the Senate inquiry.

For the record—but if this is personal, just say so; if it is personal, I am not interested in knowing—could you indicate to the committee what you mean by the words 'my circumstances'.

Mr Scafton—Both Chris Barrie and Allan Hawke were aware of the fact that the government had a very strong view on whether or not people who had been in my position as a MOPS employee should talk to the Senate. They were prepared to provide me with the legal advice, through the Defence Legal Service, to support me. They 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.

Senator FAULKNER—So the circumstances here refer to the gag placed on people like you by the government?

Mr Scafton—Yes.

Senator FAULKNER—Thank you for that clarification. Finally, if I could please take you to page 5 of your opening statement at the second last paragraph. This is an issue in relation to Mr O’Leary and your being requested by him to make available copies of the EOTS tape for the media in Canberra. Was it a normal circumstance where perhaps not a senior prime ministerial staffer but a press adviser would have this sort of authority?

Mr Scafton—No. I have probably had two or three discussions with O’Leary in my life. I would not normally assume that. However, I was aware that he had been with the Prime Minister the evening before, during the discussions. He passed that on as: ‘The Prime Minister would now like to have the tape available to the press before the Press Club statement.’

Senator FAULKNER—It was done in the context of a prime ministerial request, was it?

Mr Scafton—Yes.

Senator FAULKNER—That was what was put to you?

Mr Scafton—Yes.

Senator FAULKNER—And you acted on it—

Mr Scafton—Certainly.

Senator FAULKNER—in accordance with that prime ministerial request?

Mr Scafton—I was a MOPS staffer at that point in time. They were my bosses.

Senator FAULKNER—I do not know whether Mr O’Leary was your boss. That is the point I am making.

Mr Scafton—No, he was not my boss; but it was put in the context that the Prime Minister wanted this done.

Senator FAULKNER—How did you know Mr O’Leary was with the Prime Minister that evening?

Mr Scafton—I think I have said before that when the Prime Minister first rang me and I answered, he said, ‘I have here with me’ and he reeled off four or five names. I cannot recall who, but O’Leary and Arthur Sinodinos were two of the names. I think Tony Nutt was one of the others.

Senator FAULKNER—So you can definitively identify three of those people?

Mr Scrafton—Yes.

Senator FAULKNER—So you were certainly aware of his presence at that point when the follow-up conversation—

Mr Scrafton—Yes.

Senator FAULKNER—I do not know about follow-up, but the next day—

Mr Scrafton—The next day, yes. I was aware that he was aware of what had taken place between me and the Prime Minister.

Senator FAULKNER—I may come back at a later stage to some issues in the opening statement, Mr Chairman. Mr Scrafton, I want to move to the events of 11 October but perhaps, just as background or context, you might indicate to the committee in relation to contact or relations between the Minister for Defence's office—Mr Reith's office—and the Prime Minister's office how the interactions worked. Who were the key interlocutors?

Mr Scrafton—On the range of broader government policy cabinet issues, the chief of staff, Peter Hendy, was the primary interlocutor with all other ministers' offices, including the Prime Minister's office. On a range of operational issues Aldo Borgu, who was the adviser on operations, was generally the person who was talking to Miles Jordana and to others. And in normal circumstances it would be on issues of defence acquisition or management or policy issues more broadly that I would deal with Miles Jordana.

Senator FAULKNER—So do I understand from that that your point of contact in the Prime Minister's office was Mr Jordana? Can you confirm that?

Mr Scrafton—That is correct.

Senator FAULKNER—You may from time to time have had contact with other staffers, but your key or most common point of contact was Mr Jordana?

Mr Scrafton—Correct. For two reasons: one is that I knew Miles from prior to us both taking up our positions in Parliament House—we both were involved in East Timor INTERFET activities together—and because of the position he held in the Prime Minister's office.

Senator FAULKNER—I picked up from your evidence that really, in relation to the issue of 'children overboard', as far as your own role is concerned in these matters it commenced on 11 October. Can you confirm that?

Mr Scrafton—Again I have not gone back over all of the dates forensically, as I said in my statement. I had not been aware of the discussions between Ross Hampton and PACC leading up to the release of the photographs. The first I became aware of them was that the media came rocking into the minister's office, wanting to see the photographs. I asked the then DLO, Liesa Davis, what this was all about. She said that Ross Hampton had authorised the release of the photographs. I spoke to Ross about them at that point. So I became engaged the day they were released.

Senator FAULKNER—Was that 11 October?

Mr Scrafton—It may have been the 10th, but I am not sure. I cannot recall the exact date.

Senator FAULKNER—Anyway you became engaged on that day?

Mr Scrafton—Yes.

Senator FAULKNER—What did you say to Mr Hampton about the photographs?

Mr Scrafton—At that point I just asked him what it was all about and he said that this was the ‘children overboard’ stuff, and we were all just looking at them. So I was not aware at that point that there was any contention. Subsequently Tim Bloomfield rang me, saying that there had been a number of very difficult discussions with Mr Hampton over the captions and the photographs and that he had been very difficult to deal with. They asked if I would talk to him about it. I did. Ross was difficult—

Senator FAULKNER—Was this on the same day?

Mr Scrafton—The same day, yes.

Senator FAULKNER—Mr Chairman, just for the record, those of us who sat through the agony of the CMI committee I think would recall it was 10 October.

Mr Scrafton—The 10th; I thought it was, but again I have not gone back to check all those dates.

Senator FAULKNER—It is all imprinted on our memories.

Mr Scrafton—I am sure. I had discussions with Ross. Again, he was difficult. He was saying that Defence were giving him confusing information but that he had firm grounds for thinking they were the children overboard. I then spoke again to Tim Bloomfield. He was quite concerned. I suggested to him that he keep on file an accurate record of all of his discussions with Mr Hampton. The next time I was involved was when Jenny and Brigadier Bornholt rang me.

Senator FAULKNER—Did you make directly clear to Mr Hampton the clear concerns of officers and officials in Defence that these photographs did not represent the purported incident? Did you make that clear?

Mr Scrafton—I made clear to him that they may not have represented the purported incident. At that stage, I would suggest, even within Defence, nobody would have put their hand up with absolute certainty.

Senator FAULKNER—You mentioned that on 11 October you had other interactions.

Mr Scrafton—Yes.

Senator FAULKNER—One interaction was with Mr Jordana in the Prime Minister's office—we will come to that. You also talked about other work which was ongoing through this period—for example, I think you indicated to the committee that you were trying to establish for Mr Reith when sunrise occurred and so forth.

Mr Scrafton—That is right.

Senator FAULKNER—Can you take us through the events of 11 October to the best of your recollection?

Mr Scrafton—The issue emerged that it had not been made clear to anybody initially that there was a tape being made of the incident at the time. When it did become clear that there was a tape, I spoke to Strategic Command about what was on the tape and what sort of tape it was. Air Vice Marshal Titheridge—an Air Force officer—at that stage was not sure what sort of technology they used on the ship. He had some view that it might have been infra-red and had been advised that the tape was poor quality and that it was difficult to get any detail off it.

Somehow, through all of the messages that were coming up the chain, the idea that because it might have been infra-red it would have been taken at night-time got confused into the issue. Peter Reith rang me and said, 'Look, there's all this going on. It is typical Defence advice on these things; different advice is coming from different people and everybody's confused. What time was sunrise at the point when these two events were supposed to have happened?' I got on the Web and found the appropriate site. I had the ship's log, I think, sent to me by Strategic Command. We established that both events had taken place in daylight, and so the photograph of either of the incidences could have been taken at any point—that was the point that Peter Reith made. Following that, it became clear that it was the electro-optical tracking system, which gives you grainy photographs at any time.

Senator FAULKNER—So on that day, 11 October, you had contact with Mr Jordana?

Mr Scrafton—That is correct.

Senator FAULKNER—Did you contact him or did he contact you?

Mr Scrafton—I rang him.

Senator FAULKNER—What did you say to him?

Mr Scrafton—In effect, I said, 'There are some doubts about the photos that are going around at the moment. You should be aware that they are out on the Defence restricted system and so lots of people are aware of them. There is some confusion about the captions that have been taken off them. We'll keep you informed as to what happens, but you should be aware that there are doubts about them.'

Senator FAULKNER—So you can say categorically to this committee that you informed one of the Prime Minister's senior staffers about those doubts on 11 October?

Mr Scrafton—Correct.

Senator FAULKNER—Did you subsequently continue to liaise with Mr Jordana about these issues?

Mr Scrafton—No, I did not.

Senator FAULKNER—Did Mr Jordana contact you?

Mr Scrafton—No. I suspect the Prime Minister's office was off doing a whole range of other things at that time.

Senator FAULKNER—Can you outline for us any other involvement you had on 10, 11 and 12 October. You have already indicated to us about the issue of the sworn statements, tape and so forth. I will come to that specifically. I just want to get the full picture of your role at that time in relation to this incident.

Mr Scrafton—Again, there were a number of discussions between the minister and me and Peter Hendy and me—the normal sorts of things that happen in a minister's office. I was asked to chase up what was really happening, what the issues had really been. I talked to Ritchie. I think there is a record that I rang Ritchie. He got back to me. I spoke on a number of occasions to Al Titheridge in Strategic Command. They informed me that there had been an instruction given to take statements from all of the crew members of the *Adelaide*; that there was this electric optical tape which they could not get off the ship at that stage because it was still at sea, but as soon as it came into port they would make arrangements to get it across. Pretty much, I left it at that point in time, waiting for Strategic Command to get back to me with advice on where all those things stood.

Senator FAULKNER—When did they get back to you?

Mr Scrafton—They didn't—in terms of the tape. It was a great surprise to me to find out that the tape was actually at Maritime Headquarters when I was asked to go and look at it on the 7th.

Senator FAULKNER—Why was that a surprise?

Mr Scrafton—It was a surprise because it had dropped below my radar horizon, but I had anticipated at some point being advised that the tape and the statutory declarations were available. So I had never been advised that the tape was actually at Maritime Headquarters.

Senator FAULKNER—Have you been able to establish why Strategic Command didn't come back to you? Would you have expected them to come back to you?

Mr Scrafton—I would have expected it. Why, I don't know. Initially I think Air Marshal Titheridge was telling me that there were some complications. This ship had disembarked refugees on board. Their priority was not getting the tape back—it was the welfare of the people they had taken on board. There were a range of issues that slowed getting the tape back. As I said, I was also running the office and doing caretaker business. I was very busy at that stage. It just dropped below my horizon.

Senator FAULKNER—Was it business as usual? Did the Strategic Command have the pedal to the floor on this job, or not?

Mr Scrafton—I didn't get the impression they did.

Senator FAULKNER—I don't get the impression they did, either. So why didn't you get the impression they did? Did someone tell you that they didn't?

Mr Scrafton—Air Vice Marshal Titheridge did indicate to me that the affidavits or statements that were taken weren't getting moved as quickly as they might otherwise.

Senator FAULKNER—So it was the usual cover-up.

Mr Scrafton—I certainly couldn't comment on why that was not happening, and I didn't ask at that point in time.

Senator FAULKNER—You mean Air Vice Marshal Titheridge basically says that there is a go-slow on this essential evidence; what did you do about that?

Mr Scrafton—Nothing.

Senator FAULKNER—Did Air Vice Marshal Titheridge express to you his concerns about that, or was it just relayed to you as a statement of fact? Or was it just standard operating procedure for the Howard government?

Mr Scrafton—It was a statement of resignation, I suspect—that was what I detected in Air Vice Marshal Titheridge's voice. But I didn't pursue the issue then. It was early to middle October, I would guess.

Senator FAULKNER—Early to mid-October?

Mr Scrafton—After the photograph event, so towards the middle of October.

Senator FAULKNER—It is a pretty serious thing. Effectively, trying to get to the truth of this matter, we are now being told at this committee that there was a go-slow at Strategic Command.

Mr Scrafton—They are your words, Senator. My understanding from Air Vice Marshal Titheridge was that things were not moving as quickly as they might normally. As to what was happening, I could not confirm.

Senator FAULKNER—Did you ask any others in Defence whether Air Vice Marshal Titheridge's comments could be corroborated?

Mr Scrafton—No. Again, let me explain that, when the flurry of the photographs occurred in early October, I was engaged in this issue because I was the only person in the minister's office and there was a whole range of interaction that happened through the Canberra office. For the rest of that period, up until November, when I was in Sydney, very little of that interaction took

place through the minister's office here in Canberra. It was primarily through the minister's office in Melbourne, and I was out of the loop on most of that stuff. You would appreciate that, in a minister's office at that period, you do not thrust yourself into a whole range of activities because you are interested. I was busy enough and the issues were being dealt with elsewhere.

Senator FAULKNER—I am a generous person and I will be as generous as I can in asking this question: do you know who was responsible for requesting that Air Vice Marshal Titheridge and Strategic Command not progress this matter with the alacrity it deserved?

Mr Scrafton—No. You would have to ask Air Vice Marshal Titheridge that question.

Senator FAULKNER—Sure, we can ask the air vice marshal.

Mr Scrafton—The answer is no, I do not know.

Senator FAULKNER—In relation to these photographs here, could you indicate to the committee precisely when you became aware that the photographs were taken a day after the actual incident—that is, the sinking of the boat.

Mr Scrafton—The discussion I had with Brigadier Bornholt and Jenny McKenry was the strongest, clearest indication I had.

Senator FAULKNER—Did you ever see the dates on the photographs yourself?

Mr Scrafton—I was forwarded all of the photographs. I forget, but I think there were some 400 of them, from memory. I never opened the file and looked at them, so I cannot recall ever actually seeing the captions.

Senator FAULKNER—But Brigadier Bornholt told you that they were not of the incident?

Mr Scrafton—Yes.

Senator FAULKNER—Did Ms McKenry tell you they were not of the incident?

Mr Scrafton—She did, yes.

Senator FAULKNER—Do you know precisely when they mentioned that?

Mr Scrafton—No. I cannot recall precisely, but it was in a joint discussion I had with both of them.

Senator FAULKNER—The brigadier and Ms McKenry were responsible for emailing the photos, with captions, to you, weren't they?

Mr Scrafton—That is correct.

Senator FAULKNER—But you did not open that?

Mr Scrafton—No, I did not open it.

Senator FAULKNER—The reason they emailed it to you, as I understand it from my previous explorations of this matter, was that it demonstrated what the incident actually was.

Mr Scrafton—Yes.

Senator FAULKNER—You knew that and you did not open the file?

Mr Scrafton—That is correct.

Senator FAULKNER—Still dealing with this period, are you able to tell us whether there were any other matters—apart from those you have identified on 10, 11 and 12 October in relation to the incident—that you were involved in.

Mr Scrafton—Not that I can recall.

Senator FAULKNER—Given all these unequivocal discussions, with certain officials, the brigadier and so on, that the photos were being misrepresented, by the time you had these discussions, was there any doubt at all in your mind that they did not represent the actual incident that they were purported to represent?

Mr Scrafton—No, there was not.

Senator FAULKNER—Did you have your discussions with Brigadier Bornholt and Ms McKenry prior to your discussion with Mr Jordana? You may not recall, I appreciate.

Mr Scrafton—I do not recall exactly—but I say again that it is easy to describe these things in black and white terms. I was also receiving, in talking to the minister, the fact that different information was going into the minister's office in Melbourne, presumably from senior officers and Chris Barrie. So the question of certainty is a difficult one to pin down. I knew that Brigadier Bornholt and Jenny McKenry were confident that these were not the photographs. That is what they told me. In talking to Miles Jordana, I told him that there were serious doubts—a prudent rather than categorical statement.

Senator FAULKNER—In terms of your contact with the then minister, Mr Reith, are you able to say to this committee whether you expressed these concerns about the misrepresentation to Minister Reith? Did you at any stage discuss this with Mr Reith?

Mr Scrafton—I did.

Senator FAULKNER—Can you be precise about the timing?

Mr Scrafton—I discussed the initial concerns with him on a number of occasions. My recollection is that I rang Ross Hampton initially and said, 'There are some problems about these. The captions have been taken off. Tim Bloomfield has a problem.' The minister rang me back and asked me some questions about them, saying that he was getting other advice. So we discussed it on that occasion and we discussed it when we were talking about what time sunrise

was and what time the events took place. 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.

Senator FAULKNER—To your knowledge, did Mr Reith acknowledge the misrepresentation with the photographs?

Mr Scrafton—To be frank, I do not know what the minister believed. I do know that the way he expressed it to me was that he was still undecided on the prominence of the photographs because of the fact that he had, I think at that stage, Chris Barrie telling him that they still may represent a ‘children overboard’ event, which Chris Barrie believed had happened. What the minister believed is something—at the distance of Canberra from Melbourne and not being in his office—I could not answer.

Senator FAULKNER—Are you able to comment at all about the minister’s knowledge or perceptions of the actual ‘children overboard’ incident itself as opposed to what the photographs were purported to represent?

Mr Scrafton—Again, I think most of the discussions I had with the minister, which were in early October, left me with the impression that he was not convinced that it had not happened.

Senator FAULKNER—Did you tell him that it had not happened?

Mr Scrafton—I did not have that sort of certainty at the stage that we were having those discussions.

Senator FAULKNER—Did you tell him of your concerns?

Mr Scrafton—At that stage I did not have great concerns over whether or not it had happened. That was still a question that was out there.

Senator FAULKNER—Yes, the question was out there. So your concerns specifically related to—

Mr Scrafton—To the photographs.

Senator FAULKNER—the evidentiary basis—the photographs. Is that correct?

Mr Scrafton—That is correct.

Senator FAULKNER—I just want to be clear about what you are saying. Are you able to say to the committee whether you are aware of any other source, apart from Admiral Barrie, saying to the minister that the photos may still be photographs of kids who had been thrown overboard? Are you able to say that to us?

Mr Scrafton—No, I am not.

Senator FAULKNER—You do not know?

Mr Scafton—I do not know. As I said, I was not privy to what information was going into the Melbourne office. All I was aware of was, at one end of the telephone, what the discussions with the minister were. At that point he was seeking confirmation and evidence, I think.

Senator FAULKNER—You have told us you expressed concerns about this evidentiary basis, the photographs—

Mr Scafton—Yes, I did.

Senator FAULKNER—to Mr Reith—

Mr Scafton—Yes.

Senator FAULKNER—to Mr Jordana—

Mr Scafton—Yes.

Senator FAULKNER—and to Mr Hampton.

Mr Scafton—Yes.

Senator FAULKNER—Did you express these concerns to anybody else?

Mr Scafton—Peter Hendy was in the office the whole time we discussed this on a regular basis. He was the chief of staff to Peter Reith at the time.

Senator FAULKNER—So you had certainly made Mr Hendy aware?

Mr Scafton—Yes.

Senator FAULKNER—Anybody else, Mr Scafton?

Mr Scafton—There were not too many other people in the office.

Senator FAULKNER—I appreciate that, but there may be other people in Defence or in other ministerial offices.

Mr Scafton—No, not in other ministerial offices. There was an ongoing dialogue between me and Strategic Command and other people in Defence, so I knew that these issues were being talked about. But you are asking if I passed it on to somebody outside of that conversation—no; only to the people I have mentioned.

Senator FAULKNER—In the whole of the period we are speaking of—the previous election campaign, or 7 October through to 11 November—did you personally have contact with any other ministerial offices or are you aware of any other involvement from ministerial offices in the ‘children overboard’ issue?

Mr Scafton—I spoke on a couple of occasions to Jane Halton.

Senator FAULKNER—She wasn't in a ministerial office, was she?

Mr Scafton—No.

Senator FAULKNER—She was the head of the task force.

Mr Scafton—That is right. Prior to the election I sat in on a meeting between Peter Reith and Philip Ruddock when they discussed the issue, but that was well before this incident. I had no interaction with any other ministers' offices.

Senator FAULKNER—Broadly, I am trying to deal with this with a chronological approach but, for the purposes of the record, can you indicate the nature of your two interactions with Ms Halton.

Mr Scafton—I had an interaction with her early on when the task force was being set up. I sat in on a meeting with her and Peter Reith when they were talking generalities about the border protection issue. At some point when there were doubts about the photographs emerging Jane Halton rang me—I think at home, from memory—and talked about what the position of the minister's office was on the photographs.

