

II

THE CONSPIRACY THAT WASN'T

“Like alchemy and astrology, conspiracism offers an intellectual inquiry that has many facts right but goes wrong by locating causal relationships where none exist.”

*Daniel Pipes*¹

1. On Saturday 6 October 2001 HMAS *Adelaide*, an Australian frigate which had been tasked to participate in Operation Relex (the operation conducted by the Australian Defence Force in support of the Government's border protection policy), was patrolling in the Indian Ocean in the vicinity of Christmas Island. Shortly before 1.30 p.m. local time² the commanding officer of the *Adelaide*, Commander Norman Banks, received a signal alerting him to the nearby presence, some 100 nautical miles north of Christmas Island, of a wooden hulled vessel apparently carrying a large number of potential illegal immigrants (“PIIs”³). The vessel was, at the time, in international waters, but was steaming in the direction of Australian territorial waters. Cmdr. Banks was instructed to carry out an interception. The first visual contact with the vessel had been made at 1.13 p.m. by an RAAF Orion patrol aircraft; although it was seaworthy and did not appear to be in difficulties, those on the deck of the vessel were observed to be wearing lifejackets. The vessel was, in due course, assigned the designation “SIEV 4”, indicating that it was the fourth Suspected Illegal Entry Vessel since Operation Relex commenced at midnight on 3 September 2001.⁴

2. Operation Relex was carried out by a Joint Task Force (“JTF 639”) headquartered in Darwin, under the command of Brigadier Mike Silverstone, the Commander of Northern Command (“NORCOM”). In his capacity as Joint Task Force Commander, Silverstone was in tactical command of the *Adelaide* (as well as a number of other participating naval vessels) at the relevant time,

¹ Daniel Pipes, *Conspiracy: How the Paranoid Style Flourishes and Where It Comes From*, New York: Free Press, pp. 30-1

² Local time on board the *Adelaide* was known, in military parlance, as “Golf time”. Unless otherwise indicated, the time of all events on the *Adelaide* are given in Golf time.

³ Occupants of vessels attempting to effect unlawful entry to Australia were identified in Defence communications by a rich variety of acronyms, including “PII”; “UBA” (unauthorised boat arrivals), “UA” (unauthorised arrivals) and “SUNC” (suspected unauthorised non-citizens).

⁴ The Australian Defence Force's involvement in support of the government's border protection policy had in fact commenced the previous week, upon the issuance by the Chief of the Defence Force of a “Warning Order” on 28 August 2002.

while Banks was in operational command. Silverstone was the only person in the chain of command to whom Banks reported, and from whom he received orders.⁵ Silverstone, in turn, reported to the Maritime Commander Australia (“MCAST”) [also referred to as the Naval Component Commander Australia (“NCC AST”)], Rear Admiral Geoffrey Smith, who had overall command of Operation Relex. Smith reported to the Commander Australian Theatre (“COMAST”), Rear Admiral Chris Ritchie, who reported to the Chief of the Defence Force (“CDF”), Admiral Chris Barrie. It is important to mention two other senior officers. Vice Admiral David Shackleton was Chief of Navy (“CN”), however he was not part of the chain of command: no-one reported to him on operational matters concerning Operational Relex, and he did not give orders down the line. Nevertheless, as one of the Service Chiefs, he was in frequent contact with the CDF concerning a wide range of defence matters, in particular as a member of two high-level advisory bodies to the CDF: the Chiefs of Service Committee and the Strategic Command Group. Air Vice-Marshal Alan Titheridge was the Head of Strategic Command (“HSC”). He was not in the chain of command either; he described his role as being, essentially, “the Chief of Defence Force’s staff officer for operations”.⁶ Importantly, he was also Defence’s senior representative on a high-level inter-Departmental Committee (“IDC”) which had been established to co-ordinate the response of the various Departments and agencies involved in the implementation of the border protection policy (although sometimes Titheridge was represented at the IDC by other HSC personnel, particularly his staff officer, Group Captain Steven Walker). The IDC, which was chaired by Ms. Jane Halton, then a Deputy Secretary in the Department of the Prime Minister and Cabinet, was colloquially known as the People Smuggling Task Force (“PST”), and was also referred to sometimes as the “High Level Group”.

3. *Adelaide* reached the vicinity of the SIEV at approximately 1.50 p.m. In compliance with rules of engagement issued by the CDF, which had been approved by the Minister for Defence on 1 September, Banks brought *Adelaide* to a position 9 or 10 nautical miles from SIEV 4, just beyond the horizon. The reason Commander Banks took that course was, as he explained, because of his apprehension that, should the potential illegal immigrants see an Australian vessel, they might precipitate a safety of life at sea (“SOLAS”) situation, thus compelling the *Adelaide* to effect a rescue.⁷ The use of such tactics by potential illegal immigrants had already become apparent in respect of earlier SIEVs. We deal with the pattern of conduct engaged in by the potential illegal immigrants, both prior and subsequent to SIEV 4, elsewhere in this Report.

4. Commander Banks dispatched a long-range rigid hulled inflatable boat (“RHIB”) carried by the *Adelaide*, to deliver warning messages to those aboard SIEV 4, notifying them that they did not have permission to enter Australia

⁵ *Transcript of Evidence, Select Committee on a Certain Maritime Incident* p. 323

⁶ *Transcript of Evidence* p. 684

⁷ *Transcript of Evidence* p. 184

and, were they to do so, they would be committing offences against Australian law. The warnings, both oral and written, were delivered in the English, Bahasa and Arabic languages. They were ignored. Accordingly, Commander Banks decided to bring the *Adelaide* close to SIEV 4, in order to deter unlawful entry into Australian waters. Warning shots were fired from *Adelaide*, the earlier verbal warnings were repeated by loudspeaker from the bridge of the *Adelaide*, and the master of the SIEV was ordered to heave to. These measures were also ignored, and at about 2.30 a.m. on Sunday 7 October the vessel entered the Australian contiguous zone.

5. During the course of the interception of SIEV 4, Banks was in frequent communication by radio telephone with Brigadier Silverstone (the tactical commander). In view of the defiant conduct of those aboard the SIEV, at 3.35 a.m. Silverstone gave the order for the SIEV to be boarded. The boarding operation commenced at about 4.30 a.m.; the boarding party swiftly took control of the SIEV and steered it in the direction of Indonesia (from whence it had come). At the time of the boarding, there was no suggestion of unseaworthiness. Commander Banks described the situation faced by the boarding party, in these words:

The boarding party reported that [the PIIs] were angry, disappointed and making veiled threats to commit suicide, gesturing with wooden sticks and being very vocal.

...

Efforts to provide assistance, such as water, were not welcomed. Indeed, on occasions, the water that we provided was thrown over-board by the unauthorised arrivals on receipt. ... [T]he vessel was continually being sabotaged. The steering and the engines were disabled at various times. Vandalism and arson had been conducted, and continued. ... They had earlier thrown their compass overboard. ... My primary focus here was an expectation that the SIEV was generating a safety of life at sea situation.⁸

6. While the boarding operation was in progress, Commander Banks took a telephone call from Silverstone. Silverstone had arranged to telephone Air Vice-Marshal Titheridge, at 7.30 a.m. Darwin time (which was 8.00 a.m. Canberra time and 5.00 a.m. Golf time), in order to brief him on the situation. Titheridge, although not in the military “chain of command”, was nevertheless the Defence representative on the PST; Ms. Halton, who had been advised of the SIEV 4 interception the previous afternoon, had convened the PST to meet

⁸ *Transcript of Evidence* pp. 161, 163

at 9.00 a.m. that morning. Accordingly, shortly prior to making the call to Titheridge, at 7.20 a.m. Darwin time, Silverstone telephoned Banks (who was on the bridge of the *Adelaide*). They had a brief conversation which Silverstone estimates took approximately one minute.⁹

7. Silverstone's version of the conversation is as follows:

I spoke to Commander Banks at about 0720, as arranged, in order to get a clear view of what was happening. He gave me a quick summary of events, talking about the boat being dead in the water, about the steering being disabled and about it being seven to eight miles south of the contiguous zone. He then indicated that there were men in the water, that a child had been thrown over the side. I asked him then "How old is the child?" He said, "five, six, seven – I can't tell properly." I then said, "Are they wearing life jackets?" He indicated that a man or some of the men were but some of the men had removed their life jackets. I then said to him, "Have you got everybody?" And he said "To the best of my knowledge, yes."

Senator BRANDIS – Was that the end of the conversation?

Brig. SILVERSTONE – It was. I might have then said a few words of encouragement – "Well, get on with it. Get the situation under control" – and then hung up and let him get on with it.¹⁰

Banks' evidence is as follows:

My recollection of that conversation is not very clear. I do recollect parts of the conversation. I do recollect, in the telephone conversation at about six o'clock – and the times are a little in dispute there – being asked about a child and describing that I could see with my own eyes a man holding a child over the side. I recollect being asked about that and saying, "I can see it with my own eyes." I do not recollect saying that a child had been thrown overboard or that a child had been recovered from the water. That is based on that being a six o'clock event. Earlier conversations, to my recollection, did not make reference to children at all.¹¹

⁹ *Transcript of Evidence* p. 336

¹⁰ *Transcript of Evidence* pp. 340-1

¹¹ *Transcript of Evidence* p. 200

8. As he spoke to Banks, Silverstone made a diary note of the conversation. The relevant extract of the diary note reads:

“0720*

Vessel - disable the steering

- dead in water
- 7 – 8 nm sth
- threatened mass exodus
- men child thrown overside 5,6,7

Some discarded life jackets

to best of knowledge got everyone”

The one relevant portion of the diary note which was not contemporaneous is the entry “0720*”, which was inserted some three or four days later to identify the (local) time at which the call was made; Silverstone was able to establish this by reason of the fact that the telephone call with Banks was very short (on his evidence, about one minute), and about “three or four or five minutes” elapsed before he telephoned Titheridge, which he did at 7.28.¹² The word “child” is interlined on the diary note, however Silverstone’s evidence (on which he was not challenged) was that he wrote the word immediately upon the conclusion of the conversation, before he rang Titheridge. By a notation added later, Silverstone explained the circumstances in which the word was interlined.

Senator BRANDIS – As I understand your evidence, all the other ink notes were written as you were talking, the telephone conversation between you and Banks finished and then, in the four or five minutes that elapsed before you telephoned Titheridge, you interlined the word “child”.

Brig. SILVERSTONE – That is correct.

Senator BRANDIS – Why did you do that?

Brig. SILVERSTONE – Because that was central to the report from Commander Banks. At the time he was talking to me, he was talking quite quickly and I was having trouble keeping up. I left the space there, put “thrown over side” and added “child” afterwards, and then the following question was to do with the age of the child.

Senator BRANDIS – You are quite certain that the word “child” was put in before you spoke to Titheridge?

