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SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Reference: Certain maritime incident

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SENATE
SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Thursday, 11 April 2002

Members: Senator Cook (*Chair*), Senator Brandis (*Deputy Chair*), Senators Bartlett, Jacinta Collins, Faulkner, Ferguson, Mason and Murphy

Senators in attendance: Senators Bartlett, Brandis, Jacinta Collins, Cook, Faulkner, Ferguson and Mason

Terms of reference for the inquiry:

For inquiry into and report on:

- (a) the so-called 'children overboard' incident, where an Indonesian vessel was intercepted by HMAS *Adelaide* within Australian waters reportedly 120 nautical miles off Christmas Island, on or about 6 October 2001;
- (b) issues directly associated with that incident, including:
 - (i) the role of Commonwealth agencies and personnel in the incident, including the Australian Defence Force, Customs, Coastwatch and the Australian Maritime Safety Authority,
 - (ii) the flow of information about the incident to the Federal Government, both at the time of the incident and subsequently,
 - (iii) Federal Government control of, and use of, information about the incident, including written and oral reports, photographs, videotapes and other images, and
 - (iv) the role of Federal Government departments and agencies in reporting on the incident, including the Navy, the Defence Organisation, the Department of Immigration and Multicultural Affairs, the Department of the Prime Minister and Cabinet, and the Office of National Assessments; and
- (c) operational procedures observed by the Royal Australian Navy and by relevant Commonwealth agencies to ensure the safety of asylum seekers on vessels entering or attempting to enter Australian waters.
- (d) in respect of the agreements between the Australian Government and the Governments of Nauru and Papua New Guinea regarding the detention within those countries of persons intercepted while travelling to Australia, publicly known as the 'Pacific Solution':
 - (i) the nature of negotiations leading to those agreements,
 - (ii) the nature of the agreements reached,
 - (iii) the operation of those arrangements, and
 - (iv) the current and projected cost of those arrangements.

WITNESSES

SMITH, Rear Admiral Geoffrey, Maritime Commander, Royal Australian Navy..... 470

Committee met at 7.04 p.m.

CHAIR—I declare open this meeting of the Senate Select Committee on a Certain Maritime Incident. The remarks I am about to make you have heard 100 times, but I am bound to make them so I will do so as quickly and reasonably as I can.

Today the committee continues its public hearings in relation to its inquiry. The terms of reference set by the committee are available from secretarial staff, and copies have been placed near the entrance to the hearing room. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private. The committee has authorised the broadcasting of the public aspects of proceedings. The hearing will last until around 11 o'clock tonight and will resume at 9 a.m. tomorrow.

The waiting room next door is for Defence staff and witnesses only. It is a private area to which the press and public have no access. We shall attempt to deal as expeditiously as possible with witnesses. I urge witnesses to be concise in their answers and senators to keep their questions tightly targeted. The committee has agreed that it will hear from Rear Admiral Smith this evening and tomorrow we will start at 9 o'clock with Air Vice Marshal Titheridge followed by Admiral Barrie.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. If at any stage a witness wishes to give part of their evidence in camera, they should make that request to me as chair and the committee will consider that request. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which, in the committee's view, reflects adversely on that person, and to offer that person an opportunity to respond. An officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy. However, you may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was arrived at. When witnesses are first called upon to answer a question they should state clearly their names and positions. Witnesses will be asked to make an oath or affirmation. The committee has agreed to a request from certain witnesses that they be accompanied by counsel. However, counsel has no right to address the committee nor will the committee address questions to counsel.

Before I open, we are scheduled to finish at 11. That does not mean to say we have to go through until that hour. It could be that everyone will be so focused tonight that we could rise a lot earlier. I am sure that would make the support staff in this building, not to mention the witnesses and the rest of us, quite happy. I do urge the committee to be concise and direct about their questions and see if we can come in under the hour set. The call when we adjourned was with you, Senator Faulkner.

Senator FAULKNER—Thank you, Mr Chairman. I had had a very brief opportunity to ask some questions of Admiral Smith. I will be brief again tonight.

SMITH, Rear Admiral Geoffrey, Maritime Commander, Royal Australian Navy

Rear Adm. Smith—Before Senator Faulkner starts, I do have some answers to some questions that were posed to me. Would you prefer me to do those up-front?

CHAIR—I would prefer that they be done up-front.

Rear Adm. Smith—While giving evidence to the Senate last Friday I became concerned that the Senate committee had questioned the integrity of the operational reporting from HMAS ships. I note that these concerns were also commented on by some elements of the media. In the case of Operation Relex, visual observations and radio reports from numerous individuals were recorded and the information fused into regular formal operational signals which we call opposition reps and situation reports—or sit reps. These reports were from the ships concerned in the activity. This procedure is our normal reporting process relating to operations. I can now proffer as an example of the narrative sourced from verbal reports and extracts from HMAS *Arunta*'s boarding log for SIEV9 incidents 2, 3 and 5, as requested initially by Senator Collins. I have those documents available but, as with previous logs, they are for use by the committee and not cleared for public release. I hand those to the committee.

CHAIR—We will note that they are not for public release. We will receive them as a committee.

Rear Adm. Smith—Thank you.

CHAIR—The committee will have a look at them. There may be questions based on them, but I do ask committee members that if they ask questions based on this latest material they observe any niceties of security.

Rear Adm. Smith—Referring to *Hansard*, page 582, in reply to a question from Senator Collins concerning statements, I made the observation there that it was not our standard operating procedure to obtain witness statements from all the incidents as they were occurring. It was not seen as necessary as our normal reporting process—which I just spoke about—was, we felt, appropriate. I personally became quite concerned when you, Mr Chairman, made the observation—recorded on page 583 of *Hansard*—when talking about evidence:

But essentially, if we are to conclude something on 'the evidence', we really do need to know what those people saw, and the only way we can do that is to actually ask them ourselves.

There are other things around that comment. On the basis of your concern, Senator, and feeling a sincere obligation to present to the committee the facts, I have gone out to the ships involved in SIEV1 to SIEV12. I have sought from the available witnesses additional supplementary statements to corroborate the incidents as reported for SIEV1 to SIEV3 and 5 to 12.

Whilst I am happy to have the committee view these statements—and I believe a copy is with the secretariat—their release is subject to ministerial approval, following a review by the

department. Their aim is to demonstrate that the information in the SIEV summary information sheets that were provided to the committee last Friday is credible, accurate and correct.

With the statements that were requested by Senator Brandis and provided to the committee, together with these new statements, the committee will now have multisourced evidence that corroborates each incident in the SIEV summary sheets. I believe this information should satisfy the requirements and issues raised by Senators Cook, Collins and Brandis to me on 5 April and outstanding as questions on notice.

Finally, I would like to clarify a couple of other issues. The first relates to questioning by Senator Bartlett regarding the Navy's historical role in the interception of SIEVs. *Hansard* at page 489 on 5 April alludes to Operation Cranberry, starting in 1989. For the record, the Navy's role in the interception of SIEVs commenced in 1989. However, Operation Cranberry was not formalised until 1997. Senator Collins asked to sight a signal from SIEV9, incident 4—referred to in *Hansard* at pages 498 and 499 as folio 48. I have that document should Senator Collins require to view it.

The outstanding issues relate to an incident on HMAS *Dubbo*, referred to at *Hansard* page 496 and also at page 502, where Senator Bartlett asked how many children were involved in SIEV6 and SIEV12. I will provide answers to both of those as soon as possible.

I understand that naval headquarters has replied to the issue mentioned at *Hansard* page 481, from Senator Faulkner, relating to the source of the request for the document now referred to as the Smith report.

Finally, Mr Chairman, I would like to clarify an answer to Senator Bartlett's question concerning some evidence produced by Commander Banks during his testimony concerning whether or not SIEV4 entered Australian territorial waters. His answer was no. The question raised by Senator Bartlett was: did SIEV4 at any stage enter Australian territorial waters? The correct response is: SIEV4 did not enter Australian territorial sea prior to being intercepted by HMAS *Adelaide*. After interception and in the course of operations to detain SIEV4, HMAS *Adelaide* and SIEV4 entered the Australian territorial sea during the periods from 07 1500 zulu to 07 2100 zulu October, a period of six hours, and 08 0300 zulu to 08 0400 zulu October as well. The distance from Christmas Island on the two occasions varied, but was greater than eight nautical miles. Mr Chairman, that concludes my statement.

CHAIR—Thank you, Admiral Smith. Before we go to questions there may be some discussion of this matter by the committee and I will allow that to occur in a moment, if there is any. I will certainly not delay it, but in order to expedite it, can I just say for myself that when I raised that question you have referred to, it was as much an issue directed to the committee as it was to anyone else. My concern was not what you were saying nor was it a concern to reflect upon the veracity of what the Navy's position was. The concern I was raising was that the material being presented to us was, as you have pointed out, prepared for op reps or sit reps, rather than as 'evidence' to be provided to a committee of inquiry with our terms of reference and our particular focus. It was really a matter of defining the difference between what this material was, why it was composed and what it consisted of, and what might be regarded as 'evidence', that evidence meaning being a more judicial meaning because there was a debate

going on, or assertions being made here, about evidence and proof and things of that nature. It was just a care on my part to make a distinction.

Having said that, what you have done now is go even more deeply into what is genuinely closer to real evidence. I appreciate that and thank you very much for it, Admiral Smith. It will be an aid to the inquiry.

Senator BRANDIS—Admiral Smith, how many copies of the new bundle of statements do you have with you?

Rear Adm. Smith—I have one myself and one was provided to the secretariat, Senator.

Senator BRANDIS—Mr Chairman, I think I should make the obvious point that it is going to be very difficult for us to assimilate this information, and I am loath to ask that the matter be stood down in view of the time. I suppose if Senator Faulkner is prepared to continue then we can try to read the new statements as quickly as we may. But it is going to be a little tricky.

CHAIR—I understand exactly the point that you are making. Of course, it may be that Senator Faulkner cannot read it while he is continuing, and the committee—

Senator FAULKNER—Senator Brandis can have my copy.

CHAIR—I think that we should receive it. It is being offered in good faith and we should receive it accordingly. When we become familiar with it, if that raises any further questions, we may have further questions to the admiral. At this stage it is offered in good faith and received accordingly.

Senator FAULKNER—I do not know what is contained in the documentation but I am certain of one thing and that is we should make every endeavour and effort to complete Admiral Smith's evidence tonight. I do not know how long it will take. I do not normally like doing this, but I think we should remain until we have completed the admiral's evidence so he can be discharged and go about his other very heavy responsibilities. This is the third day he has been before this committee—I think this is, in fact, better defined as a night—and that is more than enough. We need to finish tonight; Senator Brandis and other senators can make whatever arrangements they see fit.

Senator JACINTA COLLINS—I agree with Senator Faulkner. As a result of the questioning on the last occasion, I would be disappointed if Admiral Smith got the impression that I was questioning the veracity of Navy reports because that was not meant to be the nature of the questioning. The questioning was rather about some statements that did not exist and about other source material the Navy could provide us with to corroborate the story in the absence of statements or in the situation where the statements provided did not seem to actually sustain the report. I am quite happy to take it that the rear admiral has now provided us with all the material that he is aware of to sustain all of those claims and accept in good faith his view that his reports on re-examining the source material are accurate. I will take the time to look at those reports myself but I think we are in a position now where we can reach our own conclusions on the material that is before us.

CHAIR—If there is no further comment—

Senator FAULKNER—There is one other general issue before I move to direct questions, and this relates to your opening statement, Admiral. You indicated that Navy had provided an answer to a question on notice asked by me. Thank you for that. I can say to you that I certainly have not seen it, which is fine, but I have actually checked with the committee secretariat and it seems to be somewhere in transit, I think.

Rear Adm. Smith—That was my understanding.

Senator FAULKNER—I see. I am sorry.

Rear Adm. Smith—I have not seen it myself, Senator, but it is my understanding that there has been that reply.

Senator FAULKNER—There is no problem—if, as you say, it is on its way. I just wanted to be clear that it was not supposed to have been received.

CHAIR—In view of what you put earlier—not in this most recent intervention, Senator Faulkner, but your earlier one—it is my intention to start at 9 o'clock tomorrow morning with Air Vice Marshal Titheridge. Frankly, I think the Air Vice Marshal is entitled to that respect from this committee to complete this witness tonight and it is my intention to do so. I acknowledge the remarks that I made earlier, but there are other ways of following up questions if we do not get the opportunity of asking them tonight, and putting them on notice is one of those.

Senator FAULKNER—Thanks, Mr Chairman. Admiral, I want to ask a question in relation to Operation Cranberry and Operation Relex. At any stage in those operations since 1 September 2001, were any naval operations or activities delayed or put on hold pending the passage of legislation through the Commonwealth parliament?

Rear Adm. Smith—In the case of Operation Cranberry there was no effect on the fleet program, which is the way we program our ships. In the case of Operation Relex, the only impact of the commencement of Operation Relex was the requirement for me to recall from South-East Asia five ships, I think it was, that were engaged in activities there. One of those activities was a regional exercise.

Senator FAULKNER—So I can be satisfied that in relation to actual naval operations—I hope I am using the correct terminology here, I am using 'operations' with a lower case 'o'—

Rear Adm. Smith—Yes.

Senator FAULKNER—You may well have answered my question, but I just want to be clear on this point. I am using this as a generic term, if you like. I am using it in the context of Cranberry and Relex, but I am talking about naval operations in the broadest sense. I wondered whether there had been any orders, instructions or directions to naval ships that delayed or put on hold any activities pending the passage of legislation through parliament?

Rear Adm. Smith—To the best of my knowledge, there was no such impact on the fleet program. As I said, with Operation Cranberry the ships that were committed to Cranberry attended at Cranberry. The ships that participated in the initial stages of Relex were involved in other activities and were recalled from South-East Asia to be employed in the context of Operation Relex. That was the only impact on their programs.

Senator FAULKNER—I am speaking about this as it would relate to individual vessels involved in those two capital ‘O’ operations.

Rear Adm. Smith—Yes.

Senator FAULKNER—Thanks for that, Admiral. I appreciate your answer. I want to go to the background of Operation Relex and you did, in fact, answer a question on this from Senator Bartlett on Thursday, 4 April. Senator Bartlett asked whether you were involved in the drawing up of the structure of the operation, the new rules of engagement, the mission statement and the like, and you answered that question. I wonder whether, very briefly, for the benefit of the committee we could go back a step or two before that to ask you about the planning stages of Operation Relex: what sort of time frame was there, in the early phases of the development of the operation? Let me leave it at that; I hope I have used the correct terminology, but I think you understand what I am asking.

Rear Adm. Smith—Yes. As I explained once before, our method of planning operations is to, in the first instance, be provided with a warning order from the CDF, and that warning order would normally go to the Commander Australian Theatre, Admiral Ritchie. He would get together with the land, air and Maritime Commanders and we would look at what is being asked of us. In the case of Operation Relex, that warning order was received in August last year. Admiral Ritchie got us together, and he delegated to me the lead authority for the planning of this mission.

Senator FAULKNER—I understood that from evidence that you have given before, but I appreciate you saying it again tonight. What goes on before the warning order is issued? I appreciate that it is CDF who issues the warning order. In an answer you gave to the committee on Thursday, 4 April—I am quoting from page 450 of the *Hansard*—you said:

The mission was provided to me but the detail that sat behind the mission and the way that we went about the initial stages of the operation were developed within my headquarters.

What I am trying to understand here is the timing of that process in relation to the issue of the warning order that you spoke of.

Rear Adm. Smith—Yes; I understand the question. The process after this warning order was received and I was directed by the Theatre Commander to plan this operation involved an intensive planning activity within my headquarters. Out of that planning activity, we produced what we call a concept of operations. That concept of operations document contains within it how we are going to do what has got to be done to achieve the mission. It identifies tasks, what the purpose of the mission is and what it is we have to achieve to say that the mission has been successful—in other words, an end state. We produced that concept of operations, and we back-

briefed back to the CDF in late August. He accepted our concept of operations and he executed Operation Relex following the receipt of that concept of operations.

On the basis of that, I then handed the concept to the JTF commander who, at the beginning of Operation Relex, was a naval commodore—Commodore Flotillas is the position. He works for me at Maritime Headquarters and is a deployable commander. He and his staff deployed to Darwin and from Darwin on board *Manoora*. Whilst on board *Manoora* he put out the detailed tactical messages that put into effect the concept of operations that had been planned within the headquarters.

Senator FAULKNER—Did any changes of any significance occur after the concept of operations as developed by Maritime Command was provided to other authorities?

Rear Adm. Smith—There were many adjustments to that document. Out of the concept of operations flows our operations order, which is where all the mechanics are. Those documents, particularly the op order, were amended over the period of the operation being conducted, and reflected the changing circumstances. The tactical messages that sit underneath the operation order, for example, are many. I do not have the exact number; let us say there are a dozen of them, addressing different parts of the operation. As the operation unfolded, as we learnt as we went, we needed to adjust some of the things that we had originally planned. For example, we experienced different levels of reaction from the UAs and we needed to adjust some of the tactical messages to reflect that experience. The decision by the government to change the legislation concerning the migration zone had an impact upon some of our tactical messages because that guidance needed to be given to the commanding officers. We needed to adjust them for that reason. And as the operation unfolded there were other impacts, other influences, that were brought to bear that necessitated us changing our *modus operandi*, if you like—the tactical messages that provide the framework. I might add that that is not uncommon in any operation; that is quite normal—we learn as we go, and this was no exception.

Senator FAULKNER—But how many of these amendments are driven by Navy and how many are driven outside Navy?

Rear Adm. Smith—I do not have the actual numbers, between one or the other. A good majority of them were driven by Navy's own experience and adjusting the way we were doing business. A number of others were as a direct result of policy changes. I mentioned one of the changes, for example, was the decision to take the SIEVs back to Indonesia. That sort of policy change necessitated adjustment to our tactical messages.

Senator FAULKNER—I do not expect you to have this level of detail tonight but, to save time—as you know, I am interested in saving some time—I wonder if you would be willing to take on notice and provide for the benefit of the committee those amendments that were made as a result of policy changes.

Rear Adm. Smith—Certainly.

Senator FAULKNER—In asking my question on notice in that way, Rear Admiral, what I am understanding from you is that the other changes, the non-policy changes—which I could

also ask you for—would be more technical in nature. The non-policy changes are ones that are driven out of Navy and they relate to more technical matters, do they?

Rear Adm. Smith—Yes, they do. It is really the way we do business.

Senator FAULKNER—Okay. I would appreciate that, thank you very much. This means that as far as Maritime Command or Navy is concerned, you actually are not involved in the development or planning for Operation Relex until you get the warning order from CDF? That is what I understood you to say; I just want to be clear on that.

Rear Adm. Smith—That is correct, Senator.

Senator FAULKNER—So is there any point in my asking you about the background to the warning order? I suspect there is not. I might be better off asking CDF what the background to the warning order might be, because you do not get involved in that, I assume.

Rear Adm. Smith—No, I do not; I react to the warning order.

Senator FAULKNER—Are you aware at all of the background to the warning order?

Rear Adm. Smith—No, I am not, not directly.

Senator FAULKNER—Are you indirectly aware of it?

Rear Adm. Smith—I could only speculate, but I would prefer to deal in facts. I am not aware of—

Senator FAULKNER—So anything you were to say to the committee on this would be speculation?

Rear Adm. Smith—Indeed it would.

Senator FAULKNER—I do not particularly want you to speculate. I think we are all better off if we just deal with the facts; I am comfortable with that. In relation to the concept of operations, did any changes to that result also from the joint task force itself? And, if there were, would you describe them as policy or non-policy changes?

Rear Adm. Smith—We made many adjustments to the way we were doing business, as a result of guidance passed through the chain of command, which I believe originated out of the interdepartmental committee process. That manifested itself, for example, early on in the piece with what to do with these people once we had intercepted them. Even in the early days, down to permission to board, we required higher level authority to do that. But certainly, once the operation began to unfold, decisions such as what to do with these people once we had them on board—where, for example, *Tobruk* or *Manoora* were to take them—it is my understanding that they were delivered to us through the chain of command, but they originated out of the IDC process.

Senator FAULKNER—Could I ask you to accept my question on notice as also including those policy changes, amendments or alterations that might come through the joint task force. I do not know whether that was clear or not because I am not entirely sure of how this works, but if you could read my question on notice, including all policy amendments by whatever mechanism they land on your desk, I would appreciate it.

Rear Adm. Smith—I will certainly try to get that for you, Senator.

Senator FAULKNER—Thank you very much. I will raise the other questions about background with Admiral Barrie, which at least will save time tonight. With Operation Relex, were there any new rules for sea rescue?

Rear Adm. Smith—There were no additional rules other than our standard rules for safety of life at sea.

Senator FAULKNER—So sea rescue obligations did not change in Operation Relex, as far as personnel on Australian naval vessels were concerned?

Rear Adm. Smith—At no time was any direction given that would have in any way inhibited a commanding officer exercising his responsibilities for safety of life at sea. Indeed, the requirement for that was re-emphasised in the documentation that was provided to the commanding officers.