Senator FAULKNER—Do you know when that conversation took place?

Mr Scafton—I cannot recall. It was probably five or six days after the photos were released, but I cannot remember exactly. I think she referred to it in the evidence that she gave to you.

Senator FAULKNER—What can you tell me about the meeting between Mr Reith and Mr Ruddock?

Mr Scafton—Nothing. That was in confidence between ministers and had nothing to do with these issues, except that they were discussing policy about border protection, SIEVs and Defence and Immigration cooperation.

Senator FAULKNER—You spoke a little earlier in answer to a question from my colleague on the committee Senator Bartlett. You indicated that there had been some discussion about retraction of the photographs.

Mr Scafton—That is correct.

Senator FAULKNER—Could you please outline to the committee what the basis of that was.

Mr Scafton—At the point at which we became aware that these probably were not depicting the 'children overboard' event—and, again, let me say at that point that there was no clear decision—

Senator FAULKNER—I do not like to interrupt you, but I think you need to explain to us who are 'we'.

Mr Scrafton—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.’

Senator FAULKNER—Did you propose retracting them?

Mr Scrafton—I suggested that the issue that had to be dealt with was whether or not we retracted the photos. I did not give advice on that issue. I said the question that Peter needed to consider was whether or not we would do that.

Senator FAULKNER—But you felt the misrepresentation was of such significance that consideration ought to be given to a retraction?

Mr Scrafton—That is correct.

Senator FAULKNER—So you supported a retraction?

Mr Scrafton—I did not make that point to Peter Hendy. I said that he needed to consider that.

Senator FAULKNER—Who was there apart from Mr Hendy?

Mr Scrafton—Nobody. Peter Hendy and I; and the DLO at the time, Liesa Davies, was in the office.

Senator FAULKNER—Could you run through that again for me?

Mr Scrafton—Peter Hendy and I and there was a DLO from Defence.

Senator FAULKNER—The DLO Ms Davies.

Mr Scrafton—Yes.

Senator FAULKNER—You do not know who made the decision not to retract?

Mr Scrafton—No. Peter just conveyed to me that that was not going to happen.

Senator FAULKNER—So you do not know who decided to allow the falsehood to run?

Mr Scrafton—I do not know who decided to keep the photographs out there.

Senator FAULKNER—Yes, to allow the falsehood to run.

CHAIR—We have allowed Senator Brandis an editorial, so that is yours.

Senator FAULKNER—Thank you, Chair, that is generous. You do not know who made the decision to allow the photos to remain out there?

Mr Scrafton—That is correct.

Senator FAULKNER—Do you know whether Mr Reith was involved in making that decision?

Mr Scrafton—No, I do not.

Senator FAULKNER—So you do not know whether that issue was raised directly with Mr Reith?

Mr Scrafton—No, I do not.

Senator FAULKNER—Or other ministerial officers?

Mr Scrafton—No, I do not.

Senator FAULKNER—Do you know what date this occurred?

Mr Scrafton—Probably around the 12th or 13th. It was not long after.

Senator FAULKNER—That early?

Mr Scrafton—Yes. It was when we became aware—and I think Jenny McKenry made us aware—that the photographs were out everywhere on the restricted system in Defence, which really meant they had public access.

Senator FAULKNER—Am I to understand that in terms of 10, 11 and 12 October you have been able to provide the committee now with full details? There is no other involvement you had in relation to this broad issue during that period of time?

Mr Scrafton—No.

Senator FAULKNER—This might be a good point to break, Chair, because I know you want a break in exactly 50 seconds time.

CHAIR—A very astute intervention, Senator Faulkner.

Senator FAULKNER—You were going to gag me anyway.

Proceedings suspended from 10.49 a.m. to 11.11 a.m.

Senator FAULKNER—Mr Scafton, I will now move to the end of October 2001. I have the impression from your evidence that not a great deal more in relation to this incident occurred from the events we have just been speaking of through to the end of October. Could you confirm whether that is the case.

Mr Scafton—That is correct.

Senator FAULKNER—So there is nothing you can report to the committee in relation to any interaction during that period?

Mr Scafton—As I said, I was normally in contact with Strategic Command and various parts of the organisation, and I discussed these issues, but there were no substantive matters raised that I dealt with.

Senator FAULKNER—Let us now go to the month of November. You indicated in your evidence a little earlier that you had communication with Mr Jordana, one of the Prime Minister's senior advisers, in early November.

Mr Scafton—That is correct.

Senator FAULKNER—Could you now outline for the committee what the nature of those communications was and, if possible, when they occurred.

Mr Scafton—They occurred in the first week of November. Can I remember exactly? No. It was probably a day or two before I went to Sydney—so probably on the 5th or 6th. The issues of the photographs and the 'children overboard' were starting to get some currency again. I had spoken to Miles again about the photographs and had said that, at this point, the photographs did not represent the 'children overboard' incident. That is about all of the discussion that took place.

Senator FAULKNER—So you are able to say to this committee that on either 5 or 6 November you were able to provide Mr Jordana, the Prime Minister's senior adviser, with categorical advice that the photographs did not represent the 'children overboard' incident?

Mr Scafton—That is correct.

Senator FAULKNER—Are you able to indicate to the committee how many conversations you had with Mr Jordana in this period? Was it just the one?

Mr Scafton—It was just the one. As I said, there was very little contact between me and the Prime Minister or any other officers during that period.

Senator FAULKNER—So we now know that on 11 October you expressed directly to Mr Jordana your doubts about the veracity of the photographs, but on 5 or 6 November you gave categorical advice to Mr Jordana that the photographs were a misrepresentation of the supposed events.

Mr Scafton—That is correct.

Senator FAULKNER—Are you able to tell us of any other matters that you raised with Mr Jordana in that conversation you had with him on either 5 or 6 November?

Mr Scafton—I do not think we discussed any other matters. My recollection is that it was just Miles touching base with me on the issue.

Senator FAULKNER—That is helpful. Does this mean that Mr Jordana contacted you, as opposed to you contacting him?

Mr Scafton—That is my recollection.

Senator FAULKNER—Did Mr Jordana contact you for the purpose of establishing what those photographs represented?

Mr Scafton—Yes.

Senator FAULKNER—And you told him that they were a misrepresentation?

Mr Scafton—That they were of the sinking, yes.

Senator FAULKNER—That they were of the sinking, not of an alleged incident of children being thrown overboard?

Mr Scafton—That is correct.

Senator FAULKNER—Did Mr Jordana indicate whether he was ringing on behalf of the Prime Minister or other prime ministerial staff?

Mr Scafton—No, it was just in the nature of an adviser-to-adviser discussion. No, he did not indicate that.

Senator FAULKNER—But it is quite significant. It is a proactive decision by Mr Jordana to ring you on these matters?

Mr Scafton—That is correct.

Senator FAULKNER—Up until the time of that phone call, Mr Scafton, after the events in mid-October that we have discussed, was this effectively the first re-engagement you had with the ‘children overboard’ incident?

Mr Scafton—It was, yes.

Senator FAULKNER—Could you please outline for the benefit of the committee what occurs after Mr Jordana’s phone call to you when you give the Prime Minister’s senior adviser the categorical advice about the photographs being a misrepresentation. What occurs then?

Mr Scrafton—Nothing occurs that I am aware of. The next involvement for me was when I was in Sydney on the 7th—

CHAIR—Just before you go to that, can I interrupt for a moment. I have not got an understanding of how Mr Jordana reacted to the news you gave him on 5 or 6 November.

Mr Scrafton—I do not recall a strong reaction one way or the other.

Senator FAULKNER—And I assume he did not indicate he had passed that on to anyone? He sought your advice—

Mr Scrafton—No; he just sought my advice and I gave it to him.

Senator FAULKNER—He received your advice?

Mr Scrafton—That is correct.

Senator FAULKNER—It was unqualified and categorical advice?

Mr Scrafton—That is correct.

Senator FAULKNER—Thank you. So, we have you in the very fine city of Sydney.

Mr Scrafton—I went to Sydney to have dinner with a longstanding friend of mine. Latish in the afternoon Peter Reith rang me.

Senator FAULKNER—I do not like to interrupt, Mr Scrafton, but you better give us the date. I think we might know the date but—

Mr Scrafton—It was 7 November.

Senator FAULKNER—Thank you.

Mr Scrafton—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 Scrafton—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.

Senator FAULKNER—Let us try and go through this from the afternoon at the Maritime Headquarters. You viewed the video—or an element of the video—twice.

Mr Scafton—Yes, twice.

Senator FAULKNER—You had with you a serving naval officer?

Mr Scafton—Commodore Max Hancock.

Senator FAULKNER—Commodore Hancock, a serving naval officer, was there. Did you talk to Commodore Hancock about what the tape showed?

Mr Scafton—We did. We sat down side by side and we were talking about it. In fact, some interpretation of the tape had been about a child and a man on the top of the roof of the boat. Some people had said that perhaps he was threatening to throw the child overboard. We had a discussion about the fact that the kid was sitting on the man’s hip in exactly the same way I would have carried my daughter in the same situation. So we discussed the detail of the tape.

Senator FAULKNER—Without putting words into Commodore Hancock’s mouth, are you able to say to the committee whether you are satisfied that your conclusions and the Commodore’s conclusions were identical or very similar?

Mr Scrafton—They were the same.

Senator FAULKNER—They were the same—thank you for that. Was Commodore Hancock aware that you were likely to pass that information on to the defence minister, Mr Reith?

Mr Scrafton—Yes, he was aware of why I was there and how it had come about that I had been called. He was there when I rang the minister back on my mobile.

Senator FAULKNER—Let us go to that conversation. Will you give me as much detail as you can about that particular conversation. I think your words were that the video was ‘at best, inconclusive’. I will let you describe to us what you said to the minister.

Mr Scrafton—To the minister I said, ‘I have just viewed the tape. It does show’—as I said—‘a man and a child on the roof of the boat. However, it does not look like he was threatening to do anything with the child. In fact, it looked like he was showing some concern about the child’s safety.’ I said, ‘You can see dark heads, or dark blobs which may have been people, on the other side floating in the water but there is no evidence of anybody jumping.’ I said, ‘The best you could do from this is to say that it is inconclusive because you cannot see the other side of the boat, but it certainly does not support the proposition that children were thrown overboard.’

Senator FAULKNER—Did this seem to worry Mr Reith, who had been involved in a fraudulent explanation of these events for the whole period of the 2001 federal election campaign?

Mr Scrafton—I did not detect any emotion.

CHAIR—There is an objection to the way you phrased that.

Senator FAULKNER—I was being as moderate as I could. I thought ‘fraudulent’ was as fair as I could be in the circumstances.

Senator BRANDIS—The witness has not said—

Senator FAULKNER—‘Lying’ perhaps would be a better word.

CHAIR—The record will show that characterisation is Senator Faulkner’s and not the witness’s. We have managed to get through a whole range of questions where phrases have not been used that can in any way distort the thing, so I am sure Senator Faulkner will observe that.

Senator FAULKNER—As always, Chair.

CHAIR—No, I do not believe ‘as always’. None of us in this room have that record of always observing and obeying that particular rule.

Senator FAULKNER—You are right. I have never claimed perfection. So Mr Reith's reaction was merely to say that he was going to pass it on to the Prime Minister?

Mr Scafton—Yes. He very quickly ended the conversation and said he was going to ring the Prime Minister and he would get back to me.

CHAIR—I am uncertain of one thing out of your evidence. Earlier on you speculated about why the tape had not arrived earlier. Then I think you said that you did not know that it was Maritime Headquarters until Mr Reith told you. Did you actually ask when you got there how long the tape had been there?

Mr Scafton—No, I did not, I must admit.

CHAIR—So we do not know that?

Mr Scafton—No.

Senator FAULKNER—So Mr Reith then phoned you back?

Mr Scafton—He phoned me back 15 or 20 minutes later. I was still at Maritime Headquarters. He said that he had given my mobile number to the Prime Minister and that the Prime Minister would call me to seek my direct views on the tape.

Senator FAULKNER—And that was all he said?

Mr Scafton—Yes.

Senator FAULKNER—He didn't indicate how he, Mr Reith, would be responding to the information you had provided?

Mr Scafton—No, I do not know whether anybody here has had a lot to do with Peter Reith in these sorts of situations, but he is very guarded in the way he deals with things.

Senator FAULKNER—I have not had a lot to do with Mr Reith in any situation, I have to confirm.

Mr Scafton—I did, and he certainly was very guarded and did not give away anything about his reaction or what he might—

Senator FAULKNER—It sounds like he was pretty guarded on this the whole way through.

Mr Scafton—Again, to be fair, that is his nature on a range of issues.

Senator FAULKNER—He might have been guarded in private conversations with you; he was pretty gung ho in the public arena on this.

CHAIR—Again, that is not really within the witness’s ability to answer. It was only an implied editorial this time—

Senator FAULKNER—No, that is a fair comment. It was probably an editorial comment—a fair one. Did you contact anyone else about the video at all before the Prime Minister rang? Was there any other contact on this with any other individual?

Mr Scafton—No.

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 to 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 Scrafton—Yes.

Senator BRANDIS—Thank you.

Senator FAULKNER—So that advice was clear and categorical?

Mr Scrafton—Yes.

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

Mr Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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.

Senator FAULKNER—Had you read the ONA report?

Mr Scafton—I had at the time it came out, yes.

Senator FAULKNER—You were on the list of addressees?

Mr Scafton—The office was.

Senator FAULKNER—Would it ordinarily go to you in your responsibilities, Mr Scafton?

Mr Scafton—It ordinarily would not have gone to me in my responsibilities, except that it was the caretaker period. The only person in the office looking through the intelligence stuff at that point was me.

Senator FAULKNER—When you received that ONA report in the office did you take any particular action with it?

Mr Scafton—No. It really passed beyond my—

Senator FAULKNER—Your desk.

Mr Scafton—Yes. It was one report in a flurry of activity that was happening around ‘children overboard’. It was not very substantial. My recollection is that it was three-quarters of a page or something.

CHAIR—Did it come in the weekly summary or amongst other issues?

Mr Scafton—My recollection is that it was a separate report and that there was no really startling information in it, apart from what everybody else was saying. So it would have just gone back in the general stuff that went back to intelligence.

Senator FAULKNER—But you at least had had the benefit of reading this report when Mr Howard raised it with you?

Mr Scafton—Yes, I knew what was in the report. I must say that I had been discussing the report with various people in Defence—and I think with Air Vice Marshal Titheridge but I cannot be absolutely certain—because by that time it was clear to a lot of people in Defence that the event had not taken place but there was this intelligence report and people were speculating that it was simply picking up the newspaper reports, which is what I said to the Prime Minister.

Senator FAULKNER—In your recollection, that final phone conversation with the Prime Minister was limited to the issue of the ONA report?

Mr Scafton—Yes, that is what it was about.

Senator FAULKNER—Even though you said that these were matters for Mr Jones, you have indicated that you made clear to the Prime Minister that it was effectively based on press releases?

Mr Scafton—I said that that was my understanding—the impression that I had gathered. Again, I do not know what Kim Jones based it on.

Senator FAULKNER—We know what it was based on—it was press releases.

Mr Scafton—Yes, but from recollection Kim was not sure of that until he checked a week or so later, or he did not formally finally decide that that was the case until a week or so later, although I think he had advised Miles that that might be the case.

Senator FAULKNER—Who did you inform that you had had these conversations with the Prime Minister?

Mr Scafton—I spoke to Jenny McKenry as I was driving back from Sydney the next morning. I spoke to her to set some context for the request that O’Leary had given me about the tape. I said: ‘This is urgent because I have just told the Prime Minister that the event did not happen. They want to get the tapes out as quickly as possible before the Press Club. Can you help arrange it?’

CHAIR—I take it though, from what I have read about your statements on this, that you did not tell Ms McKenry about the conversation on ONA.

Mr Scrafton—I did not give her a verbatim report on it. What I did was set the context for what I was asking her to do about the tape. My intent was not to brief her on the conversation, but I did convey what I had said in essence.

Senator FAULKNER—So in fact it would have been unlikely that you would have had a conversation with Ms McKenry except for Mr O’Leary’s request in relation to the video—would that be right?

Mr Scrafton—That is correct.

Senator FAULKNER—Who else did you speak to about the prime ministerial conversations?

Mr Scrafton—I spoke to Roger Powell. He was the only other person I spoke to in any detail about the conversations. I did say to Alan Hawke and Chris Barrie that I had had discussions with the Prime Minister that I was not going to reveal, given the gag on me from government, just to put them in the picture. But the only other person—two people, but Commander Noonan was just sitting in the room—was Roger Powell, because of the inquiry.

Senator FAULKNER—But your conversation with Major General Powell about this was in the context of the major general’s formal Defence report?

Mr Scrafton—That is not quite right. It was in the context of staying out of the major general’s formal report.

Senator FAULKNER—So you were never questioned by Mr Reith, for example, about what you said to the Prime Minister?

Mr Scrafton—No, I was not.

Senator FAULKNER—Or by any of Mr Reith’s other staff or his chief of staff?

Mr Scrafton—No. Three days after this was the election. I was back in Defence on the Monday after the election and all of a sudden it was another world.

Senator FAULKNER—How did you get to hear about what the Prime Minister said at the National Press Club?

Mr Scrafton—I was back in the office. Transcripts of those sorts of things are produced and are shot around the offices as soon as they are done, for press reasons.

Senator FAULKNER—Let us put this in context. This is lunchtime—the lunchtime after the night before.

Mr Scrafton—It was the afternoon. The Prime Minister spoke at the lunchtime Press Club—that is right.

Senator FAULKNER—And it is the previous evening when you have your discussions with him.

Mr Scrafton—That is right.

Senator FAULKNER—You have your discussions on the 7th and he speaks at the Press Club on the 8th—

Mr Scrafton—The 8th—that is right.

Senator FAULKNER—where the Prime Minister tries to confirm this story by quoting from the classified ONA report?

Mr Scrafton—That is correct.

Senator FAULKNER—Regarding the information that you have provided, as categorical as it was, in relation to the photographs, and which was also very clear about the inconclusiveness of the video and the fact that nobody in Defence believed the incident took place, what was your reaction when you heard the Prime Minister use the discredited ONA report and ignore your advices to him in relation to these matters?

Mr Scrafton—As I have said in my opening statement, I was surprised at the unqualified use of that information. But I will make the point that I am not, and never have been, privy to all the information that goes into the Prime Minister's offices or what he had actually been told, but I was surprised that it was so unqualified—the use of the ONA report in particular.

Senator FAULKNER—But you can confirm to the committee that on 11 October you indicated to Mr Jordana that you had doubts about the photographs representing the incident?

Mr Scrafton—That is correct.

Senator FAULKNER—You can confirm to the committee that on either 5 or 6 November 2001 you gave categorical advice to Mr Jordana that the photographs did not represent the incident?

Mr Scrafton—That is correct.

Senator FAULKNER—And you can confirm to the committee that you spoke to the Prime Minister on the evening of 7 November 2001 and indicated categorically that the photographs did not represent the incident, that the video was at best inconclusive and that nobody in Defence believed that children had been thrown overboard?

Mr Scrafton—That is correct.

Senator FAULKNER—I know that Senator Brandis has questions to ask. I might come back with some further questions at a later stage.

CHAIR—We should have an opportunity later for all senators to have a second bite at it.

Senator BRANDIS—I want to take you back to the account of these events that you gave to the Bryant inquiry, in the statement that was taken from you on 14 December 2001. I think you

acknowledge, don't you, that there are important discrepancies between what you told the Bryant inquiry and what you are now telling us three years later?

Mr Scrafton—Correct.

Senator BRANDIS—In fact, it goes further than to say that there are discrepancies. There are important respects in which your signed statement to the Bryant inquiry was deliberately misleading, aren't there?

Mr Scrafton—In which ways are they, Senator?

Senator BRANDIS—I will take you through them, but, before I do, I put the charge to you and invite you to comment on it in general.