¹² *Transcript of Evidence* p. 337

Brig. SILVERSTONE – Absolutely.¹³

It was Silverstone's usual practice to make diary notes of conversations of this kind, i.e. conversations about operational matters.¹⁴

9. Within a few minutes of the conversation, Silverstone telephoned Titheridge (as he had arranged to do) and conveyed to him what Banks had told him. This included the statement in relation to the child. Silverstone's evidence of what he told Titheridge was:

I have a recollection of my conversation with Air Vice Marshal Titheridge and it started with me passing on to him the events of the previous number of hours, all of which he was actually aware of. As I talked through the firing and the authorisation to board, he said, "I am aware of that, I am aware of that." As we stepped through the events, I said "The only other thing is I have just got off the phone to CO *Adelaide* and he has just told me that there are men in the water and that a young child aged five, six or seven has been thrown overboard.

Senator BRANDIS – So you basically told him what you had just been told by Banks?

Brig. SILVERSTONE – Yes.

Senator BRANDIS – And did you use your diary notes as you spoke to Titheridge?

Brig. SILVERSTONE – Yes.¹⁵

As soon as he had finished speaking to Titheridge, Silverstone rang Rear Admiral Smith and conveyed the same information to him.

10. As soon as his telephone call with Silverstone finished, Titheridge telephoned the CDF, Ms. Halton, and Mr. Hendy, the Chief of Staff to the Minister for Defence, Mr. Reith, and conveyed to them what he had been told by Silverstone. As well, on that afternoon, Titheridge spoke to the Minister himself on four occasions, during which he conveyed to him what Silverstone had told him (including the information about the child thrown overboard), together with other information which came in during the course of the day.

¹³ *Transcript of Evidence* pp. 338-9

¹⁴ *Transcript of Evidence* p. 327

¹⁵ *Transcript of Evidence* p. 342

He did not consider it necessary to place qualifications or caveats on the information:

Air Vice Marshal TITHERIDGE – I would have said that this information was passed on to me by the operational commander.

Senator FAULKNER – You believed, at this point, didn't you, that a child or children had been thrown overboard? Is that fair?

Air Vice Marshal TITHERIDGE – Correct. I had no reason not to believe what Brigadier Silverstone told me.

Senator FAULKNER – But did you place any qualifications on this, given the fact that you had not had anything other than telephonic communication with Brigadier Silverstone? Were there any caveats, qualifications or expressions of caution in this at all?

Air Vice Marshal TITHERIDGE – When the operational commander passes me information, apart from the source of it, I see no reason to provide caveats.¹⁶

11. It is uncontroversial that the Banks/Silverstone conversation was the source of the subsequent statements that a child or children had been thrown overboard from SIEV 4. The key question is whether Banks did in fact make that statement to Silverstone. Government Senators do not share the belief, asserted in the Majority Report,¹⁷ that it is not “possible to arrive at a definite conclusion about what exactly was said and not said at the time” - certainly, the Majority Report finds it possible to arrive at quite definite and damning conclusions about other factually controversial issues where the Committee had the benefit of considerably less evidence. In the Government Senators' view, the clear weight of the evidence suggests that Brigadier Silverstone's version of the conversation is correct.

12. The most obvious reason why Silverstone's version should be accepted is the fact that it does not depend upon recollection: he made a contemporaneous diary note of what Banks said to him, the authenticity of which is unchallenged. It is inconceivable that Silverstone would have recorded that he was told that a child had been thrown overboard if he had not heard Banks say so. Banks, the officer on the scene, was narrating to Silverstone events as they unfolded – both what he saw, and what was being

¹⁶ *Transcript of Evidence* p. 707

¹⁷ Paragraph 3.87

reported to him.¹⁸ Silverstone's diary note is a contemporaneous record of that narration. Furthermore, Silverstone prepared his note in circumstances in which he was able to concentrate exclusively upon what Banks was saying, while Banks, as the operational commander dealing with a difficult and highly mobile situation, obviously had many other things on his mind. As the Chief of Navy, Vice Admiral Shackleton, observed:

Brigadier Silverstone probably had a more accurate recollection of what was said than Commander Banks would have had, simply because of the intensity and the stress under which he would have been working at the time. He would have been very focused on what he was doing.¹⁹

...[S]itting in the comfort of an office, that is not rolling around in the ocean with other people trying to get your attention, is a place where you could expect to record more accurately what somebody may have said to you rather than somebody who was not taking notes and had only half a mind on the conversation that he was having with you. ...

Banks was under a great deal of stress – and by that I do not mean that he was unable to deal with it, but he had a lot on his mind and he was pretty busy. Silverstone was sitting in an office where it was a lot easier to write down and take notes of a conversation. Silverstone had no reason whatsoever to phone somebody else and say that there had been children thrown in the water unless he had good reason to do so. So there is a correlation between what he heard and what he did in that context. Banks would have wanted to get off the telephone as quickly as he could and get back to doing what he had to do in terms of his ship.²⁰

Commander Banks himself observed, of Silverstone, that “It would be my assessment that if he recollected that I said something then I would have said it...”²¹

¹⁸ Banks' evidence of what he saw and of his sources of information at the time of the incident appears, in particular, at *Transcript of Evidence* pp. 244-251.

¹⁹ *Foreign Affairs Defence & Trade Estimates Hansard* 20 February 2002 p. 124.

²⁰ *Transcript of Evidence*, pp. 105 & 133

²¹ *Transcript of Evidence* p. 204

13. Brigadier Silverstone also has a clear independent memory, unassisted by the diary note, of what Banks told him. Banks' recollection, however, was equivocal:

Throughout I have been trying to convey the message that I do not have a recollection of that conversation to the degree where I can emphatically say "Yes, I said this; no, I didn't say that."²²

Throughout the whole thing I would love to be emphatic and say, "I said" or "I didn't say". With the passage of time, I have moved much closer to clearly saying, "I believe I didn't say", because of all of the other pieces of information that I have been made privy to. In early October I remained confused and was a bit more able to swing each way.²³

Indeed, Banks conceded that Silverstone's version may be correct. When Silverstone's diary note of their conversation was put to him, Banks' evidence was as follows:

Senator BRANDIS – That is [Silverstone's] recollection, based upon the diary note that he took while you were talking, of his conversation with you. Allowing for the fact that you have very properly said that your memory of the conversation is imperfect, do you accept that Silverstone's recollection of it is correct?

Cmdr. BANKS – No.

Senator BRANDIS – Do you accept that it may be correct?

Cmdr. BANKS – Yes.²⁴

14. The report of children thrown overboard from SIEV 4 became known to the members of the PST when, during the course of its meeting that morning, Titheridge (who had just spoken to Silverstone) telephoned Jane Halton and conveyed to her what he had been told. Another of those present at the meeting, Mr. Bill Farmer, the Secretary of the Department of Immigration and Multicultural Affairs ("DIMA"), later received a telephone call from his Minister, Mr. Ruddock, who had heard reports of the interception of SIEV 4 in the media and wanted to be briefed on the latest developments:

I had the phone call from Mr. Ruddock who, in effect, said that he was going into a media conference and he wanted to know the

²² *Transcript of Evidence*, p. 206

²³ *Transcript of Evidence* p. 213

²⁴ *Transcript of Evidence* p. 260.

latest factual information about this boat that had been reported in the morning. I told him that I was in the high-level group, and I made clear to him that I was doing that because I wanted to make sure that the information I was giving to him was properly understood by me and by the members of the group.

CHAIR – My understanding is that, sotto voce, you had this conversation with the Minister –

Mr. FARMER – No, it was not sotto voce.

CHAIR – You had this conversation with the Minister on your mobile phone –

Mr. FARMER – Yes.

CHAIR – while the high-level group paused and listened in.

Mr. FARMER – That is right. I told him that we had had advice from Defence which was significant because it essentially came in three parts: that passengers were wearing life jackets – and we have talked earlier on about the significance of that – that some were jumping overboard and that passengers were throwing children overboard. Those were the three elements, and they were three new elements.

...

CHAIR – ... that is essentially what the Minister told the media, is it not?

Mr. FARMER – That is right. Those were the factual elements that he received and passed on.²⁵

15. Mr. Ruddock then had a media conference (at about lunchtime), during the course of which he conveyed the information which Mr. Farmer had given him. This was the first public airing of the report. There can be no question that at that time, there was no reason to doubt its correctness.

16. Nevertheless, given the degree of public notoriety the report received, steps were taken, initiated by different actors, to obtain written or photographic evidence. In particular:

²⁵ *Transcript of Evidence* pp. 887-8

- a. On 9 October both Brigadier Silverstone and Rear Admiral Smith (independently of one another) instructed Commander Banks to gather witness statements from the members of the boarding party, which he caused to be taken that day and the following day.
- b. On the morning of Wednesday 10 October, Mr. Mike Scrafton, Mr. Reith's military adviser, telephoned COMAST, Rear Admiral Ritchie to inquire about the availability of evidence.

17. Before tracing the fate of those inquiries, it is necessary to return to events as they were unfolding at the incident locality. After the *Adelaide* boarding party took control of SIEV 4, they discovered that the steering and engines had been sabotaged. The boarding party made makeshift repairs, and steered the vessel in the direction of Indonesian waters. 14 persons were recovered from the water and returned to the vessel; significantly, none of those recovered from the water were children. No report was received of any missing person. *Adelaide* took a position beyond visual range of the SIEV, but kept it under electronic observation. The vessel began to steam away from Australian waters in a northerly direction, at slow speed. However, at 12.19 p.m. it was observed to be dead in the water and an hour later, distress signals were displayed. Another boarding party was dispatched, which found that the engine and steering had, once again, been deliberately sabotaged. Cmdr. Banks considered that a distress situation existed; following a discussion with Silverstone, a decision was made to take the vessel under tow to Christmas Island. The tow continued commenced at 6.03 p.m. on 7 October, and continued satisfactorily for about 24 hours. However the sabotage of the engine made the bilge pumps inoperable; attempts by the crew of the *Adelaide* to deal with the rising bilge levels were initially successful in reducing the level of bilge water, however at about 5.00 p.m. on Monday 8 October the vessel began to sink rapidly. Cmdr. Banks, deciding that a SOLAS situation now existed, instructed the crew of the *Adelaide* to effect a rescue, which was conducted between the hours 5.08 p.m. and 6.41 p.m., in the course of which 223 people were embarked on *Adelaide* with no loss of life. *Adelaide* then made for Christmas Island. There can be no doubt that, throughout the operation, the officers and crew of *Adelaide* acted heroically and with a very high level of professionalism.²⁶

18. The orders of Brigadier Silverstone and Admiral Ritchie for Cmdr. Banks to obtain statements from the boarding party were not given until the day following the sinking (Tuesday 9 October). Banks instructed Chief Petty Officer Koller to take statements from 16 crew members, including members of the boarding party; the statements were taken on Wednesday 10 October.²⁷

²⁶ Information in this paragraph is drawn from Cmdr. Banks' evidence, *Transcript of Evidence* pp. 162-3, and the notes to paragraphs 3.18 – 3.34 of the Majority Report.

