

**SUBMISSION**

**on**

**A CERTAIN MARITIME INCIDENT**

**by**

**THE AUSTRALIA DEFENCE ASSOCIATION**

**to**

**The Select Committee of the Australian Senate  
appointed to inquire into a certain maritime incident**

Melbourne  
March 2002

## INTRODUCTION

1. This submission to the Select Committee of the Australian Senate on its inquiry into *A Certain Maritime Incident* is made by the Board of directors of the Australia Defence Association on behalf of the Association.
2. The Australia Defence Association is a non-partisan citizens group structured as a corporation established by guarantee under the Australian Companies Law with the object to promote, foster and encourage the best form of defence for Australia. The Board of seven directors is appointed by the guarantors who are drawn from a wide cross-section of the Australian community.
3. The Association is funded by private subscription and such other revenue as can be raised from various functions as well as consultancy work for industry and others. With the exception of some subscriptions to publications, all funds are derived from non-government and Australian sources.
4. The Association has correspondence relations with strategic studies institutes and individuals in 11 overseas countries, all in the Pacific Basin. It provides the Australian representation on the international committee which organises the Western Pacific sea lanes security conferences. The sixth conference in the series was hosted by the Association in Melbourne in October, 1988.
5. The Association publishes a quarterly journal *Defender* which enjoys a circulation of approximately 1000 in Australia and overseas. It also publishes a monthly digest entitled *Defence Brief* and a site on the Internet's World Wide Web at [www.ada.asn.au](http://www.ada.asn.au).
6. This submission will be concerned primarily with what the Association considers is the proper relationship between the government of the day and the Australian Defence Force, highlighting those aspects of the incident under scrutiny which suggest that the proper relationship is either misunderstood or neglected. It will not be concerned with the so-called Pacific Solution.

## THE INCIDENT

7. On or about the early morning of 7<sup>th</sup> October 2001, HMAS *Adelaide* intercepted a boatload (subsequently identified as Suspect Illegal Entry Vessel 4 - SIEV4) of presumed asylum seekers believed to be intending to land on Australian territory. In accordance with his orders, the Commanding Officer ordered the vessel to stop and, when the order was refused, fired a number of warning shots whereupon the vessel did stop.
8. During negotiations with the passengers and crew of SIEV4, one person held a child up above his head. This act was variously interpreted as signifying that children were on board or that the child might be thrown into the sea. At about this time, the CO took a radio telephone call from the Commander, Northern Command (NORCOM), during which he described what was happening. It appears that NORCOM interpreted some part of the

conversation as stating that a child had been thrown overboard. NORCOM reported this by telephone to Commander, Strategic Command, who reported the alleged incident verbally to the interdepartmental task force on illegal immigration coincidentally meeting in Canberra at the time. This allegation was then passed, also verbally, by various members of the task force to the Prime Minister and Minister for Immigration.

9. It should be noted that, at this stage, no formal report of the interception and subsequent events had been made by HMAS *Adelaide* so that a false assessment based upon a misunderstanding had been forwarded to ministers without confirmation and possibly without any warning to the ministers that the information was unconfirmed. Before any such confirmation had been received, both ministers made public statements condemning in forthright terms the actions alleged which had not in fact occurred and which had been denied by an ADF representative on the task force.
10. *Adelaide* sent a boarding party on board SIEV4 to ascertain details of its intentions and seaworthiness with a view to ordering the vessel to return to its port of origin in Indonesia. The crew and passengers refused to do so and some set about permanently disabling the vessel's engines. Subsequently on October 8<sup>th</sup>, the vessel was deliberately scuttled and all on board took to the sea from which they were rescued by *Adelaide*'s crew at some physical risk to themselves.
11. Several photographs of the vessel sinking and people in the water were passed to the Department of Defence. One cropped photograph showing an adult and a child in the water being rescued by a sailor from *Adelaide* was released to media as evidence to support the allegation that children had been thrown into the water on 7<sup>th</sup> October. In fact, the photograph was taken on 8<sup>th</sup> October and the interpretation was coloured by the earlier, mistaken and misleading allegations. A video which was alleged also to prove that children had been thrown into the water was not released at that time, presumably because it showed nothing of the kind.
12. There the matter rested until 7<sup>th</sup> November, three days before the Federal election. On that day, *The Australian* newspaper claimed that the allegation about the children was false. In the absence of the Chief of Defence Force (Admiral Barrie), the acting CDF (Air Marshal Angus Houston), backed by Brigadier Bornholt, personally told the minister by telephone the truth, that the photographs and video did not show children being thrown overboard and, indeed, that it had never happened. The prime minister asserts that Reith never told him that this was the case.
13. On 8<sup>th</sup> November, the Chief of Navy, Vice Admiral David Shackleton, asked a direct question by a journalist did what any proper naval officer would do. He told the truth – that no children had been thrown overboard. Later that day, he was instructed – on whose authority is not clear – by the Defence Minister's chief of staff to deny his statement, in effect to lie by saying that what he had said earlier was untrue. This seems now to have been just one of a series of attempts to suborn the ADF for political purposes. Shackleton's subsequent 'clarification' was a classic example of bureaucratic doublespeak which satisfied the minister's office but did not actually retract what he had said earlier.