Mr Scrafton—I do not think I was deliberately misleading—

Senator BRANDIS—You do not—

Mr Scrafton—If I could finish, Senator. I feel that, given the constraints I was working under, I revealed as much to Jenny Bryant as was appropriate.

Senator BRANDIS—Regarding the constraints that you say you were working under, first of all you say that there was a cabinet directive that constrained what you could have said to Jennifer Bryant?

Mr Scrafton—What I have said is that I had been advised that there was a cabinet directive.

Senator BRANDIS—Is that the directive you were speaking of when you told Mark Colvin on the *PM* program on 17 August:

... there was a Cabinet decision telling me what I could say and what I couldn't say—actually stopping me from saying things ...

That is what you are referring to there?

Mr Scrafton—That is correct.

Senator BRANDIS—What did you understand the terms of that cabinet directive to be?

Mr Scrafton—They were as had been passed on to me from Allan Hawke, as secretary, and Matt Brown, the current chief of staff to Senator Hill, and Peter Hendy, who had been the former chief of staff to Peter Reith. All of them confirmed to me that there had been a cabinet decision—and I had asked Matt Brown if I could get a copy of it but one never emerged—and that I and anybody else who was engaged under the MOP(S) Act during the period that we were in Parliament House were forbidden from talking about the issues that we may have canvassed in relation to any government business.

Senator BRANDIS—You say that you were told that before you spoke to Jennifer Bryant on 14 December 2001?

Mr Scrafton—That is correct.

Senator BRANDIS—Are you sure of that, by the way? Do you want to think about that answer again?

Mr Scrafton—No.

Senator BRANDIS—You said in your evidence a little earlier on in the morning that that instruction had been conveyed by Dr Hawke, Mr Brown and Peter Hendy—this was your evidence earlier this morning—after a Senate estimates hearing.

Mr Scrafton—I said I spoke to Peter Hendy after a Senate estimates hearing, but as for the others I cannot recall exactly—

Senator BRANDIS—You did not say that just a moment ago. You said it was with all three of them and that you had spoken to them and that that had been conveyed to you before you spoke to Jennifer Bryant on 14 December 2001.

Mr Scrafton—I am afraid that is not what I said, Senator. What I said was that all of them had conveyed the message to me that there was a cabinet decision. I did not speak to them simultaneously or sequentially. I spoke to them at a range of different times. I spoke to Matt Brown after I had spoken to the other two, because I was then interested in trying to find out about or get a copy of the cabinet decision. Matt confirmed for me that the decision existed and said he would look into getting a copy, but one never eventuated.

Senator BRANDIS—So you are quite sure you spoke to Matt Brown after you had spoken to the other two?

Mr Scrafton—Yes.

Senator BRANDIS—And, as you have now told us, you spoke to Peter Hendy after the Senate estimates hearings, so you spoke to Matt Brown after you had spoken to Peter Hendy?

Mr Scrafton—Yes, that is my recollection.

Senator BRANDIS—So you spoke to both of those two after the Senate estimates hearings?

Mr Scrafton—Yes.

Senator BRANDIS—Those Senate estimates hearings, as I think you know, were in February of 2002.

Mr Scrafton—That could be right.

Senator BRANDIS—Well, I think that would be right.

Mr Scafton—Yes, you have checked that.

Senator BRANDIS—I do not think that is controversial. So it would not be right to say that anything conveyed to you by either Matt Brown or Peter Hendy could have borne upon any decision of yours about what you would say to the Bryant inquiry, because those conversations did not happen until about three months later?

Mr Scafton—That is correct.

Senator BRANDIS—So what they said to you did not convey to you any constraint upon what you could tell the Bryant inquiry before you gave your statement on 14 December 2001 and signed it on 3 January 2002?

Mr Scafton—That is correct.

Senator BRANDIS—What about Dr Hawke? When do you say you spoke to him?

Mr Scafton—I spoke to Dr Hawke continually from the time I came back from the minister's office, which was the Monday after the election, so I could not be exact about when—

Senator BRANDIS—You could not be exact about when you spoke to him?

Mr Scafton—Yes.

Senator BRANDIS—Mr Scafton, can I tell you that there was no cabinet decision of any kind which imposed any restraints upon what public servants or MOP(S) Act staff could say to the Bryant inquiry at all. Can I suggest to you that you are confusing a cabinet instruction made on 11 March 2002, the terms of which were that departments and agencies were not to provide written submissions in response to the Senate Select Committee on a Certain Maritime Incident, that ministerial staff not attend that select committee, that people who were ministerial staff at the time were not to attend, and that public servants should attend and give evidence. Those were the terms of the cabinet decision of 11 March 2002.

Mr Scafton—As I have said, I have never seen that decision, despite asking for it.

Senator BRANDIS—All right, I have just read it to you.

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

Senator BRANDIS—So you are not sure if you were confused or not. 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 that decision.

Senator BRANDIS—But what I am saying to you, Mr Scafton, is that, other than that decision, which was a directive by cabinet after the Senate had established the select committee—shall we call it the ‘children overboard’ committee—there was no prior cabinet decision imposing any restraints whatsoever on public servants or MOP(S) staff speaking to internal inquiries concerning this incident.

Mr Scafton—That may be the case. That was not what I was advised.

Senator BRANDIS—Well, what you were advised by Mr Brown and Mr Hendy, you have told us, was post the Bryant report, so what they advised you could not possibly have been an earlier cabinet directive.

Mr Scafton—You would have to ask Peter Hendy and Matt Brown.

Senator BRANDIS—In your statement this morning you list a series of reasons why you were not able fully to cooperate with the Bryant committee. You talk about a cabinet decision, and I have told you about that. You also say that you recall that the Bryant report—I am reading from your statement now, Mr Scafton:

... 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.

Mr Scafton—That is my recollection, yes.

Senator BRANDIS—All right. Now, Mr Scafton, can I give you a copy of two documents, please.

Senator FAULKNER—Do you have copies of those?

Senator BRANDIS—They are attachments to the Bryant report, Senator Faulkner. They are attachments 1 and 2 to the Bryant report.

Senator FAULKNER—Thank you.

Senator BRANDIS—The first document you will see is a letter to Mr Moore-Wilton from the Prime Minister dated 13 November 2001, which was the Tuesday after the election. Just read it to yourself, but would you agree with me that that instructs Mr Moore-Wilton as head of the Department of the Prime Minister and Cabinet to constitute this inquiry? Do you agree?

Mr Scafton—Yes.

Senator BRANDIS—I do not think it is controversial that we are referring to the same thing—that is, the Bryant inquiry.

Mr Scafton—No, that is right.

Senator BRANDIS—The expression ‘terms of reference’ has been used by you and others. It is not exactly a term of art, but would you agree that the three dot points in the Prime Minister’s letter appear to be the terms of reference?

Mr Scafton—Yes.

Senator BRANDIS—If you go to second dot point, you will see that the second term of reference is:

... to conduct a full examination of:

... ..

- how that advice—

being the advice obtained by Australian personnel—

was obtained and conveyed to authorities in Australia ...

Just to avoid confusion, that appears to be a reference to advice derived externally from Australia—presumably from military sources and in particular from the Navy.

Mr Scafton—Yes.

Senator BRANDIS—That is the way you would read that too?

Mr Scafton—Yes.

Senator BRANDIS—But the third dot point asks for a full examination of:

... the nature of advice provided to Government ministers, and how it was transmitted ...

Is that correct?

Mr Scafton—Yes.

Senator BRANDIS—Please take as long as you like to study that letter to make sure that I am not tricking you, but there is no limitation beyond those broad terms of reference restricting the matters that could be inquired into as long as they fall within the broad defined subject matter, and there is absolutely nothing in those terms of reference which limits the advice to be examined as advice provided by public servants as opposed to ministerial staff or MOP(S) Act staff, is there?

Mr Scafton—I suppose it is how you read the document, Senator—

Senator BRANDIS—Of course it is.

Mr Scrafton—and the context in which you read it. But on the second page it says, ‘My investigation will also have a broader range than the Defence inquiry,’ which was military—

Senator BRANDIS—Well, Mr Scrafton—

Mr Scrafton—Just a moment please, Senator.

Senator BRANDIS—No, I am sorry, Mr Scrafton—

Mr Scrafton—‘as it will cover the roles’—

Senator BRANDIS—I am sorry, Mr Scrafton—

CHAIR—No, I am sorry, Senator Brandis. You have asked a question. You can then follow it up in a moment.

Senator BRANDIS—I asked him a question about the first document—

CHAIR—No. Order! You are not going to dictate the answer. If you do not like it, you can follow it up.

Senator BRANDIS—On a point of order—

CHAIR—I will take the point of order in a moment. You asked a question, he started to give you the answer and you started to interrupt. I can understand the frustration if you do not think the answer is addressing your question, and you can follow that up in a moment. Now what is your point of order?

Senator BRANDIS—My point of order is that all of these questions have been directed to the first document which I have identified for the witness. I want to take the witness through these two documents, one at a time, methodically.

CHAIR—You may want to. He may want to answer the question in a different way, and he has that right.

Senator BRANDIS—My question is about the first document, the letter from the Prime Minister to Mr Moore-Wilton.

CHAIR—Your question may be about the first document but if the witness wishes to say his answer was dictated by the totality of documents and other factors before him, he is entitled to do so. You can then follow it up.

Senator BRANDIS—I withdraw the question and ask another question.

CHAIR—All right then.

Senator BRANDIS—Mr Scafton, I will take you to the second letter—don't have any worries about that. I just want to do this methodically. Confining yourself for the moment to the letter from the Prime Minister to Mr Moore-Wilton of 13 November 2001, which we have agreed sets out what we have been calling the terms of reference, and having regard particularly to the third dot point, where in that document and in the terms of reference do you see any limitations upon the scope of the Bryant inquiry of the kind you have put forward in your statement this morning as explaining in part the reasons why you took the particular and constrained attitude to the Bryant inquiry that you did?

Mr Scafton—I am afraid I am not able to answer in the sort of constrained way you want me to. When Jennifer Bryant approached people, particularly me, about being interviewed for this inquiry, she did provide both of those documents to us to look at. In particular, the explanation of the first document—the dot points—is contained in the subsequent document—

Senator BRANDIS—Which I will take you to in a moment.

Mr Scafton—which I will take you to now, which is what I understand the inquiry was about. It says:

My investigation will also have a broader range than the Defence inquiry—

which was specific to Defence policy issues—

as it will cover the roles of several agencies other than Defence ...

Senator BRANDIS—You have just interlined some words that are not there.

Mr Scafton—No, I have not; I am relying on words that are here.

Senator BRANDIS—The document says:

My investigation will also have a broader range than the Defence inquiry ...

Mr Scafton—Yes, and it goes on to say:

... as it will cover the roles of several agencies other than Defence, including the Department of Immigration and Multicultural and Indigenous Affairs, the Office of National Assessments and Coastwatch.

Senator BRANDIS—Why do you underline those words 'as it will cover'—

CHAIR—Order! We will have the answer and then you can have your follow-up question, Senator Brandis. I understand that on occasions, in order to clarify things, we intervene. I have done it many times myself. But I think that on this occasion Mr Scafton is entitled to complete his answer on this and then you can follow it up by all means, Senator Brandis.

Senator FAULKNER—I would have to admit to having done it myself.

CHAIR—You may complete your answer, Mr Scafton.

Mr Scafton—In participating with Jennifer Bryant in this inquiry, the understanding, based on this letter and those words in the discussions with Jennifer Bryant, was that this was a Public Service inquiry—it was about Public Service agencies and not about ministerial staffers. Irrespective of how you may wish to interpret these words, I was there at the time, I had the discussion with Jennifer Bryant when we took the record of conversation and that was the understanding that was between us when we did this. If you wish to contest that, I would suggest that Jennifer Bryant is the person to ask.

Senator BRANDIS—Perhaps we may, but, if that is right, you were at all relevant times a MOP(S) Act staffer, weren't you?

Mr Scafton—I was.

Senator BRANDIS—So, if the Bryant inquiry, as you understood it, expressly excluded MOP(S) Act staffers, why were you participating at all?

Mr Scafton—Because at that point in time I was returned to the Public Service. I was again constrained by anything that Max directed me to participate in. I had this discussion with Dr Hawke before doing this. His view, as head of the agency, was that I had to talk to Jennifer Bryant because I was currently a public servant, but the question about what I discussed when I was in the minister's offices was something that I had to determine.

Senator BRANDIS—With respect, you cannot have it both ways. You cannot say—

Mr Scafton—I am not having it both ways.

Senator BRANDIS—Let me finish, please. You cannot have it both ways. You cannot say in the one breath, 'I did not tell certain things to Jennifer Bryant because this was a Public Service inquiry and I was a MOP(S) Act staffer,' and in the second half of the same answer say, 'But I did tell other things to Jennifer Bryant because I was going back to the Public Service and therefore the constraint which I understood did not apply to me.' Which is it, Mr Scafton?

Mr Scafton—Why can't I do that? I do not understand, Senator.

Senator BRANDIS—You were either appearing before the Bryant inquiry as a public servant or as a MOP(S) Act staffer. You have told us that at all relevant times you were a MOP(S) Act staffer but, nevertheless, you have gone on to explain that you took a different view of that because you were appearing before the Public Service. Why does the transition in time between you being a MOP(S) Act staffer and a public servant qualify the manner of your participation in the Bryant inquiry? Either you fell under one category, in which case you were completely out—on your understanding—or you fell in the other category, in which case there were no constraints of the kind you have described.

Mr Scafton—I guess you have very little experience of these sorts of inquiries. This is not a court of law. I did not 'appear' before the Bryant inquiry. Jennifer and I sat down with a notetaker in a room and had a discussion about issues. That discussion was as much about trying

to help Jennifer get as much as she could out of her inquiry as far as I possibly could. As I have said before, 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. If that is inconceivable to you or inconsistent, I am afraid I cannot agree with that. This is the way in which an inquiry like this is conducted. As with General Powell, it was not an inquisition that I was part of; it was a question of having a discussion with a professional about what we knew about various things and what could be released.

Senator BRANDIS—I am not suggesting it was an inquisition.

Mr Scafton—In terms of the question of drawing hard and fast rules and lines, that is not the way these things are conducted. If you want to contest that, I suppose all you have to do is talk to Jennifer Bryant about it.

Senator BRANDIS—Perhaps we will, but we are talking to you about it first. Mr Scafton, on the day you had the interview—and I am adopting your usage of the word here—with Jennifer Bryant, on 14 December 2001, where you a MOP(S) Act staffer?

Mr Scafton—No, I was a division head in Defence.

Senator BRANDIS—So you were back in the Public Service by then?

Mr Scafton—That is correct.

Senator BRANDIS—If that is the case, why is it that you say you were constrained in your participation in the interview with Jennifer Bryant if, as you also say, on your reading of her letter to you—and we will go back to that in a second—it undoubtedly did apply to public servants?

Mr Scafton—Again, I am not quite sure what you are driving at, Senator. It seems very—

Senator BRANDIS—Can I explain to you what I am driving at?

CHAIR—Mr Scafton, you have asked Senator Brandis to clarify his question so he is entitled, on this occasion, to rephrase it or point out where he is coming from.

Senator BRANDIS—And not only that, Mr Scafton; I will tell you where I am going. You have said some things to the Bryant inquiry, which I will, in due course, suggest to you were misleading and untrue. In your opening statement to this committee this morning, you have given a number of reasons why you felt constrained in what you could say to the Bryant inquiry. One of those reasons, the reason we are now dealing with, is that you say there were constrained and specific terms of reference that restricted her to examining advice provided by the public service to ministers and did not canvass the actions of ministerial advisers operating under the MOP(S) Act.

Mr Scafton—That is correct.

Senator BRANDIS—We know that at the time you were interviewed by Jennifer Bryant on 14 December you were back in the public service.

Mr Scrafton—That is correct.

Senator BRANDIS—You were not a MOP(S) Act staffer. But we also know, because it is as plain as day from reading your statement to the Bryant inquiry, that many of the issues you canvassed there—in fact, virtually all of the issues you canvassed there—are issues that arose in the course of your work as a MOP(S) Act staffer.

Mr Scrafton—That is correct.

Senator BRANDIS—So I want to know how it can be that you say the differentiation of function between public servant and MOP(S) Act staffer goes any way towards explaining why you felt able to tell Jennifer Bryant about some of the things you did as a MOP(S) Act staffer but not others.

Mr Scrafton—I think I have answered this before, Senator, but I am happy to try again. As a public servant—and, as I said, I checked with my head of department, which is the appropriate thing to do—I had an obligation to participate in an inquiry which was being conducted at the behest of the Prime Minister and by the head of the Public Service, Max Moore-Wilton. In the course of that inquiry, as I have also said a number of times, I cooperated with Jennifer to the extent that I thought I reasonably could, without revealing any of the things which were critically damaging or controversial about my time in the minister's office. Did I draw some vague lines in grey areas? Well, yes, if that is the way you want to put it.

Senator BRANDIS—What do you mean by 'vague lines'?

Mr Scrafton—The question of advice—Jennifer was trying to find out what advice went into ministers' offices on a number of specific questions. I told her as much as I thought I could say about those things and still stay consistent with keeping confidences that I thought I had been directed to in the minister's office.

Senator BRANDIS—Just a moment, Mr Scrafton. It is not merely a matter of her asking some questions about some advice that went to ministers' offices. As we have agreed, one of the three terms of reference was the nature of advice provided to government ministers and how it was transmitted. That was a core topic of this inquiry. It was not something incidental.

Mr Scrafton—I did not say it was incidental.

Senator BRANDIS—But that was your only role. You did not have any role in relation to term of reference (1), did you?

Mr Scrafton—No.

Senator BRANDIS—That was, as we have agreed, what arose offshore and was transmitted by the Navy back to the mainland. You might have had some involvement in term of reference (2) but, for the purposes of what we are interested in today, your only significance here was to

speak about the nature of advice—provided by you, can I interpolate—to government ministers, wasn't it?

Mr Scrafton—No.

Senator BRANDIS—That is what she was asking you about.

Mr Scrafton—No, Senator: I am sorry if we seem to be going around in circles here, but she was not asked to sort out what advice I gave to the minister.

Senator BRANDIS—Looking at the term of reference—

Mr Scrafton—At no point was she asked to do that. The explanatory letter which came with the points of reference points out that this is about advice by agencies.

CHAIR—Can I interrupt here for a moment, if I may. In the evidence by Ms Bryant to the committee—and you said you have not gone through it in all the detail—she said:

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.

Is that consistent with the approach?

Mr Scrafton—That is consistent with my recollection. That is why I said this was not a court; this was an interview.

CHAIR—Thank you for allowing that intervention.

Senator BRANDIS—Nobody was suggesting that it was a court, but it was an inquiry and you had agreed to participate in it.

Mr Scrafton—The advice I was given was that I had no option.

Senator BRANDIS—I want to move on from this because I do not want to get too bogged down in it, but is that paragraph of the explanatory letter from Jennifer Bryant that you have read to us—that is, 'My investigation will also have a broader range than the Defence inquiry'—the only basis in these letters which you say caused you to believe that this was limited to Public Service matters?

Mr Scrafton—'The discussion of this letter with Jennifer Bryant at the time of the interview' was what I said.

Senator BRANDIS—You also pointed to, and actually read out to us, this paragraph.

Mr Scrafton—That is right, because the way this was conducted was the way any inquiry or interview, or whatever you want to call it, of this nature would happen. Jennifer sat down and showed me these documents. We went through them and talked about what they meant.

Jennifer's view—the view I strongly recall from that discussion—was that her terms of reference were about public servants. That is how she regarded her role. My discussions with her went as far as I thought I possibly could in terms of clarifying advice that came from the Public Service to ministers without breaching my ministerial and other parliamentary staff act responsibilities. That is all I can say about this.

Senator BRANDIS—All right. You see, Mr Scafton, the statement you gave Jennifer Bryant, can I suggest to you, does not tell the full story.

Mr Scafton—I am happy to concede that.