Senator FAULKNER—I have seen that and noted it, but my question went to whether there were any changes.

Rear Adm. Smith—No, there were not.

Senator FAULKNER—And I could be confident in that regard that there would not have been any changes in the lead-up to Operation Relex?

Rear Adm. Smith—I have no knowledge at all of any changes such as you are suggesting.

Senator FAULKNER—Thanks for that, Admiral. If any did occur prior to Operation Relex I would appreciate you letting me know, but it sounds quite unlikely from what you say.

Rear Adm. Smith—They would be the facts, Senator.

Senator FAULKNER—Could I ask you another question in relation to the Navy's operations in the broad in dealing with people smugglers. There are those naval personnel who are involved on the naval vessels of Operation Relex and before that Operation Cranberry, and there are a significant number of land based naval personnel who have an involvement—an interface—with these operations. I think that is right, isn't it, Admiral?

Rear Adm. Smith—Yes, that is true.

Senator FAULKNER—Are there, or were there, any naval personnel involved in the people-smuggling issue on the ground in any other country? Specifically here I am wondering about Indonesia.

Rear Adm. Smith—I think you must be referring to intelligence people or people who may be collecting information.

Senator FAULKNER—Not necessarily.

Rear Adm. Smith—I would be unable to comment on that.

Senator FAULKNER—I am talking here about naval personnel, but I was not specifically thinking of intelligence people, nor am I wanting to clamber into that. As you know, Admiral, I have always been very sensitive about those sorts of matters, and the usual caveats apply. But, no, I was not specifically thinking of those involved in intelligence operations.

Rear Adm. Smith—The only naval person overseas that my headquarters had contact with during Operation Relex was the naval attaché in Jakarta, Captain Johnson.

Senator FAULKNER—I appreciate that, but I am not sure that it necessarily answers my question. I did not ask you about contact with your office; I asked you a broader question than that. But, equally, I do not want to trample into some areas that might be sensitive. I might think of a way of asking this question on notice that allows you to apply your mind to a considered response, because I do not want to trample into areas that might involve any sensitivities that would not be appropriately discussed in a public forum like this.

Rear Adm. Smith—I may have misunderstood your question, Senator. Were you referring to my interaction with other Australian naval—

Senator FAULKNER—No, I asked in the broad about naval personnel.

Rear Adm. Smith—I see. During Operation Relex I had occasion to visit Surabaya in Indonesia, and I had a personal discussion and a mutual exchange of information with my opposite number, the Commander of the Eastern Fleet, who is based in Surabaya.

Senator FAULKNER—I might develop a question on notice, Admiral, but I will say to you in this forum that I do not want to trample into sensitive areas. That has been my longstanding approach on operational matters, whether they be intelligence-gathering or other matters, if that is relevant.

Rear Adm. Smith—Thank you for that.

Senator FAULKNER—With a mind to that very important caveat, I will try to think of a way of approaching the question. Has Navy sought legal advice on matters relating to its activities in Operation Relex.

Rear Adm. Smith—I can only comment from my own position within the chain of command, Senator. I did not seek any independent legal advice as to what we were conducting in terms of Relex. I was advised through the chain of command that that advice had been sought and I was given directions to execute the operation within some legal advice that was provided to me.

Senator FAULKNER—Who in the chain of command informed you that independent legal advice had been sought?

Rear Adm. Smith—Admiral Ritchie advised me on the legal aspects of what we were asked to do.

Senator FAULKNER—If the RAN had sought independent legal advice, you would not necessarily be aware of it. Is that what you are saying?

Rear Adm. Smith—The Navy would not do that independently. We did this as an ADF operation and we have mechanisms to seek that sort of information at the strategic level. That would be the business of Air Vice Marshal Titheridge. That question would be best asked of him.

Senator FAULKNER—Not if the Navy did seek independent legal advice. Air Vice Marshal Titheridge would not know that.

Rear Adm. Smith—I am not aware of the Navy seeking independent legal advice.

Senator FAULKNER—Could you take this on notice? There is no other way of dealing with this, Rear Admiral. You are here as Maritime Commander and my question goes to whether Navy—I stress ‘Navy’—seeks any independent advice. I do not think that is an appropriate question for me to ask the Air Vice Marshal, or Admiral Barrie, to be honest. I think it is better directed to you, and I appreciate that you may not have first-hand knowledge of it. I think it is reasonable of me to ask you, as Maritime Commander, to take that on notice because you are here as the senior RAN officer, as opposed to me asking the head of Strategic Command.

Rear Adm. Smith—I understand that, and I will take it on notice.

Senator FAULKNER—Thank you. If the answer to the question on notice is yes, Navy did seek independent legal advice, I ask when it was sought, from whom it was sought and about what issues it was sought.

Rear Adm. Smith—I understand the question.

Senator FAULKNER—Thank you. Rear Admiral, I have not had an opportunity to chase up the matter of tasking since the Senate estimates committee, but knowing you would be joining us during these hearings I thought I could do it now. I do not know whether you are aware of this, but on Thursday, 21 February after the dinner adjournment CDF came back with some information in response to a question I had asked earlier in the day about any direct contact made by ministers or ministers’ staff—the secretary to Prime Minister and Cabinet and the like—with certain ships. I do not know if you recall that. I do not expect you to have recalled it.

I can give you a page reference if it is any assistance here. Admiral Barrie gave some information about advice that was forwarded to *Manoora*. It is those matters that I would very briefly like to go to the detail of. I hope I have selected the right person to ask; I think I have, but you can tell me.

Rear Adm. Smith—I will do my best, Senator.

Senator FAULKNER—CDF informed the Senate estimates committee:

Prime Minister Howard forwarded a letter addressed personally to myself—

I interpolate here that ‘myself’ is CDF. If it is any assistance to the people in another room supporting you, it is page 203 of the Senate Foreign Affairs, Defence and Trade Legislation Committee *Hansard* of the estimates hearing of 21 February. It says:

Prime Minister Howard forwarded a letter addressed personally to myself as commanding officer, dated 11 October, with respect to our tasking from Christmas Island to Nauru in the weeks during September-October 01. A letter arrived on board during the third week of October. Prime Minister Howard’s letter was also faxed to the ship on 12 October alongside in Sydney. Prime Minister Howard’s fax was preceded by telephone calls from Commander Steffan King in PM&C and also a Mr Brendan Hammer, PM&C, on or about 11 October informing me that a fax would be forthcoming and requesting a fax contact to forward the same. The subject fax arrived on board on 12 October. Minister Reith also forwarded a letter addressed personally to myself as commanding officer, dated 5 October, with respect to our then tasking which arrived in the post on board *Manoora* also during the third week of October 01.

I wondered if, for the benefit of the committee, you would be able to briefly outline the details of that tasking and the significance of it coming from the Prime Minister and the Minister for Defence.

Rear Adm. Smith—I do not have a copy of those letters. It is my understanding that those letters were in fact letters of congratulations to the commanding officer and the ship’s company for the way they conducted a very difficult operation. As far as I am aware, they did not contain any direction, in terms of tasking, to the commanding officer.

Senator FAULKNER—I have heard that before and I think CDF indicated that that was the case. It is just that the use of the word ‘tasking’ surprised me. My recollection is that it was CDF who said that letters of congratulations were provided. My question is just to clarify—because there is one more letter than I thought—whether that is the status of the letters. If that is the case there is no need to take it any further, given that you do not have copies of the letters. If you could just check for me if that is not the case—if any of those letters contain any details of tasking beyond appropriate congratulatory messages to the crew of HMAS *Manoora* or any other naval vessels involved.

Rear Adm. Smith—I have personally seen those letters.

Senator FAULKNER—That is all of the letters, is it?

Rear Adm. Smith—Yes. I can confirm that they were letters of congratulations and that the wording here—when we refer to tasking, that is a naval way of talking about how you are being used—was not in the context of giving tasking. It was about congratulations in the context of what their tasking had required them to do.

Senator FAULKNER—I thought that might be likely. The thing is there seemed to be one extra letter, and I was just interested in the use of that particular terminology. There is no need to chase that through because CDF, I think, did indicate the broad nature of those communications. So that is fine.

In terms of legal advice, does Maritime Command have a coordinating role, in the broad, in legal advice? Can you explain to me how the chain of command works in relation to the seeking of legal advice.

Rear Adm. Smith—I have my own fleet legal officer who provides me personal legal advice on operational matters. If there is clarity required on a particular issue, that is invariably conducted at the strategic level. At the strategic level, guidance is sought from such authorities as the Attorney-General's Department, as appropriate. I am not involved in that particular process.

Senator FAULKNER—I appreciate you have taken on notice a question in relation to legal advice, and that is fine. I was wondering more broadly whether the Navy does at times seek legal advice from the International Maritime Organisation, which I know does have a legal services secretariat. At times is there a direct link there or is that handled, if it is handled at all, by other areas of government?

Rear Adm. Smith—I can only comment on my own area, and I am not aware of any inquiry of that organisation from Maritime Command.

Senator FAULKNER—I wish to ask you about something we spoke about briefly on Friday afternoon—which was the question of phone calls, in this case outside the chain of command—which is on page 592 of last Friday's *Hansard*. I had raised with you the question of the criticism that Brigadier Silverstone had made of you and Maritime Command, and I have also raised this particular general issue with a range of witnesses. There does appear to be a pattern of an extraordinary number and frequency of phone calls, and I wondered, in relation to Operation Relex—this is phone calls to and from those naval vessels that were involved in the operation—whether this is an unusually high number of phone calls when you compare it with other naval operations.

Rear Adm. Smith—I think it would be fair to say that this would be an unusually high number of phone calls direct to tactical forces during the conduct of this operation.

Senator FAULKNER—Could you explain to the committee why that is the case?

Rear Adm. Smith—I think it is very much because of the sensitivity of this particular operation, the high media visibility that this operation was commanding within the community and the requirement for a rapid dissemination up the chain of command to the authorities making policy decisions of the factual information that was occurring. As it was occurring very rapidly and as the policy itself was being developed fairly rapidly, it necessitated that level of personal communication to the CO.

Senator FAULKNER—If we compared it to, say, naval ships involved in the Gulf blockade, is there a very different pattern here?

Rear Adm. Smith—There is a very different pattern here. I have no requirement to contact the ships in the Gulf directly by telephone, but if the need arose I would have no hesitation in doing so.

Senator FAULKNER—But in relation to Operation Relex, is it fair to say that, at the end of the day, the reason for all those phone calls comes back to politics?

Rear Adm. Smith—It comes back to seeking direction for the tactical forces as to how they go about the next stage of their operation.

Senator FAULKNER—I am trying to understand why there is this extraordinary number and frequency of phone calls, an intensity of contact on the telephone in relation to Operation Relex. You accept it is unusual—you accept in fact it is very unusual—but what is so different about Relex?

Rear Adm. Smith—Indeed I tried to explain that in my opening statement some days ago. I made the point that special reporting mechanisms were put in place for this operation. I was directed that the principal method of communication was to be commander to commander by telephone, and that was in recognition of the sensitivity and the nature of the operation in which we were involved.

Senator FAULKNER—But would you accept now that those special relationships were a failure?

Rear Adm. Smith—I do not see them as a failure at all. I believe that they worked and they permitted the relaying of very timely and important information to the appropriate authorities here in Canberra. They did not fail at all.

CHAIR—Did this high level of telephone traffic in Relex vary at any stage during the operation? Was it constant throughout?

Rear Adm. Smith—No, it was not constant. It was very much a function of what was actually happening at the tactical level. Invariably, it required communications when the SIEV incidents were unfolding or occurring and where we did not have the authority without higher guidance to react in a particular way. It was very much a function of the activity levels within the operation which are normally coincident with some activity with one of the SIEVs.

CHAIR—Were there any greater demands on you for more information at or after the time of SIEV4?

Rear Adm. Smith—I would say no. There was no obvious additional requirement. SIEV4 was just number four in a series of four and we had a few more that came afterwards. I did not see any particular request for more information after SIEV4.

Senator FAULKNER—But you would be aware of what General Powell says about the special relationship. I am just trying to turn up the reference now. Inevitably, I will not find it. The special relationship with Air Vice Marshal Titheridge has been much criticised. Are you looking at this from the perspective of Maritime Command? In other words, are you defending

what Brigadier Silverstone was critical of in relation to you and Maritime Command? That also bypassed the chain of command, but the bypassing of the chain of command in another area not involving Maritime Command—as I think you would be aware—has caused a significant problem. I think most objective observers argue that the special relationship led to the dissemination of wrong information in the first place.

Rear Adm. Smith—That particular incident you are referring to was a one-off occasion when Brigadier Silverstone was directed to speak directly to Air Vice Marshal Titheridge. That was not repeated again at any time during Operation Relex. You led into this line of questioning on the basis of my relationship and going outside the chain of command. I would make the point to you, Senator, that Brigadier Silverstone and the tactical forces were all under my command. I was not going outside the chain of command; I was going direct to a tactical unit commander to clarify a situation where there was some confusion.

Senator FAULKNER—Do you think in the case of Maritime Command this greater pressure and intensity of phone calls is as the result of the insistence of the government to be informed quickly about these matters? Is that a fair criticism as it applies to Maritime Command which does not, of course, go to the Silverstone and Titheridge issue?

Rear Adm. Smith—I would not see it as a criticism. That was one of the requirements in this operation and that is what we did.

Senator FAULKNER—Yes, but how was the requirement to inform the government quickly communicated to you?

Rear Adm. Smith—By formal signal. It was communicated directly from the CDF to the Theatre Commander, Rear Admiral Ritchie. He, in turn, gave me some quite explicit instructions on why it was essential that this communication was rapid and accurate.

Senator FAULKNER—A telephone may well be rapid, but is it accurate? At the end of the day you yourself very properly—as have other senior officers in the Australian Defence Force—cautioned this committee about the importance of looking at the sit reps, if you like, looking at the written record as opposed to depending on what might be the differing views about, and versions of, telephonic communications.

Rear Adm. Smith—I would make the point that the direction for verbal communication was in the first instance. There was never any direction that we were not to confirm by hard copy message the information that had already been relayed by the telephone. Indeed, it was this lack of confirmation that first led us to be suspicious about the original report of a child being thrown overboard.

Senator FAULKNER—So is it fair to say of a telephone that it is rapid but not accurate?

Rear Adm. Smith—We would never approach it from that point of view. We would always be providing that telephone advice to the very best of our knowledge.

Senator FAULKNER—Given the number of telephone calls in Operation Relex, do you think that is going to become the norm? Do you think that is going to become standard

operating procedure in naval operations or do you think some lessons have been learnt to ensure that you have absolute care when dealing with this extraordinary amount of telephone interplay?

Rear Adm. Smith—There is always an obligation on those in the chain of command to take care in the reports that they provide and that is why we go to a lot of trouble to confirm such information before broadcasting it. In this particular case, where we were required to communicate rapidly by telephone, with the benefit of hindsight that introduced obviously the possibility of inaccurate information being transmitted and acted upon before it could be confirmed.

Senator FAULKNER—In the light of this experience, do you think that telephone communications should ever be relied on for information going outside Defence to government? Is it good enough to rely on telephonic communications?

Rear Adm. Smith—It is good enough to rely in the first instance on that but it would be very prudent not to act until such time as that was confirmed with hard copy message.

Senator FAULKNER—I am not sure whether the committee has that CDF order—we have got so many orders and pieces of paper. I do not know whether one of my colleagues or the committee secretariat can help us. Could you identify that document? It may be one of the ones we have or it may be one we do not have.

Rear Adm. Smith—This is the warning order?

Senator FAULKNER—No. This is the one in relation to the need to inform the government—

Rear Adm. Smith—The special arrangement?

Senator FAULKNER—It is not the special arrangement—that is the Titheridge special arrangement. What I am referring to is from Admiral Barrie's request, via Rear Admiral Ritchie, to Maritime Command for the government to be kept informed.

Rear Adm. Smith—If you would bear with us I will dig that message out. I do not believe it has been provided to the committee.

Senator FAULKNER—No. As you understand, Rear Admiral, you have provided so much information that we will need to check that. Thank you for indicating that to us and thank you for providing that information to us as well. There is just one final matter, Rear Admiral—again, I do not want you to go to any intelligence operational details and I make that caveat clear. Could I ask you: was the Navy or any other Defence unit that you are aware of informed of the impending or actual departure of the suspected illegal entry vessel *Palapa*? I do not think that is on the spreadsheet.

Rear Adm. Smith—I am not familiar with that name, Senator.

Senator FAULKNER—I may be using the wrong name. My understanding is that that is the name of the vessel that asylum seekers on board were picked up by MV *Tampa*. I may have the wrong name. I am just depending on my memory. It is the *Palapa*, isn't it?

Rear Adm. Smith—I understand the question, but you are asking me whether we knew about the sailing of that one.

Senator FAULKNER—Yes, that is right. I am asking—without trampling into any sensitive intelligence details, and I put that clear caveat—whether Defence was informed of, or aware of, the departure of the *Palapa* from Indonesia.

Rear Adm. Smith—I am not aware of whether or not we were aware of its departure. I certainly was not personally aware. If my memory serves me correctly, the first we were aware of this particular vessel was when we received advice, through Coastwatch Canberra and the search and rescue organisation, that there was a vessel in distress.

Senator FAULKNER—Could I ask you perhaps to take that on notice, Rear Admiral, appreciating and understanding that you do not have that information to hand. If that is the case, what date was that information passed on to Defence and what date did that vessel depart from Indonesia? Could I ask you also in relation to that particular vessel, and you may be able to assist me with this: was any Royal Australian Navy ship ordered or directed away from the area of Australian or international waters where the *Palapa* would be expected to be intercepted?

Rear Adm. Smith—No.

Senator FAULKNER—Thank you for that.

CHAIR—Does that conclude your questioning, Senator Faulkner?

Senator FAULKNER—I said that I would try to wrap up in an hour and I have, even though I could ask many more questions. One committee member has to be a man of their word.

CHAIR—Let's hope all committee members are in that category.

Senator JACINTA COLLINS—There is one other matter, Rear Admiral Smith, from the last occasion that I do not think you dealt with in your opening statement, and that was the letter you quoted from the CO of the *Arunta*. Have you had the opportunity to review whether that could be made available to us?

Rear Adm. Smith—I am just trying to remember which letter that was.

Senator JACINTA COLLINS—It was the one you were referring to with respect to how information was collated on the ship during these incidents.

Rear Adm. Smith—I thought I provided that to the committee.

Senator JACINTA COLLINS—Okay. It has not been passed on.

CHAIR—What is that?

Senator JACINTA COLLINS—It was not provided to us at the time and, as far as I am aware, it has not been passed on to members of the committee today.

Rear Adm. Smith—Is that the one that I read from about the way they compile the information?

Senator JACINTA COLLINS—That is right.

Rear Adm. Smith—I thought that was handed to the secretariat, but I would have to confirm.

Senator JACINTA COLLINS—Okay. I checked with the—

CHAIR—Is that the document handed up tonight?

Rear Adm. Smith—No, this was last week, Senator.

CHAIR—I am sorry, I missed the beginning of your question. I am trying to get the secretariat to identify what the document is.

Senator JACINTA COLLINS—Yes. There was a letter that Rear Admiral Smith quoted from on the last occasion. I asked him if he could provide a copy to the committee. He sought to review it in terms of whether it was appropriate that all the information included in that letter should be made available to us. I sought from the secretariat, who then sought from the Defence group, clarification of whether that had been made available and we were told that, as at this point in time, the answer was no.

Rear Adm. Smith—At the conclusion of those proceedings, that was handed to a gentleman who I believe was from Hansard. I handed that document over there, and I no longer have it.

CHAIR—I see. Hansard often then return to the originator the document that they have, rather than hand it to the secretariat. We will check to see what has happened.

Senator FAULKNER—Hansard are pretty honest.

CHAIR—They are very reliable, I must say.

Rear Adm. Smith—I can certainly get another copy.

CHAIR—And not only because they are listening to our conversation. They are very good.

Senator FAULKNER—To save time, I will place a question on notice that might require a small amount of effort to get a response to. I think it will certainly save some time tonight.

Rear Adm. Smith—Certainly.

Senator JACINTA COLLINS—Given the additional material that you provided to the committee, there is probably a number of areas that I will not go into any detail with until I have had the opportunity to review that further material, but I understand that you have taken on board our questions about differences in the reports in some of those instances and the desire to get to the original source of those reports.

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—For example, another one of the examples that concerned me that you may now, with the additional material, have dealt with was incident 4 where there was no source cited, although that may well be in your later table that you collated. I think I will wait until I have had the opportunity to review all of that material before I pursue some of those issues further.

Rear Adm. Smith—The statements that are now contained in the pack that I handed to the secretariat now support each and every one of those incidents.

Senator JACINTA COLLINS—Yes. I appreciate what you said earlier this evening. I was concerned to ensure that that would be the case given that, for instance, incident 7—I am working on the Titheridge version at this stage, rather than yours, and the numbering changes—that was not the case with the statements we had at the time. Now you have been able to provide additional material, so I will review that.