19. Meanwhile, also on 9 October, Commander Banks, at his own initiative, emailed two photographs to several addressees, including a number at ADF Headquarters in Canberra, depicting the rescue operation on the previous afternoon. Those photographs included images of children and women being rescued from the water by crew of the *Adelaide*. The photographs were accompanied by captions and text which made it clear that they depicted the sinking of SIEV 4 on 8 October; they obviously did not refer to the events surrounding the boarding of the vessel on the previous day. Also on 9 October, Commander Banks gave an unauthorised interview to Channel 10 during the course of which he referred to the photographs.

20. When news of the existence of the photographs became public on 10 October, Mr. Reith's media adviser, Mr. Ross Hampton, contacted Mr. Tim Bloomfield, the Director of Media Liaison at Navy Public Affairs, to request copies of them. Bloomfield had received the photographs, with identifying captions and text, at 3.14 p.m. Apparently due to technology problems in transferring the photographs by e-mail, when the photographs were transmitted to Mr. Hampton, they were without the accompanying captions and text. The circumstances in which these problems arose, and the confusion surrounding the electronic transmission of the photographs, are discussed at paragraphs 4.80-4.87 of the Majority Report.

22. On the afternoon of 10 October, Mr. Reith sought the clearance of the CDF to release the photographs to the media. According to Hampton, this conversation took place between 3.00 p.m. and 4.00 p.m.²⁸ Admiral Barrie's evidence of the conversation with Mr. Reith is as follows:

On 10 October, in the afternoon, Minister Reith telephoned me about the release to the media that afternoon of certain photos that he had in his possession. I told him that I had not seen any photographs. But, because the operation with SIEV 4 had been successfully concluded, I could see no reason why photographs should not be released into the public domain, subject to a security check by the Head of Strategic Command Division [Air Vice-Marshal Titheridge] that the identities of ADF personnel involved were not compromised. I then telephoned HSCD about the Minister's requirements and tasked him to vet the photographs and advise the Minister accordingly.²⁹

²⁷ *Transcript of Evidence* pp. 261-2

²⁸ Hampton Statement to the Bryant Report

²⁹ *Transcript of Evidence*, p. 742

Mr. Reith's account of the background and substance of his conversation with Adm. Barrie, given in his statement to the Powell inquiry, is as follows:

On 10 October my office was besieged by media requests for photos in the possession of Defence which showed children in the water. Mr. Ross Hampton, my Media Adviser, told me that he had received a phone call from the public affairs unit of Defence that they had the photos but that they were not available for the press.

Mr. Hampton received two photos from Defence which depicted people in the water being rescued by ADF personnel. Ross had these two colour photos printed on our black-and-white printer and he brought them into my office and put them on my desk.

Michael Scrafton, from my Canberra office, told me that we had a file of a child being pushed into the water and that children were in the water on their own, separated from any adults.

I thought it prudent to ring the Chief of the Defence Force, Admiral Barrie, to discuss whether the photos should be released. He was aware that there were requests from the media for photos which supported the claim that children were thrown into the water. I asked him if there was any reason why the photographs could not be distributed. He said there was no reason for them not to be distributed but he wanted to make sure that there was no particular problem with showing the identity of the ADF personnel and he said that he would have AVM Titheridge phone me back. AVM Titheridge rang me back within about five minutes or so and said that from his point of view the photos could be released.³⁰

23. In several places, the Majority Report, in the most immoderate and inflammatory language, suggests that the release of the photographs on 10 October was, in effect, a sinister deceit practised by Mr. Reith upon the general public. That assertion is entirely unsupported by evidence. In particular, it completely ignores the following highly material circumstances:

(a) Neither party (i.e. Mr. Reith and Admiral Barrie) knew, at the time of the conversation which led to the release and misattribution of the photographs, what the provenance of the photographs was. Both assumed that the photographs were of the event on 7 October. There was simply no advertence to the possibility that the photographs may have depicted something else;

³⁰

Memorandum, Hon. Peter Reith, 20 November 2001, p. 2

(b) At the time of the conversation, Admiral Barrie had not even seen the photographs;

(c) Although by this time doubts were beginning to exist in the minds of some, lower in the chain of command, about the accuracy of the initial report, at the time of the conversation, nobody within the chain of command (or, for that matter, outside it) had expressed any of those doubts to Mr. Reith, Admiral Barrie or Air Vice-Marshal Titheridge. When Mr. Reith spoke to Adm. Barrie on the afternoon of 10 October, the fact that a child or children had been thrown into the water from SIEV 4 was for each of them, at that time, uncontroversial. In that regard, what is particularly revealing is what the conversation (on both men's version of it) does *not* say. There is no suggestion that Mr. Reith was ringing to check the authenticity or provenance of the photographs, or to clarify any confusion in relation to them. Rather, it seems reasonably clear that he was ringing simply to check whether Defence had any problem, from an operational point of view, with their release – hence eliciting two responses of an operational nature, i.e. that the identities of ADF personnel should be obscured, but that otherwise, there was no reason not to release them since, so far as Barrie was concerned, the operation had been successfully concluded. There is no suggestion of there being any question of what the photographs showed.

Only the most enthusiastic conspiracy theorist could conclude that the Chief of the Defence Force, the Head of Strategic Command and the Minister for Defence colluded to invent a barefaced lie about photographs which, at the time the relevant conversation occurred, were not understood by any of them even to be controversial. Sadly, fascination with conspiracy theories of the most Kafkaesque hue is not unknown among members of the Australian Senate.

24. On the afternoon of 10 October, following the release of the photographs, Mr. Reith gave a media conference and an interview on ABC Radio with the journalist Virginia Trioli, during the course of which he stated firmly that the photographs depicted the event of 7 October (not the sinking of SIEV 4 the following day).³¹ For the reasons we have set out in the previous paragraph, there is no reason whatever to believe that, at the time he made that statement, Mr. Reith doubted (or had reason to doubt) its accuracy.

25. That evening, 10 October, the ABC 7.30 *Report* programme broadcast the photographs. The same item carried footage of Mr. Reith's media interview that afternoon. Both Vice Admiral Shackleton and Rear Admiral Ritchie saw the programme; unlike Reith or Barrie, they were aware of the provenance of the photographs, having been informed of the circumstances surrounding the photographs by Rear Admiral Smith earlier that day. Afterwards, they each rang Admiral Barrie (who had not watched the programme) and told him that

³¹ *Interview Transcript, Peter Reith/Virginia Trioli, ABC Radio 10 October 2001*

incorrect claims had been made that the photographs were evidence of the “children overboard” event, and urged him to contact Mr. Reith to explain that the photographs had been misattributed.

25. Admiral Barrie telephoned Mr. Reith the following morning, 11 October. His evidence of that conversation was as follows:

I told [Reith] that I had been advised that the photographs he had put out did not describe the events as he portrayed on the *7.30 Report*. I cannot remember his precise response, save that we had a discussion about there being a great deal of confusion about the photographs. But I do recall that our conversation was testy. It concluded with an agreement between us that never again would we discuss photographs without ensuring that we both had the same photographs in front of us.

...

I think that the Minister was annoyed because there had been a stuff-up on the photographs.

...

The conversation itself concluded with us making the agreement about the management of photographs. The conversation never went at any point to what was going to be done about it.³²

26. The confusion is explicable, at least in part, by the fact that Admiral Barrie and Mr. Reith were apparently at cross purposes. Admiral Barrie had not seen the *7.30 Report*; his evidence was that, based upon what both Shackleton and Ritchie had told him, he understood that Mr. Reith had claimed on the programme that the photographs depicted the “children overboard” incident. But that is not so. As an examination of the tape and of the transcript of the programme reveals, the broadcast portion of Mr. Reith’s doorstep makes no reference to the photographs whatever – he was speaking about a different issue, namely the warning shots fired from the *Adelaide*. Indeed, in the broadcast portion of the interview, Mr. Reith did not even refer to children in the water, he merely said “13 persons were either thrown or jumped overboard. They were all rescued out of the water at that time.” The item then returns to the compere, Fran Kelly, who observed “And, in another unusual move, *the navy* supplied these photos to prove the claim – of two children floating in the sea.”³³ (emphasis added) It is not difficult to

³² *Transcript of Evidence*, pp. 742, 751-2

³³ *7.30 Report Transcript* 10 October 2002 [www.abc.net.au/7.30/s387645.htm]

understand why Mr. Reith and Admiral Barrie were at cross purposes – Admiral Barrie’s side of the conversation proceeded upon the assumptions (a) that Mr. Reith had appeared on the *7.30 Report*; and (b) had made claims about the photographs. In fact, Mr. Reith (a) had only “appeared” on the programme in the sense that footage of an earlier press conference had been used; and (b) had, in the course of the broadcast, not even referred to the photographs. Indeed, it was the Navy which was said to have released the photographs “to prove that claim”.

27. It is clear from Admiral Barrie’s evidence that on 11 October, Mr. Reith was told by Admiral Barrie that the two photographs which had been released by him the previous day did not depict the “children overboard” incident. Although Mr. Reith never again claimed that they did, nor did he correct his earlier statement of 10 October. This is probably explicable by the fact that, as appears from Mr. Reith’s conversation with Adm. Barrie, he apparently believed that there were other photographs of the alleged incident (hence his insistence that, in future, if they talked of photographs they would be sure to have the same set of photographs in front of them). Certainly, there is no reason to believe that, merely because he had been advised that two photographs had been misattributed, the incident never occurred. Indeed, any such conclusion would have been a logical absurdity. The advice which Mr. Reith received on 11 October merely told him that two pieces of evidence which he had believed provided visual proof of the incident were not probative.

28. Meanwhile, earlier in the day on Wednesday 10 October and in response to Scrafton’s request, Admiral Ritchie contacted Admiral Smith seeking documentary or photographic evidence. He was subsequently told that the *Adelaide’s* electro-optical film (referred to throughout the evidence as “the video”) did not show children being thrown overboard. However, since the video only showed the port side of the SIEV, it was inconclusive, as Ritchie recognized. At that stage, the witness statements were not available. Ritchie rang Scrafton back at 12.42 p.m. and conveyed this to him; this was Ritchie’s only contact with Mr. Reith’s office during this period. Importantly, at the time he spoke to Scrafton, he still believed the accuracy of the original report:

Rear Adm. RITCHIE - ... I was advised about mid-day of that day that the electro-optical film – the video that we all talk about – showed that there were no children thrown overboard. It showed that there was one child held over the side, that people were jumping over the side of their own volition and that one 13 year-old – and he has variously been described as 13 to 15, or 17 to 18 but at the time I recorded him as a 13 year-old – was pushed over.

I was also told that the CO *Adelaide* had thought that there might be reports able to be taken from sailors who were on the

disengaged side – that is, the side that the camera could not see – that there might be children in the water. At 12.42, I passed that information back to Mr. Scrafton. That is the only contact that I recall with ministers or ministers’ staff in this period.

Senator FAULKNER – Was Mr. Scrafton basically asking you if you were aware of any sort of evidentiary support for claims that children had been thrown overboard – is that a fair way of putting it?

