

## **Opening Statement by Mike Scrafton**

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

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

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

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

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

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

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

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

While it was possible that the Prime Minister would concur with my account, this was not likely. I have availed myself of the limited range of options available to establish the veracity of my claims. I was prepared to repeat my version of the event in a statutory declaration and have that statement tested by polygraph. While the polygraph may not be considered totally infallible, no one has contested that the test was conducted in a professional and disinterested manner. The expert advice indicated that that the certainty that I was not being deceitful was in excess of 90 percent. There was not much more I could do.

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

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

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

### **In the Minister's Office**

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

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

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

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

These conditions were adhered to during my time in Parliament House. During the 2001 election campaign, I remained in the Canberra office managing the ongoing business of the "caretaker period" while Minister Reith and the political staffers, except for the chief of staff, relocated to Melbourne.

### **Failure to correct the record**

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

- A Cabinet decision directing that ministerial and prime ministerial staff and public servants serving in ministerial offices at the time were not to appear before the Senate. As a serving Commonwealth public servant such a significant and formal action by the government naturally carried great weight with me. The legal advice provided to me at the time was that

unless compelled by the Senate to appear before the inquiry my situation was clear.

- I recall that the Bryant report had constrained and specific terms of reference that restricted her to examining advice provided by the public service to Ministers and did not canvas the actions of ministerial advisers operating under the MOPS Act. Despite claims that I lied to or misled Ms Bryant, the truth is that in even acknowledging that there were conversations that I was not prepared to discuss that had taken place between advisers and ministers, including the Prime Minister, went beyond what I believe were her terms of reference. The consternation and reaction from the Prime Minister's staff, who I recall chased Ms Bryant to clarify what I meant, is some indication that the little that I had revealed was not welcome.
- Similarly, the terms of reference of MAJGEN Powell's investigation did not cover advisers employed under the MOPS Act. However, Roger was well known to me professionally and I regarded him as a trusted colleague. He is an accomplished military officer with a good record of achievement. On a not to be repeated basis, I discussed a range of issues to provide him some background and context for his inquiry.
- The reality was that the Howard government had been re-elected for another term and as a senior public servant I would be required to work closely with Ministers and Parliamentary Secretaries. My position would have been unworkable if, irrespective of the Cabinet decision, I had made full disclosure about my conversations with the Prime Minister on the evening of 7 November 2001. Apart from any personal enmity toward me that may have arisen in government ranks, I would not have been able to secure the trust and confidence essential to an effective relationship between public servants and ministers.
- No direct threats were ever made to me about any consequences for my career if I were to go against the Cabinet decision. The then Secretary of Defence and CDF both acted with sensitivity, integrity and understanding to my circumstances at the time of the Senate inquiry.
- However, the prevailing atmosphere in Defence, and in particular the methods and expectations of Max Moore-Wilton as Secretary PM&C and his close association with the Prime Minister, gave me every confidence that publicly casting doubts on the Prime Minister's Press Club statements would eventually have had a negative professional impact.

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

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

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

As indicated in my letter the final catalyst and determinant of the exact timing was the derogatory manner with which the 43 signatories to the letter to

Prime Minister were dismissed and the way in which the issue they raised had been trivialised.

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

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

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

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

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

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

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

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

There is a cathartic aspect to my actions.

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

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

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

On my way to dinner that evening I detoured to Maritime Headquarters and watched the tape in the company of Commodore Max Hancock, Chief of Staff to the Maritime Commander. After watching the relevant portion of the tape (about 15 minutes) twice, I returned the Minister's call and advised him that it was at best inconclusive.

He said that he had to call the Prime Minister and would get back to me. Shortly after he rang again and said he had given my mobile number to the Prime Minister and that I could expect a call later that evening.

I continued on to dinner.

Later in the evening of 7 November 2001, I spoke to the Prime Minister by mobile phone on a number of occasions. My recollection is three times but it is possible that I have conflated the number of issues discussed with the number of calls.

In the course of those calls I recounted to him that:

- the tape was at best inconclusive as to whether there were any children in the water but certainly didn't support the proposition that the event had occurred;
- that the photographs that had been released in early October were definitely of the sinking of the refugee boat on 8 October and not of any children being thrown into the water; and
- that no one in Defence that I had dealt with on the matter still believed any children were thrown overboard.

During the last conversation the Prime Minister asked me how it was that he had a report from the Office of National Assessments confirming the children overboard incident. I replied that I had gained the impression that that the report had as its source the public statements of the Minister for Immigration. When queried by him as to how this could be I suggested that question was best directed to Kim Jones, then the Director-General ONA.

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

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

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

Mike Scrafton  
1 September 2004