## WHAT WENT WRONG

14. The Association does not wish to comment upon the various statements made by senior ADF officers and other officials to the Estimates Committee of the Senate in the week 18-22 February and the later press conference held by the CDF, Admiral Barrie on 27<sup>th</sup> February.
15. The sequence of events on 7<sup>th</sup> October, however, do call for a review of procedures involving the reporting to government of military operations. The fact remains that unconfirmed reports upon which doubts had been expressed were however passed to key ministers before they were confirmed. There are a number of possible explanations for this flawed process including:
  - a. A desire to pass politically significant but inflammatory information to ministers as a matter of urgency;
  - b. Possible directives from ministers that such information be passed immediately;
  - c. Inexperience in dealing with military operations and a desire to control the process from Canberra; or
  - d. Incompetence.
16. The first major error, which inevitably led to much of the rest, was the micro-management from Canberra through Darwin of *Adelaide*'s operation. Reports from the ship were being answered by interventions from Canberra, Sydney (Maritime Command) and Darwin produced by people who manifestly had little clear knowledge or understanding of what was actually happening on the water up to 5,000 kilometres away. Not only that but they did not know that they did not know. One of the most compelling lessons of the Vietnam War and of other later military operations such as the attempted hostage rescue in Iran in 1980 was the danger of distant micro-management of operations by public servants and politicians. The ADF has asserted for years the importance of directive command, of leaving the commander on the spot to manage his operation in accordance with broad directives. There is no suggestion that the commanding officer of *Adelaide* was incapable of handling the whole affair.
17. Well known to experienced military personnel is the issue of the 'fog of war'. When verbal reports of a continuing operation are made, the potential for misunderstanding is increased. Unless the situation is so urgent - to exploit a favourable operational situation or to limit damage, for example - that rapid responses are required, the wise commander will wait until the situation is clarified before deciding upon a course of action.
18. Furthermore, the more levels of reporting that are in use, the more likely will be the emergence of misunderstanding or error. In this instance, there were at least five and possibly six intermediate levels between *Adelaide* and the prime minister. These included also, it is believed, some informal channels arising from the presence of the then Parliamentary Secretary to the Minister for Defence at Maritime Headquarters in Sydney. As well, the use of verbal rather than documented signalled reports created a hierarchy of reliability in which the least reliable was accepted in preference to the most reliable.