Rear Adm. RITCHIE – My recollection is, yes, he rang me up and said, “Chris, what have we got that supports the claim that children were thrown overboard?” At this time I still believed that it was true.

...

Senator FAULKNER – [W]ere you able to effectively answer him at 1242 saying, “There is no evidence to support the claim”?

Rear Adm RITCHIE – No.

Senator FAULKNER – You in fact said, “There is none at this point” –

Rear Adm RITCHIE – He would have walked away from that conversation believing that there still might be evidence that supports the claim, because I believed that.³⁴

29. Doubts about the accuracy of the original report first began to form in the minds of both Brigadier Silverstone and Rear Admiral Smith on the morning of 9 October. Each, of his own initiative and independently of one another, instructed Cmdr. Banks to obtain the crew statements and identify other documentary and photographic evidence. Brigadier Silverstone’s fullest account of the development of his doubts appears in his Statement to the Powell Report:

9. Subsequent to reporting to HSC [Titheridge], in light of the tempo of other events, I thought little more about the child overboard report. ... It was not until either 8 or 9 Oct, when viewing the media coverage of the child overboard incident, that I could not recall seeing any written reporting of this incident. On Tue 9 Oct, following the sinking of SIEV 04, I directed a review

³⁴ *Transcript of Evidence* pp. 368-9; 371

of ADELAIDE's OPREPs and confirmed that no written advice of the incident existed. Subsequently, I directed CO ADELAIDE to gather statements from those involved in order to confirm whether or not a child had been thrown overboard. At about this time, I discussed my concerns and intentions with NCC AST [Smith] and COMAST [Ritchie].

10. I recall a discussion with CO ADELAIDE, from early on Wed 10 Oct, in which he indicated that no one as yet could confirm that a child had been recovered from the water. However, he said that he was still waiting to question someone who had been on the far side of the SIEV, away from ADELAIDE's position at the time of the incident. Neither at this point, nor at any earlier stage, did he suggest that a child had not been thrown into the water. In a later conversation, reported in my notebook at 101144/K Oct [i.e., 11.44 a.m. on 10 October], he reported that it was apparent to him that no children had been thrown in the water.³⁵

30. Silverstone received the crew statements on the morning of Thursday 11 October. He then forwarded the statements, together with an e-mail, to Smith and Ritchie at 1.15 p.m. The e-mail contained the following comments:

Until Tue 10 Oct, CO ADE [Banks] believed that the reports of the disposal of a child overboard remained credible. In a later conversation with me on Tue he reported that this now did not appear to be the case.

I believe that there is ample reporting here, pending CO ADE's statement, that there was a great deal of confusion, that the adult SUNC's were intent on provoking an incident and that a report of a child deliberately placed overboard was credible at the time. It is only some days later when that perception was tested that it became clear that no one recovered any children from the water, however, there had persisted a perception among some that this [a child overboard] had happened.³⁶

Although Silverstone does not explicitly say so, it is clear from the e-mail that the substance of his communication was that Cmdr. Banks no longer considered that a child had been thrown overboard, and that he adopted Banks' conclusion.

³⁵ Silverstone Statement to Powell Report. See also Silverstone's evidence at *Transcript of Evidence* p. 358

³⁶ Enclosure 2 to Silverstone Statement to Powell Report

31. Admiral Smith described the development of his thinking, resulting in the same conclusion as that which had been reached by Silverstone, in the following evidence:

I was becoming quite concerned that none of the operational reports that had come to me through the JTF commander at any time contained information saying that a child had been thrown overboard. I had been briefed by Brigadier Silverstone that there was a difference of view between himself and Commander Banks. That concerned me. So I took the unusual step of contacting Commander Banks direct on 9 October and I asked him for his account of what had occurred and what evidence he had to support the allegation of a child being thrown in the water. In that telephone call, he advised me that he himself had not seen such an event, that he had heard a number of his ship's company indicate that they had seen the event occur. I told him to get out there, to interview his people and to determine, once and for all, did this incident occur or not. That was on the Tuesday morning.

I subsequently rang Rear Admiral Ritchie and told him that I had serious concerns as to our ability to prove that this incident had in fact occurred. On the Wednesday morning, 10 October, Commander Banks rang me, told me that he had interviewed the people relevant to this incident, that he was satisfied that he had no evidence whatsoever to prove that this incident had occurred – the child being thrown over. I then directed him to produce a chronology of events and to signal that to me as a personal message, which he did that evening, and it was received in my headquarters on 11 October.

After my call with Commander Banks on 10 October I instantly rang Rear Admiral Ritchie and told him that I was now convinced that the incident had never occurred. He advised me that he would relay that information to the CDF and he subsequently rang me back to advise me that he had made that call and passed that information. From my perspective, from that moment forward I was convinced the incident had not occurred and I was satisfied the chain of command had been informed.³⁷

Although Smith's doubts began to form on the morning of 9 October, he "did believe such an incident had occurred from the period 7 October through to 10

³⁷ *Transcript of Evidence* pp. 584-5

October.”³⁸ Rear Admiral Smith rang Rear Admiral Ritchie because the latter was his immediate superior in the chain of command; at no time did Smith speak to the CDF himself, nor to the Minister.³⁹

32. Rear Admiral Ritchie’s recollection is, however, slightly different. He had, it will be remembered, been approached by Scrafton on the morning of 10 October, seeking photographic evidence.

Rear Adm. RITCHIE - ... I did have contact with Mr. Scrafton on, I believe, 10 October. Mr. Scrafton rang me in the morning and my recollection is that he was asking about evidence in support of the claim that children were thrown overboard. It may not have been in exactly those words, but I have no clear recollection of exactly what it was. At any rate, it caused me to talk to Admiral Smith. I know that Admiral Smith talked to either Silverstone or Commander Banks, and I was advised about mid-day of that day that the electro-optical film – the video that we all talk about – showed that there were no children thrown overboard. It showed that there was one child held over the side, that people were jumping over the side of their own volition and that one 13 year-old – and he has variously been described as 13 to 15, or 17 to 18 but at the time I recorded him as a 13 year-old – was pushed over.

I was also told that the CO *Adelaide* had thought that there might be reports able to be taken from sailors who were on the disengaged side – that is, the side that the camera could not see – that there might be children in the water. At 12.42, I passed that information back to Mr. Scrafton. That is the only contact that I recall with ministers or ministers’ staff in this period.

Senator FAULKNER – Was Mr. Scrafton basically asking you if you were aware of any sort of evidentiary support for claims that children had been thrown overboard – is that a fair way of putting it?

Rear Adm. RITCHIE – My recollection is, yes, he rang me up and said, “Chris, what have we got that supports the claim that children were thrown overboard?” At this time I still believe that it was true.

Senator FAULKNER – I think it is fair to say that you do not believe it is true for much longer.

³⁸ *Transcript of Evidence* p. 533

³⁹ *Transcript of Evidence* p. 585

Rear Adm. RITCHIE – Not for much longer, no.

Senator FAULKNER – It might be useful for the record if you could say when it became clear to you that children had not been thrown overboard.

Rear Adm. RITCHIE – Again, in my recollection, it is clear to me on the 11th that in all probability children have not been thrown overboard, because on the 11th I see the statements taken from the sailors concerned on the *Adelaide*, and the last vestige of hope, if you like, was the fact that there would be statements taken from sailors. I already knew that there was nothing on the video. I knew that there was nobody coming forward and saying that they had seen it, but I believe that there was a possibility that the statements taken on the 10th would include that. Indeed, as we all know, there is one person, the EOTS operator, who says in his statement that he thought one child was thrown overboard; there are 15 who say that they were not. So, by the 11th, it was clear to me. ... [M]y definite recollection when I saw the statements is that I thought that this in all probability did not happen.⁴⁰

There was no contact from Rear Admiral Ritchie to the Minister's office from the time at which he had arrived at that view (his last contact with the Minister's office having been at 12.42 on the previous day, at which time he still believed the report to be true). Observing the chain of command, Rear Admiral Ritchie raised the matter with his immediate superior, Admiral Barrie.

33. The Ritchie/Barrie conversation, which took place by telephone on the morning of Thursday 11 October sometime *after* the Barrie/Reith conversation concerning the misattribution of the photographs, is thus critical. It occurred at a time by which each officer in the chain of command – Banks, Silverstone, Smith and Ritchie – had arrived at the view either (a) that no children had been thrown overboard; or (b) that there was no documentary or photographic evidence to that effect.

31. Four observations should be made at this point. In the first place, it is by no means clear that any of the officers concerned drew a distinction in their minds between those two propositions: indeed, at least one of them seems to have deduced, from the absence of photographic or documentary evidence, that the incident did not take place. Secondly, they appear to have reached that view for different reasons. For Ritchie, it was the witness statements. For Silverstone, it appears to have been the mistaken attribution of the photographs.

⁴⁰ *Transcript of Evidence* pp. 368-9

For Smith, it was his conversation with Banks. For Banks, it was a variety of circumstances. The third point that should be made is that, even at this stage, Banks quite properly admits that his own recollection of the event was uncertain: in Cmdr. Banks' Statement of 10 October, he said, essentially by way of commentary upon his own state of mind:

21. I have since been questioned repeatedly about this event (and to a lesser [sic.] extent others) and I am now so full of conflicting information of what was [sic.] seen and heard by others and me and stated by others and me that it is difficult to recall with absolute veracity. Nevertheless I am prepared to attest to what I saw.
22. For the record quote I saw a child held over the side by a man. I did not see any children in the water. I did see 13 UBAs voluntarily enter the water from the SIEV and watched their subsequent recovery. I advised CJTF 639 that this had happened and that I could see a man threatening to put a child over the side. I advised that there had been no loss of life. I signalled ashore that SUNCs were making threats to jump overboard and some had done so and that some had been thrown overboard unquote.⁴¹

32. The final observation that should be made is that those who asserted that there was no evidence that a child or children had been thrown overboard, were wrong. There was, of course, clear and strong evidence to support the original allegation – the fact that Banks reported it at the time, a report of which Silverstone made a contemporaneous record in circumstances in which, for the reasons we have discussed, it is most unlikely that he would have been mistaken. A contemporaneous record of events, made by an experienced officer, written as they are being narrated to him, would virtually always be preferred to the piecing together of events by the narrator some days later when his mind was “full of conflicting information of what was seen and heard by others and me and stated by others and me.” Indeed, Cmdr. Banks' description of his approach to the various pieces of “conflicting information” in his statement of 10 October is almost a textbook description of the process of reconstruction – i.e., the arrival at a coherent version of events upon the basis of the reconciliation of a variety of different and in some cases inconsistent information. There is the world of difference between that exercise, and unassisted first-party recollection. That is not meant as a criticism of Cmdr. Banks: on the contrary, one of the professional skills of a commanding officer,

Statement by Commander Norman Banks, 11 October 2001 “Op. Relex – Commanding Officer's Statement Reference SIEV 04 Manoverboards”, p. 4

as the Committee was told, was the *ex post facto* assessment of reports and documentary evidence to arrive at an accurate assessment of what actually took place. That was the task which Cmdr. Banks was attempting to perform in his Statement. The point is, however, that in performing that exercise, he was acting as an analyst, not as a witness. As he narrated events as he saw them and reports as he received them from the bridge on the morning of 7 October, he was acting purely as a witness – reporting what he was seeing and hearing. The witness’s instant, contemporaneous, unassisted, unreflective narrative, as reliably recorded by his interlocutor, would usually carry more evidentiary weight than the analyst’s *ex post facto* reconstruction.