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—With respect to incident 5, there was one question I had on that incident which is that, quite different to the language throughout the rest of the report, it indicates as worthy to note that children were picked up away from—and I will have to go to this to get the exact wording which reads:

Worthy to note that WOLLONGONG and ARNHAM BAY recovered several children without parents in attendance—

Can you tell me where that language came from? Was that your own report, or was that adopted from the op rep that came from the ship?

Rear Adm. Smith—That was a direct quote that came from the op rep that came from the ship, which is now supported by a statement.

Senator JACINTA COLLINS—The overall context of that exercise was that that was essentially an abandoned ship?

Rear Adm. Smith—That was the point that the CO was trying to make there, that this was a panic exodus from SIEV10 and that is why the children became separated from their parents.

Senator JACINTA COLLINS—Yes, rather than implying some lack of concern by the parents that they allowed themselves to be separated from their children.

Rear Adm. Smith—There was absolutely no intention to suggest that fact. This was just a reflection of the panic and the mass exodus of the ship sinking.

Senator JACINTA COLLINS—Yes. In that context, whilst it actually directly related to children, it is not really an example you would have marked as an ‘X’ on that tabulation form—

Rear Adm. Smith—On the sheet.

Senator JACINTA COLLINS—as a threat to a child?

Rear Adm. Smith—No.

Senator JACINTA COLLINS—In that case, if I were talking about incidents where children were threatened by asylum seekers, you could not really count that as one of the incidents, could you?

Rear Adm. Smith—And we have not done so.

Senator JACINTA COLLINS—No. Some have been known to say they have 12 incidents and clear examples in eight of those 12. On the material that was originally available to me—and this will now have to go through the process of the additional material—I could count only four where I thought the verification was provided to us prior to the additional material that came out on the last occasion and has come out now. So it will be interesting to see ultimately the full context of these exercises.

Rear Adm. Smith—Certainly. I understand that, Senator. The Titheridge report, which was fed by my own report, talked purely about incidents of children threatened to be thrown over the side. Those reports are now, in each case, supported by multiple statements from personnel who were there at the time.

Senator JACINTA COLLINS—Yes, and in their full context.

Rear Adm. Smith—Correct.

Senator JACINTA COLLINS—Thank you. The other questions I have are aimed pretty much at trying to tie up in my mind some of the other evidence we have had which is unrelated to these incidents. The first of that is the cable that came from the *Adelaide* on 10 October correcting the earlier reports. We have had evidence that it did not make its way up the chain of command to Canberra. Can you provide us with any information in relation to that?

Rear Adm. Smith—Yes, I can. Your assertion is correct: it did not make its way up through the chain of command. It came as far as me, and I did not forward it on as a formal signal. It was a personal message from the CO of *Adelaide* to me at my direction. The information was drawn from that; it was a chronology of events. I drew from that the confirmation that this event had not occurred which had been suggested had occurred. I advised verbally that information. I did not forward that message on.

Senator JACINTA COLLINS—This was as a result of your step outside of the chain of command in talking directly to Commander Banks to get to the bottom of the exercise?

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—This signal was a response to that?

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—When that information came to you in writing—I suppose you probably regret now that you did not provide that in writing further up the chain of command.

Rear Adm. Smith—Senator Faulkner asked me at the close of the last session what I have learned from this. I think that was my lesson, that I would have forwarded that message on. At the time I did not think it was necessary. It was a tactical message. The information was relayed. With the benefit of hindsight, I wish I had have forwarded the message along.

Senator JACINTA COLLINS—A question remains with me with respect to this special arrangement for Brigadier Silverstone to contact Air Vice Marshal Titheridge directly. You and Rear Admiral Ritchie are quite clear that it was either the minister or our minister that the briefing was sought for, whereas Brigadier Silverstone refers to the Treasurer in his notes. Can you explain that discrepancy?

Rear Adm. Smith—No, I cannot. I did not keep notes of what I was asked to facilitate, which was that call in the morning. I have it in my mind, as does Admiral Ritchie I believe, that it was our minister. Brigadier Silverstone has ‘Treasurer’ written in his notebook, and I cannot explain the difference.

Senator JACINTA COLLINS—But you are fairly confident that it was our minister?

Rear Adm. Smith—I was fairly confident that it was our minister, yes.

Senator JACINTA COLLINS—The first question that came in my mind at the suggestion of the Treasurer was: why would Defence be putting a special arrangement in place to meet the media needs of the Treasurer?

Rear Adm. Smith—That is why I think I would have, if not questioned it, at least wondered myself. I did not have that query in my mind, so that is why I was pretty certain it was our minister.

CHAIR—I think it has been reported in the media, although I have not checked this, that the Treasurer appeared on the *Sunday* program that morning.

Senator JACINTA COLLINS—Yes, he did. In one sense we are back to the issue of Brigadier Silverstone’s notes because the information that we have received from both Admiral Ritchie and Admiral Smith is that this special arrangement was for their minister. I suppose we

can take it up further with Air Vice Marshal Titheridge and get to his understanding of it, but I think it seems fairly clear that if two links of the chain are saying our minister that is probably who it was.

Rear Adm. Smith—Certainly, the request to me was to provide that information to Air Vice Marshal Titheridge, who was going to brief ‘the minister’. It may have been that we interpreted those words ‘the minister’ as our minister, but certainly it was the Air Vice Marshal who was going to do that briefing so he would be best to ask, I suspect.

Senator JACINTA COLLINS—Yes, thank you. Another area where some of the media reports may also have not been accurate is on your conversation with Brendan Nelson.

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—It is suggested in some of the press reports that you were speaking directly to Commander Banks. That was not the case, was it?

Rear Adm. Smith—No. I was not.

Senator JACINTA COLLINS—Could you revisit the issue of who it was you spoke to at the time when you spoke to Brendan Nelson, and exactly what you conveyed?

Rear Adm. Smith—Certainly. It was on the Sunday evening, 8 October. I was hosting a reception on board *Kanimbla* for a youth program that we were running. At the time Dr Nelson was the Parliamentary Secretary to the Minister for Defence and he was the guest. I was speaking on the telephone to Brigadier Silverstone because the SIEV4 thing was still unfolding at that stage, on the Sunday evening, and Brigadier Silverstone was merely bringing me up to date with what had been occurring during the course of Sunday. Dr Nelson began a conversation with me and, in passing, asked me how the operation was going. I am sure he was doing that in his capacity as the parliamentary secretary. I advised him that it was a very difficult operation; that the operation had become a little more complicated with the current SIEV, as a report had been received that a child or children had been thrown over the side, and I relayed that information to him. The call I had got off was from Silverstone and he did not tell me that information then because he had already—I had got that earlier that morning. That was how the conversation—

Senator JACINTA COLLINS—It was from Silverstone on that occasion as well?

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—So he was giving you an update as to what had occurred during the day?

Rear Adm. Smith—When these operations are running, we speak probably 10 times a day and that was just one of those calls that he made. In conversation with Dr Nelson I apprised him of that situation.

Senator FAULKNER—But I suppose you would regret not contacting Dr Nelson back, Rear Admiral, and saying that that information was not accurate?

Rear Adm. Smith—Again, with the benefit of some hindsight, Senator, I would say that is correct. To be honest with you, I gave that conversation not a second's thought after it occurred.

Senator FAULKNER—I do not think Dr Nelson gave it a second's thought after it occurred either, so I would not feel too guilty if I were you.

Senator JACINTA COLLINS—Yes. I move to another one of the questions sitting in the 'loose end' area. Did Brigadier Silverstone convey to you the content of his discussion with Minister Reith regarding the content of the video?

Rear Adm. Smith—No, he did not. I was apprised of that conversation by Admiral Ritchie.

Senator JACINTA COLLINS—So he spoke to Admiral Ritchie solely?

Rear Adm. Smith—Yes. I would have to check my diary, but I do not think I was around at that time. Brigadier Silverstone spoke directly to Admiral Ritchie and Admiral Ritchie subsequently advised me of that situation.

Senator JACINTA COLLINS—How did Admiral Ritchie describe that to you?

Rear Adm. Smith—He merely told me that Brigadier Silverstone had had a conversation with the minister where they had discussed the EOTS tape, and that the minister had not viewed the tape.

Senator JACINTA COLLINS—So you were not apprised of the minister's statement that he had best not see it?

Rear Adm. Smith—I was not aware of that statement, no.

Senator JACINTA COLLINS—Also, in a statement by Mr Hendy from the minister's staff, he indicates that senior admirals in Defence were consulted about the release of the photos. Were you consulted?

Rear Adm. Smith—No.

Senator JACINTA COLLINS—I think I might just go to one of the incidents because, I think after our last session, the video that was provided to us was of enclosure 2, incident 1, which was the threat to a child. That example has made your table, hasn't it?

Rear Adm. Smith—Yes, it has.

Senator JACINTA COLLINS—In the video—correct me if you disagree with my interpretation—a man is holding up a child. I cannot speak their language and I would be interested to get an interpretation to know what was being said. He is actually surrounded by

people, he holds up a child, he gives the impression that he may be moving to put the child over the edge, and two or three men standing on the very edge raise their hands to prevent that from occurring.

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—Do you think that that is fairly accurate?

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—There was a discussion with Vice Admiral Shackleton about how seriously the Navy takes these threats. For that particular incident, how serious do you believe that threat was?

Rear Adm. Smith—I could only form an opinion by watching the video, in the same way as you have, Senator. However, I think the important perspective is the perspective of the people who were on board at the time, who viewed any of those sorts of activities with great seriousness. I think if I had been on board that vessel and had seen that incident, I would have been very concerned that something quite bad was about to happen and would have taken action to prevent it. And that is what actually occurred.

Senator JACINTA COLLINS—Yes, the asylum seekers themselves, in one sense, prevented it also, didn't they?

Rear Adm. Smith—It was a combination of them doing it themselves as well as others. And them doing it themselves clearly indicated to me, from watching that video, that they also viewed that particular incident with great seriousness.

Senator BRANDIS—Admiral Smith, I do not think it has ever been suggested that all of the people on board these vessels were attempting to throw children into the water. Plainly, most of the people on the vessels were very concerned about the behaviour of some of the other people on the vessels. Do you go along with that?

Rear Adm. Smith—I would agree entirely, Senator.

Senator JACINTA COLLINS—It is of great concern, some of the generalisations that have occurred in relation to boat people, and indeed in relation to the position that the Navy has been in in these incidents.

Rear Adm. Smith—Yes, that is very true.

Senator JACINTA COLLINS—One of the reasons that I am keen to give you an opportunity to explain more broadly the context of some of these incidents is in fact the headline that I referred you to on the last occasion, which was, 'Boat people attempt to kill child: Libs'. I look forward to seeing, in relation to that strangulation incident, the full context of that story because, as we discussed last time, that detail was not available to us on that last occasion. It was one of the ones where witness statements were claimed to exist—

Rear Adm. Smith—Yes, it was.

Senator JACINTA COLLINS—but in fact did not exist.

Rear Adm. Smith—But now do.

Senator JACINTA COLLINS—From the media's point of view, if they had seen that incident, they would have read the report and said, 'Yes, there are witness statements,' and they would have thought, 'Fine, it is reasonable to make that assertion.' But that was not the case.

Rear Adm. Smith—That is one of the incidents now that is supported by a statement. I think it is fair to put on the record, Senator, that the statement is less than conclusive in terms of that threat or allegation of strangulation. It could in fact have been interpreted as a father being quite rough with his daughter, preventing his daughter becoming involved in what was beginning as a riot. So I think that that is less than conclusive, that particular allegation.

Senator JACINTA COLLINS—So it may have been the father in fact trying to protect his daughter?

Rear Adm. Smith—You could certainly view the soldier's statement that way, yes.

Senator JACINTA COLLINS—Thank you for that. This is where I thought I should take you at this stage to a similar situation Vice Admiral Shackleton was in, in his evidence before us. He was asked about the abuse of children, and he responded—at page 76 of the *Hansard*—'I do not know that the abuse of children is all that definite.' Do you care to put a position to us about whether you believe that the abuse of children is a systematic pattern amongst asylum seekers?

Rear Adm. Smith—The use of children as a means of intimidating the boarding parties—the sailors and the soldiers that were on board these SIEVs—is a feature in a number of these SIEVs, and therefore I would have to say that, in my view, that is one of the techniques being used by these people in an attempt to achieve their aim.

Senator JACINTA COLLINS—But do you caution, as indeed did Vice Admiral Shackleton, considering that to be tantamount to child abuse?

Rear Adm. Smith—I do not think I would like to pass an opinion on that. From the Navy's operational perspective, children were used by some people, and not all, as a means of applying moral pressure on our people. I have said previously in testimony that that was designed to appeal to our moral values. That was designed to strengthen their position and weaken our own and invite us to not persevere with the mission that we had been given. I think it is frankly a credit to the young men and women involved in this that they were able to persevere with their mission in the face of that.

CHAIR—I heard you say that when you originally said it, but could I just be clear about the language here—'The threat of doing so was an attempt to deal with our moral values.' We are talking about the threat, not an actuality?

Rear Adm. Smith—It is the threat of doing that. In our situation, if you take a sailor and he sees a mother and a child in distress, his natural inclination will be to help. That natural inclination, the culture of which we are a part, was being exploited.

Senator JACINTA COLLINS—Do you believe that that is not part of their own culture?

Rear Adm. Smith—In what respect?

Senator JACINTA COLLINS—The care of children. Do you think that there is a difference between our culture and their culture?

Rear Adm. Smith—I am not prepared to comment on the culture of the people involved here. I can only comment on our own culture and our own values. I saw our culture and our values, the things for which we stand, being exploited.

Senator JACINTA COLLINS—But such threats occur within our own society, don't they?

Rear Adm. Smith—That could be true.

Senator JACINTA COLLINS—We hear about family law matters all the time where children are not only threatened but also actually harmed or killed within our own society. I should also take you to the questions that Vice Admiral Shackleton was asked in relation to moral blackmail, whilst we are at this stage. He was also cautious about referring to moral blackmail. I noticed in your discussion about the situation just then that you also did not resort to that language. Do you care to comment?

Rear Adm. Smith—I think I am on the record as having agreed that it could be interpreted or expressed in that way. Without delving into the semantics of words here, at the end, I have no doubt at all that the behaviour of these people, some of the things that they did, was designed deliberately to place enormous pressure on professional young men and women who were being asked to do a very difficult job. That pressure was being applied with the purpose of undermining their professionalism and determination to achieve the mission that they had been given. I have no doubt about that.

Senator JACINTA COLLINS—In conclusion, going to that table that you drew up, my reading of that table, I think, clearly indicates that in terms of a child or children in the water there was one such incident.

Rear Adm. Smith—That is correct. In terms of a child being dropped in the water or thrown in the water, there was only one incident.

Senator JACINTA COLLINS—And it was actually dropped or lowered; it was not thrown. Is that correct?

Rear Adm. Smith—'Dropped' is the word being used in the statements, yes.

Senator JACINTA COLLINS—That concludes my questions, thank you, Chair.

CHAIR—Thank you. Senator Brandis.

Senator BRANDIS—Chair, as we did last time, Senator Mason and I would like to take it in turns to deal with the remaining incidents that we want to deal with. Senator Mason will deal with the first two, if that is agreeable.

CHAIR—Yes.

Senator MASON—Admiral, can we go back to SIEV7. That is where you and I left off in our last discussion. Can I return you to what you refer to as ‘SIEV7, incident 2’ in your event summary. Do you have that?

Rear Adm. Smith—Yes, I do, Senator.

Senator MASON—I will also be referring to your minute to the Chief of Navy and your matrix. Those are the main three documents and I will work with a couple of others as well.

Rear Adm. Smith—Certainly.

Senator MASON—In the event summary document you refer to ‘SIEV 07, incident 2’ as an incident where a woman dropped a child into the water. In your minute to the Chief of Navy, there is a signal from HMAS *Bendigo* that verifies that, but, because we are running short of time, can I move directly to the witness statements—the primary evidence—of that incident. I have statements from Able Seaman Travis Flenley and Able Seaman Matthew Levi. Do you have those?

Rear Adm. Smith—Yes, I do.

Senator MASON—I refer to the bottom of the first page of Able Seaman Flenley’s statement dated 25 October 2001. Do you have that?

Rear Adm. Smith—Yes, I do.

Senator MASON—In relation to SIEV7 he says:

... I saw a small child being dangled over the starboard side of the SIEV by its arm.

On page 2 it continues:

Other women were gesticulating towards the child shouting, “Oh, no, look at the poor child, it’s going to die” or words to that effect.

Do you agree with that?

Rear Adm. Smith—Yes, I do.

Senator MASON—It continues:

They were obviously attempting to unsettle us. The child, about three years old, was also screaming. I then saw the woman drop the child. The woman and the other women around her remained hysterical, screaming at us.

The next paragraph continues:

Soon after the child hit the water, one of the male SUNCs that was already in the water close to the SIEV swam to it and held it above the water on his chest.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—And that is why, in your matrix document, you describe SIEV7 as an actual incident where a child was thrown or dropped overboard?

Rear Adm. Smith—That is correct, Senator.

Senator MASON—The other primary piece of evidence, Admiral, is from Able Seaman Matthew Levi. Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—On the bottom of the first page of that statement, Able Seaman Levi says:

As the two ACV RHIBs and BENDIGO's RHIB rounded up and recovered the first of the SUNCs, I saw a small child in a red jumpsuit being dangled over the starboard side of the SIEV by its arm.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—It continues:

I then saw the child being dropped into the water as the hysterics and screams increased.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—The last ship that relates to SIEV7—I think this is right—is the *Bunbury*, which was incorrectly marked at one stage as SIEV6. Is that correct?

Rear Adm. Smith—Yes, I think that is correct.

Senator MASON—In your minute to the Chief of Navy—I think it is the last two pages of that minute—you refer to the *Bunbury*. You mentioned the other day that in fact it was SIEV7. That is correct, isn't it?

Rear Adm. Smith—That is correct.

Senator MASON—And there is a signal from HMAS *Bunbury*—is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—It says there that:

... the Boarding Party observed a large male standing atop the vessel's coachhouse. He picked up a young girl (aged 4-5 years) by one leg and held her over the STBD side of the vessel and started yelling. The young girl appeared very distressed. All observers noted that she had a cast on her left arm. As this occurred BUNBURY's CBM started removing his webbing in order to enter the water after the girl.

Is that correct?

Rear Adm. Smith—That is correct, Senator, yes.

Senator MASON—What primary evidence do we have of that?

Rear Adm. Smith—We have the signal from *Bunbury*, which was as a response to my request for that information. We also now have statements to that effect.

Senator MASON—I am not sure I have the statements on that.

Rear Adm. Smith—These are the statements that are still to be circulated to the committee.

Senator MASON—You did say that, sorry. Senator Collins will say something about primary evidence. Can we then go to the boarding log?

Senator JACINTA COLLINS—This is one of the uncontentious ones?

Senator MASON—All right. Just very quickly—

Senator BRANDIS—Senator Collins, with respect, they are all contentious to the extent to which the proposition is put, as it was put unsuccessfully by you to this witness, that there is not a pattern of conduct. At risk of stating the obvious—

Senator JACINTA COLLINS—I actually never said that, Senator Brandis.

Senator BRANDIS—If it is uncontentious that there is a pattern of conduct—

Senator JACINTA COLLINS—Senator Brandis, you are misrepresenting me and I ask you to withdraw it.

CHAIR—Order!

Senator BRANDIS—I am not misrepresenting. You challenged the witness.

Senator JACINTA COLLINS—You are misrepresenting me. You claimed that I claimed that there was no pattern. I have never done so.

CHAIR—Order! Order!

Senator BRANDIS—So do you accept that there was a pattern of conduct involving the abuse of children?

CHAIR—Can we just have a bit of order, please? If Senator Brandis has something to say, I think he should say it. If you have any objection, if you are not taking a point of order—

Senator JACINTA COLLINS—I object to being misrepresented.

CHAIR—You can deal with that in the appropriate manner. Unless there is any other argument, let us go back to Senator Mason.

Senator MASON—In your matrix, Admiral, you mention the *Bunbury*, *Arunta* and the *Bendigo* in relation to SIEV7 and you say there was a threat to throw a child overboard.

Rear Adm. Smith—Yes, Senator.

Senator MASON—If I can take you, Admiral, to the boarding log. Do you have that?

Rear Adm. Smith—Yes, I have that.

Senator MASON—I think it is page 2.

Rear Adm. Smith—Yes, it is.

Senator MASON—About five lines down it says, ‘One SUNC jumped over the side, one child held over the side.’

Rear Adm. Smith—That is correct.

Senator MASON—And that is your evidence for the proposition that a child was threatened to be thrown overboard?

Rear Adm. Smith—That is now supported by these new statements.