Senator BRANDIS—You say, 'Well, it doesn't tell the full story because I was subject to this constraint.' What I am putting to you is that the first constraint you identified—that is, a cabinet decision—cannot have been an operative constraint because the only cabinet decision was in relation to the Senate Select Committee on a Certain Maritime Incident and was not made until after the Bryant inquiry had reported. The second constraint to which you point, that is, that there was some functional limitation on your participating in the Bryant inquiry, is simply not supported either by the breadth of the terms of reference—not constrained, as you say, but as wide as appears on the face of the document—or by that part of the accompanying letter that you have identified, which does not limit it to Public Service matters either, does it?

Mr Scafton—I disagree with you.

Senator BRANDIS—I suppose the documents can speak for themselves. Going back to page 3 of your statement this morning, I want to take you through it carefully. I am not going to try and trick you or anything. We can skip over the third dot point, which is the second full dot point on page 3, because that does not deal with the Bryant inquiry. The next dot point begins, 'The reality was that the Howard government,' and you say:

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.

Mr Scafton—That is right.

Senator BRANDIS—I suppose it is stating the obvious, but if there was no cabinet decision that cannot have been an operative reason either, can it?

Mr Scafton—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. If that in itself is not sufficient context to understand that I would be extremely constrained in what I would say to anybody in any document, I obviously cannot get through to you about what my context was.

Senator BRANDIS—I understand that you imposed constraints on yourself. So much is obvious from the fact that you did not tell Jennifer Bryant the full story. My point is that these constraints were not constraints imposed upon you.

Mr Scrafton—That is not right. We have here a complete disagreement, with you painting some agreement between you and I about the letters that Jennifer Bryant had that does not exist. Those letters, in the context of the discussion with Jennifer Bryant at the time the interview took place, specifically explained that paragraph we were talking about as constraining her activities to the Public Service. I do not know how many times I can say that.

Senator BRANDIS—We have made it perfectly clear that you say that Ms Bryant made some remarks to you or you had a conversation with her about what the scope of her inquiry meant and—

Mr Scrafton—No, I did not say that. If I could just correct you, I did not say that.

Senator BRANDIS—I thought I understood you to say that.

Mr Scrafton—I had an explanation from her.

Senator BRANDIS—All right—you had a conversation.

Mr Scrafton—No. That is very different, Senator.

Senator BRANDIS—All right; that is fine.

Mr Scrafton—You are trying to picture it as some sort of casual discussion. In the context of an inquiry that Jennifer Bryant was running, we discussed, as is normal practice, what was meant by her terms of reference. That is not vague.

Senator BRANDIS—That is what I understood you to say.

Mr Scrafton—That is not what you said.

Senator BRANDIS—That is what I understood you to say. I used the word ‘conversation’. You used the word ‘explanation’. That is fine. I do not think that that is an important difference.

Mr Scrafton—It was more formal than conversation.

Senator BRANDIS—In any event, the proposition I put to you a moment ago is that, if there were constraints upon your cooperation with the Bryant inquiry, as you have said there were because you were not able to say everything you knew, those constraints were constraints you imposed on yourself, not constraints imposed on you. I have put the proposition to you. It seems to me that that necessarily follows from what you have said, but I invite you to comment on it.

Mr Scrafton—I have just explained to you why I thought that, in my view, the constraints on me about what was to be said came out of what Jennifer Bryant’s terms of reference were. So they were not self-imposed.

Senator BRANDIS—They weren’t?

Mr Scrafton—The second question—

Senator BRANDIS—I am sorry; let me get this straight: you say that they were not self-imposed? Do I hear you correctly?

Mr Scrafton—No, that is correct.

Senator BRANDIS—Okay.

CHAIR—Now we will let the witness complete his answer.

Mr Scrafton—With regard to the second point of whether I felt there were constraints on me from the context that I was in, I certainly did.

Senator BRANDIS—You have set out what you claim to be those constraints, including, as I have put to you, a cabinet decision that did not exist at the time and a functional limitation which, I would suggest—you disagree—is not supported by the document you point to. Going down to the fourth dot point in the reasons you give, I am struggling to understand how you felt that telling the truth to the Bryant inquiry would make your position untenable. You gave that statement on 14 December in particular—not exclusively, but in particular—in relation to what you had told the Prime Minister on 7 November. The Prime Minister had not given a public account of your conversation with him until, I think, 19 February the following year.

Mr Scrafton—I am afraid I do not understand the logic of your question.

Senator BRANDIS—I am asking how you could have felt that.

Mr Scrafton—I will try to clarify: are you asking me whether I thought saying that the Prime Minister had lied at any point after the election was not a big issue? Is that what you are saying to me?

Senator BRANDIS—That is not what I am asking you at all. I am asking you why you felt you were subject to these constraints in what you could say to the Bryant inquiry because your position would have been untenable if you had told the whole truth, in particular about a conversation with the Prime Minister on 7 November. You spoke to Bryant on 14 December when the Prime Minister's account of that conversation, which contradicts yours, was not put on the public record until February the following year. At the time you spoke to Bryant you could not have known whether the Prime Minister would contradict you or not.

Mr Scrafton—That is true. But are you implying that—

Senator BRANDIS—I am just trying to work out the way your mind was operating.

Mr Scrafton—To clarify: are you implying that I would have not seen the consequences of saying to an inquiry that was going to be distributed around the place that I had told the Prime Minister something on 7 November which I think he misrepresented on 8 November? Irrespective of what anybody else had said, no public servant in their right mind would

contemplate making an announcement like that to an inquiry without understanding the full consequences of what that would mean. I completely miss the point of your question.

Senator BRANDIS—I think you have met the point of my question, because you have given a pretty good explanation of the way your mind was working. But what I am wondering about is why it was, on 14 December—when these issues were not nearly as controversial as they became subsequently, from early 2002—you were not prepared to tell the full truth about what you said to the Prime Minister, when you did not even know, at the time you spoke to Bryant, whether you would be contradicting the Prime Minister or not.

Mr Scrafton—I can only answer that by saying: at that stage, 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, that I fully understood the consequences of calling the Prime Minister a liar under any circumstances.

Senator BRANDIS—You would not have been calling the Prime Minister a liar. He had not said anything. You would have been simply saying, ‘In the course of a conversation with the Prime Minister on 7 December, I said these things.’ You did not feel constrained about giving an account of the conversation with the Prime Minister to Bryant because you go into it in part, without for a moment suggesting that that was not a complete rendering of the conversation. So it cannot be right to say that you felt unable to deal with the conversation with the Prime Minister. I am wondering why it is you chose not to tell the full truth, not knowing that that was going to contradict the Prime Minister’s subsequent account of the same conversation.

Mr Scrafton—I think I have answered that question.

Senator BRANDIS—Okay. If you are happy with what you have said, that is fine. Did you, by the way, feel—because it seems to me that all these questions and answers we have had about the constraints you felt under—that you were prevented from giving frank and fearless advice to Ms Bryant in the course of her inquiry?

Mr Scrafton—I do not give frank and fearless advice to other public servants.

Senator BRANDIS—So you felt that your obligation of candour and frankness to the Bryant inquiry—an inquiry you knew had been specifically set up by the Prime Minister to inquire into this very matter, with these, I would put to you, broad terms of reference—was of a lesser order of candour than you would have given to ministers? Do you?

Mr Scrafton—I am sorry, but this is too complex to pull apart. I think there is a mishmash of ideas there.

Senator BRANDIS—Let us take them one by one.

Mr Scrafton—In terms of giving advice to ministers on matters of government policy, frank and fearless advice is something that, I would hope, all public servants strive for but do not always achieve. Exercising judgment about what I might say that has political or professional consequences is a completely different issue from frank and fearless advice on policy. Perhaps

experience in ministers' offices conditions you a little more to those sorts of ideas, but I do not understand what that mishmash of ideas means.

Senator BRANDIS—With respect, it sounds to me as though you are thinking and acting like a politician, rather than like a public servant, if those are the sorts of considerations that influence your judgment about the level of candour you will display to this inquiry established by the Prime Minister to investigate this very thing.

Mr Scafton—Can I again clarify that. Are you saying that, by being cautious about what I say about describing the Prime Minister as, at worst, misleading, I am being political? Again, I do not understand your interpretation.

Senator BRANDIS—Are you? Do you think you are?

Mr Scafton—I cannot answer that question. I do not understand what you are getting at.

Senator BRANDIS—As you understand it, is the obligation to provide frank and fearless advice limited to policy? This is now accepting your distinction between advice to ministers and what you say to other public servants, including those conducting an inquiry about advice to ministers. Do you say that the obligation to provide frank and fearless advice to ministers is only an obligation about policy, or is it also an obligation to provide frank and fearless advice about facts?

Mr Scafton—It is.

Senator BRANDIS—You certainly provided frank and fearless advice to the Prime Minister—on your story now—on 7 November, when you told him the things you told him in the conversations you had on the telephone that evening, didn't you?

Mr Scafton—That is correct.

Senator BRANDIS—But, when the Prime Minister institutes an inquiry for the very purpose of being fully informed about the nature of advice provided to government ministers—including, presumably, himself—and you agree to participate in it and you give an account of what you said to the Prime Minister, you were not prepared to be as frank and fearless in relating to that inquiry the advice you had given the Prime Minister as you were in speaking to the Prime Minister himself. I cannot follow that, Mr Scafton.

Mr Scafton—Let me take you back a step: the inquiry was not about that.

Senator BRANDIS—I just read you the relevant term of reference: 'the nature of advice provided to government ministers'. Those are the words. That includes the Prime Minister.

Mr Scafton—And I told you: it was about that provided by public servants. You cannot interpret this to be something other than it was at the time.

Senator BRANDIS—Mr Scafton, going down your statement of this morning, you say no direct threat was ever made to you about the consequences for your career. We accept that. But

then you qualify it in the last of these dot points which seeks to explain the piecemeal nature of your evidence to the Bryant inquiry. You talk about:

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.

Do you see that?

Mr Scrafton—Yes.

Senator BRANDIS—That is the last of the considerations you say were playing on your mind.

Mr Scrafton—That is correct.

Senator BRANDIS—Can I venture to suggest the principal consideration that was playing on your mind was that, if you were candid or frank and fearless with Ms Bryant and you said things that you thought government might not wish to hear, it would damage your career? That is what it amounted to, isn't it?

Mr Scrafton—That is not true.

Senator BRANDIS—You said to us before—I cannot remember your very words—something along the lines of 'I didn't want to spend the rest of my career being transferred to doing gardening.'

Mr Scrafton—I certainly did not.

Senator BRANDIS—That was playing on your mind.

Mr Scrafton—I have said here it was on my mind. But you suggested it was the primary reason.

Senator BRANDIS—I am suggesting that.

Mr Scrafton—No, it was not.

Senator BRANDIS—With respect, none of the other considerations that you recite—the non-existent cabinet decision, the terms of reference that are not constrained in the way that you have suggested they have been constrained—get you there. You were worried about yourself, Mr Scrafton, weren't you?

Mr Scrafton—Can I be quite frank: that was a major consideration. I have not at any point suggested that it was not. If I might add to that answer, 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 forward. Let me

say I was confronted in an abusive way. He swore at me in quite derogatory terms, in front of witnesses.

CHAIR—In a warm and cuddly way, though.

Senator FAULKNER—It would be very hard to believe he was not warm and cuddly, Mr Scafton. I would find that very hard to believe.

Mr Scafton—Did I have reservations about whether Max Moore-Wilton might carry a grudge against somebody who would do something contrary to the Prime Minister's interests? Ask anybody in Canberra, Senator.

Senator BRANDIS—What do you say? Let us get it out. Do you say he would?

Mr Scafton—I am saying he would.

Senator BRANDIS—So you obviously had a terrible professional relationship with Mr Moore-Wilton.

Mr Scafton—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.

Senator FAULKNER—Not a cuddle at all, Mr Scafton?

Senator BRANDIS—I think that amounts to a terrible professional relationship. It amounts to this, doesn't it, Mr Scafton: when you spoke to the Bryant inquiry, you trimmed your sails to what you thought Mr Moore-Wilton would wear.

Mr Scafton—No, Senator.

Senator BRANDIS—You didn't?

Mr Scafton—Was that a consideration? Certainly.

Senator BRANDIS—Mr Scafton, we have spoken about things that you did not tell the Bryant inquiry, which you have more recently claimed to have said. Is it the case, though, having regard to all of the considerations that were playing on your mind, which we have discussed in the last half hour, that, to the extent to which your statements to the Bryant inquiry were not a fully truthful version of the relevant events, they were sins of omission? In other words, you left out matters that you knew to be material. Is that what it amounts to?

Mr Scafton—No. I will go back again to my understanding of the Bryant inquiry. It was not about the issues that I knew things about from my discussion with the Prime Minister. I do not know how many times I have to go around this, Senator. What I left out of my discussions with Jennifer Bryant were things that were not part of the Bryant inquiry.

Senator BRANDIS—With respect, that cannot be right when the terms of reference were to provide a full account of the nature of advice provided to government ministers.

Mr Scrafton—I have answered that issue.

Senator BRANDIS—We have dealt with that; the words speak for themselves. Mr Scrafton, do you have a copy of your statement, together with the one-page annexure of written questions and answers, in front of you?

Mr Scrafton—Yes, I do.

Senator BRANDIS—I will take you to it. About a quarter of the way down page 1, you reserve your position, if I can put it that way, in the paragraph where you say:

Mr Scrafton stated that he had been involved 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.

Do you see that?

Mr Scrafton—Yes.

Senator BRANDIS—I do not want to be unfair to you, Mr Scrafton. You have flagged right up front, at the very front of your statement, that things are missing from this. Do you agree?

Mr Scrafton—Yes.

Senator BRANDIS—That is all you have done in the sense that, to use the phrase that I used the moment ago, if there are material shortcomings in the full truthfulness of the statement, they are sins of omission, things left out, that were material to the inquiry.

Mr Scrafton—That is correct.

Senator BRANDIS—The first topic dealt with is under the first subheading 'Advice on children in the water'. Just so that it is apparent for the record, this statement is written in the third person but signed by you and I assume adopted by you. By signing it, you adopted the accuracy of the third person expression of that which is attributed to you throughout the statement.

Mr Scrafton—That is correct.

Senator BRANDIS—I do not want to be in any doubt about this: if there is any part of this statement that you want to say misconstrues what you said to Jennifer Bryant so that it is not a fair and accurate third person rendering of what you told her, please now take the opportunity to identify that for us.

Mr Scrafton—No, this is pretty much my recollection.

Senator BRANDIS—Okay. I want to take you to the third paragraph under the heading 'Advice on children in the water'. Just read it to yourself so you get the full context.

Mr Scrafton—Yes.

Senator BRANDIS—The topic there, you would agree, is reports of children being thrown into the water.

Mr Scafton—That is correct.

Senator BRANDIS—In the last sentence you say to Ms Bryant:

However, the discussions Mr Scafton did have, particularly with AVM Titheridge and Rear Admiral Ritchie, indicated that the story—

that is, the reports of children being thrown into the water—

was true ...

Mr Scafton—That is correct.

Senator BRANDIS—In your evidence to us earlier this morning you were asked some questions about the statement you alleged you made to the Prime Minister that nobody you dealt with in Defence believed the story to be true. You were asked who thought the story was not true; two of the people you mentioned were Admiral Ritchie and Air Vice Marshal Titheridge.

Mr Scafton—That is correct.

Senator BRANDIS—Mr Scafton, how can it be that today you say to us, ‘I made that statement that I allege I made to the Prime Minister because people I dealt with in Defence, including Ritchie and Titheridge, did not believe the story was true,’ but you said to Bryant that the discussions you had, particularly with Titheridge and Ritchie, indicated that the story was true? That is a flat-out contradiction, isn’t it?

Mr Scafton—No.

Senator BRANDIS—Tell us why not.

Mr Scafton—I will. The context of this paragraph is talking about the series of conversations that were had early on. The reference to Admiral Ritchie refers to that conversation Admiral Ritchie and I have publicly disagreed about as to what exactly was conveyed. But if you refer to the Senate committee report, which I think you were a part of Senator, Admiral Ritchie says in his statement to the committee that at that point in time, despite the fact that he told me that there was little evidence that he could put his hands on, he still believed—and conveyed to me that he believed—it was true. Subsequent to the series of telephone discussions which are referred to in the first sentence here, which are all around 10, 11 and 12 October, the position changed dramatically. As the evidence given to the Senate inquiry will show, at one point in time Admiral Ritchie was the person who took the question to Admiral Barrie to try to convince him that the issue had not happened. No, you are taking this out of context, Senator.

Senator BRANDIS—That is why I asked you to read the whole paragraph to yourself, so that the context would be apparent.

Mr Scrafton—And I did. The context is apparent; it is about the series of discussions which I have already referred to which took place between the initial announcement, the initial photographs, me chasing up Admiral Ritchie trying to find out whether there was any evidence that this existed, at which point Ritchie cast doubt on the evidence but told me that at this point in time he still believed it to be true—so, at that point in time, did Air Vice Marshal Titheridge.

Senator BRANDIS—Can you point us to where in your statement you suggest that Titheridge and Ritchie changed their position?

Mr Scrafton—I was not asked that. I was asked—

Senator BRANDIS—It is all very well to say, ‘Well, this is to be read chronologically.’ We now know independently—as you rightly say, through the ‘children overboard’ inquiry—that their views did change, but when you were talking to Bryant on 14 December the only view you ascribe to Titheridge and Ritchie, who were among your interlocutors in Defence, is that the story was true.

Mr Scrafton—If I could refer you back to the document that you handed to me, about—

Senator BRANDIS—Which one?

Mr Scrafton—The Max Moore-Wilton to Prime Minister document. In the first dot point it says that what Jennifer Bryant was looking at was:

- the advice that was provided by Australian personnel involved in the sighting and handling of the vessel, as well as any other relevant information;

Clearly, this answer here is referring to that first dot point, as to what I knew about the advice coming forward. At that point—

Senator BRANDIS—But that is not what you were involved in. You were the person providing advice to ministers.

CHAIR—Just let the witness answer the question fully.

Mr Scrafton—I am just flabbergasted at the lengths at which something can be distorted from one point to another. The questions that Jennifer Bryant was asking me were about the issues that you have already pointed out were of relevance to her inquiry. One of them was about the evidence of what people believed in advice coming forward about the handling of the boat. This statement clearly talks about the early advice, the series of telephone discussions following Minister Ruddock’s announcement—

Senator BRANDIS—It does.

Mr Scrafton—which was on 7 or 8 October, I think—7 October. It was a series of discussions. At that point, as I think I have said a number of times today, everybody in Defence still believed—even though the evidence was not available—that it had happened. There is no inconsistency in this with anything else I have said.

Senator BRANDIS—It is a fair point, but all I am pointing out to you is that the only view you attribute to Ritchie and Titheridge—whose views did change subsequently; we know that from a subsequent inquiry—is that the story was true. That is unqualified. You do not go on to say that subsequently they changed their advice, do you? Is that an example of trimming your sails to what Mr Moore-Wilton wanted to hear?

Mr Scrafton—I was not asked that question.

Senator BRANDIS—That is not apparent on the face of the document either.

Mr Scrafton—No, and it is not apparent that it was not either.

Senator BRANDIS—We will move on. The next paragraph says:

Mr Scrafton said he also understood that Mr Reith had also had the CDF confirm that the reports were true ...

Is that correct?

Mr Scrafton—That is correct.

Senator BRANDIS—As we know, Admiral Barrie continued to maintain as late as February 2002 his belief that children had been thrown into the water. You know that, don't you?

Mr Scrafton—That is correct, yes.

Senator BRANDIS—The paragraph continues:

... and that he was also aware that Dr Nelson had been at the maritime headquarters at the time with Rear Admiral Smith and had also told him that the incident had happened.

Mr Scrafton—Yes.

Senator BRANDIS—Again I do not want to go on for too long on this—I assume you will say this is a chronological issue—but the only view you attribute to Admiral Smith's headquarters, without subsequent qualification, is that the report was true. For a person reading this document—not with your sort of fine anterior knowledge of the questions that were and were not asked and your imposition on this of a chronological sequence that is not obvious from the face of it—the clear message is that you are saying these people, Ritchie and Titheridge, were saying that the story was true and that Admiral Smith's headquarters were also saying that the story was true.