33. The Chief of Navy, Vice Admiral Shackleton, put the same proposition very simply: “it is true to say that often the first call is the right call”:

We place great faith in our commanding officers to make calls as they see it and for those calls – by which I mean, reports – to be informed by all of their experience in interpreting the circumstances as they see them around them. So, when the report would have arrived with the CDF – and he obviously needs to speak for himself – he would have taken that report to have had great integrity and he would not have been easily persuaded to change that assessment, unless the commander himself was quite emphatic about it. But, even then, in the circumstances it is true to say that often the first call is the right call, even though doubts start to come into your mind later on. So I think CDF was presented with a real dilemma.

...

Senator BRANDIS – Accepting what you say, as I do, nevertheless, whether it be an observation or an assessment, it is merely the description of an observed phenomenon – something somebody saw. And even though what he saw he may have seen imperfectly, the proposition I am putting to you is that he will never be in a better position to make that assessment or to say what he saw than he is at the moment of seeing it.

Vice Adm. SHACKLETON – Agreed.

Senator BRANDIS – That is the distinction between narration and recollection. Narration does not depend upon memory and it does not depend upon reconstruction or it does not depend upon doubts, or a man working something over in his own mind, whereas recollection does. Would you agree?

Vice Adm. SHACKLETON – I would agree with that.⁴²

35. A related issue is the very high value which the military places upon the reliability of the observations of commanding officers, whose reports will not lightly be set aside by those higher in the chain of command. The Chief of the Air Force, Air Marshal Houston, gave this evidence:

Senator BRANDIS - ... [A] report from a commander in an operational situation would not lightly be set aside or varied by those further up the chain of command. It may be supplemented or fleshed out by fuller information arriving and assimilated subsequently, but it would not lightly be set aside, would it?

Air Marshal HOUSTON – No, it would not be set aside.

Senator BRANDIS – Of course, it may be wrong. Human error is part of the human condition. I am not saying that there is an absolute and dogmatic adherence to every report from a command situation. The point I am merely trying to get across or to see if you agree with it: if there is a report, those further up the chain of command have an expectation in the military that it is reliable and can and will be relied upon and it would not lightly be set aside. Would you agree?

Air Marshal HOUSTON – I would agree.

...

Senator BRANDIS – I am simply putting the almost banal proposition that, if you want to find out what happened, you go to the man or woman on the spot, whether they be the commander or a person who was directly engaged in the relevant episode. The further away you get from the eyewitness, the less reliable the account will be. Would you agree with that?

Air Marshal HOUSTON – The information that is used further up the chain of command relies totally on the reporting from the tactical level. From that point of view, I would agree.⁴³

34. Admiral Barrie's evidence stressed the importance of both of these values: the presumptive superiority of immediate observation over reconstruction ("the

⁴² *Transcript of Evidence* pp. 107-8

⁴³ *Transcript of Evidence* pp. 1053-4

first call is the best call”); and the necessity for those higher in the chain of command not lightly to interfere with reports from the field:

Senator FAULKNER – [C]an you say now whether Defence has, as we speak, a concluded view on the question of whether kids were thrown overboard from SIEV 4?

Adm BARRIE - My view is that there is no concluded view. I go back to the point I made in my opening evidence. The commanding officer is making the call. He is there – he is the only person there – and we are all the armchair experts. It is my judgment that, in most circumstances, the call a commanding officer is going to make early on is likely to be more accurate than the reconstruction he puts on it after he has thought about it and people have raised some doubt about it ...⁴⁴

Senator BRANDIS – Admiral Barrie, I would be right – would I not? – in thinking that the reliability of reports received up a chain of command or a chain of reporting is a very important value for the Navy –

Adm BARRIE – Yes.

Senator BRANDIS – that one of the professional skills in which naval personnel and in particular commanding officers are trained and in which they accomplish a high level of expertise in fulfilling is the ability to provide reliable reporting –

Adm BARRIE – Yes.

Senator BRANDIS – and the Navy relies heavily upon that capacity in order to make operational and command decisions?

Adm. BARRIE – Correct.

...

Senator BRANDIS – So that initial position, the reliability or, if you like, the authority of that initial report, would not lightly be set aside. It might ultimately have to be, as indeed, in this case, it was. But it would not lightly be set aside – would you agree?

Adm BARRIE – I agree.

⁴⁴

Foreign Affairs, Defence and Trade Estimates Committee Hansard 20 February 2002 p. 128

Senator BRANDIS – Nor should, as a matter of proper procedure, such a report lightly be set aside?

Adm BARRIE – No.

Senator BRANDIS – And you as the ultimate commanding officer of the military would in fact be – may I suggest to you, with respect – behaving quite inappropriately were you to disregard or set aside a report on the basis of which decision had already been made, unless you were well satisfied that it was wrong?

Adm BARRIE – Yes.

Senator BRANDIS – I do not want to fall into lawyers jargon but I may have to be forgive for doing so once. There is sort of an onus of proof on those who seek to establish a contrary version of events to demonstrate that the initial report is wrong, and until that is demonstrated the initial report stands?

Adm BARRIE – These would be my words: as a concept that was what underpinned my response to the raising of doubts – that is, unless you can persuade me that is wrong I will stand by my advice.

...

Senator BRANDIS – Whether we use the language of onus of proof or degree of persuasion or degree of satisfaction, you need to be persuaded –

Adm BARRIE – I need to be satisfied.

Senator BRANDIS – or satisfied that the initial report is wrong before you abandon it?

Adm BARRIE – Yes

Senator BRANDIS – And until you reach that level of persuasion or satisfaction, all you can do is continue to act upon it – would you agree?

Adm BARRIE – That is correct.⁴⁵

⁴⁵ *Transcript of Evidence* pp. 788-90

35. It is in light of those considerations – which all three of the service chiefs who appeared before the Committee (the CDF, the Chief of Navy and the Chief of the Air Force) regarded as core values of the military – that Admiral Barrie’s critical conversation with Admiral Ritchie on 11 October must be considered. In his evidence to the Select Committee, Admiral Ritchie said:

Senator FAULKNER – Are you confident that in your discussion with CDF on 11 October the fact that there was no evidentiary support for claims that children had been thrown overboard was made clear?

Rear Adm RITCHIE – Yes, I am confident.

...

Rear Adm RITCHIE – I only have a direct recollection of raising this particular issue, and the accuracy of what was being reported, twice with CDF – once on the evening of the 10th and then again on the 11th. I came away from the conversation on the 11th convinced that the issue was a dead issue.⁴⁶

However, in his evidence to the Defence Estimates Committee, Admiral Ritchie’s recollection was somewhat different:

I have never said that I said to the CDF, “This definitely did not happen.” What I have said is that there is doubt about the fact that this happened.⁴⁷

36. Admiral Barrie’s version of the conversation is this:
[On 11 October] I was telephoned by COMAST. My recollection of it was that he told me that there were now doubts about whether children were ever thrown overboard. I do not remember his being more definite than that. I recall that he referred to the photographs and to the video, and whether or not they were conclusive one way or the other. I said to him that photographs alone were only part of the evidentiary material and that until he could produce evidence to show that what had been originally reported to me was wrong, I could not change my

⁴⁶ *Transcript of Evidence* p. 373. Both Ritchie and Barrie agree that the only topic discussed on 10th October (which was a brief conversation) was the misattribution of the photographs on the *7.30 Report*, while the conversation on 11th was on the substantive issue of whether the report of children overboard was correct.

⁴⁷ *Foreign Affairs, Defence & Trade Estimates Committee Hansard* 21 February 2002, p. 182

advice to the Minister. I also said to COMAST there was obviously confusion about what took place. I directed COMASR to ensure that while this was fresh in everyone's mind that witness statements and any other evidentiary material should be collected.⁴⁸

... I offered the commanders an opportunity to come back and convince me that I was wrong if they had material that was evidence and compelling. ... So in my view I do not think that the discussion was as definite as Rear Admiral Ritchie recalls. I think he understood that an opportunity had been given to him to come back and fight a *repechage* if he wished to, and at no time did he.

...

I guess the issue for me is that, having offered the opportunity for somebody to come back and persuade me authoritatively otherwise, that did not occur.⁴⁹

Admiral Barrie's evidence before the Select Committee was consistent with his evidence before Defence Estimates. In particular, he did not ascribe the same significance as did Admiral Ritchie to the fact that the photographs had been misattributed the evening before:

In the context of photographs and the judgment about people being thrown or put over the side, the photographs themselves do not constitute the entire evidentiary material. They certainly support witness statements, perceptions formed by the commanding officer and those sorts of things. It is my view that the commanding officer's initial report which was reported to me on the Sunday in the subsequent events while I was CDF [*sic.*] ought to stand – that is, he reported that people were thrown over the side. Although there was discussion and doubt about some of the evidentiary material, it was my judgment that the commanding officer ought to be supported and his judgment ought to stand.

...

⁴⁸ *Transcript of Evidence* p. 742

⁴⁹ *Transcript of Evidence* p. 749

I have to say I was never persuaded myself that there was compelling evidence that the initial report of the commanding officer was wrong. It was my view that the photographs were simply part of the evidentiary material. The really important aspect of this are the witness statements and perceptions, and that initial report, so far as I was concerned, ought to stand. I never sought to recant that advice which I originally gave to the Minister.

...

... I have asked myself: should I have made a lot more effort in discussing with other those doubts that have been expressed to me? To be candid about it, my job is to be the principal military adviser to the government. ... It was my persistent view, until November, that there was no compelling evidence to show that the CO *Adelaide*'s call was wrong. My view – and it goes to the heart of this – is that my people had those discussions with me but I was not persuaded that there was compelling evidence that the CO of *Adelaide* was wrong. Evidentiary material or photographs, which are simply part of that, do not tell the whole story.⁵⁰

38. It is central to the understanding of this case to appreciate that, at the time of his 11 October conversation with Ritchie (which, according to Ritchie's statement to the Powell Inquiry, took place at 10.00 a.m.), Ritchie had not received the e-mail from Silverstone, reporting Silverstone's conversation with Banks and Banks' reassessment of his view that a child had been thrown overboard. (The e-mail was not transmitted until 1.15 p.m.). Nor, at that time, was Ritchie aware of two other important documents prepared by Banks: the "chronology" and Banks' Statement. The former had been transmitted to Smith on 10 October, and the latter in the early afternoon of 11 October. Indeed, the chronology *was never brought to Barrie's attention* until the Estimate hearings on 20 February:

On the night of 20 February in estimates, when Rear Admiral Ritchie and I were looking at that message of 10 October, he said to me "if I'd only had that at the time we had that discussion, I would have come back to you".⁵¹

⁵⁰ *Foreign Affairs, Defence & Trade Estimates Committee Hansard* 20 Feb 2002, pp. 100-02

⁵¹ *Transcript of Evidence* p. 749

“It was in my mind all the time that my duty as the chief in the circumstances – because the reports as I heard them were not any special surprise – was to support the commanding officer.”⁵²

So Admiral Barrie was defending the position of his commanding officer (as he understood it), while leaving it open to those above him in the chain of command to persuade him, with fresh evidence, that the initial call was wrong. Unbeknown to Barrie (for the reports indicating Banks’ considered view were not received until the afternoon of the day of his conversation with Ritchie), Banks did not continue to hold the view of the events of 7 October which Barrie understood him to hold. When those reports (i.e., the Silverstone e-mail, the chronology and the Banks Statement) were received, they were never drawn to Barrie’s attention.