Senator MASON—Thank you, that is fine. I might briefly just do SIEV8 before Senator Brandis does SIEV9 and SIEV10. In the matrix you simply mentioned in relation to SIEV8 that it was really a matter of agitation. Is that right?

Rear Adm. Smith—Yes, that is all it was.

Senator MASON—You cite SIEV8 filed at serials 32 and 36, and in your event summary you simply say:

When briefed of the requirement to sail to AI—

Ashmore Island—

the PII—

potential illegal immigrants—

became uncooperative and removed shades to deliberately expose themselves to the sun. Discussion with the PII revealed they were under the impression that AI was an Indonesian island, and once briefed otherwise they agreed to sail to AI.

Is that correct?

Rear Adm. Smith—That is correct, Senator.

Senator MASON—I think we can leave SIEV8 at that, thanks Admiral.

Senator BRANDIS—Admiral, I want to take you to some of the evidence in the statements that you have produced for the first time this evening. I am not sure whether the order in which the statements have been handed to me is the order in which you have them. Could I ask you to locate a three-page document titled, ‘Statement by Lieutenant R.P. Henry’.

Rear Adm. Smith—In what SIEV context, Senator? That will help me.

Senator BRANDIS—It is SIEV9.

Rear Adm. Smith—What was the name again, Senator?

Senator BRANDIS—Lieutenant R.P. Henry.

Rear Adm. Smith—Yes, I have that, Senator.

Senator BRANDIS—Regarding the structure of this statement, although it is entitled, ‘Statement by Lt Roy Henry,’ if you turn to the last page you will see that it is signed by six people: Lt Henry, Sergeant Oben, Corporal Troughton, Corporal Bergersen, Lance Corporal Nimmitt and Lance Corporal Mahalm. Do we take it that this is presented to us in this form as a joint statement of each of those six people who, by signing it as they do, verified their knowledge of the events to the extent to which the statement refers to their participation in those events?

Rear Adm. Smith—Those are indeed the circumstances.

Senator BRANDIS—I will next ask you to take up the Titheridge memorandum, please.

Rear Adm. Smith—Yes, I have it.

Senator BRANDIS—Go to enclosure 2.

Rear Adm. Smith—Yes.

Senator BRANDIS—There may be a bit of an inconsistency, as far as I can see, with some of the incident numbering. Incident 1 on the Titheridge memorandum refers to SIEV7, and not to SIEV9. Do you see that?

Rear Adm. Smith—Yes.

Senator BRANDIS—Incident 2 refers to SIEV9 and an episode that occurred at 0231 zulu on 31 October. Incident 2 on the Titheridge memorandum marries up with incident 1 on this joint statement by these six witnesses. Do you see that?

Rear Adm. Smith—Yes, that is correct.

Senator BRANDIS—What is described on this statement as incident 1 is *Arunta* incident 2 on the Titheridge memorandum?

Rear Adm. Smith—Correct.

Senator BRANDIS—May I take you then to the middle paragraph of the discussion of the incident in the statement. You will see that it is reported by these witnesses that a small group of PIIs had ripped up the floorboards and were banging those floorboards against the floor of the boat in an attempt to sink the SIEV.

Rear Adm. Smith—Yes.

Senator BRANDIS—That piece of evidence is one of the bases upon which you prepared your note, which ultimately became the annexures to the Titheridge memorandum reporting on that event?

Rear Adm. Smith—That is correct.

Senator BRANDIS—May I take you then to the third paragraph of the statement, under incident 1:

During this riot, a male PII threatened to throw his child off the back of the SIEV. He was moving quickly to the rear end of the SIEV and was screaming loudly, “I will throw, I will throw”, or words to that effect. Myself—

presumably Lieutenant Henry—

and two other soldiers were able to tackle this PII to the ground and remove the child from his clutches and give it back to its mother. The child would have been no more than two years old. This male PII subsequently calmed down ...

That piece of evidence, which is, of course, primary evidence from a witness, is one of the pieces of evidence on the basis of which you made the assessment of threats to throw a child from that SIEV on that occasion?

Rear Adm. Smith—I did not have that particular statement at the time that this compilation was put together. They were reports from the ship, but this is what the ship have drawn their information from.

Senator BRANDIS—Would you agree with me that that evidence clearly supports the conclusion you drew on the basis of the secondary sources when you say, ‘One male SUNC threatened to throw young infant overboard’?

Rear Adm. Smith—Very much so, yes.

Senator BRANDIS—Incident 2 in the joint statement, which you have produced this evening, refers to something happening at 1217 zulu on 31 October?

Rear Adm. Smith—Yes.

Senator BRANDIS—This is significant for two reasons: firstly, it is reported by you in your summary that that is another attempt to throw a child overboard, and it is also the strangulation incident. Whether it be a threat or an attempt or however it be described, the word ‘strangle’ comes in about that incident?

Rear Adm. Smith—That is correct.

Senator BRANDIS—You told us when last we saw you that there was a mistake in your document because, although it says statements from members of the boarding party and boarding officers had been taken, you were not able to produce those statements. This statement, which is dated 9 April is, may I take it, an attempt to correct that error by producing statements of the original witnesses?

Rear Adm. Smith—It is not an attempt to correct the error. It is an attempt to present to the committee the facts of each of these situations. At the time of producing my document, which became the Titheridge report, the ship reported that statements existed. That was in error. It was that report that was in error. They did not exist at that time. These have been produced subsequent to that.

Senator BRANDIS—The joint statement reports in relation to this incident—I am reading from towards the top of page 2:

The TSE were reacted and 5803399 PTE D. G. Moore was—

To put it in context, there is a reference to a predominant single male PII. Do you see that in the second line?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—The TSE is the army unit, isn’t it?

Rear Adm. Smith—That is correct.

Senator BRANDIS—I quote:

The TSE were reacted and 5803399 PTE D. G. Moore was able to stop a male PII from throwing his child overboard. The male PII actually had the child over the side of the SIEV and PTE Moore was able to secure the child and the rest of the TSE were able to move in and restrain the adult male on the fox'sail.

Then it goes on:

This incident was witnessed by myself—

Senator MASON—That should surely be the 'fo'c'sle'.

Rear Adm. Smith—Correct, Senator. It is written by Army people, Senator—one of whom is in the room! He is a lawyer.

Senator BRANDIS—It continues:

330301 SGT Oben and 5800316 CPL Bergersen.

So three of the six signatories to this statement do, by this statement, verify that fact?

Rear Adm. Smith—That is correct.

Senator BRANDIS—It continues:

If it was not for the action of Private Moore, it is of the above witnesses assessment—

presumably an intended reference to himself, Bergersen and Oben—

that the child would have been dropped overboard.

Again, this is information that verifies the conclusion that you drew when you drafted the document that became the Titheridge memorandum?

Rear Adm. Smith—That is correct.

Senator BRANDIS—This is the incident in which the word 'strangle' first appears. May I ask you take up please the statement of Carol Anne McQueen?

Rear Adm. Smith—This is the same SIEV incident?

Senator BRANDIS—That is one of the things I want to establish. I do not want to lead you as it were. At the top it says 'In the matter of SIEV9 incident 3', and then a time is given, presumably 2017 local time on 31 October. You will have to help me again. There is a difference between zulu time and local time?

Rear Adm. Smith—That is correct.

Senator BRANDIS—That is a difference of how many hours?

Rear Adm. Smith—In that location I think it is nine.

Senator BRANDIS—The incidents summarised in the enclosures to the Titheridge memorandum are all given in zulu time, not local time. You will see that this incident is reported at 2017 local time. It would appear to marry up with what in the Titheridge memorandum is described as incident 3, which is recorded as having happened at 1217 zulu time. In other words, it is the only incident which occurred at 17 minutes past the hour.

Rear Adm. Smith—I believe it is referring to incident 3.

Senator BRANDIS—It seems to be an intended reference to the same incident, if you read the text. But the description of SIEV9 incident 3 at the top is in fact a description of Titheridge incident 3, which is SIEV9 incident 2 because Titheridge incident 1 is a SIEV7 incident. Do you see what I mean?

Rear Adm. Smith—Yes.

Senator BRANDIS—All right. Lest there be any suggestion that we are not talking about the same incident, what this refers to and what Titheridge incident 3 refers to are the same event, at 17 minutes past the hour on 31 October 2001.

Rear Adm. Smith—Yes, that is the case. In fact this young woman is on board *Arunta*—

Senator BRANDIS—Yes.

Rear Adm. Smith—and they have used the numbering of *Arunta*.

Senator BRANDIS—All right. What is the rank of this officer?

Rear Adm. Smith—She is an able seaman.

Senator BRANDIS—Thank you. Able Seaman McQueen records in paragraph 4:

I was the communications operator on the bridge of HMAS ARUNTA during the attempted strangulation and throwing overboard of children on SIEV09.

Then at the end of paragraph 4 she says:

In relation to the incident above—

presumably an intended reference to the attempted strangulation and throwing overboard—

I did not see any of the events occur.

So she does not say she was an eyewitness and what she goes on to say is what lawyers would call hearsay or secondary evidence. But she explains in her statement the provenance or the origin of this claim. In paragraph 5 she says:

For the above incident, I wrote that the PIIs were chanting 'UN', and then the PIIs had attempted to strangle a child and throw another overboard.

May we take it from the way in which that is put together that it appears it was this officer, Able Seaman McQueen, who wrote the report?

Rear Adm. Smith—It is this able seaman who wrote in the ship's narrative that information.

Senator BRANDIS—The report that conveys that information?

Rear Adm. Smith—That is correct.

Senator BRANDIS—All right. It is interesting that she goes on to say:

Due to the circumstances at the time with a very busy communications flow I am unable to recall who passed this information to me. I believe it may have been the Army Major on the bridge of ARUNTA.

Would you agree with me, Admiral Smith, that plainly Able Seaman McQueen is declaring or stating that this information was conveyed to her and that she attempted to record what was conveyed to her?

Rear Adm. Smith—That is what she is saying, yes.

Senator BRANDIS—She goes on to say:

As information was passed between the SIEV and ARUNTA, the word 'attempted' was crossed out and initialled (as per procedure), being replaced with the word 'threatened'.

What is the procedure she refers to there? Can you tell us?

Rear Adm. Smith—In the ship's narrative, in the log, if there is an error or something needs to be adjusted, it can be ruled through in pencil, but it must be initialled. You cannot use an eraser in the ship's log.

Senator BRANDIS—I understand. Would you agree therefore that the most mature and accurate record of the event is likely to be the ultimate corrected record after these errors, as per procedure, have been corrected?

Rear Adm. Smith—From that perspective, yes, that is correct.

Senator BRANDIS—Look at paragraph 7. She says:

Clarification of the information and events that occurred on the SIEV, showed that what was perceived as a threat was actually an attempt to strangle a child and throw another overboard. Therefore the word 'threatened' was crossed out and 'attempted' reinserted. It was later recorded that both children were ok, and the PIIs responsible were restrained.

Just pausing there, as I read that statement what has happened is that there has been an original report that there was an attempt made to strangle a child. That report was changed from 'attempted' to 'threatened' and then, by some process of clarification of the information and events, it was revealed that what was perceived as a threat was actually an attempt to strangle a

child and throw another child overboard, and therefore the correction was itself corrected so that the first version of events, having been found to be the accurate version of events, was reinserted. That is what has happened, isn't it?

Rear Adm. Smith—That is what she has stated as happening, yes.

Senator BRANDIS—You mentioned the ship's log. Where do we find the original document, that is, the one in which the word 'attempted' has been crossed out and replaced with the word 'threatened' and then the word 'threatened', on clarification of the information, has itself been crossed out and the word 'attempted' reinserted?

Rear Adm. Smith—The original log is retained on board the ship. It is an official document.

Senator BRANDIS—Do you have a photocopy of it?

Rear Adm. Smith—There are some extracts, I believe. I think the extracts from the log were passed earlier on.

Senator JACINTA COLLINS—We have copies of it. Yes, we do.

Senator BRANDIS—I am sorry, I have not seen that document. Just bear with me for a second.

CHAIR—While we are bearing with you, Senator Brandis, can I take up a point. In the statement signed by the six personnel—this is the statement attributed to Lieutenant R.P. Henry, who was the Army platoon commander who boarded the actual SIEV—referring to this very incident that you are being questioned on, on page 2, the second last paragraph, doesn't that read:

Also during this riot ... Mahalm witnessed what may have been portrayed as an attempted strangulation. During what appeared to be a family domestic incident an adult PI grabbed his young daughter (roughly 9 years old) near the throat region and pushed her to the ground and made her sit down. This incident occurred because the young female was trying to join into the riot and the father did not want any of his family members involved.

That is what it says in that report. These were the people actually on the SIEV responsible for taking charge and restoring order on the SIEV.

Rear Adm. Smith—That is correct. In fact, this was the incident I was referring to earlier on when I said the witness statement would indicate that it was something less than may have been reported. So the use of the word 'strangulation' has to be seen in the context of that eyewitness account, doesn't it?

Rear Adm. Smith—That is correct.

Senator JACINTA COLLINS—Do you think it should be removed from this?

Rear Adm. Smith—I hope to get rid of this one day, Senator.

Senator JACINTA COLLINS—Yes, I know. But, on the basis of the additional information you have acquired, do you believe that incident should be taken off as a threat?

Senator BRANDIS—Before you ask him that question, Senator Collins, I think it is fair that I put my questions to him, since I have the call at the moment, in relation to the recording of the incident.

Senator JACINTA COLLINS—I am sorry, I thought we were giving you time to read something you had not got on top of yet.

Senator BRANDIS—I have read it and I have discovered what I am looking for. Would you turn to the ship's log. That is a six-page photocopied document.

Rear Adm. Smith—Yes, I have got that one.

Senator BRANDIS—Would you go to the fifth page of it, please.

Rear Adm. Smith—Maybe I do not have the same document. I do not have six pages.

Senator BRANDIS—Perhaps I have miscounted. Yes, there are six pages on the document I have been given. Perhaps we can do it by reference to time. In the left-hand column, 2017.

Rear Adm. Smith—Maybe you could take me through it, Senator.

Senator JACINTA COLLINS—What might solve this problem is that the document we have is a few different logs. So it is page 6 of a few different logs.

Senator BRANDIS—May I approach you for a moment please, Rear Admiral.

Rear Adm. Smith—Certainly.

Senator FAULKNER—That is risky, Rear Admiral. I would not let him anywhere near you!

Rear Adm. Smith—Senator Collins is correct. I have got this split up incident by incident rather than as one document. Yes, I have the appropriate page.

Senator BRANDIS—Rear Admiral Smith, I think you have got it highlighted there. At the entry at 2017, after the entry 'PIIs chanting "UN"', as far as I can make out from my photocopy there appear the words 'PIIs attempted' and that is crossed out then 'threat', or 'threatened' because it goes on to the next line—

Rear Adm. Smith—It goes on to the next line, yes; that is correct.

Senator BRANDIS—Then that is crossed out and both of those crossings out appear to be initialled immediately above the word.

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—That is an initial, is it?

Rear Adm. Smith—Yes.

Senator BRANDIS—Then the ultimate or perfected version of the document is ‘attempted to strangle the child and throw overboard’ and the words ‘another child’ seem to be interlined in the middle of the word ‘overboard’.

Rear Adm. Smith—That is correct.

Senator BRANDIS—So that the ultimate version of this, as it was in the words of Able Seaman McQueen after clarification of the incidents and events, reads:

PIIs attempted to strangle a child and throw another child overboard.

Would you agree with me that that is the way the report ultimately reads?

Rear Adm. Smith—Yes, I agree.

Senator BRANDIS—And we know from Able Seaman McQueen’s statement that that entry and those corrections were made at the time or immediately after the time that these events happened?

Rear Adm. Smith—That is correct.

Senator BRANDIS—And we know from her statement that the ultimate correction, so that the recording in the ship’s log of the episode had been corrected or recorrected to read that it was an attempt to strangle a child, took place after a process of clarification of the information and events that had occurred on the SIEV had taken place, as she says in paragraph 7 of her statement?

Rear Adm. Smith—That is what she has stated, yes.

Senator BRANDIS—All right. While we are on the joint statement, may I take you to what is described as incident 3?

CHAIR—Before we leave incident 2, and I think I know where you are trying to get to, Senator Brandis—

Senator BRANDIS—I am just trying to work out what the nearest contemporary record of this event was.

CHAIR—Yes. But, on incident 2, the people who were actually on the SIEV, the six of them that have signed, signed off on ‘9 April 02’, which is this week. And, incidentally, it is the 200th anniversary of the interception by Her Majesty’s barque *Investigator* of the *Geographe* at Encounter Bay in South Australia. I am sorry, it is a day after—but we will leave that aside; that is my historical interest.

Senator FERGUSON—That was Baudin.

CHAIR—Yes, Nicholas Baudin.

Senator BRANDIS—Senator Cook, your historical knowledge is almost as impressive as Senator Faulkner's.

CHAIR—I have a particular interest in maritime exploration of Australia, but we will leave that aside.

Senator FAULKNER—I have less, having been on this committee!

CHAIR—These guys signed this on the 9th—that is this week. And that is their recollection this week of what actually occurred on board the SIEV?

Rear Adm. Smith—That is correct.

CHAIR—These are the eyewitnesses?

Rear Adm. Smith—Correct.

Senator BARTLETT—As opposed to the hearsay ones.

Senator JACINTA COLLINS—So we are moving off this one, are we?

Senator BRANDIS—There is something arising out of that. Able Seaman McQueen believes the person who passed the information on to her was an Army major, not any of the signatories to this statement of which we are now speaking?

Rear Adm. Smith—That is correct.

Senator BRANDIS—The second last paragraph of the discussion of incident 2 on the second page refers only to something witnessed by Lance Corporal L.G. Mahalm?

Rear Adm. Smith—That is correct.

Senator BRANDIS—And, as I established with you at the start of this, we understand the structure of this document to be that, although it is signed by six people, plainly not all six of those people say they witnessed each event and they appear to have signed off on it to the extent to which they can speak to the events which they witnessed. Is that right?

Rear Adm. Smith—That is my understanding of this.

Senator BRANDIS—We see from the paragraph to which I have just directed your attention that there is an interpretation of an event by Lance Corporal L.G. Mahalm and, according to Able Seaman McQueen, there is a report to her, whether or not of the same incident, from another person, who was an Army major, not one of the signatories to the three-page statement,

and whose description of the incident is not so qualified are Lance Corporal Mahalm's interpretation of the event that he saw?

Rear Adm. Smith—That is my interpretation for it.

CHAIR—The major appeared to be on the bridge of the *Arunta* and not on the SIEV like Mahalm.

Rear Adm. Smith—That is right. The six signatories were on board the SIEV. Able Seaman McQueen was on the bridge of *Arunta* and this major was also on *Arunta*.

Senator BRANDIS—It would be a bit hard to confuse a family domestic restraint with an attempt to strangle a child, wouldn't it? I suppose we would have to ask the people who witnessed the events. It may well be that what Mahalm and the Army major are describing are in fact different episodes.

Rear Adm. Smith—I think that would be highly unlikely, Senator. I believe they are talking about the same thing. Clearly, on board the SIEV at the time of all of this there was a great deal of tension and aggravation and stress for everybody involved in it. Lance Corporal Mahalm has written about it as he viewed it. The major on board *Arunta* would have been relying upon voice communication from the SIEV to interpret what was going on.

Senator FAULKNER—You mean by radio?

Rear Adm. Smith—Yes.

Senator BRANDIS—What rather strikes me, Admiral Smith, and I do not want to dwell too much on this, is that there has actually been nearly contemporaneously with the event or at least immediately on the heels of the event a process of clarification, of which Able Seaman McQueen speaks—and we would expect this to consist of her speaking to the eyewitnesses—as a result of which a conscious decision has been made by her to correct the record for the second time to reinstate the report that there was an attempt to strangle. Presumably she would not have done that lightly.

Rear Adm. Smith—She would not have done that lightly, Senator, and you made the point quite correctly: she was the communications operator and she was speaking to the SIEV—we are not sure who was on the other end of that radio on board the SIEV, but she was speaking directly to them—and so that correction, one must assume, flowed out of information received over the radio.

Senator BRANDIS—And it is indeed the only contemporaneous account of the event.

Rear Adm. Smith—That is correct.

Senator BRANDIS—Going to incident 3 in the joint statement; that is, the incident that happened on 1 November at 0851Z—

Senator FAULKNER—Are we still on SIEV9?

Senator JACINTA COLLINS—No—

Senator FAULKNER—Have we moved from SIEV9?

Senator BRANDIS—I am going to the next incident now.

Senator FAULKNER—Well—

Senator BRANDIS—Please, Senator Faulkner: because these statements have come late, I am trying to deal with them as best I can. I am just going to take him through the statements, and try to do it sequentially as well.

Senator FAULKNER—Do we know the country of origin of the asylum seekers on SIEV9?

Rear Adm. Smith—I am not sure, Senator.

Senator BRANDIS—If it helps: this joint statement is the only statement that deals with the multiplicity of incidents.