## ADF OVERSTRETCH

19. Related to the issue of micro-management of military operations is that of ADF overstretch and excessive management. At the operational level, the ADF and especially the RAN is seriously over-stretched. Currently the RAN's front-line strength consists of just nine frigates instead of the authorised 14, five being in the builder's hands. Personnel numbers are low and the over-commitment of ships is creating an unhealthy imbalance between sea and shore service, the latter being traditionally regarded as a break from the more intense and demanding sea service.
20. Three frigates instead of the usual patrol boats were committed to intercepting asylum seekers because of the policy of preventing landing at Christmas Island which is outside the range of the patrol boats and which lacks port facilities that would permit their being stationing. At the same time, three more frigates were committed to the war on terrorism while another was deployed in The Solomons area in support of peacekeepers in that country and on Bougainville.
21. In effect, therefore, the RAN has only two frigates in service to meet the sustainment requirements of crew training, maintenance, modernisation and submarine training. Add to this, the commitment of two of its three transports and one of two tankers to offshore operational deployments and it is likely that serious and irreversible (in the medium term) damage will be done to the Service. There is also virtually no capacity to meet other unpredictable operational requirements such as interdiction of distant fish poachers without compromising existing operations.

## THE MANAGEMENT OF MILITARY OPERATIONS

22. It is also true that too many personnel in Canberra were involved in the whole process. The sheer number of such people coupled with the determination to micro-manage the SIEV4 operation practically guaranteed that somewhere along the line wrong information would be passed on and acted upon with the results that are now obvious. Fortunately little real damage was done except to the *amour-propre* of ministers but it ought to be an object lesson to be learned before some serious military operation is launched.
23. The Association is concerned that, after 8<sup>th</sup> October when the immediate operation was finalised, the incorrect reports to ministers do not appear to have been corrected. Under normal and formal reporting procedures, a correct version of events should have been available in Defence Headquarters by 10<sup>th</sup> October at the latest. There have been suggestions that the correct version of 'children overboard' may have been passed to the Defence Minister by the CDF on two occasions by 11<sup>th</sup> or 12<sup>th</sup> October. Whether they were or not, we presume the Select Committee will investigate. However, we submit that it was certainly the CDF's duty to ascertain the facts and communicate them to his minister, at the time the Hon Peter Reith.
24. Of some concern to the Association is the activity of the personal staffs of ministers. It has been recorded that Vice Admiral Shackleton was instructed by the Defence Minister's chief

of staff, Mr Hendy, to retract a statement he had made to journalists on 8<sup>th</sup> November. The Association questions whether such an officer is entitled to issue such an instruction to any officer, much less a senior officer. If the minister wished such an instruction - effectively to compromise the officer's duty - to be given, he should do so himself.

25. Similarly, there have been suggestions that the Defence Minister's Press Secretary actively sought from a number of officials in Defence reports that would have confirmed a pre-conceived - and inaccurate - view of events rather than an accurate report. Given that most officers would have assumed that he was acting for his minister, this action is quite improper.

## **GOVERNMENT AND DEFENCE FORCE RELATIONS**

26. The incident highlights the question of the proper relationship between a democratic government and the nation's armed forces. In the Association's view, this is a fundamental question but one which has never seriously been questioned in the past. Nevertheless, the potential for misunderstanding or conflict has been looming because of the changing nature of armed conflict, changes in the traditional relationship between government and the public service, and a tendency by governments to use the armed forces for utilitarian purposes.
27. In a new arrangement where many senior public servants - other than departmental heads - are now employed on contract rather than as permanent officials, there will inevitably be a tendency for closer involvement in the political process. In effect, the growing number of politically engaged senior officials means that the Australian Public Service is becoming more like its United States counterpart without the countervailing checks and balances that exist in the US political system with its much stricter separation of powers.
28. The armed forces, however, must stand in a different relationship with the government because of their ability through equipment and training to use lethal force subject only to the directions of government which may not be lawful in the domestic legal context. While they must always be subordinate to the elected government, the latter must exercise prudence in their employment to ensure that the potential for misuse is not abused. This is a clear responsibility rarely discussed in Australia because it has never in the past been an issue of any significance.
29. Increasingly in recent years, the ADF has been employed in non-military tasks such as law enforcement, civil aid and internal security where its use has been governed more by utilitarian principles and the lack of - or failure to use - more appropriate organisations. Examples include:
  - a. The use of ADF resources for Coastwatch and off-shore law enforcement despite a view extending back for at least 35 years that a dedicated coastguard service is required. In the Association's opinion, there exists a fundamental incompatibility between the requirements of armed combat on the one hand and law enforcement on the other. The failure to establish a coastguard service with primary responsibility for law enforcement has been a product of an unwillingness to invest in national