39. In approaching the matter in this fashion, Admiral Barrie behaved in an absolutely proper and appropriate manner. There are three particular respects in which his approach was entirely correct. In the first place, he observed the important principle that “the first call is usually the best call.” Secondly, he recognized that reports from commanding officers in the field ought not lightly to be set aside. Thirdly, he recognized that the photographs were not the whole story and that the misattribution of the photographs did not conclusively establish that the “children overboard” incident did not happen. In other words, Admiral Barrie did not make the logical error (which others apparently did) of concluding that from the fact that a mistake had been made about the photographs – so that they were of no probative value – it followed that therefore the incident never occurred. Nevertheless, Admiral Barrie left it open to his subordinates to persuade him otherwise – but they never did.

40. It was in that frame of mind that Admiral Barrie advised the Minister on 17 October:

On 25 October, I went to East Timor for a short visit. On 29 October, I went to Singapore and Malaysia and then Hawaii before returning to Australia on 10 November. Prior to my departure, and possibly on 17 October, I had a conversation with the Minister in which I informed him that I had been told by the Chief of Navy and COMAST that there were doubts about whether children had ever been thrown over the side of SIEV 4. I said to him the doubts seemed to be based on what the photographs showed – or did not show – and an inconclusive video. I said that I had indicated to them my position was that, until evidence was produced to show the initial report to me was wrong, I would stand by it. As at that date, no further evidence had been provided to me.⁵³

⁵² *Transcript of Evidence* p. 758

⁵³ *Transcript of Evidence* pp. 742-3

Under questioning from Senator Faulkner, Admiral Barrie elaborated:

Senator FAULKNER – Was the 17 October face to face discussion a photograph management issue, or an event management issue?

Adm. BARRIE – No, that was an event management issue. He just needed to know that these doubts had been raised and what I had done about them.

Senator FAULKNER - ... Would you accept that you were told on a number of occasions that children were not thrown overboard and that the photographs that had been published did not depict that event?

Adm. BARRIE – Yes.

Senator FAULKNER – In that circumstance, given that you had had that information – and those matters had been drawn to your attention in the way they were – do you think, beyond what you said to us a moment ago, that you should have taken other action before February to adequately inform government of what had occurred in this incident?

Adm. BARRIE – No, I would not say so. To go back to it, if I had directed Rear Admiral Ritchie to get to the bottom of the issue and make a positive determination one way or the other, in my view that issue would have been resolved within a few days and then I would have reported to government.⁵⁴

The matter was not raised again with Admiral Barrie prior to his departure overseas, either by the Minister, within the ADF, or by the Leader of the Opposition Mr. Beazley, to whom Admiral Barrie provided a number of defence briefings.⁵⁵

41. Admiral Barrie, in effect, told the Minister two things. In the first place, he informed him, as a matter of fact and as was the case, that doubts had been raised about the accuracy of the “children overboard” report. This was the first occasion upon which Admiral Barrie had broached the subject with the

⁵⁴ *Transcript of Evidence* p. 757

⁵⁵ *Transcript of Evidence* pp. 742-3

Minister since his conversation with Admiral Ritchie on 11 October. There is no suggestion that the Minister had received any earlier indication about the existence of doubts. Secondly, the CDF advised the Minister that, notwithstanding those doubts, he adhered to his initial advice, but that he had invited those who expressed the doubts to him to come forward with evidence demonstrating that the original version of events was inaccurate.

42. In those circumstances, it is difficult to see what else the Minister could have done other than accept the CDF's advice. He had no basis upon which to challenge it, nor had he the capacity to second-guess it. The CDF, not the Minister, is the commander of the Australian Defence Forces,⁵⁶ and it is the CDF, not the Minister, who has power to issue orders or directions to members of the ADF. The CDF, under s. 9 of the *Defence Act*, is constituted as the adviser to the Minister "on such matters relating to the command by the Chief of the Defence Force of the Defence Force". The Minister having received that advice, and having no basis to dispute it, was properly bound to accept it.

43. The matter did not resurface for some three weeks. Then, on 7 November *The Australian* published an article called into question the validity of the "children overboard" allegations, based upon interviews with PIIs now at Manus Island. The Acting CDF on that day was Air Marshal Houston (who had assumed the role the previous day). Houston, having seen *The Australian* report, raised the matter with Air Vice Marshal Titheridge, who told him about the video taken by the *Adelaide* EOTS operator. Houston inquired about the possibility of viewing the video, however it was held in Sydney and it was not possible to view it in Canberra. He was nevertheless told by Titheridge that the video did not show children being thrown into the water, and was "inconclusive":

The whole thrust of the conversation was what the video showed and what came out of that was that the video did not show that there was any evidence to support the fact that children had been thrown overboard. I think the word he used was that it was 'inconclusive' in terms of supporting the child overboard proposition.

Senator BRANDIS – "Inconclusive" means it is not conclusive one way or another, doesn't it?

Air Marhsal HOUSTON – That was the word he used. I think the reason he used that word was that the video showed what happened down one side of the vessel and did not actually show what had happened on the other side of the vessel. I would assume that is why he came to the view of it being inconclusive.

⁵⁶ *Defence Act* 1903, s. 9

In fact, I think he actually said that. He said, “Therefore, it’s inconclusive.”⁵⁷

44. Houston then had conversations with Lt. Col Day (who was unable to provide him with any relevant information) and with Brigadier Gary Bornholt, the Military Adviser, Public Affairs and Corporate Communication of the ADF. It was Bornholt who brought to Houston’s attention a signal from the *Adelaide*, in the form of a chronology, dated 10 October. The chronology, which was a signal giving an abbreviated summary of the sequence of events against times, does not mention children in the water. As he read the message, it appeared to Houston that the Minister may not be aware of it.⁵⁸ Houston’s evidence was:

The military message, I believe, had not been seen by anybody in the chain of command in Canberra before I saw it. So essentially this was something no other CDF – acting CDF or permanent CDF – had seen previously. ... It was a message on 10 October from the *Adelaide*. It was addressed to the Maritime Commander, I believe. There were no Canberra addressees on the message. This is something that was provided to me by Brigadier Bornholt on the day in question.⁵⁹

45. Mr. Reith, apparently also having seen *The Australian*, was seeking urgent advice from Houston. They spoke by telephone. Air Marshal Houston’s account of the conversation is as follows:

There was obviously a considerable amount of confusion. I understood from my discussion with Air Vice Marshal Titheridge that Minister Reith was very anxious to talk to me to get my advice on this matter. So I phoned him and we had a chat. I started off by telling him that I felt that it was a very confused situation, but from this evidence that I had seen it appeared to me that there had been a boarding operation on the 7th, people had jumped into the water, there had been an incident with a child being held over the side, but fundamentally there was nothing to suggest that women and children had been thrown into the water.

I then went on, as I can recall it, to describe the fact that on the second day there was a rescue operation when the vessel sank and that the photograph, from what I had just been advised, related to

⁵⁷ *Transcript of Evidence* p. 1060

⁵⁸ *Transcript of Evidence* p. 104

⁵⁹ *Foreign Affairs, Defence & Trade Estimates Committee Hansard* 20 February 2002, p. 106

the events of 8 October. After I had given him this run down of what happened there was silence for quite a while. It seemed to me that he was stunned and surprised. Essentially, he then said “Well, I think we’ll have to look at releasing the video.”

I omitted to say earlier on that I also explained to him that the video was inconclusive in proving whether any women or children were thrown into the water due to its poor quality. I would be quick to add, however, that I did not see the video. I was going on advice that had been provided to me by Air Vice Marshal Titheridge and Brigadier Bornholt. As everybody would know, a short time later the video was released to the public that evening – it may well have been the next morning.⁶⁰

46. After Air Marshal Houston gave this evidence to the Defence Estimates Committee in February, Mr. Reith (by now, of course, a private citizen) issued a statement outlining his memory of the conversation. He said:

I can confirm that I did speak with Air Marshal Angus Houston on Wednesday 7 November 2001.

I had asked Air Marshal Houston contact me that day regarding reports that had appeared in that morning’s press.

...

My recollection of our conversation is that he had that morning examined some material in the Chief of the Defence Force’s office which had cause him to deduce that as there was no evidence to support the claim that children had been thrown overboard then the event had not happened. Such a conclusion contradicted advice provided to me previously by the Australian Defence Force.

I asked him questions to the effect whether all the information was available, including statements from defence personnel and whether there had been a thorough investigation and a properly concluded view formed.

I was concerned that I had not had the opportunity to speak to the Chief of the Defence Force and had not had a proper detailed and conclusive report.

⁶⁰ *Foreign Affairs, Defence & Trade Estimates Committee Hansard* 20 February 2002 pp. 104-5

Although he had a report on the video, he had not seen the video. I immediately arranged for a person in my office to view the video. I was still under the impression that the video supported earlier advice and I thought it should be released. Later on that day I recommended the release to the Prime Minister.

I am certain I did not discuss Air Marshal Angus Houston's comments with the Prime Minister because I felt it was wrong to do so without talking first to the CDF; I thought the video should be reviewed and I wanted some further advice on the investigation.⁶¹

47. There are three points to be made about this conversation. The first is that the recollections of Air Marshal Houston and Mr. Reith are in all material respects consistent. Secondly, as Mr. Reith points out, other than what was said in relation to the video, Air Marshal Houston was telling Mr. Reith nothing that Admiral Barrie had not told him weeks earlier, on 17 October, i.e. that there were doubts about the accuracy of the initial "children overboard" report. Mr. Reith, who was undoubtedly aware that Air Marshal Houston had had no prior involvement in or familiarity with the issue, was surely obliged to discuss the matter with Admiral Barrie, upon whose advice he had been acting up to this point, before abandoning that advice on the say-so of a person who did not claim to know anything about the matter. Thirdly, Mr. Reith's reaction was revealing, in two ways. According to Air Marshal Houston, he was "surprised" – a reaction hardly consistent with an antecedent belief that the "children overboard" allegation was inaccurate. Even more revealingly, Mr. Reith's immediate response was to release the video (as was done). He had just been told that the video was "inconclusive" – i.e., that it provided no support for the view that children were thrown overboard. If Reith's motive was to perpetuate in the public mind a story which he believed to be false, that is the last thing he would have done. On the contrary, his decision to release the video, knowing that it did not assist the "children overboard" case (and, in the minds of some, went some way towards refuting it) is only consistent with a readiness to place information in the public arena whether or not it suited the Government's interests.