Senator FAULKNER—I was just asking because it is not clear to me what nationality the SIEV9 asylum seekers were.

Senator JACINTA COLLINS—No.

Rear Adm. Smith—I can find out for you, Senator.

Senator FAULKNER—If they were Afghanis, you would think they would just leave their children behind to the clutches of the Taliban!

Senator BRANDIS—Admiral Smith, go to incident 3. Would you agree with me that that marries up by reference to the time with incident 4 in the Titheridge memorandum and other SIEV9 incidents?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—There were some statements already produced in relation to incident 4, if my memory serves me.

Rear Adm. Smith—Yes, that is correct.

Senator BRANDIS—In any event, we now also have this joint statement in relation to incident 4 and Titheridge, which is incident 3 in the joint statement. It verifies that a female PII was observed—in this case by Corporal R.H. Troughton and Lance Corporal J.R. Nimmitt—as threatening to throw her child over the back of the SIEV. The statement continues:

This was not the first time nor was it the last time that she had threatened to throw her child overboard due to the delay in processing.

I am sure you would agree that that provides further corroboration with the observational conclusion you offer in your document.

Rear Adm. Smith—Yes, it does.

Senator BRANDIS—There is another incident described in the joint statement which is not referred to in your document. That is not a criticism. I do not think you were asked about incidents other than threats to children or conduct in relation to children. At the middle of the next paragraph down of the joint statement I think Lieutenant Henry says:

I personally observed CPL Jarvis get punched in the face by a PII.

Rear Adm. Smith—I note that comment. That had not been reported previously.

Senator BRANDIS—There has been a lot of discussion about a pattern of conduct or a modus operandi. I take you to the last part of the joint statement which all six of these officers or crewmen appear to share where they report:

During the time that the TSE was embarked, there were a few incidents of threats against children. During the riots selfharm and threats to children became common place and were not seen to be out of the ordinary, almost a 'modus operandi'.

Do you see that?

Rear Adm. Smith—Yes.

Senator BRANDIS—Is that consistent with your own analysis of the material that you have reviewed in preparing your own document?

Rear Adm. Smith—Yes, it is consistent and I have previously stated that.

Senator BRANDIS—And you adopt the expression that it was a modus operandi or almost a modus operandi?

Rear Adm. Smith—I have used that expression myself. That is correct.

Senator BRANDIS—Thank you. I will just take you quickly through relevant parts of the statements to which I wish to draw attention. Could you take up from the bundle the statement of Guille Newham?

CHAIR—Are we still on 9?

Senator BRANDIS—These are all SIEV9 incidents.

Rear Adm. Smith—Yes, I have that, Senator.

Senator BRANDIS—Do you see incident 2 at the top?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—I just want to direct your attention to towards the end of paragraph 5 of Able Seaman Newham's statement where he reports:

I saw a solidly built male PII of about 40 years of age threaten to throw a child overboard on the port side. The TSE de-escalated the situation and the male calmed down and sat down.

Rear Adm. Smith—Yes, that is what it states.

Senator BRANDIS—Is that part of a pattern of conduct?

Rear Adm. Smith—Yes.

Senator BRANDIS—In relation to incident 2, what is LSCD in the statement?

Rear Adm. Smith—Leading Seaman Clearance Diver.

Senator BRANDIS—Leading Seaman William Ashley Taylor.

Rear Adm. Smith—Yes, I have that.

Senator BRANDIS—I might be missing some things, but you will appreciate that I have not had these for long. The third sentence in paragraph 7 states:

Upon arrival—

that is on the deck—

I noticed that the PII's had used a knife to cut through the anchor line that I had previously secured the top deck windows with. The TSE were in the process of controlling the riot that had occurred and had restrained one PII. I was informed that another PII was restrained for attempting to throw an infant overboard. TSE and boarding party controlled the situation ...

I will allow that it may be a different report of the same episode to attempt to throw a child overboard—part of the pattern of conduct.

Rear Adm. Smith—That is correct.

Senator BRANDIS—Next, there is the statement of LSCIS. Can you help me on that?

Rear Adm. Smith—Leading Seaman.

Senator BRANDIS—Leading Seaman Kent Scully Pedersen. This is, again, in relation to incident 2.

Rear Adm. Smith—Yes, I have that.

Senator BRANDIS—Halfway down paragraph 5 it says:

I noticed a large Middle-Eastern looking male leaning over the port guard rail with his arms fully extended holding an infant over the side of the vessel.

If a large man was leaning over the side of the guard rail with his arms fully extended, that is not really a very ambiguous set of circumstances, is it? It is not as if he is holding the child in the air near the guard rail.

Rear Adm. Smith—No, it is not. It is very clear.

Senator BRANDIS—It says:

It appeared to me that he was threatening to throw the infant overboard. I was later informed by members of TSE that he had tried to throw the infant overboard but was unsuccessful as TSE prevented him from doing so, and the infant was brought safely back inboard.

See that? Part of the pattern of conduct?

Rear Adm. Smith—That is what the statement says and that is consistent with the pattern of behaviour.

CHAIR—You appreciate, Senator Brandis, that if this were a court that would be hearsay evidence, wouldn't it?

Senator BRANDIS—A lot of this evidence is hearsay and, Senator Cook, often hearsay evidence is admissible—certainly if it is the best evidence available. As you have been at pains to remind me, Senator Cook, it is not a court.

CHAIR—That is right. I wish we could move quicker—we are appearing to be a court.

Senator BRANDIS—Can we now move on to incident 3. There is another statement by Leading Seaman Kent Scully Pedersen.

Rear Adm. Smith—Yes, I have that.

Senator BRANDIS—This is later in the day.

Rear Adm. Smith—It is 8 o'clock in the evening.

Senator BRANDIS—Thank you. Halfway down paragraph 5 it says:

I noticed a large Middle-Eastern looking male who appeared to be the same male from the situation earlier in the day at 1030am, scuffling with members of TSE. I assisted them in restraining him, then relocated the PII on the focsle of the vessel. I was informed by members of TSE that he had tried to throw an infant overboard and to “keep a eye” on him.

Part of the pattern of conduct, Rear Admiral?

Rear Adm. Smith—That is the statement and it is consistent with the behaviour.

Senator BRANDIS—Again, concerning incident 3 there is the statement of Andrew Michael Bertoncin.

Rear Adm. Smith—Yes, I have it.

Senator BRANDIS—This is an incident that occurred on 2 November 2001. Just moving quickly through it, the second line of paragraph 6 says:

All hell broke out on board with Male PII's jumping over the side. During this incident I remember a female PII grabbed a child of approximately 2 to 3 years of age (she later claimed this child to be her own) and attempt to throw the child over the side. Her path was blocked by a member of the TSE and some of the other female PII's. She was separated from the child and moved away from the other PII's. She was returned to her child when the situation was calmed.

He goes on to say, in paragraph 7:

During the incident I remember five PII's requiring to be restrained from the group but only remember seeing the incident in relation to a real threat to a child overboard.

Again, Rear Admiral, is that consistent with the pattern of conduct about which we have spoken?

Rear Adm. Smith—Yes, it is.

Senator BRANDIS—I ask you to take up the statement of leading seaman William Ashley Taylor with reference to SIEV9 incident 3.

Rear Adm. Smith—Yes, I have that.

Senator BRANDIS—Paragraph 6, starting at the end of the second line, says:

At that stage I noticed one male PII holding the legs of a small PII infant who was also in contact with a female PII, who I assumed to be the infant's mother. She had hold of the infant by the arms. It was obvious that she was attempting to stop him from throwing her infant child over board.

Part of the pattern of conduct, Rear Admiral Smith?

Rear Adm. Smith—That is what the statement says, Senator, and that is consistent with other behaviour.

Senator BRANDIS—Take up the statement of Able Seaman Guille Bawden Newham in relation to incident 3. Paragraph 5, about four lines down says:

I observed a solidly built male, the same male who had previously threatened to throw a child overboard, holding a small child roughly with one arm whilst the mother struggled with him. The mother was holding onto the lower legs of the child, whilst the male had his right arm wrapped around the child's upper torso. His arm was underneath the child's armpits, however, the child was slipping.

He goes on to express fear for the safety of the child, although in this case he does not observe an attempt to throw it overboard.

Rear Adm. Smith—That is correct, Senator. It is clearly the same incident as in the previous statement.

Senator BRANDIS—Finally, I ask you to take up the statement of Brent Anthony Dell, in relation to incident 5. He does not really have much to tell us.

Rear Adm. Smith—Yes, I have it.

Senator BRANDIS—The statement reads:

... 'Threatening to throw his children overboard if he can't cook his meal', I did not see the event occur but it was reported to me by POCIS Bertoncin and I transcribed it into the Narrative.

Rear Adm. Smith—That is correct.

Senator BRANDIS—May I now take you to the statement—which I think we have seen before, but it is also within your bundle—of Lieutenant Andrew Graham John Hawke?

Rear Adm. Smith—Yes.

Senator BRANDIS—This is all SIEV9. On page 3 he records an incident on Thursday, 1 November 2001. In the third paragraph from the bottom of the third page he says:

About 1700 members of the HMAS BUNBURY (FCPB)—

What does that mean?

Rear Adm. Smith—A Fremantle class patrol boat.

Senator BRANDIS—It goes on:

... had been embarked and rigged for a tow. As the FCPB made her approach a riot broke out. As soon as the riot broke out, I ordered the tow to be abandoned and the FCPB to clear away.

During the riot I observed at least three males throw themselves in the water. One woman ran to the vessels' side with her child, I instructed BP—

presumably, boarding party—

... personnel to stop her from throwing the child over the side and remove her from the area.

Do you see that?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—At the very foot of the page it says:

The women who had threatened to throw her child were united with the child, on the FX, under strict security.

Rear Adm. Smith—That is correct.

Senator BRANDIS—He goes on to say:

The English speaking Doctor (PII) warned me any more work on the engine—
because the Navy was trying to restart the engine at this stage—
would result in ‘trouble’.

Do you see that?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—The next incident that is reported is on Friday, 2 November 2001. In the third paragraph under that subheading it says:

About 0558 the man identified as the PII Doctor approached me and started asking questions. I moved into the main hold and had around ten PII start to relay questions through the interpreter. The question revolved around where we were going; I responded I would inform them when the Government of Australia told me. They threatened ‘trouble’ if we tried to start the engine—including jumping over the sides, throwing children over the side and ‘wrecking things’. I replied violence to others was unacceptable and any person trying to harm a child would be restrained and we would prevent them from damaging the vessel. I reiterated we would not respond to threats, my men had a job to do and so did I and, that their rioting would not prevent us from doing our job.

This threat here is part of an orchestrated threat to cause trouble. I suggest, once again, it is part of the pattern of conduct of which we have been speaking.

Rear Adm. Smith—Yes, I agree with that.

Senator BRANDIS—I think that is all I had on SIEV9. May I go to SIEV10. Forgive me, I do not know if you have produced any new statements in relation to SIEV10 this evening. If you have, I have not had the opportunity to review them.

Rear Adm. Smith—No, there are no new statements, Senator.

Senator BRANDIS—May I hand you a bundle of statements which has previously been produced in relation to the SIEV10 incident, which was an episode involving an interception of SIEV10 by HMAS *Wollongong*. In the bundle there are many statements, but many of them are merely corroborative of one another. In view of the time, I will just take you to the principal ones. The first in the bundle is a statement by Lieutenant Commander W.M. Heron. It refers to the boarding of SIEV10 on 8 November 2001.

Rear Adm. Smith—Yes, I have that.

Senator BRANDIS—This is the occasion referred to in enclosure 5 of the Titheridge memorandum, which reports on or is based on your summary in your synopsis document. Is that right, Rear Admiral?

Rear Adm. Smith—Yes, that is correct, Senator.

Senator BRANDIS—This is one of the occasions on which a vessel sank.

Rear Adm. Smith—That is correct.

Senator BRANDIS—And 33 children under the age of 12 were recovered from the water. Do you see that?

Rear Adm. Smith—That is correct, Senator.

Senator BRANDIS—There was not, in this case, observed to be any actual or attempted throwing of children into the sea, however.

Rear Adm. Smith—That is correct. There was no time.

Senator BRANDIS—Do you see a practical difference between throwing a young child into the sea and sabotaging a vessel on which a young child is being carried so that it sinks and the child ends up in the sea? Do you see a difference?

Rear Adm. Smith—I guess you are asking for my opinion there, Senator. The end result is exactly the same. It would be very hard to put intention and motive to those two different incidents. I would not like to draw that conclusion.

CHAIR—Do you make a distinction between a threat as opposed to an actual event? If it is oranges with oranges, it is throwing kids into the sea or sinking a vessel which kids are in—or if it is a threat to do either. They are direct comparisons in either case. But a threat to throw someone in is not the same as actually sinking a vessel, is it?

Rear Adm. Smith—That would be my view, yes.

Senator BRANDIS—If the vessel is deliberately sunk and the children end up in the sea then they are actually in the sea; they are not merely being used as a lever or a device.

Rear Adm. Smith—As Senator Cook pointed out, trying to get apples and apples here, I would liken the deliberate sinking of the vessel to be the same as actually throwing someone in the water.

Senator BRANDIS—Thank you.

Senator JACINTA COLLINS—Do we know it was deliberately sunk?

Senator BRANDIS—We will see what the statements say, Senator Collins.

CHAIR—Do we know who actually sunk it, if it was?

Senator JACINTA COLLINS—You raised the hypothetical, Senator Brandis.

Senator BRANDIS—Having established the hypothetical, let us now turn to the facts of this case. We will start with Lieutenant Commander Heron. This was, of course, the very unfortunate occasion on which two female adult PIIs died. Is that right?

Rear Adm. Smith—That is correct, Senator, and if I could just put on the record—

Senator BRANDIS—Would you like to elaborate on that, Rear Admiral Smith—on your understanding of the circumstances?

Rear Adm. Smith—I would like to get it on the record if I could, please, that I am not in a position to be able to talk too much about that as there is still a Federal Police inquiry under way and we anticipate a coronial inquiry on completion of that.

Senator BRANDIS—Then I will not ask you any more questions about that aspect of the matter. Can you go to page 4 of Lieutenant Commander Heron's statement. At the start of the second last paragraph on the page you will see that he says he was informed by Petty Officer Duff that the father of the children being tended in the senior sailors' mess—this is obviously after the sinking and rescue—had told him that the Iranians started the fire on board SIEV10.

Rear Adm. Smith—That is what is stated here, yes.

Senator BRANDIS—There were in fact a number of different ethnicities among the PIIs on SIEV10. Are you familiar with this bracket of statements, Admiral Smith?

Rear Adm. Smith—Yes, I am.

Senator BRANDIS—I do not want, in view of the time, to go laboriously through each one. But is it a fair summary to say that there was a debate as to which group of PIIs the fire was commenced by? They were blaming each other, in other words.

Rear Adm. Smith—Yes, they were. The mix on board this particular SIEV, I believe, was Afghani and Iraqi, and there were some Iranians. In the statements here, one group blames the Iranians and one blames the Iraqis. So there was a bit of a counterclaim as to who actually did it.

Senator BRANDIS—Let me cut to the chase: having reviewed these statements—and there are 11 of them—do you have any doubt at all that the sinking of this vessel was caused by people on the vessel?

Rear Adm. Smith—I have no doubt at all.

Senator BRANDIS—Regardless of whoever on the vessel did it, do you have any doubt that it was a deliberate act?

Rear Adm. Smith—I have no doubt at all that there was a fire lit by the people on board that vessel, that there was a subsequent explosion and, as a result of that, the ship foundered.

Senator BRANDIS—Let me refer you to a couple of relevant extracts. Do you have Sublieutenant Brock Symmons's statement? He is the gentleman from the Royal New Zealand Navy who was on an exchange duty of some description.

Rear Adm. Smith—Yes, I have that.

Senator BRANDIS—I refer you to the second page of his statement where he describes the event from the time at which visual contact was made. Am I right in thinking that in relation to SIEV10, the HMAS *Wollongong* did not respond to a distress call?

Rear Adm. Smith—No. The Customs vessel *Arnhem Bay* first detected this particular SIEV, and *Wollongong* responded.

Senator BRANDIS—Was the SIEV in a seaworthy condition and under steam in the direction of Australian territory at the time it was first sighted by the crew of the *Wollongong*?

Rear Adm. Smith—The initial identification was done by the Customs vessel *Arnhem Bay*, which reported the SIEV in the vicinity of Ashmore Island and issued warnings. At that time, the SIEV appeared seaworthy and there were no visible signs of any distress.

Senator BRANDIS—You have no doubt that the fire, which you have no doubt was deliberately lit, was started after contact had been made by HMAS *Wollongong* with SIEV10?

Rear Adm. Smith—That is correct.

Senator BRANDIS—Are you in any doubt that the purpose of the fire was to destroy the vessel and compel a SOLAS situation?

Rear Adm. Smith—I have no doubt at all.

CHAIR—It is interesting that the New Zealand Navy cannot spell Fremantle; they spell it 'Feemantle'. As a Western Australian I am deeply offended!

Senator BRANDIS—We have statements here as well from Lieutenant Commander McLaughlin, Chief Petty Officer Zanker, Petty Officer Philp, Petty Officer Duff, Petty Officer Yeardeley, Able Seaman Hillier, Able Seaman Walker, Able Seaman Hogarth and Able Seaman Mooney. Are you familiar with all of those statements?

Rear Adm. Smith—Yes, I am.

Senator BRANDIS—Am I right in believing that each of those statements is consistent with and supports the proposition that you have expressed to this committee—that is, the fire was deliberately lit by occupants or PIIs on board for the purpose of sinking the vessel and compelling a SOLAS situation?

Senator JACINTA COLLINS—I do not think he said that. He has not said that the purpose was to sink the vessel. Stop putting words in his mouth.

Senator BRANDIS—I will put a proposition to him: are those statements consistent with the proposition that the sinking of the vessel was caused by a fire which was deliberately lit for the purpose of creating a SOLAS situation?

Rear Adm. Smith—All of those statements are consistent with that assertion, yes.

Senator BRANDIS—In your professional judgment and on the basis of your analysis of the statements, is it your belief that that is what happened?

Rear Adm. Smith—That is my belief, yes.

Senator BRANDIS—There are some photographs with handwritten notations in this part of the bundle of documents. Do you have them there?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—There were 33 children rescued by the Royal Australian Navy from SIEV10, weren't there?

Rear Adm. Smith—That is correct.

Senator FAULKNER—Your figures on the spreadsheet say that out of the 164, 21 were females, 33 were children and two were deceased females. Are the two deceased females included in the 21?

Rear Adm. Smith—Are the two deceased included in the 21? I assume that to be the case. I would need to confirm that, Senator. The total was 164; that is confirmed.

Senator FAULKNER—Including the two deceased.

Rear Adm. Smith—Including the two deceased.

CHAIR—I think the deceased were recovered and transported to Christmas Island.

Rear Adm. Smith—Eventually they were, Senator.

Senator BRANDIS—Have you finished, Senator Faulkner?

Senator FAULKNER—I thought you were checking the numbers.

Senator BRANDIS—No, I was not. I just wanted to establish—and I think I already have—that among those recovered from the water there were 33 children.

Rear Adm. Smith—That is correct.

Senator BRANDIS—The two deceased people were adult females?

Rear Adm. Smith—Yes, they were adult females.

Senator BRANDIS—So the lives of all the children were saved.

Rear Adm. Smith—That is correct.

Senator BRANDIS—There are just two photographs in this sequence of 11 that interest me. With photograph No. 5, on the photocopies I have there are handwritten notations or descriptions of the photos, but I see you have the actual print copies of the photos. Are the notations written on the back of the photos?

Rear Adm. Smith—Yes, they are.

Senator FAULKNER—They have not been removed.

Rear Adm. Smith—What has not been removed, Senator?

Senator FAULKNER—Any captions or descriptive material about these photos. That has not been removed on this occasion.

Rear Adm. Smith—The photographs I have have explanatory captions on the back, Senator; that is correct.

Senator FAULKNER—That is good; it is still there. It has not been removed.

Senator JACINTA COLLINS—You cannot read—

Senator FAULKNER—Yes, I know.

Senator BRANDIS—Just to make sure that we do not have any confusion in this evidence, would you mind passing up those photographs?

Senator FAULKNER—And the government has not removed them. That is good. The Navy have caught up with you. They are not making electronic records; they are actually writing on the back of the photos in pen. It is the smartest thing, Admiral Smith; you have really got them this time.

Senator BRANDIS—We can do without the theatre.

Senator FAULKNER—It is the smartest thing.

Senator BRANDIS—I am second to none in my admiration of your Thespian qualities, Senator Faulkner. We can do without them just now, thank you.

Senator FAULKNER—You need to learn some, I think.

Senator BRANDIS—I think I will stick to a clinical analysis of the facts and I will leave the theatricality to you, Senator Faulkner.

CHAIR—Why don't we just stick to asking the witness questions.

Senator FAULKNER—I have made some theatrical references in relation to you.