Mr Scrafton—With all respect, could I just point out to you that if you read the document carefully it starts by saying that we are talking about the initial 'claims of children being thrown in the water'.

Senator BRANDIS—Where does it say that?

Mr Scrafton—In the second paragraph under ‘Advice of children in the water’:

Mr Scrafton noted that initially the claims of ...

This is what I was talking about to Jennifer Bryant: the initial set of claims in the immediate period when the issue became—

Senator BRANDIS—I understand what you are saying.

Mr Scrafton—Just a moment; perhaps I could finish.

CHAIR—Let him finish his point.

Mr Scrafton—That has further confirmed the timing by referring to Ruddock’s statements and the series of telephone calls straight afterwards. If anybody had read the record of the Senate ‘children overboard’ inquiry, they would know that Brendan Nelson was talking to Admiral Smith at the same time as this because Brendan Nelson was on a visit, and at that point Rear Admiral Smith also believed the issue. It was only a matter of days after this that Rear Admiral Smith personally rang the commander of the HMAS *Adelaide* to direct him to get statements because his view was starting to move. This is clearly chronologically addressed to a series of questions about the initial advice coming forward consistent with the terms of reference and which you seem to be selectively taking out of context—

Senator BRANDIS—I am taking you through it paragraph by paragraph.

Mr Scrafton—in an effort to somehow cast some doubt on the fact that I have now undergone a statutory declaration, which in some senses I think might be relevant to you in terms of whether they are honest or not.

CHAIR—Now, now; let us move on.

Mr Scrafton—I am starting to get annoyed by the fact that this is being misrepresented.

CHAIR—Can I interrupt you there. We know you have done a sterling job being here for four hours. You knew when you fronted up that it would be a bit adversarial.

Mr Scrafton—I did.

CHAIR—I think, and I think Senator Brandis would say, you are addressing the issues as much as you can.

Senator BRANDIS—You are addressing the issues, Mr Scrafton.

CHAIR—So thank you for that and let us proceed.

Senator BRANDIS—I am not trying to be adversarial. All I am pointing out is that, as this document reads on its face, it appears to be inconsistent with later statements.

Mr Scafton—No.

Senator BRANDIS—I am taking you point by point to each of the respects in which that appears to me to be so and I am inviting you to explain.

Mr Scafton—Could I say that I think, if you read the document with a particular perspective, that might be a way you would interpret it. But if you read it on face value it does not look like that.

Senator BRANDIS—On face value, you make these statements about a belief that certain officers had at a certain point of time that the story was true and you do not subsequently qualify that—and this is speaking on 14 December 2001 without the great body or fund of knowledge we now have from the ‘children overboard’ inquiry in 2002. On 14 December 2001 you are saying that these officers had the belief that the story was true and you do not anywhere suggest that that ever changed.

Mr Scafton—And why might that be the case? That I was not asked?

Senator BRANDIS—Do you say you were not asked?

Mr Scafton—That is right. This is the record of the discussion I had with Jennifer Bryant.

Senator BRANDIS—Do you say you were not asked?

Mr Scafton—My recollection is that I was not asked, and these are the answers that I gave relating to the questions that Jennifer asked me in relation to her terms of reference.

Senator BRANDIS—I can understand the logic of what you say about this being only intended to be early on in the sequence of events and you were not asked about the subsequent events which materially altered the views you attribute to those officers. But what about the next bit? Let me read it all before you comment on it:

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

Mr Scafton stated that he continued to be marginally involved in events around the incident until the week before the election—

so this is the end of the sequence, chronologically—

and never had a sense that the original advice was not correct.

That is not true, is it? That is not what you now say, is it?

Mr Scafton—That is correct.

Senator BRANDIS—It is not true, is it, on the story you now tell us?

Mr Scrafton—I make one distinction there. You are right, Senator, but that sentence is a separate paragraph on the other page.

Senator BRANDIS—All right. It is not perfectly clear whether it is or not.

Mr Scrafton—But it is.

Senator BRANDIS—Okay. I am really only interested in the second sentence, obviously.

Mr Scrafton—In a sense, you are right: I did not say to Jennifer Bryant that we actually had a different view at the end of that process. You are right.

Senator BRANDIS—And you now say you did.

Mr Scrafton—Yes.

Senator BRANDIS—So that is not true?

Mr Scrafton—That is correct. That is not true.

Senator BRANDIS—It is not true. Why did you make that false, untruthful statement?

Mr Scrafton—I will go around this buoy again. There were avenues that I just simply could not open up in a discussion with Jennifer Bryant that would have not led to things I did not want to talk about or could not talk about.

Senator BRANDIS—I understand. I do not—

Mr Scrafton—There is no other explanation I can give for this.

Senator BRANDIS—I understand what you are saying; I might not have a lot of sympathy for it but I understand why you are saying that. I can understand your explanation of why you have left things out. But this is not a matter of leaving something out. This is a matter of saying, on the story you are now asking the public to accept, that something is so that was not so. This is an outright falsehood, isn't it?

Mr Scrafton—That is correct.

Senator BRANDIS—While we are dealing with that, because it really is germane here, if you go to No. 4 of the written responses to additional questions, it says:

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

I know Senator Ferguson asked you about that, but I would like to complete the sequence of this. Without qualification or elaboration, baldly you say, 'No.' How do you explain that? Or was that a falsehood like the falsehood you have just admitted you told about the core issue at the top of the second page?

Mr Scrafton—Again, I think I have answered this question before.

Senator BRANDIS—You have addressed it before.

Mr Scrafton—No, I have answered it before, specifically, Senator. The inquiry was about formal advice from the department. The question is about: was there formal advice that came forward to the minister from the department which contradicted it? No. I think your inquiry showed that at no point did Defence go back and formally say to the government that the event did not take place.

Senator BRANDIS—That is true. I agree with that. But why do you say—

Senator FERGUSON—You said to me this morning that that statement was not true. In answer to my question you said that the statement you made was not true. That is what you said to me this morning.

Mr Scrafton—No, I didn't. I said that this was a question of a formal advice.

Senator FERGUSON—I asked you this morning: 'Do you recall being advised at any stage that there were no children among those in the water on 7 October?' Your answer was no. I asked you: 'Is that a truthful statement?' You said, 'No, it isn't.' I will check the *Hansard*, but you said that you did not tell the truth when you said no.

Mr Scrafton—I do not recall saying that. If that is what I said, that is not right.

Senator BRANDIS—We will check the *Hansard*. We are running up to lunch, and this is probably a convenient time for me to stop this part of the examination.

Senator FERGUSON—Can I intervene for one minute with one question?

Senator BRANDIS—Sure. But before you do, can I ask one last question in this part? Why do you say that this was about formal advice? There is nothing in the terms of reference that qualifies the subject matter of the advice in the way that you qualify it.

Mr Scrafton—The convention—and one that Minister Reith and the Prime Minister constantly referred to not only throughout this entire period but on a whole range of other issues—is that formal advice from the Department of Defence comes from the CDF or from senior people in writing on these issues.

Senator BRANDIS—If that is so, Admiral Barrie's advice that the original report that children had been thrown into the water was correct was formal advice—

Mr Scrafton—It was.

Senator BRANDIS—and Air Marshal Houston's advice that there was a view among people in Defence that the original report was not true was not formal advice and should not have been had regard to by the minister, let alone the government?

Mr Scrafton—I am not sure you understand ‘acting arrangements’. Angus Houston was formally Acting CDF at that point in time.

Senator BRANDIS—That is right. He told the ‘children overboard’ inquiry that he had no personal knowledge of these matters whatsoever; he was merely conveying what his subordinates were saying.

Mr Scrafton—I am not addressing the question of what he said. What I am saying is that—

Senator BRANDIS—Was what Air Marshal Houston said to Mr Reith on 7 November formal or not formal advice? Was that formal advice or was it not formal advice?

Mr Scrafton—It was formal advice. He was acting in the position of the Chief of Defence Force.

Senator BRANDIS—Is that the definition—

Mr Scrafton—That means he was taking the place of the CDF, if you understand what acting arrangements mean.

Senator BRANDIS—Yes, I do. So the character of the office occupied by the person giving the advice is the sole criterion which determines whether it is formal advice or not formal advice?

Mr Scrafton—No, what I said was that the position taken by the Prime Minister and the Minister for Defence on this issue was that formal advice came from the CDF. Minister Reith—

Senator BRANDIS—And they had received formal advice from Admiral Barrie.

Mr Scrafton—Minister Reith repeated that on a large number of occasions, to my recollection.

Senator BRANDIS—I think you accepted this a moment ago: the advice that the original report should be adhered to and that there were not sufficient doubts to countermand it from Admiral Barrie was always formal advice, wasn’t it?

Mr Scrafton—That was Admiral Barrie’s advice all the way along. There is no question about that.

Senator BRANDIS—Yes, all the way along.

Senator FERGUSON—You may recall this. In the *Australian Financial Review* on 17 August you are quoted as saying that the context of your interview with the inquiry—this is talking about the Bryant inquiry—had to be taken into account. In other words, the context of the interview had to be taken into account. You said, ‘At the time, parliament was debating the “children overboard” issue and the issue of MP staff testifying, and the government had taken a strong position on both issues.’ Will you now concede that that statement is not true?

Mr Scrafton—No. What I will concede is that the cabinet decision—which I had never seen—did not exist at that point in time. But was it the government’s view and were ministers taking the position that MOP(S) staffers should not talk? That was clear right from the start.

Senator FERGUSON—That is not the part of the statement I am referring to. You said, ‘At the time, parliament was debating the “children overboard” issue and the issue of MP staff testifying.’ On numerous occasions you have used the fact that the debate was raging in the parliament to justify your answers to Bryant. There is only one problem with that statement and that is this: your interview was on 14 December 2001, your written responses were dated 4 January 2002 and the parliament did not sit until 12 February 2002. So how on earth could parliament have been debating the ‘children overboard’ issue and the issue of MP staff testifying at the time you were giving your contribution to the Bryant inquiry?

Mr Scrafton—I cannot answer that. I may have been mistaken. But I must admit I am at a loss to know why there is this obsession with the Bryant inquiry.

Senator FERGUSON—It is not an obsession with the Bryant inquiry; it is trying to test the veracity of your statements.

Senator BRANDIS—You see, it is your most recent account of these events—one you gave when they were fresh in your mind—and it is completely at variance with what you now say. It is a prior inconsistent statement which is much more nearly contemporary with the events than what you are now saying. You are trying to overcome the inconsistency by saying, ‘I was not telling the truth in important respects when I spoke to Bryant.’

Senator FERGUSON—Will you now concede that that statement is not correct?

Mr Scrafton—It is obviously inaccurate, if that is the case.

Senator BRANDIS—It is not true.

Senator FERGUSON—Thank you. It is not true.

CHAIR—We are going to have a luncheon break and I propose that we then proceed with the witness scheduled for 2 p.m. We will talk to you in a moment, Mr Scrafton, about your availability to finish the questioning. That is more likely to be at about 3.30 p.m.

Proceedings suspended from 1.01 p.m. to 2.06 p.m.

POWELL, Major General Roger Anthony, (Retired)

CHAIR—I declare this afternoon session of the committee open. Welcome to the table, Major General Roger Powell—retired. Do you have an opening statement of any sort?

Major Gen. Powell—I would like to make three or four opening remarks. Although I am a retired senior officer, I intend to respond to questions from the committee from the perspective of a serving senior military officer, based on the values and ethos of the profession of arms. I will not be drawn on any matter that I consider will harm the reputation of my former profession or that I consider is an attempt to align me on either side of the political spectrum. At all times I will be frank and forthright in my answers as long as they do not impact negatively on me or on any of my former colleagues.

CHAIR—Thank you for that very appropriate opening statement. I do not imagine we will detain you for too long. We do appreciate you giving up your time to come here today. Senator Faulkner, would you like to open the questioning this time.

Senator FAULKNER—It is nice to see you again, General. Could you briefly outline for the benefit of the committee your recollection of what Mr Scrafton said to you in that direct contact you had with him when you were undertaking your own investigation as requested by CDF.

Major Gen. Powell—I think the statement that was released to the public following a series of questions put to me by the Acting CDF, Admiral Russ Shalders, covers my recollection. That statement I think shows that I do not have a very clear recollection of the events in the entirety of what Mr Scrafton has placed on the public record, but I do remember quite specifically certain things that transpired during our discussions with him. So I have nothing to add other than what was in that statement.

Senator FAULKNER—What was the reason that Mr Scrafton was interviewed, given the constraints that were obviously on your own inquiry?

Major Gen. Powell—I think it was the fact that Mr Scrafton was back within the department at the time and the fact that the CDF of the day was very clear about my responsibilities to him in conducting the inquiry from an Australian defence organisation perspective and it was appropriate in our eyes to speak with Mr Scrafton, along with the other interested parties. In Mr Scrafton's case, he was treated in exactly the same way as all the other witnesses.

Senator FAULKNER—Do you recall who requested or who made the decision that Mr Scrafton be interviewed?

Major Gen. Powell—I do not know, I am sorry.

Senator FAULKNER—Were any other members of Mr Reith's office staff interviewed? I appreciate the point that you make to the committee that Mr Scrafton had come back from working in the ministerial office into the department.

Major Gen. Powell—Sure. If I recall correctly, certainly I interviewed the minister and gave him the series of questions that I gave everybody else, and I certainly spoke to some of his other ministerial staff. I cannot remember specifically which ones I interviewed formally. When I say ‘formally’, I gave them the questions that I gave everybody else. But, certainly, the scope was within the defence department; that is very clear to me.

Senator FAULKNER—But did it strike you as at all odd that Mr Scrafton was, in his evidence before you, so clear about indicating to the Prime Minister, telling the Prime Minister—which is no small thing, I would have thought—that these events, in the broad, did not happen and the photos were a misrepresentation and so forth? I imagine you would have thought this was quite dramatic evidence or revelations to you.

Major Gen. Powell—I do not recall it being dramatic in the broad scheme of things, other than to say that there was a heck of a lot going on at that time that was reasonably dramatic, and it really was a matter of focusing on what I considered were my terms of reference and specifically reporting on what I thought was appropriate.

Senator FAULKNER—Are you making the point, then, that those comments that Mr Scrafton made to you were outside your terms of reference?

Major Gen. Powell—With regard to his statement that was just recently released, absolutely.

Senator FAULKNER—Your terms of reference were pretty limited, weren’t they?

Major Gen. Powell—It depends on what you mean by ‘limited’. From CDF’s point of view, my terms of reference were very much to do—as I indicated in my opening statement—with the tactical, operational and strategic passage of information and decision making within the ADF but influenced by the broader defence department organisation.

Senator FAULKNER—I appreciate that but, given those terms of reference, how is it that Mr Scrafton went beyond those and provided this information—what are quite dramatic revelations—about matters that obviously did not fall within your terms of reference?

Major Gen. Powell—That is a reasonable question. You would need to ask Mr Scrafton that. The comments that he made to us were certainly not solicited. They were made in the context of exactly the same protocols that I used with each of the other witnesses, which were to place a series of formal questions in front of each person of interest and then to offer each person that we interviewed the opportunity to make any comments that they felt at the time might assist me with the broader picture of what transpired.

Senator FAULKNER—So it was more a broader context, would you say? He has obviously offered these comments up to you. He probably would have been aware himself, I suspect, that they may not have fallen directly within the terms of reference, if you like; they may have been outside the terms of reference.

Major Gen. Powell—Again, I am not really in a position to comment on that, other than to say that I did not treat those comments within the terms of reference other than to make a

deduction that there was a clear perception that information had gone to the minister's office to leave the minister and his staff in no doubt that children had not been thrown overboard.

Senator FAULKNER—But from your point of view, as the person conducting the inquiry, you did not think it was appropriate to allow Mr Scrafton to—you did not put any constraints on Mr Scrafton at all?

Major Gen. Powell—That is correct; nor did I with any of the other witnesses.

Senator FAULKNER—You have made the point, and I accept it, that this particular evidence was outside your terms of reference. As I understand it, that is where it was left: you and Commander Noonan had heard that evidence from Mr Scrafton. Perhaps I should ask you if you can say to the committee whether you passed on to anyone else the detail or any elements of that evidence of Mr Scrafton.

Major Gen. Powell—Admiral Shalders asked me the same question last week and my response was that I could not recall discussing this formally or informally with anyone else. That is not to say that I did not, but I cannot recall specifically discussing it with anyone who was more senior in my chain of command at the time.

Senator FAULKNER—I thought it might be possible, given its quite dramatic and sensitive nature, I suppose.

Major Gen. Powell—Yes, but I cannot recall.

Senator FAULKNER—Did you find Mr Scrafton to be a credible witness?

Major Gen. Powell—I did not find him to be incredible.

Senator FAULKNER—Did you make those sorts of judgments about the witnesses that you had before you?

Major Gen. Powell—Not in a public sense. I obviously had known and worked with Mr Scrafton in a professional capacity for a couple of years, so we had a robust and workmanlike relationship. When I was working as the director-general of land development, he was in a senior public service role. We had frank and constructive debate about future capability, so I knew his professional ability, and I had not struck any incident where I felt that his judgment was not reasonable in a professional sense.

Senator FAULKNER—Fair enough. You obviously had your own inquiry and, as you are aware, there was questioning at Senate estimates committees and there was a Senate select committee into this. Without putting any spin on it at all I think it is fair to say it is a matter of at least some notoriety in the public arena. Have you felt at any stage, given the nature of the information provided to your own inquiry, that it might be appropriate to pass that on to anyone higher up the chain of command?

Major Gen. Powell—That is a reasonable question. No, I have not, the reason being that 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. I might add that in the remarks that we are now dealing with that I gave last week to the Acting CDF I did not elect to make these comments. I was clearly asked to recall what had happened and did so because I was asked to do so.

Senator FAULKNER—I think you are making the point that effectively you did not volunteer the information; you were formally requested to do so—

Major Gen. Powell—Correct. That is right, Senator.

Senator FAULKNER—and you are making that point very clearly to us.

Major Gen. Powell—Yes, I am.

Senator FAULKNER—Did you ask the Acting CDF at the time about the background of the inquiries and why you were being requested to do so?

Major Gen. Powell—Of course, yes.

Senator FAULKNER—Are you able to share that with the committee?

Major Gen. Powell—I was told that there had been a request from the minister's office to seek to clarify whether I had anything to contribute that might shed light on Mr Scrafton's public statements. I made the point that I had certainly interviewed Mr Scrafton and there were things that were said in that interview. As a result, I was asked to make a formal statement.

Senator FAULKNER—Were you surprised that the Acting CDF was the person who effectively took this statement from you?

Major Gen. Powell—No, because General Cosgrove had approached me prior to going overseas and what I am recounting is in regard to the CDF as opposed to the Acting CDF.

Senator FAULKNER—I have lost the distinction there. I know the distinction between the CDF and the Acting CDF—

Major Gen. Powell—General Cosgrove, before he went overseas, made contact with me and asked me whether I would be prepared to make a statement. He said it was unlikely that that would be made to him because he was about to go overseas and I could expect to hear from Vice Admiral Shalders, who would ask me to make the statement.

Senator FAULKNER—Were there any terms of reference for this?

Major Gen. Powell—No.

Senator FAULKNER—But your understanding was that it was broadly about Mr Scrafton's public statement?

Major Gen. Powell—Very much so, yes; absolutely. As I have indicated, it was to do with anything that might clarify Mr Scrafton's statement.

Senator FAULKNER—But you do seem to have a strong recollection of the substance of Mr Scrafton's comments to you at the time.

Major Gen. Powell—I think that is a matter for judgment. I do not have a strong recollection of the detail, as enunciated in my signed statement to the Acting CDF. I only recall a clear understanding of the fact that, if what Mr Scrafton had told me was accurate, the Prime Minister would have been in no doubt that children had not been thrown overboard. That was about the essence of what I remembered. I certainly did not remember the detail of the three points that Mr Scrafton has made in his public statement.

Senator FAULKNER—But it is pretty clear that you made a deduction that the Prime Minister should have been in no doubt that the claims had no basis?

Major Gen. Powell—Correct.

Senator FAULKNER—And no-one higher up the chain of command at any stage had asked you whether any such information had been adduced at your inquiry?