48. It is not in dispute that Mr. Reith spoke to the Prime Minister on the afternoon of November 7, to recommend the release of the video. Both parties to that conversation are in agreement that Mr. Reith did not discuss with the Prime Minister his conversation with Air Marshal Houston. Mr. Reith's reason for not doing so is perfectly understandable and proper:

⁶¹ Statement by Hon. Peter Reith 21 February 2002.

I am certain I did not discuss Air Marshal Angus Houston's comments with the Prime Minister because I felt it was wrong to do so without talking first to the CDF.⁶²

Mr. Howard, in a *Four Corners* programme on 4 March 2002, when asked of his conversation with Mr. Reith on 7 November, said:

Well, I haven't had a discussion with Mr. Reith about his discussion with Air Marshal Houston because until the Air Marshal gave that evidence, I didn't know of that discussion.⁶³

The evidence of the only two participants in the conversation is consistent and unequivocal; there is not a syllable of evidence to suggest that the conversation was other than as the two participants remember it. Further, since we know from his statement that Mr. Reith was not prepared to accept Air Marshal Houston's interpretation of events, and so jettison Admiral Barrie's advice, at least until he had had the opportunity to speak with Admiral Barrie again, it is inherently implausible that Mr. Reith would have conveyed to the Prime Minister advice about which he was (to say the least) sceptical and which was at variance with the advice upon which he was relying.

49. Mr. Reith was not only acting reasonably in continuing to put his faith in Admiral Barrie's advice; he was also right to do so. Under questioning before the Select Committee, Air Marshal Houston conceded the tenuous nature of the information upon which he was relying. He had no personal familiarity with the matter. He had spoken to none of the witnesses (nor, indeed, to anyone in the chain of command).⁶⁴ His conclusions were based upon conversations with three people - Air Vice Marshal Titheridge, Lt. Col. Day and Brigadier Bornholt, a second-hand account of the video, and the "chronology document". Of the three people to whom he spoke, one (Titheridge) was still of the opinion that the initial report of "children overboard" was accurate (and was to remain of that view until 25 November⁶⁵), the second, Day, introduced him to "no relevant material fact",⁶⁶ while the third, Bornholt, was not a witness to any of these events, but did introduce him to the chronology.⁶⁷ The video was, as Houston concedes, inconclusive. Houston's entire advice appears to have been based upon the chronology, on the basis of a belief that "If a child had been in

⁶² *ibid* ABC Transcript, *Four Corners* 4 March 2002, p. 19
[www.abc.net.au/4corners/stories/s496427.htm]

⁶⁴ *Transcript of Evidence* pp. 1059-61

⁶⁵ *Transcript of Evidence* p. 684

⁶⁶ *Transcript of Evidence* p. 1061

⁶⁷ *Transcript of Evidence* p. 1062

the water, it would have been reported in the text of the message.”⁶⁸ Yet the chronology itself was equivocal on the issue of whether there were children overboard; it merely reported MOBs (i.e. manoverboards) which, Houston agreed, was a generic term equally apt to cover men, women and children.⁶⁹ As well, Houston appears to have made the logical error of assuming that, simply because the photographic evidence did not establish the accuracy of the initial report, they proved the negative.⁷⁰

50. When another piece of original evidence – the *Adelaide*’s boarding log – was produced to Air Marshal Houston, which contained an entry (“believed child last MOB”) providing some evidentiary support for the initial report that a child had indeed been thrown into the water, he conceded that, had he been aware of it on 7 November, his advice to the Minister would have been different:

Senator BRANDIS – I want you to answer this question. If you had been aware on 7 October [*sic.*] of this piece of information – that is, that the boarding log records at 0550 “believed child last MOB” – would you have advised the Minister that there was no child overboard?

...

Air Marshal HOUSTON – Of course what would have been required was a lot more questions. That would have been documentary evidence that a child perhaps had been in the water. If the captain had confirmed the veracity of that entry in the log and had put it in his summary, of course that would have been the documentary evidence that was required to support the fact that there were children in the water. But that was not here.

...

Senator BRANDIS – May I take it, then, that if the four-page signal upon which you did rely had included the words from the boarding log “0550 believed last child MOB”, you would not have given the advice to the Minister you did give?

Air Marshal HOUSTON – Not in relation to the first part of it, which was the child overboard.⁷¹

⁶⁸ *Transcript of Evidence* p. 1064

⁶⁹ *Transcript of Evidence* p. 1066

⁷⁰ *Transcript of Evidence* pp. 1068-9

⁷¹ *Transcript of Evidence* pp. 1075-6

That is not to say that Air Marshal Houston's advice was, in the end, wrong. But what it does demonstrate was the entire appropriateness of the Minister not abandoning the advice he had received from Admiral Barrie because of the views of another officer whose familiarity with the events was, at best, sketchy and incomplete, and who himself conceded that, had he been aware of other evidentiary material of which on 7 November he was unaware, he would not have given the advice in the first place.

51. In addition to the attacks by innuendo and surmise upon senior politicians and military officers, distinguished public servants also suffered from attempts by Labor senators to assert that in all the circumstances they not only failed in their duty to the Australian public but were complicit in so doing.

52. At Table 5.1 and Table 5.2 the Majority Report details occasions on which Defence notified the Minister for Defence or his staff about assertions relating to the correction of the initial report that children had been thrown overboard.

53. The Majority Report then outlines three other occasions on which Defence allegedly provided evidence relating to the correction of the initial children overboard report. Those stated occasions were:

- Group Captain Walker's advice to the People Smuggling Taskforce on 7 October 2001;
- Strategic Command's chronology of events supplied to the Social Policy Division in the Department of Prime Minister & Cabinet on 10 October 2001; and
- advice from Commanders King to the Defence, Intelligence and Security Branch, International Division, in the Department of Prime Minister & Cabinet on 11 October 2001.⁷²

54. The Majority Report notes that "To the Committee's knowledge, apart from this advice to the PST and to other areas of the Department of the Prime Minister & Cabinet, Defence provided advice relating to the correction of the initial children overboard report to *no other agency or individual*."⁷³

55. It is the contention of government senators that none of the "advice" to the PST and to PM&C warranted a correction by them to the initial advice from Defence that a child or children had been thrown overboard.

⁷² Majority Report, 5.61.

⁷³ Majority Report, 5.62 (emphasis added).

56. Group Captain Walker gave evidence that at the morning meeting of the PST on 7 October he could find no evidence in the written message traffic from defence sources that mentioned children. He told the Committee that he informed the PST's evening meeting on 7 October that he "had no written confirmation that children had gone into the water."⁷⁴

57. The claim is made in the Majority Report⁷⁵ that Ms Halton in particular, and the PST in general, should have been alerted by Captain Walker's observation to the possibility that children had not been thrown overboard from SIEV 4. A complete examination of the evidence, however, shows that this is not the case.

58. Ms Halton's evidence is clear. She told the committee that "... at no time was the PST or I told that children were not thrown over the side of SIEV 4 on 7 October or that the initial advice from Defence was wrong or in doubt."⁷⁶

59. Ms Halton told the Committee that she could not recall Group Captain Walker informing the evening meeting of the PST that he had been unable to find signal traffic to justify the claim made that morning that children had been thrown overboard. "However", Ms Halton said, "such a comment would not have raised particular concerns as our experience to date had been that signal traffic could often be slow in arriving."⁷⁷

60. Moreover, all members of the PST were able to contribute to an options paper that was prepared at the evening meeting of 7 October for the Prime Minister and the Minister for Defence. During an extensive editing process certain information was specifically caveated by Defence; for example, the number of people on board SIEV 4. By way of contrast, Ms Halton told the Committee, "The later statement – that passengers were 'jumping into the sea and passengers throwing their children into the sea' – was not."⁷⁸

61. The options paper was completed on the evening of the 7 October. It was the recollection of witnesses that Group Captain Walker stayed until the end of the discussion of the defence material but that, in any case, Air Vice Marshal Titheridge arrived part way through the meeting to assume responsibility for Defence input into the options paper. Air Vice Marshal Titheridge then stayed until the completion of the options paper and the conclusion of the meeting.

⁷⁴ *Transcript of Evidence* p. 1684.

⁷⁵ Majority Report, 5.69 – 5.82.

⁷⁶ *Transcript of Evidence* p. 900.

⁷⁷ *Transcript of Evidence* p. 901.

⁷⁸ *Transcript of Evidence* p. 901.

62. The critical issue was that Air Vice Marshal Titheridge cleared the options paper that was prepared for the Prime Minister and Minister for Defence. Ms Halton told the Committee that :

The task force member was Air Vice Marshal Titheridge. Air Vice Marshal Titheridge was the senior Defence person who cleared that paper line by line. Group Captain Walker was sitting in Titheridge's chair temporarily at the beginning of that meeting. He did not stay until the end of the meeting; he left before the close of the meeting. The paper was signed off by Air Vice Marshal Titheridge, who had been through it line by line.⁷⁹

63. In response to a question from Senator Faulkner suggesting that it was Ms Halton's responsibility to "... ensure that Air Vice Marshal Titheridge checked the basis of that information [ie relating to claims that children had been thrown overboard] before it was communicated to the Prime Minister",⁸⁰ Ms Halton replied that:

It was always the responsibility of each agency to reconcile its own views in bringing them to the task force. At the end of the day, it was for Air Vice Marshal Titheridge to be satisfied from a defence perspective the advice was correct. He – as you know, because the comment is not caveated – was clearly satisfied.⁸¹

64. In short, even if Group Captain Walker did flag concern that there was no signal traffic confirming that children had been thrown overboard there are two reasons why this does not compromise Ms Halton's claim that there were no doubts on the issue expressed by Defence. First, the experience of the PST was that signal traffic could often be slow in arriving. In a fast moving environment the lack of signal traffic confirming early reports would not have raised any particular concerns.

65. Secondly, and much more importantly, Air Vice Marshal Titheridge was the senior defence representative on the PST. He was the Head of Strategic Command and one of the nation's senior military officers. He cleared the options paper that was submitted to the Prime Minister and the Minister for Defence. While in editing the options paper Defence had tempered or qualified their advice in relation to certain facts, no such qualification or caveat had been sought by Air Vice Marshal Titheridge in relation to the observation in the options paper that children had been thrown overboard.

⁷⁹ *Transcript of Evidence* p. 2044.

⁸⁰ *Transcript of Evidence* p. 2045.

⁸¹ *Transcript of Evidence* p. 2045.

