



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Reference: Certain maritime incident

TUESDAY, 26 MARCH 2002

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to: **<http://search.aph.gov.au>**

SENATE
SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Tuesday, 26 March 2002

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

Senators in attendance: Senators Bartlett, Brandis, 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

BANKS, Commander Norman, Royal Australian Navy 191

Committee met at 9.10 a.m.**BANKS, Commander Norman, Royal Australian Navy**

CHAIR—I call the committee to order. I have a short statement that is remarkably similar to the statement that I read yesterday. I am debating in my mind whether it is a bit rich to read the same words two days in a row. I have a truncated version, but I think it is necessary to go over some of the main points. Today's hearing is open to the public. This could change, of course, if the committee decides to take any evidence in private. The committee has authorised the broadcasting of the public aspects of the proceedings.

We have not proceeded as far as we had originally hoped with our proposed list of witnesses and we apologise for the inconvenience that that has created. The committee decided at the close of business last night to rearrange today's program to free up those witnesses who needed to return interstate. A revised schedule has been circulated.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege and the Senate will use its powers to protect witnesses against any adverse consequences arising from the giving of evidence. 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 the 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, witnesses in that category 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 name and position. Witnesses should be asked to make an oath or affirmation. The committee has agreed to the request from certain witnesses that they be accompanied by counsel. For the convenience of all, the committee has agreed that counsel may be seated at the witness table with the witness. However, counsel has no right to address the committee, nor will the committee address questions to counsel.

That discharges the opening preliminaries. I think you are in continuance, Commander Banks, and Senator Bartlett has the floor since there are no objections.

Senator BARTLETT—To give space to others, I have one final question at this stage. There was a line of argument or questioning put yesterday to the previous witness, a commander of the Navy, about the impact on the morale, spirits, wellbeing or bonhomie of the crew of the *Adelaide*—and other ships for that matter—having to witness the rare incidences of children being held up. Could you comment on the impact on the crew in having to confront the whole situation: the full picture of women, children, infants and desperate people in overcrowded

boats that are not in the best of condition and having to basically block them out and send them back? In your evidence yesterday, you spoke a bit about the range of views of some of your crew and how that changed after the rescue incident. The level of satisfaction of Navy personnel and crew with having to do this task has been a source of comment from time to time. Whilst I recognise that Navy crew will do as they are commanded, from your point of view as a commander, there is still an issue about their level of satisfaction or happiness with the tasks that have been given. Could you comment on the attitude, views or impact on the crew of having to do this fairly unprecedented activity?

Cmdr Banks—Sir, I can only speak on the *Adelaide* incident, SIEV4. I have no knowledge of any of the other SIEV incidents, or other RAN participation in Operation Relex. I could really only comment on my impression of what I saw of *Adelaide*'s morale and how that impacted on other people. Yesterday I said that I observed a change in the attitude of some people who were not keen on this type of activity, as their own personal views on immigration indicated that encouraging people to come to Australia was not in their mind-set as being a good thing but that they had quickly changed when they realised that this was a task that we were directed to do and that we are instruments of government policy, and that I was also particularly pleased with how, when this turned into a humanitarian issue, they quickly changed any inherent attitudes they had, rallied to the point and became very actively involved in looking after the unfortunate SUNCs, and at how a number of people went around and fed the people on the forecastle and became involved in giving assistance to them and looking after the children. There was almost a minor babysitting club developing, involving men and women. When the announcement was made that we would be landing the SUNCs to Christmas Island, they cheered and clapped and were quite excited by it. As they departed *Adelaide* to go into the barges to be ferried to Christmas Island, they wanted to shake hands and say thanks.

I do not believe that *Adelaide*'s morale was impacted by the events that we experienced. If we were asked to sustain that effort for a lot longer, it may have had an impact, but during the periods that we were involved I do not see or recollect that it had an impact. Throughout the period afterwards, when we deployed overseas, most people were focused solely on the task at hand. There was obvious disappointment at media commentary. We were only seeing snippets and vignettes of domestic information, but we were able to put their concern to rest with addresses to the ship's company that we had done nothing wrong, that we should be proud of the action to rescue these people, that there were particular slants on the issue that we had no control over and that I and the Navy remained proud of them. As far as I am concerned, their morale was extremely high throughout Operation Relex and Operation Slipper.

Senator FERGUSON—Mr Chairman, I think Senator Bartlett is referring to a question I asked yesterday of the commander, and I think he has misrepresented the question that I actually asked, which had nothing to do with the bonhomie—

CHAIR—I actually think he asked his own question.

Senator JACINTA COLLINS—He asked his own question.

Senator FERGUSON—But also he said questions were asked yesterday about bonhomies of crews—which was certainly never mentioned, as far as I know.

CHAIR—I see. I do not know the distinction, but obviously you see one. I actually thought Commander Banks introduced the word ‘bonhomie’ into this discussion.

Senator FERGUSON—Certainly we did not in questioning him. The question that I put to the other people was in fact: is it any less traumatic on the sailors of any vessel to have threats of children thrown overboard than to have children actually being thrown overboard, because it has been suggested that it is more traumatic.

CHAIR—I think we will come to your question in a minute, Senator Ferguson.

Senator FERGUSON—I understand, but I think it has been suggested that it is more traumatic to see people in the act of threatening to throw children overboard than to see them actually throwing them overboard.

CHAIR—That is a question you may ask when the call comes to you.

Senator FERGUSON—I will.

Senator BARTLETT—I am quite happy for Senator Ferguson to correct any unintended misrepresentation. My question was more to whether there were traumatic consequences for the crew. I would have thought the trauma lag experience—which I am sure they can handle but, nonetheless, best not to have it—would relate to the whole experience of having to blockade a ship full of infants, women and children. These people were obviously upset and agitated, according to your evidence. You have spoken about how they felt after the rescue but, before that time, was there unhappiness or stress—to use the word that has been used—in having to perform that task?

Cmdr Banks—As I said, I can only comment on my impression of what I gauged *Adelaide* ship’s company to be feeling or showing. At the stage where we were involved in the man overboard incidents, there was obvious concern that this was not good. There were comments about how wrong it was that people were threatening and doing this. My point about the change in attitude was that on 8 October when we rescued these people, people very quickly shifted their attitudes and opinions to, ‘Now we are looking after these people,’ and there was a clear shift.

Senator BARTLETT—What do you put that down to? Was it just the fact that they engaged them on a personal level, they were sharing space and saw them as human beings?

Cmdr Banks—No, they were genuinely concerned that these people had entered the water from a boat that was sinking and had to be pulled from the water in a distressed state. There is a human compassion in most people, and certainly in *Adelaide* ship’s company, to extend the hand of friendship to people in distress or in need. I was personally quite pleased how the ship’s company responded to that.