Major Gen. Powell—Not that I can recall, no.

Senator FAULKNER—When you presented the inquiry to the CDF—Admiral Barrie, obviously, at the time—did you also provide any accompanying brief, either written or verbal?

Major Gen. Powell—Not that I can recall.

Senator FAULKNER—So it was the formal document that we have obviously seen and made public?

Major Gen. Powell—Yes. I do not recall having any accompanying notes, brief or covering letter. I do not recall having anything like that.

Senator FAULKNER—As you now reflect on the inquiry that you conducted and with the benefit of hindsight, which no-one has at the time of course, are you satisfied that the inquiry holds up to examination?

Major Gen. Powell—Yes, I am. In preparation for today I obviously re-read my inquiry in some detail to try to recall the relationship between this inquiry and the one that I conducted at the subsequent Senate estimates and the subsequent inquiry into this whole saga. I think there are a couple of areas where, with the benefit of hindsight, there could have been a little more depth. Clearly the comments of the then Chief of the Air Force, Air Marshal Houston, at the Senate estimates were not reflected in my inquiry. I think CDF made the point that that was significant, and indeed it is. I think there were reasons for that that were, in some cases, beyond my control. But, apart from that—and whilst it is difficult to balance the memories of everyone concerned—I think, with the benefit of hindsight, that it still stands up to reasonable scrutiny given my terms of reference.

Senator FAULKNER—Which I acknowledge—I do not necessarily say that you do or need to—were very limited, something on which I think I commented at the time. I asked the questions of the then acting CDF, the Chief of Air Force, at Senate estimates. You might recall those answers.

Major Gen. Powell—I do—vividly.

Senator FAULKNER—So do I. Given that those answers were forthcoming about Air Marshal Houston's contact with the then defence minister, I suppose I reflect on it from time to time myself. The point I want to make is that this inquiry is very much focused on Mr Scrafton's public statements inasmuch as they impact on your inquiry.

Major Gen. Powell—I understand.

Senator FAULKNER—In this sense, it is the statement that you made to the acting CDF.

Major Gen. Powell—Correct. I understand that.

Senator FAULKNER—I might, if there is another opportunity, perhaps ask a couple of further questions, but I can see that other members of the committee are getting impatient so I will cede to them.

CHAIR—In that two-page record of the discussion with the admiral is there anything that needs to be changed? We might just accept that as a document. We do not, then, have to ask you questions about every aspect. Is there anything you need to change in that?

Major Gen. Powell—No.

CHAIR—Is it the wish of the committee that we receive those two pages as evidence? There being no objection, it is so ordered.

Senator FERGUSON—General Powell, were you surprised to see the public statement by Mr Scrafton three years after the supposed events?

Major Gen. Powell—I guess this whole saga has involved many surprises. I am not sure that I was unduly surprised. I guess I am reasonably robust as to the events and what has transpired since. It was significant, but I am not sure that the word 'surprise' would enter into my thought processes with regard to Mr Scrafton's statement.

Senator FERGUSON—Are you surprised at the timing of his statement?

Major Gen. Powell—Having read his opening statement of this morning and reflected on his justification for making the statement in terms of its timing, I can see his logic. That does not necessarily mean I agree or disagree with it, but I can see his logic.

Senator FERGUSON—At least you have been frank enough with us to say that you cannot recall many of the details; unlike some evidence we heard this morning where some things were recalled in supposedly very clear detail. I noticed in your statement that Mr Scrafton did not

provide you with a written statement. You did not take any notes yourself when interviewing him?

Major Gen. Powell—That is correct.

Senator FERGUSON—So the whole basis of your report and interview with Mr Scrafton was all from memory. I see in your statement that you did not take any notes during or after the interview with Mr Scrafton.

Major Gen. Powell—Sure.

Senator FERGUSON—Is that unusual?

Major Gen. Powell—No, not from my perspective. In each case, the protocols that were used involved having a series of questions, which I think I have already mentioned, but I will just go back over this in the context of your question. We had a clear set of questions that we pondered over and we worked out exactly what we wanted to ask to get a consistency and to try to ensure that we had everybody thinking about the issues from our perspective when they answered in a formal sense. It was my view that it was a far better way to do it, albeit that there was some debate about the process that I used after the event.

In addition to that, and to ensure that people were relatively relaxed and uninhibited in sharing whatever they felt might be appropriate, each person we interviewed was given the opportunity to share whatever they felt might be relevant. That clearly was in the context of my terms of reference. That is the way that information was handled within the Department of Defence, up to and including the minister. With that context in mind, having regard to the sorts of things that Mr Scrafton shared with us, the fact is that, subsequently, even though we had the expectation that he was going to provide us with a written statement, his circumstances were slightly unusual compared to those of everybody else, in that he was the only one, if I recall correctly, who did not meet our expectation of providing a written statement.

Senator FERGUSON—Mr Scrafton was the only one who did not provide a written statement?

Major Gen. Powell—If I recall correctly, he was the only one who did not provide a written statement that we specifically asked for. There may have been others, but he stood out because clearly he was a key member of the minister's staff at the time and had featured in many of the other witnesses' formal statements to us. So I do not think it is unusual, given the context of his latest public statement, to recall the sorts of things that I have recalled about the informal discussions we had, or indeed for Commander Noonan, who clearly has recalled something that is pretty close to what I recall.

Senator FERGUSON—It must be that Mr Scrafton was the only one still taking advice from Hugh White about not writing notes or putting anything down on paper, as he said this morning. Are you aware of a criticism by the Public Service Commissioner, Mr Andrew Podger, who, in talking about this committee and others, said, 'Nonetheless, there were a number of failings in public service management'—in his view—'the most significant being the lack of record

keeping and the reliance on oral advice both in Defence and in the work of the task force.’ Are you aware of that criticism?

Major Gen. Powell—Not in a specific context, but I am certainly aware of the fact that there has been criticism in numerous quarters of the lack of protocol when interdepartmental committees have been conducted and in terms of making sure that there is a clear record of decisions being taken. Certainly there has been a significant effort—and I have been associated with some of this work—to improve those protocols.

I would like to return to your question, though. I would like you to understand that, in the way that we conducted each of these sessions, the aim was to get a formal response against a set of questions; it was not to take down notes on things that clearly we were not going to attribute. I think you will find, when you speak with Commander Noonan, that I did invite him to take notes on things that were appropriate that might aid in the formal preparation of my report. That is one of the reasons why he was accompanying me in most of the interviews that I conducted.

Senator FERGUSON—But do you agree that it is a valid criticism where he says that there was a lack of record keeping and a reliance on oral evidence?

Major Gen. Powell—A criticism of me?

Senator FERGUSON—No, not of you. This is in general terms—both within the Defence Force and the Public Service.

Major Gen. Powell—I would like that to be attributed more specifically before I could agree to it. I think there are some very—

Senator FERGUSON—It is not a reflection on you at all.

Major Gen. Powell—No. What I mean is that, with regard to that general statement, my experience is that I have seen a very professional set of protocols undertaken in certain parts of the department and the ADF, and in other areas, as indeed I have reported in my inquiry, it has been less than satisfactory. I do not think it is necessarily a general statement that I would attribute right across the board to the Department of Defence. I do not think that would be fair.

Senator FERGUSON—Were you aware of the evidence that Mr Scrafton had given to the Bryant inquiry?

Major Gen. Powell—Not in detail.

Senator FERGUSON—But were you aware of the general thrust of his evidence?

Major Gen. Powell—Do you mean now or then?

Senator FERGUSON—Then?

Major Gen. Powell—No, I was not.

Senator FERGUSON—Can you think of any reason why the evidence that he gave or the written statements that he gave to the Bryant inquiry—because he gave the Bryant inquiry a written statement or some written answers to questions; although you did not get a written statement—are so much at odds with your recollection of what he said to you?

Major Gen. Powell—Sorry, could you repeat the question.

Senator FERGUSON—I will just give you an example. One question from the Bryant inquiry was: ‘Do you recall being advised at any stage that there were no children amongst those in the water?’ The answer was no. He signed a record of interview in which he said he never had a sense that the original advice was not correct. That is totally at odds with what he told you and your inquiry. Did you have any reason to suspect that he was telling two different stories?

Major Gen. Powell—No, I did not, because I was not privy to what he told the Bryant inquiry. The Bryant inquiry and my inquiry were conducted concurrently and certainly it was very clear in terms of my direction not to conduct interviews in a collective sense. They were concurrent inquiries but they were conducted quite independently of one another. So I had no knowledge of or insights into what Mr Scafton had said to the Bryant inquiry, and certainly there was nothing out of the Bryant inquiry that I drew on in my inquiry.

Senator FERGUSON—It seems quite strange that in the Bryant inquiry he said that he was restrained in what he could say. In evidence this morning he said that that was because of a cabinet instruction, but we have since ascertained that that was not the case. But he felt restrained and gave a totally different set of answers to the ones he gave you. I am just wondering why he was not restrained when he was talking to you.

Major Gen. Powell—That is a reasonable question. You would note from Commander Noonan’s evidence—and I did not remember this until I read Commander Noonan’s statement after it was published by the Prime Minister—that Mr Scafton had said that there was a caveat on his remarks to us at the time, and that caveat was that he would deny anything he had shared with us if it was divulged to anyone outside the room, or words to that effect. Certainly, there was a caveat on the statement. I had not recalled it at the time, but I had treated it in confidence.

Senator FERGUSON—We have a situation where in your statement it is your recollection that Mr Scafton had told the Prime Minister that there was no substance to the claims that children had been thrown overboard, which is quite at odds with the evidence that he gave to the Bryant inquiry. It also does not say in your statement here with the vice CDF whether he was just talking about an inconclusive video or whether he was talking about photographs. There is no written record. It may have been that he was only saying that there was no substance because there was an inconclusive video.

Major Gen. Powell—Sure, he might have been. I have only recounted what I recall of the conversation and I am very clear about the deductions that I had drawn from what Mr Scafton had shared with me. The clarity was, I guess, reinforced after I subsequently read what Commander Noonan had to say. Since we conducted the inquiry I have not seen or spoken to Commander Noonan until just a few minutes ago when we met each other in the waiting room.

Senator FERGUSON—He has been at sea a bit.

Major Gen. Powell—He has, and I have been off doing other things. But the point I would make is that that has reinforced the fact that I am pretty clear now, in front of you as a committee, that my recollections are reasonable.

Senator FERGUSON—But it is quite possible, because you cannot recollect the detail, that in fact his claims that there was no substance to the claims that children had been thrown overboard could have referred to just the video and not necessarily to photographs?

Major Gen. Powell—I do not think that is right, no. That is a reasonable deduction to draw out of context, but certainly that is not my recollection of the events.

Senator FERGUSON—We have to take into account the evidence that he gave to the Bryant inquiry—

Major Gen. Powell—I understand that.

Senator FERGUSON—which was totally different, and then the evidence to your inquiry. Now, three years later, another public statement is made, apparently where things are recalled with such clarity that he can remember minute details such as telephone conversations and the timing of those conversations.

CHAIR—I take it that is not a question, so have you got another question?

Senator FERGUSON—It is probably not quite a question. Basically, Chair, I think that Major General Powell's submission is quite self-explanatory and I do not have any further questions.

Senator FAULKNER—General Powell, do you know why Mr Scrafton did not provide a written statement?

Major Gen. Powell—No, I do not.

Senator FAULKNER—Did you ask him why he did not provide a written statement?

Major Gen. Powell—I think I recall Commander Noonan, through contact with him—and I am not sure how—on numerous occasions following up to try and get a written statement from him, but I do not know why it was not forthcoming. After we had met to conduct the interview that I had with him, there was an expectation that it would be forthcoming.

Senator FAULKNER—We can ask him that, I suppose.

Senator BARTLETT—Did you happen to hear Mr Scrafton's evidence this morning?

Major Gen. Powell—No, I did not, but I read his opening statement, which was faxed to me. Apart from that I have not heard any of his evidence, no.

Senator BARTLETT—Is there anything just from that statement, or indeed from the public statements he has made prior to today, that you would dispute or have any particular reason to find implausible?

Major Gen. Powell—No, there is not.

Senator BARTLETT—You stated in the record of interview that was released last week that you could not recall any specific grounds or undertakings as an agreement to off-the-record comments, but you have just now mentioned that, when you read Commander Noonan's statement, you recalled that there was a general statement to the effect that he would deny anything if it was repeated—

Major Gen. Powell—Correct, yes.

Senator BARTLETT—which, I guess, is another way of saying 'this is off the record'—that Mr Scrafton would have made it clear at the time that it was off the record.

Major Gen. Powell—Sure, but when I made my statement I could not recall that at the time. Having now read Commander Noonan's statement, obviously that does not necessarily imply that I said anything about being off the record; it just reinforces the fact that what he said to us he would deny at a later stage if it was made public.

CHAIR—Which begs the question—if you do not mind me interrupting—of why in heaven's name he would then go and put it all in writing. I think his characterisation was that he wanted to give you as good a heads up as possible but not pay the consequences. Why would he put it in writing?

Major Gen. Powell—In writing to me?

CHAIR—Yes.

Major Gen. Powell—The questions that were in my formal questionnaire—

CHAIR—Did not go to those matters?

Major Gen. Powell—No, indeed not.

CHAIR—I do not think that was clear. That is the first time it has been made clear to me that the written questions are different from those aspects in the briefing. Do not let me put words in your mouth. You tell me.

Major Gen. Powell—That is a fair question. By inference I thought I may have made that clear to this point, but obviously not in your mind, Senator. My questions were very much within CDF's terms of reference and directive to me. The sorts of things that we are discussing at the moment clearly fall outside my terms of reference. If you read my statement, that is the way I have clearly justified why these things have not been aired in public before this.

CHAIR—Thank you. I think that is a clear explanation.

Senator BARTLETT—My question probably follows on from that. I want to make clear the nature of the conversation or interview—I am not sure which it was, as we have heard both terms used—you had with Mr Scafton as part of your inquiry. Was it really part of your inquiry or was it more of an informal heads up—to use another phrase that has been used?

Major Gen. Powell—That is a fair question. No, indeed not. It was very much a part of my inquiry. If I recall correctly, the then Minister for Defence was very open in providing CDF, to me, access to all his staffers for the inquiry that I was conducting. Certainly all the Minister for Defence's staffers were made available for me to interview them, to give them a series of questions and, indeed, to offer them the opportunity to share anything that they felt appropriate to share with me in a sort of informal sense. We sat down, and I gave them the opportunity to do so. So it certainly was not an extraordinary dialogue.

Senator BARTLETT—You stated, in the record of discussion, that you deduced from what Mr Scafton said he had told the Prime Minister that the Prime Minister should have been in no doubt that the claims had no basis. Did you make the deduction that, if what Mr Scafton had said were true, that would be the case; or did you have no reason to doubt that the Prime Minister would have been aware that the claims had no basis?

Major Gen. Powell—Could you perhaps ask me a clearer question?

Senator BARTLETT—I will try. There is a specific sentence in there, that, if you took it out of context, would say that you deduced that the Prime Minister should have been in no doubt that the claims had no basis. What I am trying to get at is: was that your deduction as a matter of fact; or was it simply that, if what Mr Scafton said were true, that would be the case?

Major Gen. Powell—I will just reiterate what is in my statement. My deduction was based on the fact that Mr Scafton had passed on to the Prime Minister what he said he had passed on to the Prime Minister. Therefore, what I was trying to clarify was that, in the event that the Prime Minister had been told what Mr Scafton had shared with us, if I were the Prime Minister I would have been in no doubt.

Senator BARTLETT—I appreciate that. You had no particular reason to doubt the veracity of what Mr Scafton said to you?

Major Gen. Powell—No, I had not.

Senator BARTLETT—I think you have already answered this. Because it was not part of your terms of reference, you did not formally pass on to anybody else the piece of information about the Prime Minister being told this. Is that right?

Major Gen. Powell—That is correct.

Senator BARTLETT—I have a final question—and I apologise in advance as it may be offensive, but I feel it should be asked. We have had the suggestion—I think it was specifically stated earlier on today—that you do not say certain things that people do not want to hear if you are worried about either your career prospects or your ability to do your job properly. Now that

you are, as I understand it, retired is that in any way a factor in your now making some of these things public?

Major Gen. Powell—No, not at all. In fact, it was not my desire at all to make any further utterances on this issue. That is based on the fact that I think a lot of water has flowed under the bridge on this. It has not placed some of my colleagues or, indeed, the Department of Defence in all that favourable a light. It has been a tough road for everybody and you look forward, you do not look back. But, when asked to tell the truth in any forum, in my view the truth is what counts. Clearly I was asked specifically to recount what had occurred and, under those circumstances, I had nothing other to do than recount what I recalled.

Senator BARTLETT—We appreciate that; thank you.

CHAIR—A good note to finish on, I think. Are there any further questions?

Senator FAULKNER—Given the information that you have provided, which I appreciate, in relation to the nature of the evidence provided to your inquiry by Mr Scrafton, can you say whether there were any other witnesses to your inquiry who perhaps similarly provided information that might have thrown light on to this incident but, because of the narrowness of your terms of reference, that evidence did not see the light of day?

Major Gen. Powell—Not that I can recall.

CHAIR—There being no further questions, General, we thank you very much for coming and for giving up your time; we appreciate it.

Major Gen. Powell—Thank you.

[2.52 p.m.]

NOONAN, Commander Michael Joseph, Commanding Officer, Department of Defence

CHAIR—Welcome. Do you have any opening remarks?

Cmdr Noonan—No, I do not.

CHAIR—So just respond to our questions; we do not imagine it will take too long.

Senator FERGUSON—We have just heard evidence from General Powell in relation to the inquiry he conducted where, apart from one or two interviews, I think you were with him most of the time.

Cmdr Noonan—Yes.

Senator FERGUSON—You did say in your written report that you signed that you had taken some notes and were 80 per cent sure you had destroyed them but were going to go back and find out. Can you tell us whether those notes have been destroyed?

Cmdr Noonan—I am now 100 per cent sure that I have no notes. I did search my holdings of past notes and things once I returned to Melbourne last weekend and, in fact, had another look again last night, both at home and on my current ship.

Senator FERGUSON—Perhaps you should teach Senator Faulkner how to do that. He seems to be able to remember things from 10 years ago and to have detailed information about them.

CHAIR—I suppose that is what distinguishes politicians from the military.

Senator FERGUSON—That is right. You played a significant role in drafting the Powell report, I take it?

Cmdr Noonan—Yes.

Senator FERGUSON—In all of the cases in drafting this report, were you and General Powell both relying just on oral evidence or did you have written evidence that you used in the compiling of the report?

Cmdr Noonan—The way that we conducted the composition of the report was made very clear from the outset by General Powell to all interviewers. It was that we would compile the inquiry report based on written evidence that they would provide to us. Certainly the report was written essentially to answer the terms of reference, which also called for a chronology of events. So the written statements that were received from the 22 people who provided them formed the basis of our report. Any notes that might have been taken in the course of the inquiry were used by me and the General to form the basis of the chronology, which appears as an annex to the report.

Senator FERGUSON—I understand that Mr Scrafton was the only person that did not provide a written report to your inquiry.

Cmdr Noonan—In the course of the inquiry, we identified 27 people of interest with respect to the inquiry. Twenty-two of those were interviewed, and 22 provided statements—not the same 22. There were some people that were deployed overseas who provided a statement and there were some people we interviewed whom we did not ask for a statement. Mr Scrafton was the only person from whom we requested a written statement who subsequently did not provide it prior to our completing the report on 14 December.

Senator FERGUSON—Did he give you a reason why he was not going to give you a written report?

Cmdr Noonan—No, he did not. Certainly, at the time of the interview on 5 December, he indicated that he would subsequently provide us a written statement. On two or three occasions subsequent to that interview, I had attempted to make contact with him, through his office, to try and solicit the report prior to our completion date. But on each occasion I did not receive a response, and at the time of the finalisation of the report there was no written statement from Mr Scrafton.

Senator FERGUSON—So, in compiling the report, you had the opportunity from all the other witnesses you interviewed to have both their oral evidence and a written statement, but in the case of Mr Scrafton you had to rely solely on oral evidence.