66. The second occasion when Defence provided advice relating to the correction of the initial children overboard report was when it provided a chronology of events of the SIEV 4 incident and its aftermath to the Social Policy Division of the Department of Prime Minister and Cabinet on 10 October.

67. Ms Halton and Ms Edwards sought the information from Defence either because there was no mention of children being thrown overboard in situation report 59 from the Department of Foreign Affairs and Trade on 8 October⁸² or because of continued media reporting about the issue.⁸³

68. Included at the conclusion of the chronology is a footnote which states that “There is no indication that children were thrown overboard. It is possible that this did occur in conjunction with other SUNCs jumping overboard.”⁸⁴ Much was made in the Majority Report about Ms Halton’s failure to act upon receipt of this information. Again, however, the facts belie a conspiracy.

69. Ms Halton stated that she had no memory of seeing the chronology. While Ms Edwards claimed that she did show Ms Halton the chronology, their differing recollections are not critical.⁸⁵ Just prior to the evening meeting of the PST (at the same time Ms Edwards claims that she showed Ms Halton the Chronology) Ms Halton was contacted by the Minister for Defence. Mr Reith explained to Ms Halton that there was other evidence verifying claims that a child or children had been thrown overboard. It consisted of photographs (which he had released that afternoon as evidence of children overboard), a video of the incident and statutory declarations from the crew.

70. Ms Halton explained to the Committee the content of the phone call from Mr Reith:

At the same time, or shortly thereafter in any event or almost contemporaneously, as that footnote – and it was only a footnote and it was not accompanied, as I have already told you, by a red light flashing and a warning bell problem type alert from anyone that I am aware in Defence – we are told about the photos which duly appear on the front page of I do not know how many newspapers the next morning. We were told there was a video. It was acknowledged it was grainy, but we were told there was a video, and we were told there were witness

⁸² *Transcript of Evidence* p. 1705 (per Ms Edwards).

⁸³ *Transcript of Evidence* p. 2061 (per Ms Halton).

⁸⁴ Enclosure to Bryant Report, attached to Statement by Ms Katrina Edwards.

⁸⁵ It certainly does not justify the imputation by Senator Collins that Ms Halton accused Ms Edwards of being a liar. See *Transcript of Evidence* p. 2054.

statements. At the end of the day, with reasonableness and the balance and the weight of the evidence ... we took the facts as we knew them to the evening meeting [of the PST of 10 October]. No-one then came back to us and said, 'You're wrong!' And, as I have said, that was the last time, to my knowledge, that it was discussed. ... We put the information in front of the evening meeting – that was fine – and then it moved on.⁸⁶

71. Ms Edwards clearly corroborates Ms Halton's understanding of those conversations. She (Ms Halton) was advised

that there was no doubt that the incident had occurred and that a video of the incident existed, although it was of poor quality, that there were photos and that statutory declarations were being gathered from crew members.⁸⁷

72. Moreover, Ms Halton checked this information with other sources including Air Vice Marshal Titheridge and members of Mr Reith's staff.⁸⁸

73. Put simply, both the advice she had received as well as the clear balance of the evidence indicated to Ms Halton that there was no reason to doubt the initial Defence reports that children had been thrown overboard from SIEV4. This belief was not unreasonable. Ms Halton had received direct advice from the Minister for Defence that there was clear and positive evidence supporting the claim.

74. In any case, as Ms Halton recalled, this "interpretation of the facts of the case was put in front of the evening meeting of the 10th. Those facts were not denied."⁸⁹ Following this meeting of the 10 October 2001 the evidence is that the children overboard issue was never raised again at PST meetings.⁹⁰ Neither Defence generally, nor Strategic Command specifically, ever supplied definitive advice to overturn the initial report that children had been thrown overboard.

75. The Majority Report implies, however, that the PST operated in conspiratorial mode. The majority asserts that there was doubt about the veracity of the children overboard evidence because of the failure to include any reference to it in the talking points for the PST meeting on the evening of 10 October which were derived from the Strategic Command chronology.

⁸⁶ *Transcript of Evidence*, CMI 953. See also *Transcript of Evidence*, CMI 957.

⁸⁷ *Transcript of Evidence* p. 1705

⁸⁸ Enclosure to Bryant Report, Statement by Ms Jane Halton.

⁸⁹ *Transcript of Evidence* p. 957

⁹⁰ *Transcript of Evidence* p. 953.

Same old tactic. The evidence does not suit the majority so the only explanation is a conspiracy – this time of silence.

76. The final piece of evidence raised before the Committee relating to advice from Defence to the Department of Prime Minister and Cabinet related to the misattribution of photographs taken from the sinking of SIEV 4 on 8 October.

77. On 11 October 2001, Commander Stefan King was advised in informal circumstances by Commander Piers Chatterton, Director of Operations, Navy that the photographs taken of SIEV 4 on 8 October and released by the Navy were being misattributed. The photos were being portrayed in the media as evidence of the report that children had been thrown overboard on 7 October, rather than as photos of the rescue of passengers from the ocean during the sinking of SIEV 4 on 8 October. Later on 11 October Commander King passed this advice to his immediate supervisor in PM&C's Defence, Intelligence and Security Branch, Ms Harinder Sidhu and together they informed their branch head, Dr Brendon Hammer.⁹¹

78. The Majority Report asks why this information was not acted upon by PM&C.⁹²

79. There are three reasons why this information was given little weight by PM&C and, in particular, Dr Hammer.

80. First, the “information” was presented to Dr Hammer by Commander King as a “rumour”.⁹³ The information regarding the photographs was sourced from a conversation that Commander King had overheard in the “margins of a meeting” between Defence officials regarding the SIEV 4 incident.⁹⁴

81. Secondly, as even the Majority Report concedes, this issue did not fall directly within Dr Hammer's area of responsibility and that he was extremely busy with other matters.⁹⁵ So when Dr Hammer was asked by Senator Faulkner why he did not pass on the information, Dr Hammer replied:

... because it was presented to me as a rumour from a relatively junior officer who was not, to my knowledge, involved in any way in illegal

⁹¹ *Transcript of Evidence* p. 1491.

⁹² Majority Report, 5.125 – 5.142..

⁹³ *Transcript of Evidence* p. 1806.

⁹⁴ *Transcript of Evidence* p. 1550.

⁹⁵ Majority Report, 5.136 and *Transcript of Evidence* p. 1809.

immigration and people smuggling issues and who had not been over in the Department of Defence to discuss that matter in any formal way with anyone over there.⁹⁶

82. Thirdly, Commander King was not a formal liaison officer with PM&C. Dr Hammer and Ms Sidhu described him as a ‘seconded’ to PM&C⁹⁷ and, according to Dr Hammer, “...a line member of my branch, very much like any other member of the branch.”⁹⁸ Commander King had no formal or special role as a conduit of information from Defence to PM&C.

83. Thus, if Commander King’s information had veracity, Dr Hammer expected that liaison between Defence and PM&C would have occurred at the high level IDC that had been specifically created to discuss and analyse these issues – the People Smuggling Task Force.⁹⁹ Put simply, if there was any truth to the rumour, senior defence representatives would know about it and would pass the information on to Ms Halton and the PST.

84. It is for these reasons that Dr Hammer did not pass the information on.¹⁰⁰

85. The Majority Report also seeks to make something out of the revelation that on 7 November Ms Sidhu casually mentioned to another PM&C officer, Ms Catherine Wildemuth, that there were rumours circulating in Defence that photographs taken of SIEV 4 had been misrepresented.¹⁰¹ Ms Wildemuth passed this information to her supervisor Ms Bryant, who then contacted Ms Halton. In turn, Ms Halton then immediately rang Mr Miles Jordana, Senior Adviser (International) to the Prime Minister.

86. The Majority Report seeks to blame Ms Halton for “Although she passed the information on to the Prime Minister’s office, she did not embark on her own investigation of the truth of this significant matter.”¹⁰² This is grossly unfair.

⁹⁶ *Transcript of Evidence* p. 1808.

⁹⁷ *Transcript of Evidence* pp. 1550, 1856.

⁹⁸ *Transcript of Evidence* pp. 1857 and 1806-7.

⁹⁹ *Transcript of Evidence* p. 1806.

¹⁰⁰ Mention should also be made of the raising of allegations by Labor senators that Dr Hammer had attempted to interfere with Commander King in his role as a witness before this Committee (see, *Transcript of Evidence* p. 1829 passim). Having investigated the matter, however, the Senate Committee on Privileges “accepted Dr Hammer’s denial of any attempt to influence Cmdr King.” See, Senate Committee of Privileges, *106th Report*, August 2002, 1.40.

¹⁰¹ Majority Report 5.132 – 5.134 and *Transcript of Evidence* pp. 1550 and 1563.

¹⁰² Majority Report 5.144.

87. Ms Halton did not believe that this “sixth or seventh hand gossip”¹⁰³ warranted further investigation for two reasons. First, having passed the information to Mr Jordana¹⁰⁴ she had “the clear impression that the matter was in hand. I had a clear impression that it was being dealt with and I did not have to worry about it.”¹⁰⁵ Secondly, “this gossip or allegation had clearly already been put to the responsible minister and the responsible minister’s spokesman had, as far as I read the report, denied it.”¹⁰⁶

88. As always throughout this matter, Ms Halton acted appropriately, exercised sound judgment, and advised government in accordance with the highest traditions of the public service. Throughout her testimony to the Committee Ms Halton repeatedly asserted that she was never informed that the initial advice from Defence that children had been thrown overboard was wrong.

89. All the instances described above were either unconfirmed utterances, minor details in a report immediately superseded by apparently authoritative advice, or rumour and gossip. No doubt from the perspective of Ms Halton, and others in the Australian Public Service, public policy should not be founded on such evidence. In every case Ms Halton had sound reasons for acting as she did.

90. In hindsight, as Ms Halton herself conceded, perhaps if she had been possessed of more information at the time she might have taken a different approach¹⁰⁷. In the circumstances of the hour, however, Ms Halton acted reasonably and conscientiously. Importantly, the PST under her chairmanship never inserted itself into the chain of command¹⁰⁸. The PST was a forum for the sharing of information and coordination of agency inputs and actions in support of the border protection strategy; it was not part of the military chain of command. It did not give orders. Neither Defence nor any other agency ever provided authoritative evidence to Ms Halton or the PST that the initial reports were incorrect. If Defence had doubts they were not communicated to Ms Halton and the PST.

¹⁰³ *Transcript of Evidence* p. 1025.

¹⁰⁴ Government senators note the criticism of Mr Jordana (and the Prime Minister) in paragraph 6.98 of the Majority Report in relation to his alleged doubts about the provenance of the photographs. Again, there is no evidence to support this contention.

¹⁰⁵ *Transcript of Evidence* p. 1023.

¹⁰⁶ *Transcript of Evidence* p. 1026.

¹⁰⁷ See, for example, *Transcript of Evidence* pp. 977, 1023, 1025.

¹⁰⁸ *Transcript of Evidence* p. 977.