Senator BARTLETT—In the description that you gave when the asylum seekers were taken off the *Adelaide* and on to Christmas Island, you talked about them expressing thanks and generally giving a positive response to the crew.

Cmdr Banks—Very much so.

Senator BARTLETT—They must have switched from baby killing monsters to nice, kind people overnight, from the sounds of it. That is hardly a comment that should be recorded.

Senator FERGUSON—Nobody has ever suggested that the refugees were baby killing monsters. Nobody has even suggested that.

Senator JACINTA COLLINS—A headline today suggested that they tried to kill a child.

Senator FERGUSON—That is true. That is in the report.

Senator JACINTA COLLINS—It is not in the report.

Senator FERGUSON—Just a minute.

Senator JACINTA COLLINS—No, it is not in the report.

CHAIR—The attempted strangle I think is in the report.

Senator BARTLETT—So the crew certainly did not perceive that these—

CHAIR—The standing of the report is that it did not matter, of course.

Senator BARTLETT—people were of bad character when they were being transferred from the *Adelaide*? There were no people saying, ‘Good riddance. We don’t want people like that around us any more’ and that sort of thing?

Cmdr Banks—It is difficult for me to express the attitudes of 196 people in one straight statement. My own view, and the view that I surmised of other people, is that at no stage was there any great concern. For a short period on 7 October with the jumping overboard issues, people were concerned about what was happening. For a short period after that, people were disappointed and confused.

Once we entered into the tow arrangement, people’s attitude shifted to: we are now providing some assistance to these people. We provided food, medical aid and water, and we tried to repair their vessel. People settled into that. Most people were concerned about the length that this would have to be sustained.

At the same time, the decision and the announcement that we would be deploying elsewhere was coming out and people were becoming very focused on that—when we were going to get back to prepare for that and have some time with families before we redeployed. Once the rescue took place, the ship’s company rallied very much to providing compassion. That was evident. It was appreciated, and when they departed at Christmas Island, there was cheering, clapping and handshaking.

The comment about bonhomie was earlier when I spoke about the attitude of the SUNCs changing from when we were steering the vessel north out of the contiguous zone to when we took it under tow and were clearly taking it back towards Christmas Island. My perception is that they viewed that as having a win. We were now providing the assistance that they were expecting, and we were obviously taking them back towards Australia where they could be processed.

Senator BARTLETT—Finally, would you confirm the total number of people on board the SIEV4? Was it 223?

Cmdr Banks—There were 223 people on board.

Senator BARTLETT—From all the witness statements there was one person who was seen at one stage to hold a child over the edge.

Cmdr Banks—There were a number of reports made throughout the period. I only recollect seeing at about six o'clock one adult Iraqi male holding one child, estimated to be about five years old, putting her in a life jacket and holding her over the starboard side.

Senator BARTLETT—One out of 223?

Cmdr Banks—One out of 223.

Senator BARTLETT—Thank you. That will do for the moment.

Senator FAULKNER—Let me just ask you at the outset about the nature of the tasking for Operation Relex, if or how that might differ from other operations and if there was anything unique about it that might assist the committee as it looks at these issues that we have before us.

Cmdr Banks—The only area of difference that I was able to perceive was that generally, and certainly in the past to my knowledge, the illegal immigration interception patrols had only ever been conducted by the Fremantle class patrol boats. It was different to see major fleet units—major warships—being tasked in that role, although that role was clearly within our capability.

Senator FAULKNER—You yourself had some earlier interaction with one of the Prime Minister's task forces, I think. Correct me if I am wrong but that was my understanding. Would you just briefly outline—this is obviously prior to Operation Relex—the background that you had and if that was useful in any way?

Cmdr Banks—That background was in 1999-2000, in the early stages when policies were being developed. Those things certainly stayed in my mind. I was aware of the sensitivity of the task. I was seeing discussions that we had had in 1999-2000 come to fruition: the deployment of naval units to the north to intercept and deter the arrival of large numbers of SIEVs with large numbers of potential illegal immigrants on board. That had transitioned from the discussions in late 1999-early 2000 to where we were in late 2001, and it was becoming a reality.

Senator FAULKNER—What is the interface between tasking and rules of engagement in a technical sense, if you like, or are these just very separate issues as you look at them?

Cmdr Banks—They are related in that the rules of engagement are developed to suit the task.

Senator FAULKNER—Appreciating that, was there anything particularly unique about the rules of engagement for Operation Relex that it might be useful for the committee to understand, without drawing too much on this distinction? I am really only asking you a question to try to understand a bit more of the general background.

Cmdr Banks—I do not believe that there was anything different. I believe that the rules of engagement were very clear and the task was very clear. The rules of engagement were very clear and the commander's intent was very clear.

Senator FAULKNER—Senator Bartlett was asking you some questions last night that I listened to about directives from government. Any such orders, directives or instructions—'instructions' might be a better word to use—as I understand it would always come through the commander of the joint task force. Is that right?

Cmdr Banks—Yes, sir, that is correct. When Senator Bartlett was asking questions last night about the Prime Minister's involvement, I was aware that he was involved, but his directions were being conveyed throughout down the military chain, and I was only taking direction from Commander JTF 639 and on occasion from the Maritime Commander in regard to other areas.

Senator FAULKNER—As far as you are aware, in your experience, if there are orders or instructions that are initiated at the level of government, it would be passed down the chain of command in that way via CJTF. That is normal or standard operating procedure, I would have thought. You have said also possibly Maritime Command, but either of those options would be the way you would expect this to work, and that is the way it worked. Is that right?

Cmdr Banks—Yes. From CJTF 639 for Operation Relex and for any other tasking I had from the Maritime Commander.

Senator FAULKNER—And you can say to us that there are certainly no exceptions to that.

Cmdr Banks—To my knowledge there are no exceptions to that.

Senator FAULKNER—I do not know that this was the case with *Adelaide* so in a sense I suppose I am asking you a question that may or may not have applied to *Adelaide's* involvement in Operation Relex, but what happens in a situation if you have on board Defence personnel from another service—which certainly was the case with some vessels involved in Operation Relex? Are you able to shed any light on that in terms of command structures from the perspective of a commander of a naval ship?

Cmdr Banks—There were no personnel other than naval personnel embarked on HMAS *Adelaide*. I believe there was one Army corporal who was embarked as part of a ship's flight—

one of the maintenance crew. He was on exchange service from the Army to the Navy for the maintenance of aircraft. He falls under our full command.