Cmdr Noonan—In a broad sense, yes. But it was certainly made clear to each person interviewed by General Powell that we would only use the written evidence as the basis for reporting, so anything that was said orally was not necessarily going to be used in evidence in the report.

Senator FERGUSON—So, if that is the case, none of the evidence you took from Mr Scrafton was used in the compilation of your report.

Cmdr Noonan—That is correct.

Senator FERGUSON—In this document, you said:

... the substance of Mr Scrafton's interview had not been used in the report because MAJGEN Powell had committed to use only written statements.

What do you mean by the 'substance' of the interview? Does that mean any other aspects of the interview may have been used?

Cmdr Noonan—Probably, in terms of the chronology that appeared as an annex, I would have used the time lines in which he discussed certain conversations and events as confirming other evidence that we used in the chronology that had been provided formally. If there had been a conflict in that aspect of the chronology, I would have sought further clarification from other sources.

Senator FERGUSON—There was a lot of questioning in relation to phone calls, the number of phone calls et cetera during this morning's hearings, which you probably have not been party to. The unusual thing about your statement—and this is why, after three years, it is sometimes difficult to make some calls—is that you said you had seen references in the media to the Prime Minister being at Kirribilli. We have established that the Prime Minister was at the Lodge, with four of his staff, yet you recall Mr Scrafton saying that the Prime Minister and his party were at a restaurant in Lygon Street.

Cmdr Noonan—Mr Scrafton certainly referred to two or three phone calls that he had had. As a subsequent statement, I distinctly recall that he suggested that during at least one of those phone calls either the Prime Minister or members of his party were in Lygon Street. That is something that stuck in my mind as being memorable but not consequential to the nature of what we were looking into.

Senator FERGUSON—As I said to General Powell, it probably reinforces the criticism of Andrew Podger, the Public Service Commissioner, who said that there are a number of failings in Public Service management. He said that the lack of record keeping and a reliance on oral advice, both in the Defence Force and the work of the task force, were some of the failings that currently existed. When we are going on recollections, as you obviously have here, the recollections can quite often be quite inaccurate through no fault of your own, particularly after three years.

CHAIR—Commander, did you re-read your record of discussion with the admiral?

Cmdr Noonan—Yes.

CHAIR—Is there anything in it that you now regard as inaccurate, or is it all pretty much as you recall?

Cmdr Noonan—It still stands up as an accurate reflection of my recollection of the conversation. The only thing I can add is that I now have a 100 per cent confidence that I do not have any further notes.

CHAIR—The committee might take your page and a half of comments as evidence, and then we do not have to ask you to give specific evidence on the things you have mentioned here. Is it the wish of the committee that we do that? There being no objection, it is so ordered.

Senator FERGUSON—Commander Noonan, I did not mean any reflection on you when I talked about not taking notes, because you did take notes, didn't you?

Cmdr Noonan—I took notes to use as memory joggers and to help me compile the final report and the chronology. They were not formal file notes as such, but they were certainly what I based the draft of the inquiry report on.

Senator FERGUSON—Although you might have taken notes during the interview with Mr Scrafton, none of those notes would have been used in the report anyway, because you said you did not use any of his evidence.

Cmdr Noonan—I will clarify that, in that I did not actually take notes during the interview itself. On completion of our interview I made some short notes which I would have reviewed as part of the process for compiling the final report. Anything of any substance would have been used or I would not have thought that it was worth discussing further. There were obviously aspects of my draft of the final report that I discussed with the general, and there was nothing of any substance that I thought was alarmist or needed to be further expanded upon before we completed the report.

Senator FAULKNER—I have a question in the same terms as one I asked General Powell. Can you indicate to the committee whether there was any other evidence similar to that provided by Mr Scafton, where new matters were raised but, because they were outside the terms of reference for General Powell's report, were not progressed in any way? To be fair to you, General Powell indicated to the committee he had no recollection of any such events.

Cmdr Noonan—Certainly I am quite clear that of the 22 personnel that we interviewed there was nobody who indicated that they had anything further to offer.

CHAIR—Have you learnt a lesson out of all this? Is it now your view that you should always destroy your notes, or always keep them? I have not made up my mind yet.

Cmdr Noonan—I will go back and think about that question a bit more.

Senator BARTLETT—Did you hear any of Mr Scafton's evidence this morning or see his opening statement?

Cmdr Noonan—I saw parts of it.

Senator BARTLETT—Is there anything in that that you have any reason to doubt or dispute or that you have a different recollection of?

Cmdr Noonan—No. It was certainly quite consistent with my recollection of the conversation that took place between him and General Powell.

Senator BARTLETT—Is there anything from the evidence just given by General Powell Rtd that is different from your recollection?

Cmdr Noonan—No.

Senator BARTLETT—In the conversation you had with Mr Scafton at the time, did you have any particular reason or feeling at the time to doubt the veracity of anything he said?

Cmdr Noonan—No, 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.

Senator BARTLETT—I guess the fact that he stated it was an off-the-record conversation assisted him to be open.

Cmdr Noonan—Yes, and certainly that point was made by the general at the start of the interview—that we would only take written evidence. Certainly, in the comments made by Mr Scrafton with respect to the conversations he claimed to have had with the Prime Minister, he made it quite clear that he would not admit to them publicly.

Senator FERGUSON—I want to follow up a question I asked of General Powell. You must have been aware of the Bryant inquiry, although it was proceeding almost concurrently, but not quite. Were you aware of the discrepancies between the statements made by Mr Scrafton to the Bryant inquiry and the oral evidence he gave you in your inquiry?

Cmdr Noonan—No, I was not. The first time I saw the written statement from Mr Scrafton to Ms Bryant was this morning. I had no reason to note those discrepancies.

Senator FERGUSON—Would you have been surprised to know that he said things like he had never had a sense that the original advice was not correct and was still saying this on 14 December when in fact I think you had already conducted your interview by that stage, hadn't you?

Cmdr Noonan—Yes. We conducted our interview on 5 December and completed the report on the 14th. I understand that his interview with Ms Bryant was on the 14th.

Senator FERGUSON—You have a situation where he told you one thing on 5 December and then on 14 December in a signed record of an interview—a written statement—he says something that is totally different. You are aware of that now, but you were not then?

Cmdr Noonan—I am aware of that now, yes.

CHAIR—With respect to the copy of the statement to the Bryant inquiry that you read this morning, did you read that in the CMI report?

Cmdr Noonan—Yes, I did.

CHAIR—Thank you for coming along. We know it has put you out a little, but we do appreciate your coming along and giving such forthright evidence.

Proceedings suspended from 3.07 p.m. to 3.33 p.m.

SCRAFTON, Mr Michael John, (Private capacity)

CHAIR—I declare the meeting resumed. We have Senator Brandis in continuation.

Senator BRANDIS—Mr Scafton, I want to go now directly to the conversations with the Prime Minister which you claim to have had on the evening of 7 November. I have the *Hansard* of your evidence this morning, which Hansard has been kind enough to provide swiftly, so we might go through it according to the evidence that you have most lately given. Before going to that, though, this much is clear, isn't it: in your statement to the Bryant inquiry you refer only to one conversation with the Prime Minister—is that right?

Mr Scafton—Two.

Senator BRANDIS—Two conversations with the Prime Minister; sorry. I am looking at the third page, where it states:

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—

That is, the video—

Mr Scafton—That might have been two or three. I cannot recall what I meant at the time.

Senator BRANDIS—I am sorry?

Mr Scafton—That might have been two or three. I can recall that I had three conversations with the—

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.

Senator BRANDIS—I am going to ask you to explain the discrepancies between the different versions of these controversial events you have given. I am entitled to do that.

Mr Scrafton—I am not going to keep going around this buoy. I did not fully reveal or intend to make an explicit answer to Jennifer Bryant on the events. I indicated to Jennifer Bryant, in terms that I thought were as far as I could go at the time, a range of issues that existed which were outside of her purview. There was no reason for me to be explicit with Jennifer Bryant about the number of phone calls. I fail to understand completely why you are so focused on this.

Senator BRANDIS—I am focused on it because what you said to the Prime Minister is the core issue before us today—

Mr Scrafton—But not what I said to Jennifer Bryant.

Senator BRANDIS—Let me finish—and everything you said to the Prime Minister you said to him in the course of a sequence of telephone conversations. So surely you can appreciate that the number in that sequence is relevant to testing the accuracy of your memory.

Mr Scrafton—No, I do not accept that at all.

Senator BRANDIS—Okay.

Mr Scrafton—You might refer to my opening statement where I said that I do acknowledge the possibility that I conflated the number of issues and the number of phone calls.

Senator BRANDIS—Well, then—

Mr Scrafton—Can I please finish, Senator?

Senator BRANDIS—I am sorry; I thought you were.

Mr Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—That is correct.

Senator BRANDIS—Is that right?

Mr Scrafton—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 Scrafton—That is correct.

Senator BRANDIS—You remember that?

Mr Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—In the first conversation.

Senator BRANDIS—In the first conversation.

CHAIR—I am not sure we have evidence from anyone that there were four advisers in the room. Not even Mr Scrafton has said that. He has mentioned on different occasions two and then three names.

Senator BRANDIS—We have statements from four people who say they were in the room.

CHAIR—Yes, I am just pointing out that that is not—

Senator BRANDIS—They have not been before this committee, which I think is your point, Chair.

CHAIR—Nor has evidence of the four. Those documents are not before us either.

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

Mr Scrafton—That is correct.

Senator BRANDIS—Are you quite certain of that?

Mr Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—Yes.

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

Mr Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—That is correct.

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

Mr Scrafton—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 Scrafton—Yes.

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

Mr Scrafton—Two or three, I suppose.

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

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

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

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

Senator BRANDIS—In substantially the same words?

Mr Scrafton—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 Scrafton—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 Scrafton—Yes.

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

Mr Scrafton—Something like that, yes.

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

Mr Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—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 Scrafton—That is my recollection.

Senator FAULKNER—I just want to be clear with Mr Scrafton. 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 Scrafton—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 Scrafton—I am prepared to admit that it was a very stressful situation so that is why I am trying—

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

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

Senator FAULKNER—Thank you.

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

Mr Scrafton—That is correct.

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

Mr Scrafton—That is correct.

Senator FAULKNER—The Prime Minister said there were two, didn't he?

Senator BRANDIS—Senator Faulkner, let me proceed.

CHAIR—Yes, you have the call, Senator Brandis.

Senator BRANDIS—Mr Scafton, 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 Scafton—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 Scafton—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 Scafton—That is correct.

Senator BRANDIS—That is putting it fairly?

Mr Scafton—Yes.

Senator BRANDIS—You receive these calls from the Prime Minister—whether two, or as you think more likely, three—on your mobile phone?

Mr Scafton—That is correct.

Senator BRANDIS—Your mobile phone number at the time, according to the then current edition of the Howard government directory—I will show it to you, if you like—under your listing, under Mr Reith's entry, was 0416266413?

Mr Scafton—It still is.

Senator BRANDIS—And that was the phone you were using that night?

Mr Scafton—That is correct.

Senator BRANDIS—Do you want to look at the extract from the Howard government directory?

Mr Scrafton—No, I am happy to—

Senator BRANDIS—Take my word for that?

Mr Scrafton—Yes.

Senator FAULKNER—Mr Scrafton, I do not know how wise it is to have your current phone number in *Hansard*.

Mr Scrafton—I am about to change it; all the media know it.

Senator FAULKNER—It is a bit insensitive of Senator Brandis.

Senator BRANDIS—Mr Scrafton, you now accept—there was some uncertainty about this—that the calls to you that were initiated by the Prime Minister were made from the Lodge?

Mr Scrafton—I assume so; I do not know.

Senator BRANDIS—I do not think that that is in controversy. We know that that is where the Prime Minister was that evening.

CHAIR—We do not know that. How do we know that? On whose evidence? He could have come into the office here.

Senator BRANDIS—Mr Scrafton, I have arranged to extract the telephone records for that evening from the Lodge, and I tell you that there were eight telephones at the Lodge on the evening of 7 November 2001.

CHAIR—You are telling him that, Senator. How do you know? Were you there? How do you know there were eight? We did not think you were on the invitation list at the Lodge. That will be news to everyone.

Senator FAULKNER—I bet you are off it now!

Senator BRANDIS—Senator Ray, I understand your sensitivity about this, but I am putting these questions to the witness.

CHAIR—No, you are leading evidence. You are saying there were eight there. I am asking: were you there to count the eight phones that were there?

Senator BRANDIS—I am not a witness.

CHAIR—But you are putting things to the witness as though they are fact.

Senator BRANDIS—I am allowed to put propositions to the witness.

CHAIR—Why don't you suggest to him that there were eight, not baldly state that there were eight?

Senator BRANDIS—Mr Chairman, you might let me put the question and then if there is any procedural issue you or Senator Faulkner can raise it then.

CHAIR—I am just cautioning the witness that propositions put to him, claimed as fact, that are not before this committee, do not have to be accepted as fact. They may well be accepted as fact.

Senator BRANDIS—Mr Scrafton, I am suggesting to you—and I do not expect you to have personal knowledge of this, but it is an assumption on the basis of which subsequent questions will depend—that there were eight telephones at the Lodge that night. There were two landlines, there was the Prime Minister's mobile telephone, there was Mrs Howard's mobile telephone, there was Mr Sinodinos's mobile telephone, there was Mr Nutt's mobile telephone, there was Mr O'Leary's mobile telephone, and there was Mr Paul McClintock's mobile telephone. Those were the only eight telephones, whether surface lines or mobile telephones, in the Lodge on the evening of 7 November 2001.

I have arranged to have the telephone records—that is, the automatically generated records—of each of those eight telephone services, for that day, searched. I indicate to the committee, and renew publicly my offer to other committee members, that there is obviously a privacy issue because the telephone records in each case, for each telephone call, record a sequence number, the date, the time the call was initiated, the exchange from which it was initiated, the number dialled, the rate, the length of time of the call and the cost. For each telephone call, there were those eight data.

The telephone records of seven of the eight telephones that were at the Lodge on the evening of 7 November—that is, both of the landlines, Mrs Howard's telephone and the four advisers' telephones—record no telephone calls being initiated to 0416266413, the number you were using. But the telephone records for the telephone that Mr Howard was using—that is, his mobile telephone—do record two telephone calls initiated to your number on the evening of 7 November. I know you do not know those propositions for a fact; they are not in your personal knowledge.

Mr Scrafton—I am happy to accept that.

Senator BRANDIS—All right. Because we are talking about telephone calls initiated by the Prime Minister or his advisers, the records of which record the numbers which the Prime Minister or his advisers rang, there is obviously a security issue about these telephone logs. That would be obvious to you.

Senator FAULKNER—There cannot be, if they have given them to you.

Senator BRANDIS—I am not in a position to give you those telephone records here. But I want to put this on the record.

Senator FAULKNER—How did you get access to them, anyway?

CHAIR—Hold on, Senator Brandis. Before you put anything on the record, I have allowed you a five-minute preliminary summary before you ask a question. I am going to allow you a little more latitude in that regard, but you cannot simply continue to make a statement to set up a question. You understand that.

Senator BRANDIS—I have made all the factual statements I wish to make.

CHAIR—All the factual claims you wish to make; we accept that.

Senator BRANDIS—Which have been accepted by Mr Scafton.

CHAIR—I beg your pardon. He has acknowledged that you put them. We will not split hairs. You might get on with the question.

Senator BRANDIS—I will come to the question in a moment, but I want it to be a matter of public record that, because of the security issue which prevents these telephone records being tabled in this committee—

CHAIR—So they can be given to you but not tabled in this committee?

Senator FAULKNER—They have fallen into your hands; they are not that secure.

CHAIR—Cut to the chase and ask a question.

Senator BRANDIS—I have nevertheless offered Senator Ray—

Senator FAULKNER—They have fallen into your hands but not into anyone else's.

Senator BRANDIS—and Senator Faulkner the opportunity to examine the originals of those telephone records for all eight people.

CHAIR—And we have offered for people from the Prime Minister's office to come and give evidence here if they so wish, not to take second-hand evidence from you in some closet. Get on with your questioning, please.

Senator BRANDIS—Let me finish this.

CHAIR—No, I will not. We are here to ask questions; you know that. I have given you a fair go of five minutes introductory background material.

Senator BRANDIS—People are entitled to know that you have been offered the opportunity to verify what I am saying and have declined it.

CHAIR—Ask your questions, please.

Senator BRANDIS—The telephone records for the Prime Minister's mobile telephone—which is the only telephone service of those eight from which calls to your number were initiated

that evening—indicate that two telephone calls were initiated to your number that evening. So, if that be so, would you accept that that resolves the three calls or two calls issue?

Mr Scrafton—I have admitted that was a possibility.

Senator BRANDIS—I know you did. I am simply saying that that seems to verify that alternative hypothesis.

Mr Scrafton—Yes.

Senator BARTLETT—Chair, can we—

CHAIR—If it is a point of order, you may intervene; if it is a question, you will need to seek Senator Brandis's acceptance that you interrupt his questioning.

Senator BARTLETT—I guess it is for a ruling from the chair—and I know you have raised it a bit. I appreciate that Senator Brandis wants to put all this on the record, but can we have an overarching recognition from the chair that saying all these repeated statements that this establishes, this is a fact, this is now acknowledged is simply not the case. We have not seen these records. Even if we did see them, we would have no way of knowing whether or not they are accurate.

Senator FAULKNER—I do not believe anything the Prime Minister's office says about anything.

Senator BARTLETT—Can we have a suggestion or something rather than this continual assertion that this is fact all the time?

Senator FAULKNER—And I do not believe anything the Prime Minister has ever said about anything. He is a known liar. Senator Brandis knows that—and says it.

CHAIR—Order, Senator Faulkner! It is up to this committee to evaluate, in the long term, all the evidence we hear, and everyone can put their assertions. It is not up to me to make a ruling on Senator Brandis's credibility here today. I have indicated to Senator Brandis that I think I have given him what I regard as reasonable latitude out of the chair to set up the direction of his questions.

Senator BRANDIS—And I have done that. I have finished doing it.

CHAIR—You have well and truly done it is the point being made. Let us just get on with the questioning. I do point out that I have not had the chance to ask any questions yet. I am waiting patiently. Senator Brandis, you have got the call.

Senator BRANDIS—I am coming to the conclusion, Mr Chairman. The telephone records indicate that the first of those calls from the Prime Minister's mobile to your mobile was made at 8.41 p.m. Does that sound right?

Mr Scrafton—As I said, I have no direct recollection of the time.

Senator BRANDIS—I understand that, but I asked whether that was about right—about 20 to nine?

Mr Scafton—It is not impossible that it was 8.41.

CHAIR—But you are saying it is possible, too. Give Senator Brandis the courtesy of a more accurate answer, if you could.

Mr Scafton—It is possible that it was 8.41.

Senator BRANDIS—And the call lasted for nine minutes and 36 seconds. Does that conform approximately with your recollection of the length of that call in which you discussed the video?

Mr Scafton—No, it does not, actually.

Senator BRANDIS—You said 10 to 15 minutes.

Mr Scafton—I said between calls, I think. I think I said five or six minutes.

Senator BRANDIS—You said five or six minutes. The record says nine minutes and 36 seconds. There is not a huge difference between six minutes and nine minutes and 36 seconds. As some people say, we are in the same ballpark, aren't we?

Mr Scafton—If that is what the records say, that is what the records say.

Senator BRANDIS—That is what the records say.

CHAIR—We do not know that. That is what the records purport to say.

Senator BRANDIS—I am reading from them, and we have offered to show them to you, Senator Ray.

CHAIR—So what? Do you think I would believe it necessarily, Senator Brandis?

Senator BRANDIS—These are the Telstra documents—the phone company documents.

CHAIR—We do not know that. Get someone from PM&C or the Prime Minister's office—

Senator BRANDIS—You can look at the originals, Senator Ray.

Senator FAULKNER—How do we know they are not doctored?

Senator BRANDIS—You can look at the originals and make a judgment about that for yourself, too.

CHAIR—I am sure you will call people from the Prime Minister's office to give evidence on this.