CHAIR—It would be nice if we could finish at a reasonable hour.

Senator BRANDIS—I have nearly finished. I am on my last couple of questions. Senator Mason then has SIEV11 and SIEV12 to deal with. Turning to photograph No. 5 please, Admiral Smith, do you know who wrote the descriptive caption on the back of each photo and the circumstances in which it was written?

Rear Adm. Smith—No, I do not.

Senator BRANDIS—Whomever it was has annotated photograph No. 5, 'baggage in water WOL'—presumably that means Wollongong—

Rear Adm. Smith—That would be it.

Senator BRANDIS—'Holding party offered wads of US dollars by some PIIs as they embarked Wollongong. No Wollongong ship's company accepted this money.' Was the offering of money by PIIs—in this case specifically US dollars—encountered on occasions other than this occasion?

Rear Adm. Smith—I am not aware of any other incidents.

Senator BRANDIS—Thank you. Would you go to photograph No. 7, please? You will see the notation is, 'Note baggage in water. People in floating life rings. 98 per cent of PIIs in life jackets remained in inflated tyre tubes, children's pool toys. One very young baby (max two weeks old). Picked up another child (12 months). Wrapped up in several life jackets and secured. No parents in attendance when child picked up.' Do you see that?

Rear Adm. Smith—Yes, I do.

Senator BRANDIS—So far as your analysis of the source material and all the statements of all the SIEV incidents tells you, was this the youngest child, a maximum two-week-old child, who ended up in the water?

Rear Adm. Smith—That would be my assessment, yes.

Senator BRANDIS—Thank you, Admiral. Senator Mason will deal with incidents 11 and 12.

Senator FAULKNER—I am looking forward to that.

Senator BARTLETT—Chair, I raise a question in terms of the amount of time left this evening, which is an hour and 10 minutes, and whether there will be any space available for me to raise any questions. We have had some new evidence presented to us tonight, and there are one or two broader questions I wouldn't mind having time to ask.

Senator MASON—Chair, I can indicate how long I will be. I will certainly be finished by half past 10 and nearly definitely before. SIEVs 11 and 12 will not take long. Then I have just a few questions on process, and that is it.

CHAIR—Okay. I have a few questions to finish off the examination. How much time do you want, Senator Bartlett? As I said earlier at the beginning, I appreciate the admiral is being conscientious in bringing this matter forward, but there may be questions that arise from it and there is always the device of putting those questions on notice. I would really like to complete Rear Admiral Smith's evidence tonight.

Senator FAULKNER—I would strongly suggest to you and the committee, Mr Chairman—I have not tried this out on the witness, and I do not know what his view is—that we ought to finish with this witness tonight. If it means we have to go past 11 o'clock, I am sorry for Rear Admiral Smith but I am sure at the end of the day he would see the good sense of actually spending a few extra minutes tonight and not coming back here later and losing yet another day out of what is a very busy life.

CHAIR—I would like everyone to focus on completing their questioning of Rear Admiral Smith by 11 o'clock. We will go to Senator Mason or Senator Bartlett now and see if we can fit it all in. I am sure Senator Mason would be mindful that we want to be out of here by 11 o'clock. Before we do that, just on photograph 7, this is the SIEV from which two adult women were drowned?

Rear Adm. Smith—That is correct.

CHAIR—Do we know whether the children referred to in this photo belonged to either of those women?

Rear Adm. Smith—I do not believe that is the case. The children in the photograph were reunited with their parents.

Senator JACINTA COLLINS—But this was a naval boarding party 'abandon ship' exercise, wasn't it?

Rear Adm. Smith—This was not a Navy boarding party 'abandon ship' exercise; this was a ship sinking and the UAs panicking after the explosion and a mass exodus from a sinking ship.

Senator JACINTA COLLINS—It is just that some of the statements actually indicate that they were advising SUNCs to abandon ship.

Rear Adm. Smith—The boarding party were assisting a panicking group of UAs to exit a sinking vessel.

Senator JACINTA COLLINS—But were they not advising them to abandon ship?

Rear Adm. Smith—No, these people were abandoning ship and the boarding party were facilitating that, helping them do that, as safely as we possibly could.

Senator JACINTA COLLINS—I appreciate you do not want to go too much further on that issue because perhaps that will become part of the other investigation.

Rear Adm. Smith—Senator, if you are suggesting the boarding party directed these people to abandon ship, that is not the case.

Senator FAULKNER—Is the AFP investigation into the two deaths or into the sinking or into the relationship between those matters?

Rear Adm. Smith—It is into the death of the two women.

Senator JACINTA COLLINS—Some people actually remained on the ship, and were rescued off the ship. But of those that went into the water two of them died. So the question that remains open is: why did they go into the water?

CHAIR—All right, we will go to Senator Mason.

Senator MASON—Thanks, Chair. Rear Admiral, with SIEV11 and the documents relating to that including your events summary, a statement has been produced tonight from Lieutenant Richard Mortimer. In the events summary you claim that some PIIs in relation to SIEV11 ‘threatened self-harm or to jump overboard’. Do you have Lieutenant Mortimer’s statement with you?

Rear Adm. Smith—Yes, I do.

Senator MASON—Just to justify that in terms of primary sources, on the second line Lieutenant Mortimer says:

... I recall an item of conversation that pertained to the demand made by the UAs for UN representation on arrival at their destination in what they believed to be Indonesia. If this demand was not met several of the UAs threatened to commit self-harm or jump overboard.

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—Then Lieutenant Mortimer says:

This demand was again reiterated to me by the UAs during my watch ...

Is that correct?

Rear Adm. Smith—That is what he states.

Senator MASON—So it is the same pattern of conduct again?

Rear Adm. Smith—Yes, it is.

Senator MASON—Can we move to SIEV11?

Rear Adm. Smith—We are on SIEV11.

Senator MASON—Sorry, SIEV12.

Senator FAULKNER—Jesus, come on!

Senator MASON—In this particular SIEV we have, just to get the documents right, the Titheridge minute, which relates to SIEV12, is enclosure 4. Is that correct?

Rear Adm. Smith—Yes, that is correct.

Senator MASON—I think that is replicated in the minute to the Chief of Navy, which is enclosure 5.

Rear Adm. Smith—Yes, that is correct.

Senator MASON—In your event summary you say:

- PII were particularly belligerent and disrupted efforts to return them to Indonesia on a number of occasions during the ensuing few days. Such action included:

And here we get a broad brush of the pattern of conduct that we have been talking about for the last two days. I will go through it:

- **jumping overboard** (4 occasions),
- **lighting fires** (3 occasions),
- **holding children over the side threatening to throw overboard** (once),
- attempted **self-harm** (twice – knife to the throat & dousing with/ingesting petrol), and
- **sabotage** (twice).

Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—So you base that on the statements of Lieutenant Damien Casey and also Lieutenant Richard Peter Mortimer. Is that correct?

Rear Adm. Smith—There is a range of evidence to support those particular incidents ranging from operational reports through to witness statements. That is correct.

Senator MASON—Can we go, first of all, to Lieutenant Richard Mortimer’s statement. I think he was one of the officers in charge of the boarding party that embarked from HMAS *Leeuwin*. Is that correct?

Rear Adm. Smith—That is correct. He is a Royal Navy officer on exchange—an Englishman.

Senator MASON—Thank you. There are a number of dot points under the heading of 17 December 2001. I will quickly go through these. This relates very much to your matrix. The second dot point relates to an attempt to light a fire. Is that correct?

Rear Adm. Smith—That is correct.

Senator MASON—The third dot point relates to people jumping overboard. Is that correct?

Rear Adm. Smith—Yes, it does.

Senator MASON—The fifth dot point relates to an attempt to light a fire?

Rear Adm. Smith—That is correct.

Senator MASON—A fire was in fact lit but it was extinguished by the boarding party. Is that right?

Rear Adm. Smith—That is correct.

Senator FAULKNER—Don’t you think, Rear Admiral Smith, that either Senator Brandis or Senator Mason should throw you in a curly one that is not correct that would really trick you?

Senator MASON—We have to get through this pattern of conduct, Senator Faulkner. I am trying to be as quick as I can. Thank you for that assistance. The next dot point is about a child being held over the side. Is that correct?

Rear Adm. Smith—One more beyond the fire lit?

Senator MASON—Sorry; another fire was attempted to be lit?

Rear Adm. Smith—Yes, that is correct.

Senator MASON—And the next one is that a child was held over the side?

Rear Adm. Smith—Yes, that is what it says.

Senator MASON—And then some unauthorised arrivals did jump overboard?

Rear Adm. Smith—Six people, yes.

Senator MASON—And then the next dot point is about some unauthorised arrivals using part of the decking as a weapon?

Rear Adm. Smith—Yes, that is correct.

Senator MASON—And the next dot point is about an unauthorised arrival smashing the window on the bridge of the vessel?

Rear Adm. Smith—Yes, a female did that.

Senator MASON—And the next dot point is about self-harm, another part of the pattern of conduct?

Rear Adm. Smith—Correct.

Senator MASON—Then a member of the boarding party was pushed into the water, but from that information you cannot tell whether that was deliberate or not, Rear Admiral? It is the second last dot point on the first page.

Rear Adm. Smith—The way I interpret that comment is that it was probably more accidental than intentional.

Senator MASON—Thank you. On the next page under 18 December there is a male translator threatening to kill his wife.

Rear Adm. Smith—That is what is stated here, yes.

Senator MASON—The next one is about threats again to throw children over the side?

Rear Adm. Smith—Correct.

Senator MASON—Under the heading of 19 December the second dot point says that four illegal immigrants jumped overboard.

Rear Adm. Smith—That is correct.

Senator MASON—Under the third dot point it says that the leader of the Afghani group reported death threats against him from the Iraqi contingent?

Rear Adm. Smith—That is correct.

Senator MASON—You will be pleased to know—oh, Senator Faulkner has gone. But the final point is about putting valium in people's tea to calm everyone down; is that right?

Rear Adm. Smith—That is what is alleged, yes.

Senator BRANDIS—Perhaps we could do that to Senator Faulkner.

Senator MASON—Perhaps we could. Admiral, there are a lot of incidents there with sabotage, self-harm, holding children over the side, lighting fires and jumping overboard. That is part of the pattern of conduct, again?

Rear Adm. Smith—Yes, it is.

Senator BRANDIS—Can I just ask one question arising out of the pattern of conduct: it strikes me that in the vast majority of, though not all, cases this threatening conduct in relation to children is engaged in by male PIIs not female PIIs; is that your analysis?

Rear Adm. Smith—With one or two exceptions, that is the case, yes.

Senator BRANDIS—It is also, as far as I can see, a pattern of conduct. Of course, threatening a child is naturally a threatening thing to the mother. But, independent of the threats to children, there is also a multiplicity of occasions of threats to women by male PIIs. Again, is that what you have detected in your analysis?

Rear Adm. Smith—I have not drawn that conclusion, Senator, no.

Senator BRANDIS—All right, thank you. There are some instances of it—

Rear Adm. Smith—There are some instances, yes. But I could not say that it was a common—

Senator MASON—Admiral, Senator Brandis and I have taken you through the event summaries of SIEV1 to SIEV12 inclusive. We have discussed a pattern of conduct that has been used by unauthorised arrivals, involving all sorts of conduct. Can I just ask a question about the reporting of these instances up the chain of command: what is the chain of command or the protocol for reporting these incidents, whether it was from SIEV4, SIEV5, SIEV6, or SIEV7, and so forth? What is the chain of command? How does it work?

Rear Adm. Smith—The official reporting is by operational report—the op rep that we have referred to a number of times—which is from the tactical unit, the ship involved in it, to the JTF commander, Brigadier Silverstone. In turn, Brigadier Silverstone relays that information to me; he onforwards the op rep to my headquarters. We, in Maritime Headquarters, have the responsibility to collate this information and to provide a synopsis of these events further up the chain of command, which we do.

Senator MASON—A synopsis of this information?

Rear Adm. Smith—We do not just turn around the original report. My responsibility is to gather the information, to analyse the information and to make some conclusion from all that information, which we then relay to the Theatre Commander, Admiral Ritchie.

Senator MASON—Admiral Ritchie; that is right.

Rear Adm. Smith—We relay an information copy, as well, to Defence headquarters in Canberra—Air Vice Marshal Titheridge’s area.

Senator MASON—Let us take an example out of all these SIEV instances. Let us take SIEV7, where a child was actually thrown overboard. There were threats to throw a child—

Senator JACINTA COLLINS—Dropped, Senator.

Senator MASON—I said ‘dropped’.

Senator JACINTA COLLINS—No, you said ‘thrown’.

Senator MASON—Dropped overboard. A child was threatened to be thrown—or children were threatened to be thrown—overboard. There was threatening and offensive behaviour. There were threats of suicide, sabotage of the vessel, fires lit, threats to the boarding party and so forth. In your synopsis to Admiral Ritchie, did you include all that information?

Rear Adm. Smith—Yes, I did. In fact, in those particular cases, the op rep itself was turned around by my headquarters and sent intact to the theatre headquarters and to Defence headquarters in Canberra.

Senator MASON—It went to Canberra. By that do you mean to Admiral Barrie or Air Vice Marshal Titheridge?

Rear Adm. Smith—It went to Air Vice Marshal Titheridge’s organisation: Strategic Command.

Senator MASON—Do you know from Air Vice Marshal Titheridge in what form that information went, if it all, to the joint task force on people-smuggling?

Rear Adm. Smith—No, I do not know that.

Senator MASON—I will have to ask that question later on. Thank you very much.

CHAIR—Well, we can perhaps get out of here—

Senator FAULKNER—Here is a filler for you: the way I work it out—

CHAIR—We do not need fillers, but ask your question.

Senator FAULKNER—The way I work it out, there are 2,215 asylum seekers listed on your spreadsheet. Would that be the correct figure? I have had a lot of time on my hands here. I have added it up three times on the calculator, so I am pretty confident. It sounds about right, doesn’t it?

Rear Adm. Smith—It sounds about right, Senator.

Senator FAULKNER—I reckon it is spot on. Of those 2,215, we have come to the grand total of one being dropped over the side.

Rear Adm. Smith—One child?

Senator FAULKNER—Well, one, which was a child.

Rear Adm. Smith—One child dropped over the side; that is correct.

Senator FAULKNER—One child and no adults.

Rear Adm. Smith—There are many adults who have gone over the side.

Senator FAULKNER—But they were not assisted.

Rear Adm. Smith—I have no evidence to suggest that any adult has been thrown over the side.

Senator FAULKNER—That is right. So there were 2,215 and one was dropped over the side. Thanks.

Senator MASON—I would like to ask a supplementary question. I asked in relation to SIEV7 whether the information went through to Air Vice Marshal Titheridge, and that included all those parts of the pattern of conduct I mentioned. Is that also the case in relation to every other SIEV?

Rear Adm. Smith—That is correct, Senator.

Senator MASON—Thank you.

CHAIR—I have not had a turn, but I am not complaining about that. Senator Bartlett, if you would not mind—

Senator BARTLETT—Try to wrap up by half-past.

CHAIR—Sooner than that, if possible.

Senator BARTLETT—Regarding Senator Faulkner's question then, and what we have been through this evening, would it be fair to say that the pattern of behaviour is more in terms of making threats in relation to children—and other acts of aggression—rather than carrying out those threats in terms of throwing the children overboard?

Rear Adm. Smith—No, I would not agree with that, Senator. There are many aspects of the behaviour that are separate to this issue with children. I do accept that there was only one incident of a child being dropped over the side. There were many other incidences, however, of behaviour—not just threatened but actually conducted—of self-harm, of damage to the vessels

which they were in, and sabotage to the engines and other parts of the vessel. There were many instances of actual deeds as opposed to just threats to do things.

Senator FAULKNER—I have always accepted that, and still do, and I do not need to be told at great length that that is the case. The good thing is—it is quite remarkable, really, isn't it?—that out of those 2,215 only two died. That, I think, says a lot for the Royal Australian Navy.

Rear Adm. Smith—I would certainly have that view. I think the professionalism of the men and women who have been conducting this operation in very difficult circumstances is highly commendable. It is through their efforts that we have had only those two fatalities. The potential for others was always there.

Senator FAULKNER—I agree with you. If we are being honest with ourselves, I think it also says a lot for those asylum seekers. Would you agree with that? That is the point that Commander Banks made to us.

Rear Adm. Smith—I am happy to comment on the performance of our own people.

Senator FAULKNER—Fair enough; you do not want to comment. But I think the statistics are very stark. I think they say an awful lot for people under your command and they do put some of these events in perspective. We can all be thankful that, out of that very high number on the 13 events that we have specific numbers for, only two people—and they were two adult women—died.

Rear Adm. Smith—I would agree with that, yes.

Senator BARTLETT—I want to go to those incidents where people did actually undertake violent actions. In terms of the phrase 'pattern of behaviour' that is used in relation to children, we have the one instance of a child being dropped in the water. We have a lot of allegations of threats of various types, but very few behaviours where the threat has been carried out in relation to the child.

Rear Adm. Smith—That is correct, Senator, yes.

Senator BARTLETT—I am interested in terms of what happens with people. Obviously, on these boats there are some people—and no-one has ever disputed it—who get aggressive or violent. There is always the potential on these boats that there are some people who are trying to sneak through and who know that they do not necessarily meet the requirements for refugee status, and they may well be the ones who are most desperate in terms of the level of violence. To try to kill two birds with one stone, I want to go to this alleged strangulation incident. Leaving aside for a second the now discredited allegation about a child being attempted to be strangled, one of the statements here in relation to that incident is by Guille Newham from the *Arunta* and was taken on 8 April. I am assuming this is the same incident as Able Seaman McQueen refers to and that the group of six people with that joint statement are referring to.

Rear Adm. Smith—No. I believe McQueen is talking about incident 3. The Newham one is incident 2.

Senator BARTLETT—I have a Newham statement with ‘incident 3’ at the top.

Rear Adm. Smith—I am sorry, I may have—

Senator BARTLETT—I think there are two from Newham.

Rear Adm. Smith—Yes, you are quite right, Senator. I beg your pardon.

Senator BARTLETT—This one is incident 3 at approximately 2000 hours.

Rear Adm. Smith—Yes.

Senator BARTLETT—Paragraph 5 there talks about a confrontation and states:

I observed a solidly built male ... holding on to a child roughly with one arm whilst the mother struggled with him. The mother was holding onto the lower legs of the child, whilst the male had his right arm wrapped around the child's upper torso.

As you understand it, is that the same incident as is referred to in the statement by the six people? It is referred to as incident 2, a little confusingly, but I think we have established that. Would you see that as being the same? Would you see that as probably referring to the alleged strangulation?

Rear Adm. Smith—No, that one is referring to incident 3.

Senator JACINTA COLLINS—Which is the strangulation attempt in the Titheridge report.

Senator BARTLETT—We have ourselves confused on this.

Senator JACINTA COLLINS—Sorry, the non-strangulation attempt, Senator Faulkner tells me.

Rear Adm. Smith—I am not quite with you here, Senator.

Senator BARTLETT—In the Newham statement, he refers to incident 2 and incident 3. I have a single page by Newham.

Rear Adm. Smith—Yes. At the very top it tells you what incident it is.

Senator BARTLETT—Yes. The single page is incident 3—

Rear Adm. Smith—Right.

Senator BARTLETT—at approximately 2000 hours.

Rear Adm. Smith—Yes, 2000 hours local.

Senator BARTLETT—Just to be clear, I also have a statement by Able Seaman McQueen, which was referred to earlier as incident 3.

Rear Adm. Smith—Yes.

Senator BARTLETT—I also have statements by Lieutenant Commander Taylor and Kent Pedersen as incident 3. They are all single pages.

Rear Adm. Smith—Yes. That is correct.

Senator BARTLETT—In addition to that, I think this was with the three-page statement headed by Lieutenant Henry and signed by six people. They refer to that witnessed by Lieutenant Corporal Mahalm, on the second page, which has been read into the record. But that is called incident 2 on this document.

Rear Adm. Smith—That incident 2 I believe to be incident 3 in the Newham statement.

Senator JACINTA COLLINS—Is that incident 3 in the Titheridge?

Rear Adm. Smith—Senator, come on! Yes, I believe it is.

Senator JACINTA COLLINS—Thank you.

Senator BARTLETT—Going to the statement, according to the witness, Lance Corporal Mahalm, as we have already heard, he says quite clearly:

This incident occurred because the young female trying to join into the riot and the father did not want any of his family members involved.

That is almost the exact opposite—in fact it is the opposite—of threatening harm. The other main one that seems to refer to an incident with a child and someone holding it is this one by Newham, which, in paragraph 5 of the statement, says:

The mother was holding onto the lower legs of the child, whilst the male had his right arm wrapped around the child's upper torso.