Senator FAULKNER—Sure, but are you able to more generally outline, for the benefit of the committee, what would occur if, let's say, some Army personnel were embarked on a naval ship involved in an operation? Would there be a separate command structure, or are you unable to comment because you have not faced that situation?

Cmdr Banks—I am really unable to comment on that, but, as far as I am aware, I would retain full command. All people on *Adelaide* are under my command, and if that were to be changed there would be an administrative instruction, a command and control document, that would clarify that situation.

Senator FAULKNER—We might progress that with some of the other vessels because, as you know, the terms of reference of the committee have been broadened. I do not want to get bogged down in that now, but thanks for that information. One thing that does appear to have been unique about Operation Relex was the communication strategy. Is that a fair statement, do you think?

Cmdr Banks—Which aspect of the communication strategy?

Senator FAULKNER—Is it fair to say that there was a specific communication strategy adopted for Operation Relex?

Cmdr Banks—Could you be more specific about what you mean by communication? Are we talking about equipment? Are we talking about communications frequency plans or communicating information to other interlocutors?

Senator FAULKNER—I am specifically talking about communications with the media.

Cmdr Banks—There was clear guidance issued. There was a draft public affairs plan issued.

Senator FAULKNER—I use the term 'communication strategy'. If we talk about the draft public affairs plan, how do you technically describe that: as a media plan? Is that the best way of describing it?

Cmdr Banks—The public affairs plan is the term that was used.

Senator FAULKNER—Do you know when *Adelaide* became aware of the public affairs plan?

Cmdr Banks—When we inched to the Operation Relex task we received a number of signals, formal Defence messages, which were the instructions for Operation Relex. As I said yesterday, we were not assigned to Relex to begin with; we were rotated into it at short notice. Those were generally rebroadcast to *Adelaide*. I cannot recollect the number there were but probably 20 or 30 formal signal messages, one of which was the public affairs plan. I would have been aware of that on or about 18 or 19 September.

Senator FAULKNER—So your point yesterday about, if you like, the phone conversation that you had with the Channel 10 researcher/reporter, that should not have occurred if the public affairs plan had been strictly adhered to. I think that was the point of your comments yesterday, but for clarification's sake—

Cmdr Banks—The point is that I made an error in judgment. I should not have spoken to Channel 10. It was clearly contrary to the guidance.

Senator FAULKNER—And that guidance also comes from CJTF 639?

Cmdr Banks—I do not recollect that coming from CJTF 639. I believe there were two messages. One was a draft public affairs plan which had been issued either by the former CJTF or indeed by—I have not got a copy in front of me—probably an agency in Canberra. There was a second signal from the Maritime Commander—I have not got copies with me; I think it was later in September—which made it clear that we were not to make comments. I made an error; I forgot that information.

Senator FAULKNER—I was just wondering where those instructions emanated from. It just was not clear to me. That is helpful. I might actually come back to that a little later.

Could I ask you about the comment on page 15 of your opening statement, the bottom dot point, the last line about '062300ZOCT 01'. Listening carefully to Admiral Shackleton yesterday, I was trying to understand the dates and times et cetera. I think I have got that on board. If you go over the page to page 16, it says:

Sitrep message #9 and BOARDING Log did not mention child held over the side incident. I viewed this incident as an inconsequential event in the overall scheme of things.

Just for the record, could you explain to me the timing of sit rep message #9? I think you have explained a little earlier, but just so I am clear.

Cmdr Banks—The time 062300 zulu refers to zulu time which is universal time constant. If you add seven to that you would have the time zone at Christmas Island which would have made that 0600 in the morning at Christmas Island on 7 October. I think that was 0830 in Darwin and 01000 in Sydney.

Senator FAULKNER—I appreciate this does not mention the crucial point; this does not mention a child being held over the side. It is not clear to me whether that particular situation report has been made available to this committee or not. I do not know that you will necessarily be able to help us with that but this goes, I assume, to CJTF 639. Is that where that particular message would go?

Cmdr Banks—I do not know whether these documents have been made available to the committee. I believe extracts were made available to Ms Bryant without necessarily what I would call the top and tail information of the date, time group and the where addressees.

Senator FAULKNER—We have an extract, I think.

Cmdr Banks—It was made available to a number of addressees, including Commander JTF 639, and a number of other agencies. I am happy to list what those agencies were.

Senator FAULKNER—Yes, that might be useful for the record.

Cmdr Banks—They were addressed to Commander JTF 639, information to Headquarters NORCOM where he worked, to the task group 639.0, which was all the ships that were involved in Operation Relex, to the task unit 646.2.2, which was the air detachment in support of Operation Relex, to Maritime Headquarters in Sydney, to Coastwatch Canberra—the civil customs arm—to the Australian Theatre Joint Intelligence Centre, to Headquarters Australian Theatre in Sydney, to Defence Intelligence Organisation in Canberra, and to the Defence Signals Directorate in Canberra.

Senator FAULKNER—This message, as we know, says that ‘14 SUNCs have jumped or have been thrown overboard. All SUNCs recovered by RHIB and returned to SIEV. Second boarding party of nine inserted.’ What I do not quite understand is why this formal communication, given its time in the chain of command, did not get more emphasis than what has now become a disputed phone call—that is, the phone call is not disputed but the contents of a phone call that are disputed between yourself and Brigadier Silverstone. This seems to be the first mention of this issue of SUNCs in the water, if you like, that I have been able to locate. I do not know if that is correct but I think it is correct.

Cmdr Banks—That is correct, and that was my comment in the Bryant report, because I could not quite understand why so much weight had been given to a telephone conversation that was in dispute when very shortly thereafter, or almost at the same time, the written summary makes no reference to that, nor do any subsequent written summaries. I do not want to dispute the telephone call, but the written record, which was compiled in the same time frame, made no mention of it, and the reason I made that point of the note was trying to draw out that these were simultaneous events, and I viewed the child being held as not being an event of great consequence in the scheme of all these other events that had taken place. Surely if a child had been thrown overboard I would have changed my viewpoint and would have been reporting that.

Senator FAULKNER—So the significance of this particular communication is that it is effectively the first in formal channels?

Cmdr Banks—Is that ‘in formal’ or ‘informal’?

Senator FAULKNER—In formal channels.

Cmdr Banks—Yes. With the benefit of hindsight, I view the telephone conversation as an informal communication, whereas the formal record is the signal summaries. Throughout Relex, or *Adelaide*’s involvement in SIEV4, I drafted what were numbered as 33 signal summaries. You will see there are errors in that; I think we omitted sit rep No. 13—not that we were superstitious; I think it was just an error in maintaining a record of the sequence numbers. But those are short, sharp summaries of what we saw, observed, were involved in at a period of time from the interception through to the landing of the SUNCs at Christmas Island. I view those as the official record of *Adelaide*’s involvement in SIEV4.