Senator BRANDIS—The records also show that the next call initiated from the Prime Minister's mobile phone to your mobile phone was initiated at 10.12 p.m.—that is, about an hour and a half later; not 15 to 20 minutes later.

Mr Scrafton—That could be possible as well.

Senator BRANDIS—So, if that is what the records say, you would agree that that is the way it must be?

Mr Scrafton—Yes.

Senator FAULKNER—And, wait for it—'It didn't go very long,' is what he is going to say.

Senator BRANDIS—That is the only other call initiated from any phone at the Lodge to your mobile phone that night.

Mr Scrafton—I think I have accepted that there were probably two phone calls.

Senator BRANDIS—And, Mr Scrafton, the question of the photos, you say, was raised; your observation that the people with whom you dealt in Defence did not believe that children had been thrown overboard and reiterated; and the question of the ONA report was discussed. Those three topics must all have been discussed in the second phone call, if there was not a third phone call.

Mr Scrafton—Yes, they must have been discussed in the first two phone calls.

Senator BRANDIS—That call lasted for 51 seconds.

Senator FAULKNER—I am sure you could have done that in about 10 minutes less.

Senator BRANDIS—That call lasted for 51 seconds, Mr Scrafton. That is what the record says, and we have offered to show the originals to other senators. If the record is accurate—

Senator FAULKNER—I am sure you could not say anything in 51 seconds, Senator Brandis, but I suspect the rest of us might have a reasonable go at it.

Senator BRANDIS—If the record is accurate—

Senator FAULKNER—Hold the front page, please!

Senator BRANDIS—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 Scrafton—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.

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 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 Scafton, 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 Scafton—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 Scafton—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 Scafton—That was my recollection.

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

Mr Scafton—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 Scafton—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 Scafton.

Mr Scafton—I am not changing the substance of my discussion, but I have always said—

Senator BRANDIS—But you were so emphatic about this. To give you your due, you allowed for the possibility that there may have been two or three phone calls, but you were so emphatic, when Senator Faulkner asked you this morning and when I asked you just before about what was discussed between the first and the subsequent phone calls in the sequence, that it was the video in the first phone call and then the Prime Minister rang you back and asked about the photos and then you made the observation about the children in the water and then repeated it—

Mr Scafton—And that was my recollection.

Senator BRANDIS—and then the Prime Minister rang and asked about the ONA report. I think we are all in furious agreement that your story cannot be right if that second phone call happened in 51 seconds.

Mr Scafton—I think, quite clearly, I have misrecalled the order of the phone calls or what happened in the phone calls.

Senator BRANDIS—But it is not just the order of the phone calls, because you also said emphatically that it was those parts of the first phone call that were about the video that were reiterated but the custom of reiterating what you were saying to the Prime Minister was not repeated in relation to the other topics. That fits with what the Prime Minister's advisers have put on the public record—that they heard the Prime Minister talking about the video but nothing else—and with what the Prime Minister, incidentally, has said: that you only spoke to him about the video. How could it be otherwise?

Mr Scafton—It is certainly the case that the only part of the conversation the Prime Minister repeated when I was speaking to him was the bit about the video. That is all I have ever said about that. I said that he never repeated the other bits; they were more in terms of questions.

Senator BRANDIS—Yes.

Mr Scafton—Could I be mistaken about which phone call those conversations took place in? Yes. Am I mistaken about the discussion? No.

Senator BRANDIS—The funny thing is that when this was fresh in your mind on 14 December 2001 and you talked to Jennifer Bryant, you only told her about the video too. That was what the Prime Minister was saying then as well. Don't you allow for the possibility that what you told Jennifer Bryant on 14 December 2001, which is consistent with your testimony today in relation to the first phone call only—and no other matters could possibly, in the brevity of 51 seconds, have been discussed in the second phone call—was the real story?

Mr Scafton—What I said to Jennifer Bryant was that there were a number of phone calls that I would not discuss.

Senator FAULKNER—Chair, can I take a point of order and ask you to make a ruling, please?

CHAIR—If it is a point of order, yes; not to interrupt the questioning.

Senator FAULKNER—It is a point of order. Given that Senator Brandis is quoting from alleged—I have no reason to disbelieve that they are real phone records—

Senator BRANDIS—You can see the originals, Senator Faulkner. You are welcome.

CHAIR—Order! Let us hear from Senator Faulkner.

Senator FAULKNER—Does this mean that Senator Brandis would be able to provide to the committee with information about the other phone calls that the Prime Minister made between 8.41 and 10.12—for example, whether Mr Reith, Mr Jordana, Mr Kim Jones and others were rung from that particular phone or the other seven that he has the records of? Could he please provide full details of that to the committee while he is outlining this information? That would be quite helpful. I would be really interested to know that.

CHAIR—I do not think that is a point of order. It is a debating point under the guise of a point of order.

Senator FERGUSON—Could I intervene with two questions before we go back to Senator Brandis?

CHAIR—If he cedes the floor to you.

Senator BRANDIS—I have made the point.

Senator FERGUSON—Mr Scafton, 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.

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.

CHAIR—It has not been proved; it has been asserted.

Senator FERGUSON—I will accept that it has been asserted.

Senator BRANDIS—If you accept the accuracy of the telephone records—

Senator FAULKNER—He has a special relationship with the Prime Minister.

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.

Senator FERGUSON—Yes. I said, 'Don't you think—'

Mr Scafton—No, I do not think that is the case at all.

Senator BRANDIS—Also, there was corroboration from you, Mr Scafton, on 14 December 2001 when these things were fresh in your mind.

Senator FERGUSON—You told two different stories—one to Ms Bryant and one to Major General Powell.

CHAIR—If you are finished, we will give him a chance to respond.

Senator FERGUSON—Yes.

CHAIR—There was a sort of rat-a-tat-tat there, if you know what I mean. Do you want to respond to any of that, again?

Mr Scrafton—I think I have covered in great detail the nature of the comments that were made to the Bryant inquiry. The issue of what I said to Major General Powell has been covered in detail today and it is corroborative with what I have said. I have always conceded that there was some uncertainty about the number of phone calls. I have submitted myself to as much verification as I have been able to. I have had Jenny McKenry come out and support the fact that I had the same discussion with her afterwards. Unless for some reason three years ago I was cooking up a plot to do all of this and put myself through all of this three years later, I cannot see what the issues with the telephone calls are. The point I would continue to make is that, if you give that sort of advice to the Prime Minister, you may not remember all of the details but you certainly remember the specifics.

Senator FAULKNER—Can I ask this, Mr Scrafton. You did not know where the Prime Minister was, necessarily, did you?

Mr Scrafton—I was under the impression, I must admit, that he was at Kirribilli, but I was wrong.

Senator FAULKNER—Yes, that is right. We hear from Senator Brandis—

Senator BRANDIS—It is now a matter of public record that he was at the Lodge. That is not controversial.

Senator FAULKNER—I see.

CHAIR—But that was not the question. He was asking Mr Scrafton—

Senator BRANDIS—What he assumed.

CHAIR—what he thought at the time.

Senator BRANDIS—I understand that.

CHAIR—That is fair enough.

Senator FAULKNER—I do not think it is a matter of public record at all. In fact, that is what I want to ask.

CHAIR—The fact that the Prime Minister was finally in the Lodge is good information.

Senator FAULKNER—Yes.

Senator BRANDIS—Are you disputing the proposition, Senator Faulkner, that the Prime Minister was in the Lodge on that evening?

Senator FAULKNER—I am not certain that it is true at all. You are alleging this.

Senator BRANDIS—Yes, I am.

Senator FAULKNER—You have this close relationship with the Prime Minister's office that enables you to get the phone records and all sorts of other information.

Senator BRANDIS—Here they are. You can see them for yourself, privately.

Senator FAULKNER—But I do not even know that the Prime Minister was necessarily there. I thought I read somewhere he had left the Lodge before 10 that night. Is that right or wrong?

Senator BRANDIS—Senator Faulkner, I am sure we could make the entry records to the Lodge available to you as well.

Senator FAULKNER—I do not know whether he was or not. Do you know that?

CHAIR—How?

Senator FAULKNER—Do you know that, Senator? You do? If you can confirm that—

CHAIR—Order! This is a very exciting discussion, and it is entertaining Mr Scrafton. However, he is here to give evidence and we will give him due courtesy by making sure he is the witness. The two senators at the table can desist giving evidence. Do you have a question, Senator Faulkner? I know you were interrupted.

Senator FAULKNER—I was asking Mr Scrafton whether he knew where the Prime Minister was between 8.41 and 10.12 p.m. It sounds like the answer is no. Can you confirm that, please?

Mr Scrafton—No, I didn't.

Senator FAULKNER—We are fortunate, apparently, that Senator Brandis knows where he was.

Senator BRANDIS—I do.

Senator FAULKNER—We had better check, hadn't we?

CHAIR—On a mobile phone.

Senator FAULKNER—On a mobile phone.

Senator BRANDIS—A mobile phone in Canberra.

CHAIR—Really?

Senator FAULKNER—Now he was on a mobile phone in Canberra. Sorry, I thought you were saying he was at the Lodge.

Senator BRANDIS—A mobile phone and, according to the records, the call was through exchanges in Canberra.

CHAIR—Really? We are not doubting that.

Senator FAULKNER—I am not doubting that. We do not know whether someone else had a—

Senator BRANDIS—You have suggested that whether or not he was at Kirribilli is still a controversial matter or an unsettled fact.

Senator FAULKNER—No, I have not. I am sure he was in Canberra. I have no doubt he was in Canberra.

CHAIR—He had to go to the Press Club the next day.

Senator FAULKNER—I am not certain that he was at the Lodge, but I am certain he was in Canberra. I accept your word for it. You do not know whether he was at the Lodge or not. I do not know either. I do not know who else's phone might have been there or not. I am afraid you do not know that—

Senator BRANDIS—Senator Faulkner, as I said, if you want to inspect the entry records to the Lodge—

Senator FAULKNER—No, I accept that—

Senator BRANDIS—and the time log of which vehicles entered the Lodge, I am sure that can be made available to you.

Senator FAULKNER—But you confirmed that before you came here this afternoon, did you?

Senator BRANDIS—I confirmed each of the facts which I have put to the witness, yes.

Senator FAULKNER—Did you confirm—

CHAIR—Who did you confirm it with?

Senator BRANDIS—I am not a witness here; I am responding to that question.

Senator FAULKNER—Sorry, you are presenting all this information. I think you should go to the table. There are some questions I would like to ask you, I can assure you. I would be very interested in your answers.

Senator BRANDIS—Both in relation to the phone records and in relation to the Lodge logs, I have offered you the opportunity to verify the originals of those documents for yourself, to make your own judgment about their authenticity and their contents.

CHAIR—We would like to know their source now. Who gave them to you?

Senator FAULKNER—Who did give them to you?

CHAIR—He is not going to answer it. Mr Scrafton, I have a few questions but I am not going to go over all the ground you have been over. Why didn't you put in a written statement to the Powell inquiry? That is a question pending.

Mr Scrafton—I had very little I could have added to General Powell's report, but at that stage I had decided not to engage in any of the internal inquiries after the Bryant inquiry.

CHAIR—I see. You said earlier that the then head of the Department of the Prime Minister and Cabinet, Mr Max Moore-Wilton, would ring the CDF directly, trying to force issues with him. Is that knowledge that you acquired either in the minister's office or the department or by reading the CMI report?

Mr Scrafton—All.

CHAIR—And did that in some ways leave you in a doubtful position, in that, if the Secretary of PM&C could, in effect, push around the CDF, being so far down the food chain yourself you would have no chance?

Mr Scrafton—Something along that line, yes.

CHAIR—You mentioned earlier that you received advice—I think you may have even said legal advice—about responding to a subpoena.

Mr Scrafton—That is correct.

CHAIR—Was that in writing or just orally delivered?

Mr Scrafton—It was orally delivered by the head of the Defence Legal Service.

CHAIR—You did not ask for it in writing?

Mr Scrafton—No. I had a number of discussions with the lawyer in the presence of Dr Hawke.

CHAIR—You did discuss something which is not quite the side issue but not the directly relevant issue about the photos. Do you have any knowledge about who directed Defence to remove the captions from the photos when they were first transmitted to the minister's office?

Mr Scrafton—No. My recollection of the event is that it was more a comedy of errors than anybody directing the captions to be removed.

CHAIR—Would you agree that not all your evidence today can be crystal clear; that some of the recollections are vague and some are accurate—that it is a mixture?

Mr Scrafton—Yes, I think that is true.

CHAIR—That then leads to the question: do you know of any motive that would cause you to misrepresent your evidence here today? You go to that in your statement a little.

Mr Scrafton—There is nothing I can gain from what I have come forward and said. I have seen sufficient Senate inquiries and Senate estimates to have known exactly what I would have been subject to through this process. I have nothing to gain from this. I am not coming back into Commonwealth employment. There is an air of notoriety and a lack of anonymity which is not good for a public servant. No, there is nothing I can gain personally from having done this.

CHAIR—Your belief in what transpired in the conversations between you and the Prime Minister on the evening of 7 November—you related those events in part to Ms McKenry?

Mr Scrafton—In part.

CHAIR—You did not mention the ONA aspect?

Mr Scrafton—That is correct.

CHAIR—You then related it in part to Commander Noonan and Major General Powell.

Mr Scrafton—That is right—in more detail. I spoke to Jenny McKenry on a car phone while driving back from Sydney in the context of arranging for the tape to be released. But with Major General Powell and Commander Noonan, we sat in a room for half an hour or 40 minutes talking about a range of issues, including this.

CHAIR—And that was on 5 December?

Mr Scrafton—If that is what the record shows.

CHAIR—I think it does.

Senator FAULKNER—You may not be able to answer this but I have been very concerned to hear this afternoon that apparently none of the security people or other people at the Lodge have phones, apart from the Howards themselves and their staff. Can you confirm that?

Mr Scrafton—I do not know what the phone arrangements at the Lodge are.

Senator BRANDIS—I think you will find that I said ‘in the Lodge’. I am not talking about people who might have been at the security box in the grounds.

Senator FAULKNER—Oh, really?

Senator BRANDIS—I think you will find if you check the transcript what I said.

Senator FAULKNER—So you don't know about the security guards?

CHAIR—Or the staff or anyone else inside?

Senator FAULKNER—Or the staff or anybody else? You did not take account of that, Senator Brandis? Do you have the phone records for them too? They did not cough them up?

Senator BRANDIS—I have the phone records of every mobile phone and landline in the Lodge that evening.

Senator FAULKNER—So the staff do not have phones in the Lodge? You are not serious, are you?

Senator BRANDIS—I am just telling you what records I have.

Senator FAULKNER—Who told you that?

CHAIR—I will proceed with my next question; we will ignore those two. We have established that you had a conversation with Ms McKenry in part, and a conversation with the general and the commander—in part, too, because again I do not think the ONA aspect was mentioned there.

Mr Scrafton—That is correct.

CHAIR—Apart from those two conversations, did you have conversations with anyone else before you went public in August this year?

Mr Scrafton—I did consult—not on the detail—with two personal friends as to that I was going to do something public.

CHAIR—You did that this year?

Mr Scrafton—This year.

CHAIR—I am looking more back to the—

Mr Scrafton—No, nobody else was made aware of it.

CHAIR—I see. Could I ask you this very direct question: no-one has approached you to come public on these issues?

Mr Scrafton—No.

CHAIR—You did it of your own volition?

Mr Scrafton—I did it of my own volition.

Senator BRANDIS—I have just one thing arising out of this morning's evidence which I should have asked you then but I omitted to. You remember that I showed you attachments 1 and 2 to the Bryant report—that is, the letter from the Prime Minister to Mr Moore-Wilton instructing him to institute the Bryant inquiry and, more particularly, attachment 2, which was the letter that Ms Bryant gave to each interviewee introducing them—to use a neutral expression—to the inquiry in which they were about to participate. We had quite a lot of discussion about the first full paragraph on the second page, which you said in part shaped your view about the limitations on that inquiry—I am paraphrasing; I hope that does not put it wrongly. You also said, though, that your understanding of the limitations of that inquiry was also influenced by an explanation—I think that was your word—that Ms Bryant gave to you orally.

Mr Scrafton—That is correct.

Senator BRANDIS—I should have asked you this this morning. Doing as well as you can, can you tell us what she said to you when she was giving that explanation that you referred to?

Mr Scrafton—Basically, my recollection is 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. It was a discussion along those lines.

Senator BRANDIS—I know that is a paraphrase but was there any other important point she made to you that you can recall?

Mr Scrafton—Not that I can recall.

Senator FAULKNER—I wondered if I could ask you a question, Chair, in relation to the status of the phone record documents that have been referred to by Senator Brandis. They do not have any status before this committee, do they?

CHAIR—Not at this stage. I should say that Senator Brandis has said that he offered me a viewing of them. I think that is correct. I refused—

Senator FAULKNER—And I refused.

CHAIR—because I do not regard them yet as evidence before the committee. But I did indicate to Senator Brandis that he could of course phrase his questions based on them, and he has done so. That is the status of them at this stage. This committee will be going into private session only to discuss future witnesses and evidence, Senator Faulkner. We will all be there. It may be that you, Senator Brandis or anyone else would want to then move that people be called. We will deal with that at that stage. But it has been flagged for some time that we would meet after this to see where the inquiry goes next.

Senator FAULKNER—But it seems to me to be a selective use of selective phone records, albeit very interesting. Could we perhaps have the information about who else Mr Howard contacted? I would like to know, for example, whether Mr Kim Jones of ONA, Mr Reith, Mr Jordana and others were contacted by phone. It was a very long time between 8.41 p.m. and 12. This would all be very useful information that no doubt Senator Brandis would want to put on the public record.

CHAIR—Thank you for that, but that is a point you can make at the private meeting. Have you got a final question?

Senator FAULKNER—No, I will ask that question at the private meeting.

CHAIR—Thank you.

Senator FAULKNER—I have already asked it publicly, but I will ask it in private.

CHAIR—Senator Bartlett, have you a last question?

Senator BARTLETT—My question relates to some of the issues relating to what you said and did not say to Major General Powell and Ms Bryant some time back. As we have already heard, the Powell component had fairly narrow terms of reference. Do you believe that the terms of reference of the Powell and Bryant inquiries together were too narrow to allow a clear picture to be revealed?

Mr Scrafton—My understanding is that they were for particular purposes. The CDF wanted a routine investigation as to where things had gone wrong in advice coming up the chain of command—for Powell's report. Jennifer Bryant's report was about public service advice going forward from the task force and from other agencies to ministers.

Senator BARTLETT—So any suggestion that they were inquiries that were set up to ensure that the full information about what happened was investigated and made apparent would not be accurate? They were narrower for specific purposes?

Mr Scrafton—I think they were probably comprehensive within the scope of the people who were running the inquiries: the CDF's capacity is constrained to people in uniform.

Senator BARTLETT—I appreciate that. I do not want to try to denigrate the people who did the reports.

Mr Scrafton—No, neither do I.

Senator BARTLETT—I am just saying that any suggestion that, by saying, 'Well, these reports were done', they investigated the full story would not be accurate.

Mr Scrafton—No, I think that is right.

CHAIR—Thank you. Before I close the meeting I would like to thank all senators who have participated, because they have done so with reasonable grace and reasonable cooperation compared with some other committees.

Senator BRANDIS—That has been because of your chairmanship.

CHAIR—No, I do not think that it has. I also thank the witness, Mr Scrafton. Firstly, he came here on short notice—because we only determined this inquiry on Monday. Secondly, he knew when he came here that he would be facing both inquisitorial and adversarial questions. He has done so with a degree of grace and strength—and frustration at times, but that is the nature of Senate committees. That is the way we operate. We try to ask a whole range of questions, including doing a bit of long-line fishing, to try to get the full picture. We appreciate you coming along and subjecting yourself. As you said in your own evidence—and I do not think any senator will disagree—there is nothing in this for you. Thank you, once again, for appearing. I close this hearing and announce that we will have a private hearing in five minutes, now that Senator Ferguson is with us.

Committee adjourned at 4.34 p.m.