The statement does not use the word 'strangulation' or anything like that. It does say the male 'had previously threatened to throw a child overboard' and this male was then taken away and restrained, put in cuffs, and it was suggested he should be guarded with a right foot in the vicinity of his groin which might assist in restraining him. That also seems a little different to the suggestion that it was just a father trying to stop his daughter getting involved in the riot. All it says to me is that it again highlights the intensity of those sorts of situations. I do not actually expect word for word precise matching accounts from everybody on board—it would almost be suspicious if you had that. What I am interested in is, when you have a male who is perceived to be acting in a threatening manner—we have heard of the example tonight of someone actually punching a sailor—what actually happens in those circumstances? What methods are used to control people? Are you able to handcuff people, use pepper spray or something like that?

Rear Adm. Smith—Before I talk to those things, Senator, if I could just clarify a little bit, the statement by Newham, which refers to this male holding one end of a child while the female holds the other end, which is supported also by Leading Seaman William Taylor's statement, is not referring to the same incident that Lance Corporal Mahalm is talking about. They are different things.

Senator BARTLETT—All right.

Rear Adm. Smith—In terms of what the boarding party and the transit security element are able to do to contain aggressive behaviour on board, they have a range of options available to them up to a certain level. The sailors do not have any facilities to restrain people; the soldiers are trained in this sort of thing. The way they can do that is by using electricians' cable ties to temporarily restrain someone, which has been done on occasion. We would try not to keep that for too long, but it is just to calm people down and regain control of that situation. The TSE sailors have batons and they are trained in the use of that sort of thing. The only people trained to use non-lethal weapons such as capsicum spray are the soldiers, and they carry that. It was necessary to use that on very few occasions. There was certainly one incident that I can recall but I will have to check it. But at all times the TSEs and the boarding parties are briefed that minimum force is all that should be used consistent with the situation they find themselves in.

Senator BARTLETT—When you identify someone that is apparently violent—we have had an allegation of assault—is any attempt made at the other end to address that? Are they pointed out to the Federal Police and is that followed up in any way, or do you not see that as part of the task?

Rear Adm. Smith—Not to my knowledge, Senator. Regarding some of these statements—particularly of the earlier SIEVs which were not returned to Indonesia but where the crews did come ashore on, say, Christmas Island—the ships provided as much information as they had, in terms of statements and so forth, to the Australian Federal Police and that is, essentially, where we handed over that responsibility.

Senator BARTLETT—We stepped through last week the initial interception procedures, including the warning messages that are provided to the crew. A few statements referred to handing out pamphlets to passengers. Are we able to get copies of what those pamphlets and messages are?

Rear Adm. Smith—I certainly have all the warning messages that have been used; I am not sure of the pamphlet thing. I would have to look at that for you, Senator.

Senator BARTLETT—I will see if I can find a reference to one of them. I am wondering if there was a message to the passengers, as opposed to the warning messages to the crew.

Rear Adm. Smith—No, the warning messages were very much to the crew. It was trying to get the crew to desist from what they were attempting to do—which was to come to Australia—and turn around and go back.

Senator BARTLETT—Was anything specifically provided or told to the passengers?

Rear Adm. Smith—Not that I am aware of, but I will take it on notice and confirm that.

Senator BARTLETT—Thanks. I will see if I can find a reference to them in some of the statements. What other things were the boarding party directed to say to the passengers? I am sure passengers were saying, ‘Where are we going? What’s happening?’ There was a statement by Captain Algie on SIEV5—which, if I remember correctly, was one of the ones that was taken back to an Indonesian island. I quote:

... were officially told they would not be coming to Australia and that we in fact had delivered them safely to the Indonesian Territorial Sea...

It makes it sound a bit like they did not actually tell them until they got there that this was where they were going. Is that the way they are meant to do things?

Rear Adm. Smith—That is a fair assessment, Senator. In a lot of cases—and you have seen comments in some of those statements by the boarding officers—they were unable to tell the UAs where they were going to go to; that is the fact. Much of this was being discussed in Canberra, it was policy and, on many occasions, we were not sure of what the next step was going to be. Certainly, when the decision to return the vessels to Indonesia was relayed to us, a conscious decision not to inform the UAs was taken, for obvious reasons: that was not what they wanted, and it would create a problem for us. The timing of when that sort of information was passed to them was very much at the discretion of the commanding officer on the spot, once he was made aware of what their destination was going to be.

Senator BARTLETT—A few of the statements also refer to the fact that people on board were either calling out for the UN, wanting to speak to the UN, or were stating that they were refugees. Is that of any relevance, in terms of the orders you had been given in the guidelines for the operations? Is the fact that people say, ‘We are refugees’ of any relevance?

Rear Adm. Smith—It had no relevance for us. Our mission was clear—that is, to intercept and then to carry out whatever direction we were given subsequent to that. The status of these people was irrelevant to us.

Senator BARTLETT—Was that specifically outlined in the operational guidelines that you were given—that, when you have people in Australian territorial waters saying, ‘I’m a refugee’, such claims have no impact on your mission?

Rear Adm. Smith—Our mission was clear. Claims from the UAs were not factors to be taken into account in terms of how we conducted that mission. We expected those sorts of claims to be made. Our mission, however, was clear, and that is the way we executed it.

Senator BARTLETT—That is the mission as given to you by the government.

Rear Adm. Smith—That is correct.

Senator BARTLETT—Using that SIEV5 example again, how is it decided that a boat is seaworthy enough to make the return journey? Is that just the professional assessment of the commander of the vessel?

Rear Adm. Smith—It is the professional judgment of the commanding officer of the ship involved in the incident as to whether or not the ship was seaworthy enough, and I accepted that without question.

Senator BARTLETT—So they would not normally seek advice further up the chain?

Rear Adm. Smith—There is no-one better to make an assessment like that than the person on the spot.

Senator BARTLETT—We have heard of those two deaths. There was that baby on board SIEV5 when it returned to Indonesia, and that baby was still alive when the boat left.

Rear Adm. Smith—That is correct.

Senator BARTLETT—What happens with other encounters at sea? Let's say you are patrolling and you run into illegal fishing vessels or suspected drug trafficking vessels or vessels that are suspicious, and then there are lost yachtsmen and those sorts of things. Do the same rules of engagement apply or is there a completely different set of circumstances? There are a few different scenarios there.

Rear Adm. Smith—There are quite a few different packages there—lost yachtsmen are treated a bit differently to a fishing boat or something. In the case of fishing, we have our economic exclusion zone, where we have regulations and licensing processes for fishing boats. We run patrols under Operation Cranberry to surveil those areas. If we find fishing boats within the Australian economic zone which are not licensed, we place boarding parties on board. Subject to advice from the department of fisheries as to how they want to play that particular incident, the boats will be either released or escorted into the nearest port. Our procedures are very much dependent upon who it is that we are dealing with. If we were involved in an operation like the drugs one that you mentioned, which we are not routinely, we would be working on behalf of Customs and we would respond in the way they wished us to respond.

Senator BARTLETT—In terms of that broad area of activity—and I am referring to a new submission we have in today from Dr Bateman, a former commodore with the RAN—would you describe the arrangements that are in place at the moment in northern Australia for intercepting people as temporary or permanent or just ongoing until otherwise advised?

Rear Adm. Smith—It is certainly the latter, Senator. That would be a question for the government. As far as I am concerned, this is an ongoing operation and I have no indication that it has an end date.

Senator BARTLETT—What is the distinction between military surveillance and civil surveillance?

Rear Adm. Smith—We work together. The national surveillance of this country prior to Operation Relex was the responsibility of Coastwatch. Coastwatch have civilian aircraft that surveil our northern approaches in particular. The Navy provided patrol boat support as a response capability to Coastwatch as part of that overall effort. That responsibility remains extant. Where it has changed is with the introduction of Operation Relex, which is specifically

focused against illegal entry vessels. The Navy has prime carriage of responsibility and the civilian agency Coastwatch with its aircraft is in support of us for that operation, so we have turned the whole thing around. Under Cranberry, we support the civil agencies and they have the lead; for Relex, the ADF have the lead and the civilian agencies are in support.

Senator BARTLETT—So it depends a bit on what the vessel is: if it is a people-smuggling vessel, you are the focus; if it is another type of vessel, then you are the support.

Rear Adm. Smith—That is correct. It is only suspected illegal entry vessels that are the subject of Operation Relex.

Senator BARTLETT—Are you aware of any plans to meld those two together in a more cohesive way so that you do not have those divisions of focus?

Rear Adm. Smith—We have no plans at the moment to do that.

CHAIR—Let me just conclude the questioning by asking you a few more questions, if I may, and just bear in mind reference (b) from our terms of reference. My understanding is that your evidence to us has been that, consistent with what Brigadier Silverstone has said, it was reported that a child, which later became children, was thrown overboard from the SIEV4 incident, and that was reported up the line of command.

Rear Adm. Smith—That is correct, Senator.

CHAIR—It is also my understanding that your evidence is that by 11 October this was understood not to be true and a correction to that earlier report was reported by you to the CDF on that day.

Rear Adm. Smith—I reported that to Admiral Ritchie.

CHAIR—To Admiral Ritchie on that date?

Rear Adm. Smith—That is correct.

CHAIR—Just refresh my memory: in the chain of command, where does Admiral Ritchie sit with respect to you?

Rear Adm. Smith—He is my superior. He is the Theatre Commander and he is responsible directly to the CDF.

CHAIR—So as soon as you became aware that the earlier report was not true, you reported it immediately to the person in the chain of command who is next above you?

Rear Adm. Smith—That is correct.

CHAIR—You did not report it to anyone else in the chain of command above him, or outside of the chain of command?

Rear Adm. Smith—I reported to the chain of command, to Admiral Ritchie. I also reported outside the chain of command to the Chief of Navy, to whom I am also responsible.

CHAIR—Admiral Shackleton?

Rear Adm. Smith—That is correct.

CHAIR—Can you tell me again what date you reported to Ritchie—was that the 11th?

Rear Adm. Smith—No, it was on the 10th, in fact—Wednesday, 10 October. I had suspicions on the 9th and spoke to Commander Banks on the 9th. He could not confirm or otherwise the report. I told him to interview his ship's company that had some relevant information in connection with this incident and to call me back the next day—Wednesday, 10 October—with the outcome of that investigation. He did so on the morning of the 10th and told me that he had no evidence to prove that the incident of a child being thrown overboard had occurred. I told him to compile that information into a signal, a chronology, and to send that signal to me, which he did about 24 hours later, early on the morning of the 11th. So on the Wednesday, the 10th, when I had had that conversation with Banks, I then rang Admiral Ritchie and told him that there was no evidence to support the claim that a child had been thrown overboard.

CHAIR—The manner of advising Ritchie was by a telephone call from you to him?

Rear Adm. Smith—That is correct. That was what I had been directed to do.

CHAIR—Is that call logged and recorded?

Rear Adm. Smith—It is logged in my own telephone records, but it is not recorded.

CHAIR—Did you communicate that advice in written form in any way?

Rear Adm. Smith—No, I did not.

CHAIR—Why was that?

Rear Adm. Smith—I did not think it was necessary. I had advised Admiral Ritchie, who in turn contacted the CDF. Admiral Ritchie then rang me back to say that he had advised the CDF. Quite frankly, I felt that I had completed my obligations and that the chain of command had been informed and that there was no need to do it.

CHAIR—The CDF is who?

Rear Adm. Smith—Admiral Barrie.

CHAIR—When did you advise Admiral Shackleton and what was the nature of the advice?

Rear Adm. Smith—I had a number of calls with Admiral Shackleton. On that Wednesday, the 10th, I advised him after I had spoken to Admiral Ritchie—it was some hours later in the evening. I had a habit of contacting Admiral Shackleton at about six o'clock in the evening just to give him an update on what had occurred during the day. At that time I advised him that there was no evidence to support the claim.

CHAIR—This was oral advice, not written?

Rear Adm. Smith—That was oral advice, that is correct.

CHAIR—Did anyone from the minister's office contact you directly about this?

Rear Adm. Smith—No.

CHAIR—Did any of your superior officers come back to you after your initial contact with them on this matter, to follow it up?

Rear Adm. Smith—No, they did not.

CHAIR—You were satisfied when you spoke to Admiral Ritchie that he had understood what you had said, passed it on and had come back to you and advised you that he had done so?

Rear Adm. Smith—I had no doubt that he understood that. Admiral Ritchie and I talk regularly on a daily basis, we have discussed it many times between then and now and I have no doubt that we were both aware of that.

CHAIR—And you are satisfied that when you advised Admiral Shackleton he understood what you were saying and took note of it?

Rear Adm. Smith—Yes.

CHAIR—I am sorry, did you actually say on which day you advised Admiral Shackleton?

Rear Adm. Smith—I am less certain on what day that was, but I believe it was the evening of the 10th.

Senator FAULKNER—I might have misunderstood you then, Admiral. Did you say you had discussed it with Admiral Barrie between then and now?

Rear Adm. Smith—No, I have never discussed this with Admiral Barrie.

Senator FAULKNER—That is what I thought. I must have misheard you.

Rear Adm. Smith—I had discussed it with Admiral Ritchie.

Senator FAULKNER—I am sorry, I misheard you.

CHAIR—No-one has gone to this matter, but let me just ask it. My understanding is that Operation Relex is not completed.

Rear Adm. Smith—That is correct.

CHAIR—It is not over. It is ongoing.

Rear Adm. Smith—That is correct. It has been renamed: it is now Operation Relex II. The differentiation between the two is that SIEV1 to 12 was Operation Relex, and to be able to declassify the signals for the benefit of the committee it was necessary to move on to a new operation, which is called Relex II.

Senator FAULKNER—Does Maritime Command come up with the names of operations, like Relex, for example?

Rear Adm. Smith—No, that is done from Canberra, from Strategic Command.

CHAIR—Under Relex II have there been any further SIEV incidents?

Rear Adm. Smith—No.

CHAIR—After or before September 11, when you were in charge of Operation Relex, were you asked to keep a watch for terrorists who might be posing as refugees?

Rear Adm. Smith—I was not specifically asked to look for terrorists posing as refugees.

CHAIR—To your knowledge have any of the refugees been identified as terrorists?

Rear Adm. Smith—Not to my knowledge.

Senator BRANDIS—Are you in a position to know?

Rear Adm. Smith—Not necessarily so.

CHAIR—But you do see the intelligence reports? I am not wanting to go to those intelligence reports. You nodded in the affirmative?

Rear Adm. Smith—I have access to intelligence reports.

CHAIR—Have you at any time, up until 10 November, advised the Minister for Defence that refugees may include terrorists?

Rear Adm. Smith—No, I have not.

CHAIR—Earlier in your evidence we talked about consultations you had engaged in or at least surveys of what types of actions had occurred where refugees come across the water in Europe—I think you said the Mediterranean—

Rear Adm. Smith—Yes.

CHAIR—and in the United States. You referred me to the US Coast Guard web site. I will put a question on notice about this, because I have visited that web site and I cannot find a reference on it to children being thrown overboard, but there may be one because there are quite extensive references. I just note that the US example is an interesting one because there are many thousands of refugees that cross the water from either Cuba, the Dominican Republic or the People's Republic of China. There is a huge body of documentation about all of that.

What I can find is a reference to a Coast Guard report to a congressional committee in 1999 in which they identify one incident, between the People's Republic of China and Guam, where a refugee threatened US Coast Guard personnel that he might jump overboard. I will ask you if you can perhaps go to some better sources on that, because I cannot find exactly those references about children going overboard. Also, in what looks like the financial year 2000 report there is one reference to Cuban refugees threatening, with knives and machetes, that they might injure a boarding party team, but again there is no reference to children. There are several thousand refugees from Cuba, the Dominican Republic and China. I will go to that on notice.

I will now go to another area for a moment: the public relations handling of Operation Relex. We have the Defence Instructions (General) order signed by Secretary Hawke and Admiral Barrie on 8 August 2001 which varied the then arrangements for press and public comment. Are you aware of that instruction?

Rear Adm. Smith—Yes, I am.

CHAIR—I think you said, but I want to be careful about this, that there was at some stage during Relex a change or variation to what the PR arrangements would be for Defence? Is that right or have I misunderstood?

Rear Adm. Smith—I do not believe I said that. At the beginning of Relex—I have to get the dates of the instruction—the first one that was produced inhibited significantly those who were authorised spokespeople for Relex. That subsequently has been changed.

CHAIR—Can we walk our way through this carefully? The Defence Instructions (General), 8 August, was later specifically for Relex—correct any of this if it is wrong—varied in a way which significantly inhibited comment on that operation. Is that what—

Rear Adm. Smith—It restricted significantly those that were authorised spokesmen, indeed. We needed authorisation from the minister's office to be able to speak about those things.

CHAIR—The Defence Instructions (General), issued on 8 August, were in themselves a significant concentration of authority in the minister's office and at the senior levels of command for comment over what had previously applied, weren't they?

Rear Adm. Smith—They certainly were more restrictive. That is correct.

CHAIR—And so they were restricted further for Relex?

Rear Adm. Smith—Correct.

CHAIR—And now they have been varied again and a much more open, communicative regime applies, doesn't it?

Rear Adm. Smith—Yes, it is. It really takes us back to where we were before.

CHAIR—Do you know the date or the timing of when the PR instruction relating to Relex was issued?

Rear Adm. Smith—I mentioned to Senator Faulkner that we had a series of instructions that are part of the concept of operations for this activity. One of those was the public affairs plan that was promulgated by Admiral Ritchie's organisation. The date, I seem to recall, was about 3 September. But I would have to confirm that date for you.

CHAIR—Is it possible for us to get a copy of that public affairs instruction for Relex?

Rear Adm. Smith—I believe so. It has all been declassified in the interests of the inquiry.

CHAIR—And that will show its date of operation?

Rear Adm. Smith—Yes, it will.

CHAIR—Thanks. Can you take me through what the normal operational requirements are for an operation like Relex? We are now in Relex phase II. You are the operational commander of this operation. What obligations are on you to report, analyse or synthesise the operation? Perhaps I should put that more directly. When Relex changed from Relex to Relex II, would you have reported what you had done as the operational commander up to that point to deliver on your orders relating to Relex?

Rear Adm. Smith—I am not sure I am—

CHAIR—Perhaps I am not putting it—in my civilian way—quite right. When you were put in charge of Relex, you were given orders as to what this operation was to be about.

Rear Adm. Smith—Yes, that is correct.

CHAIR—And it was your job then to take those orders and implement them?

Rear Adm. Smith—That is correct.

CHAIR—Relex ended and Relex II started. Does that mean you, at that point, report back to your commander saying, 'This was the mission I was given. This is the mission as it has been accomplished.' Is that the normal procedure?

Rear Adm. Smith—Yes, it is. But the arrangements under Relex II have not changed at all in terms of what were doing under the first one.

CHAIR—I have in mind that here is an order to you. You go out and discharge the order and come back and report, ‘Mission accomplished,’ or some such thing.

Rear Adm. Smith—I see. No, I have not had to do that because the mission is ongoing.

CHAIR—At any point during this mission, if the character of the task appears to have changed from how it was originally conceived, do you analyse or report what alteration there may be in operational necessities because of those changes?

Rear Adm. Smith—That is part of my responsibility to assess the operation as it has been unfolding. If there has been a change of circumstances which require me to obtain clearance to operate in a different way or to adjust some element of the operation then I have a responsibility to seek that waiver or change, and that is what we would do.

CHAIR—Have you had any cause to do such a thing?

Rear Adm. Smith—Certainly in the transition from Relex to Relex I, I have not had occasion to do that. I do not recall having to ask for any adjustments and, indeed, most of the adjustments have been driven down from the top.

CHAIR—Operation Relex has changed in character, but because of further refinement of orders given over those that were initially given?

Rear Adm. Smith—Operation Relex has evolved. As each of these incidents has occurred, we have adjusted the way we have done business in certain ways and the current arrangement reflects our experience up until SIEV12 as modified by some of the things that you are aware of, in terms of public affairs and things like that.

Senator FAULKNER—All the policy changes should be picked up in that question on notice that I asked you.

Rear Adm. Smith—Yes, they should.

CHAIR—My question is that too, but I am glad Senator Faulkner has saved me a bit of time and reminded me of that. As the commanding officer do you routinely report to your superiors about how things are going—a monitoring report, the positions so far and that sort of thing?

Rear Adm. Smith—I do that every day.

CHAIR—Every day?

Rear Adm. Smith—That is correct.

CHAIR—But you don’t at the end of each week, each month or after a significant incident file a particular report saying, ‘Fellows, things have changed a bit. You ought to know these things’?

Rear Adm. Smith—Not up the chain, but down within the forces under my command we do assess that sort of information. The JTF commander and I regularly communicate on those sorts of issues. If there has been something that we have learnt, if there has been something that once we have put it all together that gives us a better picture of what we have been through, we then modify our operating procedures to reflect that experience.

CHAIR—All of this focus by you and by your superiors is about delivering the effectiveness for Operation Relax, which is ‘to enforce and intercept any illegal entry into Australian waters’—I think that is how you describe it—and about operational concerns, is it not?

Rear Adm. Smith—Yes, it is.

CHAIR—We have what has been called the Titheridge minute here. It was not Air Vice Marshal Titheridge who actually ordered you to do the work to compile this, was it? I thought it was Vice Admiral Shackleton.