Senator FAULKNER—Not one of those series of communications says there is—or even hints at—a child being thrown overboard, does it?

Cmdr Banks—Not until I was asked to make the chronologies, on 10 October, did we start talking about that incident.

Senator FAULKNER—In the chronology, how is the incident referred to?

Cmdr Banks—As a child being held over the side.

Senator FAULKNER—Thanks for that. You and I have both mentioned the disputed phone conversation with Brigadier Silverstone. Appreciating your comment that you did not want to go to that in answer to my previous question, we cannot get away from the fact that there is a disputed recollection of the contents of such a phone conversation. I think you would accept that. You have a strong view about this. We are yet to hear from the brigadier. He has provided some evidence, as you appreciate, which is contained both within General Powell's report and Ms Bryant's report, and he has also provided statements in support of that. You would certainly accept that there are different recollections or different views about this. Yours are strong, and we will hear from Brigadier Silverstone shortly. But you accept there were a number of phone conversations; it is just that one element of one of them is disputed by the two parties?

Cmdr Banks—That is correct. To this day, I wish I had perfect recall. I have difficulty remembering conversations I had this morning with my wife. But I would believe that, if a significant event took place, I would recollect that. I think there is also some dispute over the timings of the telephone conversation. I certainly recollect a number of telephone calls that day with a number of different people. Relex was perhaps a watershed event in what became proliferous use of the telephone. In my naval training, I have not used the telephone as much as we did during Operation Relex.

My recollection of the conversation: I recollect a number of conversations over that day, more so for the subject matter. If a tape recording existed of that conversation, I would be quite happy for that tape recording to say that I made that statement that children were threatened or indeed were thrown overboard. If that was the truth and it was on the tape, I would be happy to acknowledge that. Equally, if a tape recording clearly showed that I did not say that, I would not be standing up here asking for applause and recognition of it; I would accept that that was what was on the record.

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

One of the reasons I am so adamant—perhaps too strong a word—is that in my sworn statement, which I submitted on 11 October, I relied on the principal warfare officer, my operations

officer, who was standing adjacent to me. His recollection of that conversation was that I did not say 'throwing children overboard'. He made a sworn statement to that. I captured that in my testimony, but in that testimony I also said, 'I am not sure what I said or the exact detail of the conversation,' because it was just one of a number of conversations that took place in what was a fairly busy day. I said in my statement that I would attest that a child was not thrown overboard, but that a child was threatened to be thrown overboard.

Senator FAULKNER—Thanks for that, Commander. Could you explain to the committee why there was such a reliance on the telephone in this particular operation? You said that was something new in your naval experience. Could you explain to the committee why that was the case?

Cmdr Banks—At the time, I was not aware of that. With the benefit of immediate hindsight, 8, 9 and 10 October, I was advised that Relex was a sensitive operation and that the provision of timely and accurate information was essential. I believe the telephone was viewed as the most timely way of conveying that information. I want to say, though, that most of the signal messages, whilst they took time to draft, type, proofread and send, generally took about 15 minutes from drafting the first words to releasing the message and it being transmitted. If you went through all the logs, you would see that the message delivery for Operation Relex was fairly prompt. Messages were turned around in quick order, often of four, five and six minutes.

Senator FAULKNER—I am interested in understanding whether part of this is because of pressures on CJTF 639 because of what was happening with the People Smuggling Task Force in Canberra; whether that is why this more immediate form of communication—but, I think everyone would accept, less reliable in terms of a record—was used. Frankly, we do not know yet, Commander, whether phone conversations at NORCOM are recorded as a matter of course. I have asked that, and in time we will probably hear the answer. It may be that there is a record of your conversation with the brigadier. The brigadier can probably assist us with that at a later stage. But I am interested in understanding whether the reliance on telephonic communication, the urgency—and you may not be able to assist me in this—was because of the significance of this as a public issue and whether that had an impact on the nature of the communications that occurred to and from HMAS *Adelaide*.

Cmdr Banks—As you said, I think you would be better off asking CJTF 639 about the background to that.

Senator FAULKNER—Senator Collins—properly—has asked me to check with you as to when you became aware of the difference of view between you and Brigadier Silverstone in relation to suggestions that a child had been thrown overboard. When did you become aware that there was this difference of view?

Cmdr Banks—I believe it was 9 October and possibly as late as 10 October.

Senator FAULKNER—Do you know how that was drawn to your attention, how you became aware of it?

Cmdr Banks—There were two events. One was a telephone call from the Maritime Commander to ask me for clarification. The second was a conversation with Commander NORCOM, again to ask me to clarify what had been said and what had not been said.

Senator JACINTA COLLINS—When was that?

Cmdr Banks—I believe it was 9 October. It may have been as late as the 10th; I am pretty confident it was 9 October. If there is one thing I have learned it is that I need to keep a diary of telephone conversations.

Senator FAULKNER—It would be another log, probably.

Cmdr Banks—It would be another log.

Senator FAULKNER—In relation to that issue, or the question of when this became an issue, you did not only have that communication but I think at some point around that time members of *Adelaide*'s crew—I assume including you, but you can tell us—became aware of the misrepresentation in the media of the photographs and the incident they related to. I am drawing a distinction here, you appreciate, between them allegedly depicting that children had been thrown overboard, as opposed to—what we know to be the case—photographs that surround an issue on 8 October, the sinking of the SIEV. You might explain that to the committee, if you could.

Cmdr Banks—I would be delighted to. There was a question yesterday in which Senator Bartlett asked me about email. I would like to add to that. Whilst email was switched off for the ship to send messages, we were still able to receive messages—emails. Therefore, some of the inbound traffic intimated—certainly I had some personal email from some friends and family saying, 'You're making newspaper headlines.' That prompted us to go on the Net and the XO produced a photograph from the front page of the *Herald Sun* on 8 October—and I think we got that on the morning of 9 October—which was the first real hint that there was a clear misrepresentation going on.

I cannot recollect whether the brigadier phoned me and raised the subject or whether I phoned him and raised the subject. But at some stage there was a conversation in which we discussed what was happening, the photographs, what I had said, what he recollected I had said and my confusion: 'I don't think I said that but, Sir, I could be corrected.' He conversed with me that I was busy and that perhaps I was not fully aware of all the things that were happening, and we had a long discussion about that. I was subsequently directed to collect statements from the ship's company and also to provide my own statement of that recollection. That would have happened over the 9th and the 10th.

Senator FAULKNER—You mentioned before that you were advised that this was a 'sensitive operation'. Can you give me some background to that? Why do you make that statement? I think they are your words, I think I am quoting you correctly from a little earlier in your evidence when you described Operation Relex as a 'sensitive operation'. It might be useful to understand why this is outside the norm.