- organisations suitable to a sophisticated nation and the bureaucratic failure to surrender treasured departmental assets.
- b. Aid to the civil power is a well-established and popular use of the ADF in emergencies. Normally these are related to disaster relief and, under the federal system, are dependent upon requests from the affected state authorities. However, the recent deployment of army engineer detachments to provide material aid to aboriginal communities, while popular and useful, is not a proper use of scarce ADF resources when the work could and should have been performed by ordinary civilian contractors. The use of troops in these circumstances tends to create the impression that the ADF is little more than a useful, on-call and responsive work force undifferentiated from any other in the community. Similar strictures could be applied to the use of the RAAF during the airline pilots strike some years ago.
  - c. The 2000 Olympic Games in Sydney and the 2002 CHOGM conference have seen the deployment of absolutely and relatively large numbers of military personnel in an internal security role. Many were employed as little more than unskilled security guards although the use of some small specialist units may have been necessary or prudent. While the Association notes that the present government received parliamentary approval for legislation to control military personnel engaged on such operations, it did not effectively impose limits upon the circumstances in which the ADF could be used. The Association questions whether such large and expensive deployments were necessary, even for deterrence, or whether their use was more for public relations purposes.
30. There exists in the ADF and, indeed, in the wider community a strong belief that the armed forces must not only be politically neutral but that they must be seen to be so. That view derives not only from a strong constitutional tradition dating back to 17<sup>th</sup> century Britain but also to a recognition that in many countries around the world - including some near neighbours - politicised armed forces are antithetic to democracy. Therefore it is incumbent upon any government to ensure that its own political practices do not taint the armed forces in a way that would cause a loss of confidence in their primary loyalty to the national interest rather than some temporary political interest.
  31. The Association is seriously concerned that the actions of some members of the pre-November 2001 ministry and perhaps at least one senior ADF officer failed to maintain the distinction between political interest and national interest and, in so doing, have damaged the political neutrality of the ADF.
  32. In particular, we note with astonishment the statement by the prime minister referring to an apparent conflict in evidence given to the Estimates Committee of the Senate by the Chief of Defence Force, Admiral Barrie, and the Chief of Air Force, Air Marshal Houston, in scornful terms that demeaned both officers in a way unique, we believe, in the history of the Australian Parliament. That this statement which casts doubt upon the loyalty, integrity and political neutrality of Air Marshal Houston and other officers should have been made within days of the death in action of an Australian soldier in Afghanistan was at best insensitive and at worst detestable.

33. The ADF in Australia must always be responsive to the lawful orders of the government that interprets the national interest at any time. But to have a force that is responsive in that way imposes an obligation on the government to ensure that it is used only in the national rather than some sectional interest. The ADF is a national organization that has been in existence for more than a century. It is a national asset that needs to be preserved and enhanced to cope with national defence emergencies. The government of the day is no more than a temporary caretaker of that national asset and it must be careful not to identify too closely the national interest with its partisan political interest. The risk is that those unduly besotted with party political contests can easily confuse the two.
34. The most serious outcome of this affair has been a breakdown in trust between the ADF and its political masters. If either Admiral Shackleton or Air Marshal Houston is seen to be penalised in any way by the government, that trust will break down further. This will seriously damage morale and exacerbate an already excessive resignation rate as well as damage recruiting. It will encourage officers to play safe and comply with possibly illegitimate political demands. It is not true that the ADF has been politicised but the warning signs are there. The ADF and its senior officers have a loyalty beyond that owing to the government of the day.

### **CONCLUSION**

35. As a national organisation whose members represent many shades of political opinion, the Australia Defence Association is disappointed in the apparent actions of a number of ministers and others since the 7<sup>th</sup> October and their failure to be more frank with the community. On the other hand, the Association is deeply troubled over the apparent failure to isolate the Australian Defence Force from the partisan political process, believing that this has serious potential implications for the proper governance of Australia. The Association urges the Committee to take this matter into its consideration and produce a firm non-partisan statement of principle in its report.