Rear Adm. Smith—It was Vice Admiral Shackleton; that is correct.

CHAIR—He gave you specific instructions as to what you were to do?

Rear Adm. Smith—That is correct.

CHAIR—There was not a position in which you could discriminate and say, ‘I do not want to do those things. I would like to do some other things’?

Rear Adm. Smith—It is not normally career enhancing to do that.

CHAIR—No. This might occur in politics, but with the chain of command and for sensible and very good historic reasons, people need to give clear and precise orders and expect those clear and precise orders to be carried out. That is what you did?

Rear Adm. Smith—That is exactly right.

CHAIR—Yes. Does what has become known as the Titheridge report have any Defence purpose?

Rear Adm. Smith—Only in the sense that I was asked to compile that sort of information and report to Vice Admiral Shackleton on those facts and that is what I did.

CHAIR—It is a report seeking information about particular incidents and not about other incidents that may have occurred. What is notable, for example, is that it does not require you to report heroic action by Navy personnel in managing what is a sensitive and difficult situation.

Rear Adm. Smith—That is true.

CHAIR—It does not require you to do that. For example, it does not require you to report the actions of that able seaman on the *Adelaide* who, at some risk to her personal safety, jumped in

and rescued a woman from drowning, or being swept under the propellers of the ship, with a baby in her arms?

Rear Adm. Smith—No, I was not asked to report on those things.

CHAIR—It does not ask you to report a range of things that might have demonstrated, for public relations reasons, how capable, professional and expert the Navy had been in managing its responsibilities so that the public can be aware of the professionalism of the service, does it?

Rear Adm. Smith—No, it was a report specifically targeted around a certain set of circumstances. I might add, Senator, that some of the things that you are referring to are sometimes things that I am asked to report on separately as well. It is not uncommon to be tasked to produce that sort of information.

CHAIR—I will put it in a question on notice to you, but I do think it is of public interest and of material point to this inquiry to know how well the Navy has conducted itself, because the evidence I have heard since this inquiry commenced is that the Navy has conducted itself in an extremely professional manner. I think that is something that people should know about. But nothing that you have been asked to do has included collating examples of that professionalism for public release.

Rear Adm. Smith—That is correct, Senator, but I would welcome the opportunity to be able to do that.

Senator FAULKNER—But, Admiral, in the case we are talking about, you were asked to compile that material by the Chief of Navy, Admiral Shackleton. I think that is correct.

Rear Adm. Smith—That is correct.

Senator FAULKNER—In relation to the material we have received today under your signature, that is an initiative you took yourself.

Rear Adm. Smith—That is correct.

Senator FAULKNER—It might be, in that context, that it is interesting to the committee to understand whether you discussed that at all with the Chief of Navy or any other superior officer.

Rear Adm. Smith—No, I did not. I reflected on the line of questioning that I experienced last time we were here together. I was sensitive, I guess, to an operating reporting regime, which I have total confidence in, and I got the impression that that confidence was not shared by the committee—rightly or wrongly, that was the way I interpreted it—and that clearly more information was needed. As I briefed the committee at the beginning of this evening's proceedings, it was not our SOP—standard operating procedure—to get witness statements but I felt that in the circumstances, and in respect of the committee, for you to fully understand what actually has happened in the course of all of these events that was the right thing to do, and that is why I did it.

Senator FAULKNER—That is fair enough. But you did not discuss this with anyone outside Maritime Headquarters? You took this action yourself?

Rear Adm. Smith—I took this action myself but I did advise the CDF today that I had done so. I did that through our task force so he was aware that I had had these statements compiled and that I was going to present them.

Senator FAULKNER—Could you define ‘our task force’ for me please?

Rear Adm. Smith—Rear Admiral Gates, who you have met, who is coordinating Defence’s participation in this—

Senator FAULKNER—Is it a task force around the inquiry?

Rear Adm. Smith—Yes, that is correct—the inquiry task force.

Senator FAULKNER—There are so many task forces, Admiral, that it is always best to be definitive about them.

Rear Adm. Smith—I used to be very clear about task forces, Senator! It is operations.

CHAIR—To follow on from Senator Faulkner, the point is that the material you have provided us today is, as you have said in your opening statement tonight, to fill the gaps about concerns that had been created in your mind by some of the questioning of the committee.?

Rear Adm. Smith—That is correct.

CHAIR—And to provide more specific material to the committee about those things?

Rear Adm. Smith—That is correct, Senator.

CHAIR—I want to go back to what is being called the ‘Titheridge report’ or the ‘Titheridge minute’. Does that have any naval operational purpose?

Rear Adm. Smith—It is a report of a series of facts that have been called for by a higher authority.

CHAIR—Yes, but it does not have any purpose as far as aiding your operation in the management of Operation Relex, does it?

Rear Adm. Smith—No, it does not.

Senator FAULKNER—In fact, the matters contained in it do not have any operational significance, do they?

Rear Adm. Smith—They have operational significance in the fact that they are things we have had to deal with in the course of Op Relex.

Senator FAULKNER—At the time that they occurred, were they passed up the chain of command?

Rear Adm. Smith—Yes, they were.

Senator FAULKNER—All of them?

Rear Adm. Smith—Yes, they were.

CHAIR—When were you asked by Admiral Shackleton to compile this report?

Rear Adm. Smith—I was asked on 20 February.

Senator FAULKNER—Were those matters contained in the Titheridge report that was passed up the chain of command passed to ministers or the task force?

Rear Adm. Smith—I do not know. It is addressed to the minister, so it clearly—

Senator FAULKNER—No, I am talking about when they happened.

Rear Adm. Smith—Sorry, I beg your pardon. I cannot comment on that. The information was passed by message to the Strategic Command Division. What happened to it after that I do not know.

Senator FAULKNER—I am interested—and I have no objection to the terminology ‘pattern of behaviour’; it is as good a use of words as any to describe the circumstances and it is a reasonably economical use of the English language, so I will go along with that—that the pattern of behaviour seems to matter an awful lot on the first weekend of the election campaign when Mr Costello is about to go on a Sunday television program and for the rest of it does not appear to have a great deal of significance at all. At the end of the day, it does not have any tactical or strategic significance in terms of your responsibilities. In military, strategic terms, it does not really matter, does it?

Rear Adm. Smith—I do not think I will comment on that, Senator.

CHAIR—Can I put this question in another way: would you have compiled this report if you were not asked to do so?

Rear Adm. Smith—Probably not.

CHAIR—Are you aware that on 20 February the prospects of this inquiry were well known?

Rear Adm. Smith—Yes, I am aware of that.

CHAIR—And that it would focus on the ‘children overboard’ affair, as it is popularly known?

Rear Adm. Smith—Yes, I was aware of that.

CHAIR—Did it occur to you that the Navy might be being asked to do research to defend a government position in a political debate rather than an operational position in carrying out its responsibilities under Relex?

Rear Adm. Smith—I think that is a bit of an unfair question, Senator. I was responding to a direction from my chief of service to provide him with some information, and that is what I did.

Senator FAULKNER—It would be reasonable, though, for the committee to note that, on the date in question—20 February—the Senate estimates committee dealt with estimates for Defence.

Senator BRANDIS—Admiral, in preparing your report, were you placed under any form of political pressure whatsoever?

Rear Adm. Smith—Not at all.

Senator FAULKNER—Were you aware that the report was produced for the purposes of this Senate select committee?

Rear Adm. Smith—I made an assumption that that was its purpose.

Senator FAULKNER—Were you told by anyone that that was its purpose?

Rear Adm. Smith—No, I was not.

CHAIR—I think I have gone about as far as I can go with you on that line of questioning, Admiral. Obviously, this is a matter of some interest to me. One of the items of evidence you gave, as I recall, was that the crew of the SIEVs were to be returned to Indonesia or were returned to Indonesia. Do you recall that?

Rear Adm. Smith—Yes, I remember that.

CHAIR—Can you refresh my mind as to what that was exactly?

Rear Adm. Smith—As Relex was unfolding, I think SIEV5 was the first occasion when policy direction was relayed to me that, rather than transportation of the UAs to a country to be nominated by the government, I was to attempt the return of this vessel to Indonesia. From SIEV5 onwards that was an extant requirement for us.

CHAIR—Obviously that is the optimum outcome, to get the vessel to go back to whence it came. Once the crew and the refugees were on board a naval vessel—their vessel, or whatever their means of getting there, having sunk—what happened to the crew then?

Rear Adm. Smith—Once these people were on board the ship, in the cases when we had to do that, they were eventually landed at Christmas Island and the UAs and the crew were handed over to the Australian Federal Police.

CHAIR—Do you know if the crew were returned to Indonesia?

Rear Adm. Smith—I do not know what has happened to the crew of any of the SIEVs that were landed at Christmas Island. It is not our business.

CHAIR—No. Were you kept informed through that task force Ms Halton chaired—whatever its proper name was—about its broad considerations or were you not privy to those?

Rear Adm. Smith—I was not privy to the deliberations of the IDC, other than some of the outcomes that were then relayed through the chain of command.

CHAIR—According to the Department of Immigration and Multicultural and Indigenous Affairs in its intelligence report 52 of 2001, the prices paid to smugglers and agents varied from \$US1,200 to \$US3,500—this is in relation to SIEV4—and there were 219 passengers on SIEV4, meaning that the gross income to the people smugglers of SIEV4 would be somewhere between half a million and 1½ million Australian dollars. Were you aware of that?

Rear Adm. Smith—I may have been. I do not recall that particular report.

CHAIR—Probably, if you take the median point, SIEV4 was worth \$1 million to the people smugglers as gross income.

Rear Adm. Smith—I would have to do accept that.

CHAIR—That is according to DIMA. What the net income was I do not know, but people smuggling was a handsome profit-making affair.

Item (c) of our terms of reference is almost entirely taken up by the so-called Titheridge minute, and you have been subject, might I say, to fairly detailed questioning and reading from the documentation. I just want to mark the spot in the *Hansard*. You were not subject to any questioning from any member of this committee in relation to what I would call the ‘Kevin hypothesis’.

Rear Adm. Smith—I think Senator Bartlett did address that.

CHAIR—Senator Bartlett asked questions about that? Okay.

Senator FAULKNER—Were you informed prior to your appearance at the table that you were likely to be asked questions about what was contained in the Titheridge minute?

Rear Adm. Smith—No, I was not.

CHAIR—My understanding about what I have called the Kevin hypothesis is that that hypothesis leaves a big question mark over ethical conduct for the Navy. Do you have anything to say about that at this point? Are you aware of the hypothesis?

Rear Adm. Smith—I am certainly aware of it. I have a letter to the editor of the *Canberra Times* appearing in the paper tomorrow commenting on a couple of letters that have been talking about this very issue. In my response to Senator Bartlett I made the point that I took great offence, on behalf of the Navy, at the suggestion that has been made in that context. We are a professional navy, we are professional mariners. It could only have been written by somebody who does not understand how seriously professional mariners would take their responsibilities for the safety of life at sea. They clearly did not understand just how seriously we do take those things.

In that particular instance, our nearest ship to where that boat sank was 150 miles away. We had no knowledge of the boat having sailed. The first that we were aware that this vessel had sailed from Indonesia was when we were contacted by the search and rescue organisation here in Canberra, on 22 October, when they advised us that this vessel was overdue and it was feared it had foundered in the Sunda Strait area. None of our surveillance that we had operating—aircraft or ships—had detected this vessel.

Senator BRANDIS—Admiral, don't be too polite! The Kevin hypothesis, as it has been called, is absolute rubbish, isn't it?

Rear Adm. Smith—As I said, I find it quite insulting and offensive to the Navy.

Senator BARTLETT—How did Search and Rescue know it was overdue if they did not know it had left?

Rear Adm. Smith—They had advice from Coastwatch Canberra to say that the vessel believed to have sailed on or at the 19th for Christmas Island was overdue. Where they got that information from is a bit sensitive, I think; it is intelligence.

Senator FAULKNER—When did you become aware that Admiral Barrie was going to make his announcement following the senior leadership group discussion on 27 February?

Rear Adm. Smith—I learnt it the same time as all the other members of the senior leadership group: that very morning, when we were all gathered in this building.

Senator FAULKNER—So Admiral Barrie addressed the senior leadership group and indicated what he planned to do, but you were not aware of it before he said that?

Rear Adm. Smith—I was not aware of it before that, no.

CHAIR—Do you have anything further to add about that incident? I have one last question.

Rear Adm. Smith—Sorry, about what?

CHAIR—About the so-called Kevin hypothesis. I think you have covered it, but I wanted to give you the opportunity.

Rear Adm. Smith—I think I have said enough on that. We were nowhere near it; we did not know it was there. As I said, I find the assertion quite offensive to the Navy. The Navy, as a professional organisation, just would not have allowed that to happen, if we could have done something about it.

CHAIR—If you were there, what would you have done?

Rear Adm. Smith—It is very clear to our commanding officers that if we were in close proximity to where that was, and we knew that it was happening—whether it was in Indonesian territorial waters or in international waters—we would have gone to the rescue of those people.

CHAIR—That is because they would be in distress and you would have an obligation on you to do so and because of your humane instinct to do so in any case.

Rear Adm. Smith—That is absolutely correct.

Senator FAULKNER—But have you given consideration, Admiral, that misleading official statements surrounding the ‘children overboard’ issue actually make it harder to defend the Royal Australian Navy in the case of the Kevin hypothesis?

Senator BRANDIS—That is a preposterous thing to say, Senator Faulkner!

Rear Adm. Smith—I would not accept that, Senator Faulkner. I would have to say that, in my interaction with the Australian community, the Australian community seems very much attuned to the professionalism of the Royal Australian Navy and the responsible way in which we have done this business. I have no doubt that the majority of them understand exactly what we have done.

Senator FAULKNER—I think you are right about community attitudes about the professionalism of the Navy, but my question goes to the public notoriety of this issue, which is not directed at Navy. I think you are well aware of where I am directing my criticism; I do not think I have to even explain that. The public notoriety of this issue inevitably has an effect, and other witnesses have said that. I think CDF, in the Senate estimates, indicated that there is a cost in relation to the public standing of Defence in the broad, if you like, because of this particular issue.

These are matters of opinion—I do not want to put words into the CDF’s mouth—but my point goes to the behaviour of the government and whether that has an effect in relation to the capacity to deal with the Kevin hypothesis. I do not think that is an outlandish link to draw. I think there is a relationship there and I think that many commentators in the public arena have said that. You may care to comment; you may prefer not to.

Rear Adm. Smith—I prefer not to comment.

CHAIR—I am going to go to another subject, which is my last subject. I want to get this clear—it is very clear to me but it seems to have been lost in the murk. If a child is thrown overboard, you would rescue it; if an adult jumps overboard you would rescue them. If you are a refugee, you do not need to throw a child overboard to cause the Navy to rescue someone overboard—an adult would equally serve that purpose if you were trying to create an incident such as that, wouldn't it?

Rear Adm. Smith—Your assumption is correct in the sense that it would not matter who went over the side, we would have a responsibility to rescue them. I guess you would need to talk to these individuals to see what their motives are for what they do. We certainly interpret what they do as applying pressure to our people.

CHAIR—At the level of threat. But at the level of actuality an adult jumping into the sea has the same effect in terms of what action it evokes from you.

Rear Adm. Smith—It has the same effect in what action it takes from us. It has less of an impact in the sense that an adult is able to look after themselves and a child is a child and that appeals to a certain part of our character that is different.

CHAIR—Yes. I am not in any way trying to excuse it. But an adult from the Middle East may not be an efficient swimmer. That may mean that they are they are at risk in any case—a lot of them.

Senator BRANDIS—How does he know what the swimming ability of people from the Middle East is?

CHAIR—Because they do not have access.

Senator FAULKNER—I think you are right, Admiral.

CHAIR—It is one of the cultural differences, for God's sake.

Senator FAULKNER—I am sure the perceptions in the Navy would be the same as perceptions outside the Navy. I am not in the Navy but my perception is that there is difference between a suggestion that a child is thrown in the water and an adult who takes action of their own volition. Surely there is a difference; that is the point you are making to us.

Rear Adm. Smith—Yes.

Senator FAULKNER—I do not think the views in the Navy would be any different to community views on that—it is a natural and totally understandable and totally proper and correct human reaction.

CHAIR—I have no further questions of you, Admiral, thank you very much.

Senator JACINTA COLLINS—I have a couple of questions.

Senator FAULKNER—You do not agree, Senator Mason?

Senator MASON—No. They both require the Navy to act.

Senator FAULKNER—So you agree with me.

Senator MASON—I agree with what the Admiral said.

Senator FAULKNER—In this case you are right.

CHAIR—Order! It is a bit late and we are well over time now. Senator Collins, if you have got a question please make it quick.

Senator JACINTA COLLINS—We heard earlier from Brigadier Silverstone about his understanding of the time that he made the call to Air Vice Marshal Titheridge.

Rear Adm. Smith—Yes.

Senator JACINTA COLLINS—I think he indicated at the time that you might have some additional information for us on that point.

Rear Adm. Smith—I am not sure it is additional information—I think you might have asked me this question last time. He was instructed to call Air Vice Marshal Titheridge at 7.30 Darwin time—eight o'clock Eastern Standard Time. He rang me at about that time to advise me that he had done as directed and what information he had relayed to Air Vice Marshal Titheridge. I then rang Admiral Richie at 8.02 that morning and that is why I am saying it was about 7.58 to 8.02—that sort of time—when Silverstone rang me.

Senator JACINTA COLLINS—I am sorry, we covered this on the last occasion, did we?

Rear Adm. Smith—Yes that is right.

Senator JACINTA COLLINS—It is a case of information overload.

Senator FAULKNER—As a consequence of the publication of the Bryant and Powell reports, have you had any further discussion about the obvious conflict of evidence or conflict of views between yourself and Admiral Ritchie on the one hand and Air Vice Marshal Titheridge on the other?

Rear Adm. Smith—I am not sure what you mean by conflict of views between Admiral Ritchie and me.

Senator FAULKNER—The fact that the Air Vice Marshal says that he did not become aware of doubts of this issue until late November.

Rear Adm. Smith—Admiral Ritchie and I have discussed that and I advised Admiral Ritchie that I had the distinct recollection of a telephone communication with Air Vice Marshal Titheridge on 17 October.

Senator FAULKNER—I knew you had discussed it with Admiral Ritchie, but I was asking whether you have had a discussion with Air Vice Marshal Titheridge because, as a result of the publication of the two reports, that conflict of view or conflict of evidence—call it what you will—would be well known.

Rear Adm. Smith—No, I have not discussed it with him.

Senator JACINTA COLLINS—My final question is in relation to—

CHAIR—Please make this the final question.

Senator JACINTA COLLINS—I asked this earlier, but you did not get to respond to it, Rear Admiral Smith. My final question is in relation to this table of yours, in which you still have, regarding the SIEV9, a reference in the ‘Threat to a child’ column of ‘X⁵⁵ (Strangulation)’.

Rear Adm. Smith—Yes, I do.

Senator JACINTA COLLINS—Is there a correction you would like to make there?

Rear Adm. Smith—That was the information that I had available to me when I compiled this particular chart, and I am not sure I have any further information that would necessarily say to us that that is incorrect.

Senator JACINTA COLLINS—I am sorry; I must have misunderstood what you had indicated earlier.

Rear Adm. Smith—What I was suggesting earlier is that, some of the statements—and that particular statement of the lance corporal—would indicate that there may be another explanation for what was perceived to have occurred there. The ship’s logs, and things that record information as it was happening at the time, do contain that claim that there was an attempt to strangle.

Senator JACINTA COLLINS—I see. So, in that sense, this table depicts perceptions rather than, necessarily, facts.

Rear Adm. Smith—This table represents the facts as recorded on board the ship, gleaned from communications and so forth. The statement would give a different spin on this particular incident.

Senator JACINTA COLLINS—Right. So you have not reached a conclusion?

CHAIR—Can we leave it there? Thank you very much, Rear Admiral Smith. It has been a long and, I hope, not too arduous—

Senator BRANDIS—Was it longer than for Commander Banks?

CHAIR—I do not know—

Senator BRANDIS—It was nine hours for Banks.

CHAIR—I have given up record keeping. On behalf of the committee, we have really appreciated your corporation; thank you very much. Before I adjourn the committee, members of the committee would have seen a copy of the letter from the Clerk of the House dealing with this debate between the clerks. There is no reason why that should not be released.

Senator BRANDIS—Before Rear Admiral Smith leaves the table, can I take it that these additional statements which he produced this evening will be subject to the same protocol as the earlier statements—that is, once they are reviewed by the Navy for security and privacy purposes, the Navy has no objection to them then being released?

Rear Adm. Smith—That is my understanding of the process.

CHAIR—They have not been through that process yet. Again, thank you very much. We are adjourned until 9 a.m. tomorrow, when we commence with the much deferred Air Vice Marshal Titheridge.

Committee adjourned at 11.18 p.m.