Cmdr Banks—No pun intended. It was sensitive in the sense that the operational traffic was all classified. Most of the messages setting it up were secret. As events unfolded the commander made it clear to me, in conversation and in signal format, that this was sensitive and certainly his signals on 9 and 10 October drew a clear statement that this was a sensitive operation and we needed to have clear, unambiguous lines of communication. My error with Channel 10, I was advised, had attracted some criticism because—whilst it was not intended to be a controversial statement, it was only statements of actual fact—it had been portrayed on Channel 10 in a different context, and that was attracting some comment. I was, therefore, fully aware that this was overall a sensitive operation. The whole set-up of the operation intimated that there were some sensitivities here and certainly my earlier experience on the handling of immigration was that it was a sensitive issue.

Senator FAULKNER—You said that in the phone call with Brigadier Silverstone you were asked about a child going overboard. Was that raised by the brigadier? I am just wondering who first raised this issue in relation to the child going overboard.

Cmdr Banks—Which date are we talking about?

Senator FAULKNER—The phone conversation you referred to a moment ago—and I do not think I have jumped to any conclusions about the date, but I assume it is 10 October.

Cmdr Banks—Again, I do not have perfect recall; we had a number of conversations. Between the Maritime Commander CJTF 639 and myself the issue was raised and discussed and decisions were made to go away and validate the information. The Maritime Commander asked me to check with the members of the boarding party and—I do not know whether I was told to take statements or if I made the decision, but a decision was made—to take statements from people involved. I spoke to all of the ship's company over our main broadcast and said that anybody involved or having a recollection of the man overboard incidents, particularly those on 7 October—and I do not know whether I spoke specifically about the child, but certainly about the man overboards, and I believe I would have spoken about the child—should contact the ship's coxswain and provide written information. A number of the ship's company did that and I think 15 or 16 statements were taken. If you read those, some talk about different events. One or two talk specifically about the child and they had different recollections of that incident.

I was then also asked to make my own statement and I went to my cabin and made a fairly quick and nasty typing job of my thoughts and then fleshed that out over time to make it a formal statement. I made that statement largely without drawing on the logs or any of the other information, although most of it was in my head. To be fair, I lived the events of the preceding two days and I believe I had a pretty good recall of what had happened, certainly from my perspective. I am not sure of the protocol here, but, in answer to a previous question, the public affairs plan was a public affairs plan for Operation Relex. I believe the committee already have a copy of that document, the draft.

Senator FAULKNER—Yes.

Cmdr Banks—That was the only plan that was issued. There was a subsequent plan, I believe, issued after SIEV4 was finished. Whilst it was not a signal addressed to the *Adelaide*, I

have been asked to advise that there was a direction on communications from the Commander Australian Theatre that said: 'Naval Component Commander Australian Theatre'—who is the Maritime Commander—and COMNORCOM CJTF 639 are to advise the Commander Australian Theatre by command-to-command personal telephone calls when the following occurs: when the ADF forces establish visual contact and positively confirm a vessel is a SIEV; when sufficient detail is known about the SIEV to warrant a subsequent call.' That instruction was issued on 6 September.

Senator JACINTA COLLINS—I just want to interject briefly on Senator Faulkner's questioning in relation to this phone conversation, subsequent phone conversations and the disputed recollections between you and Brigadier Silverstone. I have a number of questions that I will go to later, but just on this one point that Senator Faulkner was dealing with, Brigadier Silverstone indicated in his statement—and I want your response on this point—this is attachment 2 to his statement dated 3 December, that he, referring to you, Commander Banks:

... asserted that he had informed me during our conversation on Sunday 7 October that those on SIEV4 had only been, 'threatening to throw children over the side' ...

Brigadier Silverstone goes on to comment:

This report clearly contradicted my notes and recollection of our conversations not only on AM Sunday 7 October but subsequently. His statement reflected the conclusion reached as a result of the statements taken from those members of his crew involved and reported by him to me on 101144I/K October and not the content of our conversations on and subsequent to 7 October.

My question to you, Commander, in responding to that is: what is there in Brigadier Silverstone's understanding that you might be aware of to lead him to believe that there was no dispute after your conversation of 7 October?

Cmdr Banks—I have not had the privilege of reading that information in front of me. I think you had probably better ask Brigadier Silverstone.

Senator JACINTA COLLINS—The reason I am asking you is that it is fairly clear that he seems to be implying that, until you produced the statements from your crew, there was no such disputed recollection of the 7 October conversation.

Cmdr Banks—It would be my assessment that if he recollected that I said something then I would have said it and he would have walked away with that understanding throughout because there was no information to contradict that thereafter. It was my recollection that I had not said that or did not say that and I had received no information to the contrary. Until the 9th/10th information we were both probably operating on a tangent.

Senator JACINTA COLLINS—So between the telephone conversations of 7 October and 9 and 10 October there was nothing in any interim telephone conversations to contradict either of your understandings?

Cmdr Banks—Not that I recollect. We had lots of telephone conversations, and when the distress incident, the tow and the sinking took place those events took primacy. It was not until the information was coming into the ship that there was clearly a difference of opinion and that

the media representations were different to our recollections that we realised that something had to be done and the subject was brought back up.

Senator JACINTA COLLINS—Did you have a subsequent conversation from 7 October with either Brigadier Silverstone or some other person such as COMFLOT indicating either that there were threats or that a child had been put over the side?

Cmdr Banks—To my knowledge, the first conversation was on 9 October. I believe the Maritime Commander rang me and asked some questions. About the same time the brigadier and I had those discussions.

Senator JACINTA COLLINS—Despite the fact that you spoke to a number of people between 7 and 9 October, the only example of a dispute about reporting on this incident is that with Brigadier Silverstone on 7 October?

Cmdr Banks—That is my understanding, and that is the confusion. If you believe something and you do not see anything to the contrary, you will continue to believe it. I think that applies to both of us. I had a conversation and a recollection of what that subject was. I then wrote sit reps, which were my version of what had happened. That substantiated or supported that telephone conversation from my perspective. The brigadier has his recollection of the telephone conversation and he will be able to answer his concerns about any lack of information to substantiate that.

Senator JACINTA COLLINS—Thank you.

Senator FAULKNER—On this issue, Commander, you indicated in your opening statement that, since your return to Australia, you had an opportunity to have a look at some of the evidence that was adduced at the Senate estimate committees. I do not know whether you have read the *Hansard*, but you have indicated to us that, in a general sense, it has been drawn to your attention. I want to go to a comment made by the Chief of Navy. On page 147 of the *Hansard* of 21 February this year he said that you:

... said to me that he is fairly sure that he said to Brigadier Silverstone that there were people being thrown in the water or a child had been thrown in the water, but, in hindsight, he was now just a little bit ambivalent.

... ..

When we talked it through I said, 'Well, frankly, I would think that you probably said at the time what the brigadier wrote down in his notes ... I think he—

that is, you, Commander—

accepted that ... My view is that he—

that is, you—

almost certainly did say what Brigadier Silverstone wrote down.

This goes to your discussion with the Chief of Navy on 8 November. I am a little surprised at that, but the best way to deal with this is to ask you whether you would mind us placing on the record the nature of your comments to Admiral Shackleton on this issue—in other words, the differences between your and the brigadier's recollection of that particular phone call.

Cmdr Banks—I would be delighted to, because I was a little concerned that some of these comments were reported by the media this morning. These were notes that we had not discussed. The whole issue comes down to this telephone conversation. To say that I have had occasional sleepless nights over this would be an accurate statement. I wish I could recall that conversation with the clarity that is necessary to put this issue to rest. Unfortunately, I cannot. I am relying on my recall of the overall events and the context of what was happening and what I would have viewed as significant. I do not recollect the specific words or the grammar that was used but I certainly recollect talking about a child being threatened to be thrown over. I certainly recollect being asked something along the lines of, 'Norm, that is pretty serious; what proof do you have of that?' 'I can see it with my own eyes.'

Whether that was an inaccurate statement, in the sense that I did not say it clearly or the brigadier transcribed it in a different guise or he did it in short form, certainly when we spoke on the 9th or 10th he said to me, 'I have a record of what you said, Norm,' and read out what I thought were sentences. I was surprised later on to find out that he actually had very short notes. When a commander questions what you have said and says from a position of authority, 'You said this; I have records of this,' I thought, 'Well, perhaps maybe I did say that'—I almost want to use an expletive there.

Senator FAULKNER—It would be out of character, I think, Commander.

Cmdr Banks—My mother would be upset. Because I do not have a clear recollection of what was said, when the brigadier said, 'I recollect you said this,' I said, 'Well, perhaps I did, Sir.' But I also had a conversation with the PWO, which says that I did not say that. So I am in a clear quandary here over what is a significant statement. And, believe me, I was aware of the significance of those statements early on. Throughout I have been trying to convey the message that I do not have a recollection of that conversation to the degree where I can emphatically say, 'Yes, I said this; no, I didn't say that.'

What I can say is that shortly thereafter, and within minutes, I was transcribing a sit rep—a situation report—in the continuance of those sit reps throughout that event, and I made no reference to it in that sit rep. Therefore, I am more comfortable in my mind, with the passage of time, that obviously I did not say that, because I did not report it in any subsequent correspondence. I wish to add that I released all those messages from *Adelaide*. All those messages, with the exception of one or two at the actual sinking, were proofread by me, amended by me and signed by me for release.

I spoke to Admiral Smith and Brigadier Silverstone in the period 9, 10, 11 October. The next conversation I had with anyone about this issue was on 8 November with the Chief of Navy. I said that I had had some sleepless nights because I was wrestling with what I was seeing on TV in the period from 14 October. The ship returned to Australia on 14 October, and I saw the *Sunday* show and was confused at what was being reported. I was also cognisant of the fact that I was under clear instructions that I was not to talk about Relex as it was an ongoing operation

and there were clear media/public affairs guidance principles. When I spoke to the Chief of Navy in my cabin, it was the first opportunity for me to talk to anybody in my naval chain of command about what had gone on. I was unaware that he was not au fait with all the background information. I was unaware that he had been out of the country and did not have, as he said in his statement yesterday, an understanding of the events that had gone on in the last few weeks. That was my first opportunity to speak to somebody about this.

I had been asked to prepare for the Chief of Navy a brief based on the EOTS videotapes, and I did that the night before. Commodore Hancock had rung me on 7 November and told me that this was getting another airing and that I ought to be prepared to brief the Minister for Defence and the Chief of Navy on what was being known as the ‘children overboard’ affair. I made those preparations. The Chief of Navy visited the *Adelaide* after the church service in Perth. He came up to my cabin and we briefly viewed the video and I showed him some photographs. To my recollection, I spoke of my concern and confusion over the whole thing—where it was heading and how big an issue it was becoming—and that I was clearly confused over how that had transferred from what had happened on 7 October, in our recollection, to what was being portrayed in the press on 7 and 8 November. I had just driven down in the car from Perth and heard the ABC reports that the media had copies of the video.

I recollect that the Chief of Navy spoke about the ‘fog of war’ and I recollect that the brigadier and I had discussed that in earlier October. But perhaps my recollection was not accurate because of the amount of activities that were going on. I believe I affirmed that my view was that I had not said that children were thrown overboard, but I could stand to be corrected on that. I recollected a conversation with the Principal Warfare Officer, who stood by me and said, ‘You didn’t say this,’ at least in that conversation; I do not know of other conversations.

The Chief of Navy spoke to me about it: ‘You could be right, you could be wrong. It really doesn’t matter, it’s out there in the arena now. There’s an election going on. It’s a hot item. It will pass with time. What you need to do is to focus on the fact that your crew did a great job rescuing those people.’ He could see from the photographs that this was clearly a rescue operation. He said that my job was to stop worrying about the past and deal with the future, which was Operation Slipper, and to prepare myself and the ship for the task at hand that we were sailing for that day and that I was to just get on about the business of leadership and preparing the ship’s company and, if I had concerns about people, dealing with those on board. I think that discussion took place over maybe a 20-minute period. If the Chief of Navy’s recollection of that is in *Hansard*, that is his recollection. I do not want to argue or dispute that.

Senator FAULKNER—This is another one of those situations, Commander, where you and Vice Admiral Shackleton are the two people having the conversation. In fact, Senator Brandis asked Admiral Shackleton about this back on Thursday, 21 February. This is our first opportunity to ask you about it, and that is why I would like to get it clear. I think what you are saying is that your recollection is different. I refer to Vice Admiral Shackleton’s comments about half-way down page 147—just to be clear—where he says:

He—

that means you—

was ambivalent about whether he had actually said to Brigadier Silverstone that a child had been thrown into the water. I discussed this with him a bit. When we talked it through I said, 'Well, frankly, I would think that you probably said at the time what the brigadier wrote down in his notes, because the brigadier was in the comfort of an office that wasn't rolling around, and people shouting and asking him to do all kinds of other things.' I think he accepted that. I can understand, in hindsight, how he may question what he thinks he said.

And so on. I ask about this because this particular conversation on 8 November—albeit about an event which, as you properly say, was getting a lot of publicity and in some ways dominating that period during the election campaign—does not take place in quite the same atmosphere as might have been the nature of what was occurring on the *Adelaide* on 7, 8 and 9 October. This, of course, was on 8 November.

Cmdr Banks—My context of this conversation is that it was a fairly pressured day. I had little warning of where this was leading. I was expecting the minister and the Chief of Navy to view the tape before it was going to be released. It subsequently transpired it had been released. I had a brief period of time with the Chief of Navy and I tried to convey that I was confused, I do not recollect what was said but it had clearly become a big issue and I was worried about it. We discussed that. The representation, or the statement, in *Hansard* is not uncomfortable to me. I walked away from that believing that we were agreeing to disagree.

Senator FAULKNER—There has been a little bit of press commentary on the pages of bullet points that were at the end of your statement. You may or may not have heard the commentary.

Cmdr Banks—I heard it this morning.

Senator FAULKNER—Yes, I thought you might have. I do not want to get bogged down on that. If you go to page 32 of 35 of what was tabled yesterday and go to the last square point there, it says 'GOAS'. That stands for 'government of Australia', doesn't it? That is an acronym I am not used to.

Cmdr Banks—Is it the conversation on 8 November or the 25th?

Senator FAULKNER—It is on page 32 of 35 of your tabled opening statement.

Senator JACINTA COLLINS—In the middle of the page.

Senator FAULKNER—The last square point.

Cmdr Banks—It stands for 'government of Australia'.

Senator FAULKNER—Could you explain that to us? My concern there is the qualification: 'If aim was to support GOAS with evidence that a child was in the water ...'. Was that the aim?

Cmdr Banks—I can address that in two ways. I would like to set a contextual statement first and then answer the question—and I might ask you to remind me of the question as we get through it. I was a little disturbed that these points have made it to the media. There was an error yesterday evening. My intention was to provide the statement to the Senate committee on completion of reading it. I made the mistake of having my own talking points in the same

document. When the secretariat got those, we had not separated the 28 pages of statement—in that size font, not 28 pages of actual text—from the remaining pages. I was also surprised when I was asked to table that—I think Senator Bartlett or Senator Cook had said that you already had the statement in front of you—as I was unaware that you had been given it at that time.

When Senator Bartlett was reading from these bullet points—and it took me a minute to realise which bullets he was reading from, that they were these pages—I was faced with a decision whether I should ask for those to be handed back or to remain on the record. In the short space of time that that was happening, I viewed taking those back as perhaps indicating that I had something to hide, and I did not want to give the committee that impression. I was very happy, therefore, in a cursory glance with Peter Baston, that there was nothing contentious in here and for those to remain in the Senate committee's hands.

In the subsequent discussions about documents being released to the Australian public, I naively took that to mean that all the reports would be released at some stage today. I was unaware—and I use the word 'naively' there—at the time I tabled my statement that those copies were being made available to the Australian media and that by 9.30 or 10 o'clock last night people were reviewing those notes. I have to live by that mistake. I stand by that none of these points in here are contentious or controversial, but I had produced them as memory joggers for me if those questions came up. I had assumed that you would be asking me specifically about my recollection of conversations with a number of people and these were the points that I wanted to bring out.

CHAIR—I will just say something, because I think it comes back to the chair, and that will not mean that you cannot say something. I think it is appropriate that, given the commander's response, I come in here as the chairman because I have a responsibility—

Senator FAULKNER—Before you do, Mr Chairman, I am sensitive to the fact that Commander Banks said he would like to answer my question in two parts and one was contextual. I was not sure whether he had finished his contextual remarks. It is not fair to the commander in this circumstance to respond before he finishes that part of his remarks. I do not know whether he has or he has not.

CHAIR—If the question is whether the commander finished his reply—

Cmdr Banks—I have not finished the reply, but I have finished the contextual framework.

Senator FAULKNER—That was my concern. If the commander has finished his contextual remarks, that is fine.

CHAIR—I did not realise, until it was drawn to my attention, that your private memory jogger bullet points were attached to the statement that was being circulated. When that became obvious to me, I offered to hand them back to you, because I regard those as your private notes and not necessarily what was intended to be your public statement. My understanding of private notes is that they are, as you have described them, memory joggers. If anyone looked at my private notes—and people do from time to time—what they indicate on the page is not necessarily what I would say. They simply spark the thought that I want to convey, and they usually spark it in fairly direct, pithy, colloquial language, and I would like to express myself

with greater elegance than that. So I regard those bullet points as private notes; I do not regard them as necessarily meaning anything very much at all. Your evidence is what we should pay attention to.

I think it is embarrassing for you, Commander, and I apologise to you on behalf of the committee that your private notes have been distributed. I think that they were attached to the document that was handed up and that the secretariat innocently photocopied the lot and distributed them. It is one of those things—and maybe this is a motif for the entire inquiry—that has happened which we have to now deal with. Those are my remarks from the chair, and I do apologise to you that that occurred.

Senator FERGUSON—Could I clarify one thing about this statement. Commander Banks, if your statement was meant to be tabled and your own notes were not, why on earth have you got this unclassified document numbered from page 1 to 35, as though your handwritten notes were part of the statement?

Cmdr Banks—I produced this statement back in Perth as a document. When I arrived here yesterday, I was advised that it would be appropriate to table my statement.

Senator FERGUSON—But it would appear as though you are trying to separate—

Cmdr Banks—I made an error in that I did not separate the two parts of the document.

Senator FERGUSON—But if you intended to, why on earth did you number this from page 1 to 35? It is no wonder the secretariat thought that it was part of the statement if the pages are numbered 1 to 35 and, in fact, the last four or five pages are your private notes.

Senator FAULKNER—It is not my job to defend the commander, but you know as well as I do that the committee has asked Dr Hawke and Admiral Shackleton whether they would mind, as a courtesy, tabling their opening statements. We all know it is easier to get across evidence more quickly, and to refer to it, if you have it in written form.

Senator FERGUSON—I understand that, Senator Faulkner. All I am asking is: if these were meant to be his own notes and he did not intend to table his private notes, I just do not know why they are consecutively numbered from page 1 to 35 as though they were part of one document.

Cmdr Banks—I had not intended to table anything until I was asked to yesterday.

Senator FAULKNER—That is the point.

Senator FERGUSON—Okay. I am just asking.

Senator FAULKNER—We have asked the witness to table this as a courtesy. I asked Dr Hawke whether he would mind because I knew he had a prepared statement. I do not think the witnesses come thinking that the material will be tabled.

CHAIR—I do not think there is any need for us, as a committee, to take this any further. If any committee member wants to discuss it further, let us do that in our private meeting scheduled for lunchtime. Certainly I, from the chair, have followed the habit of asking people who read written statements into the record—which helps us a great deal—to make their written statement available to the committee as a courtesy. We get a copy of what they say through *Hansard*, but this simply means that we get their statement before us concurrently with their reading of it. That makes it easy for the committee to examine people on their statements, rather than waiting for the black letter of what they said to come through *Hansard*, for which there is a delay. It is a considerable convenience to the committee in our expeditiously meeting our deadline to complete our inquiry, which is indeed pressing. At that point, unless you have anything further to add, Commander—and I offer you the floor if you have—we will adjourn for 10 minutes for morning tea.

Cmdr Banks—I would like to add the one point that these were memory joggers; they are being used in the media as quotes. That was the point I wanted to make: these are not quotes; I had not said these things. I am happy to discuss them and I am delighted that the committee has asked me about a couple of points in here that I will be able to address formally and which, therefore, would be tendered as quotable information.

CHAIR—They are not quotes because you never said them. Were you to say them in the record of this hearing, they would then be quotes, I suspect.

Cmdr Banks—I will save that for shortly, when I answer the senator's question.

Senator FAULKNER—But I do think it is proper for you, Mr Chairman, to point out to Commander Banks that it is now a tabled document—it does have that status. The commander spoke to his opening statement, too, because he in fact added a significant amount. The best example of this is quite a substantial description of photographs that have been provided to the committee, which description is not contained within the opening statements. I think it is proper to say to the commander, in understanding all that background, that while they are not quotes they do have the status of being in a tabled document.

CHAIR—The document is public, but they are not quotes because they are not speaking notes and they were never said to this inquiry. On that basis, I think we are all entitled to a cup of coffee.

Proceedings suspended from 10.37 a.m. to 10.52 a.m.

CHAIR—Commander, I think you were part way through an answer when we broke for morning tea.

Cmdr Banks—I was.

Senator FAULKNER—Would it help if I repeated the question, Commander?

Cmdr Banks—That would be very useful, sir.

Senator FAULKNER—I was going—and now I can with the benefit of your contextual comments—to the last square point on page 32 of 35 of the tabled document. I was asking about the qualified statement contained in that document, which reads:

If aim was to support GOAS with evidence that a child was in the water then the photo of the Iraqi male youth would support that albeit not absolutely.

My question goes to why that would be the aim. I am wondering what the motivation and imperative might be, or whether you questioned motivations or imperatives here.

Cmdr Banks—Sir, as I said, on 8 November I was confused as to where this whole issue was heading. In that discussion with the Chief of Navy about the ‘child overboard’ issue—the conversations that had or had not taken place with COMNORCOM—I then made a comment that if it was the Navy or Defence’s aim to prove that a child had not been thrown overboard then clearly the videotape showed that a child had not been thrown overboard but a child was threatened to be thrown overboard. If the aim was to support the government’s views that children had been thrown overboard, then clearly the photograph of an Iraqi male youth in the RHIB, having been recovered from the water, was support for that statement.

I realise I am entering the realms of politics—and it is an uncomfortable area for me—but, in the privacy of the cabin, that was the discussion. If we are here to provide proof that children were not thrown overboard, then it would appear that the videotape shows that, and that supports my recollection of the conversations. If the aim is to show that children were thrown overboard, or some form of proof that children had been thrown overboard, then the photograph—I think it is one of these 31 here—shows a youth in the RHIB, having been recovered from the water, and therefore you could draw the link that a child had indeed been in the water.

Senator FAULKNER—Commander, was Chief of Navy able to tell you what the aim was?

Cmdr Banks—I do not recollect that. What I recollect is his advice—not so much a shrug of the shoulders—of, ‘It’s water under the bridge, Norm. You’ve bigger things to deal with. This is about the government. This is about politics. This is about the election campaign. Forget it and get on and deal with your job at hand, which is preparing the deploy to go overseas.’ At that stage we did not know it was for 4½ months; it was for an indefinite period.

Senator FAULKNER—Were you able to ascertain whether the key imperative here was for the truth of the situation to come out?

Cmdr Banks—You would have to ask Admiral Shackleton that. My aim was to offer an opportunity for either situation to be supported. I was confused throughout about what had happened and where this whole situation was heading. If I went down the line that a child had not been thrown overboard, there was still a photograph of a youth in the RHIB.

Senator JACINTA COLLINS—How does that sit with your comment in your email to Ms Bryant saying:

If GOAS are clutching at straws and want to use the photo to say 'see there were children thrown overboard' then I am not prepared to make comment further. In any case my crew statements all attest that the 'teenager' jumped of his own accord.

It seems in that comment that you are quite clear that that is your view, rather than just furnishing evidence or not furnishing evidence.

Cmdr Banks—That was, again, written after the event. That was written in December or January.

Senator JACINTA COLLINS—On 14 January.

Cmdr Banks—Some significant time after.

Senator JACINTA COLLINS—'Clutching at straws'?

Cmdr Banks—I will come to that one. I do not want to enter into areas where I am criticising the government or making a political stance in any way. I was also unaware that those emails were going to go on the public record. Those emails were scene-setters between Ms Bryant and me. There was evidence that I provided and then there was commentary that she and I exchanged, and I believe that was written in the sense of a commentary. Clearly, I have made a political statement in that and, clearly, events had passed on from the confusion of 8 November. We were now into the new year.

Senator FAULKNER—I assume that the discussion that you had in your cabin with Chief of Navy was a private discussion. For better or worse, there is more detail about it now on the public record, which I am sure you accept. I am trying to understand where this ends in terms of how this matter was dealt with. In what you have said to us, you are indicating two possible approaches to the Chief of Navy, depending what the aim of the exercise was. I am trying to understand what the outcome is—when you leave your cabin after that conversation with Admiral Shackleton is concluded, what understanding did you have?

Cmdr Banks—Admiral Shackleton visited me primarily to prepare for the ship's farewell from Fleet Base West to deploy for Operation Slipper. The focus of that discussion was really centred on that. It had been added in the night before that, because the EOTS tape may or may not be released at the government's direction, would I show a copy to the Chief of Navy—and indeed to the minister, were he to come on board—so he had the opportunity of seeing it before any media release or media comment? I took that as an opportunity, whilst talking primarily about the Operation Slipper deployment, to say that I was concerned about Operation Relex and how this was being portrayed in the media and to express my concerns.

Throughout the whole thing I would love to be emphatic and say, 'I said' or 'I didn't say'. With the passage of time, I have moved much closer to clearly saying, 'I believe I didn't say', because of all the other pieces of information that I have been made privy to. In early October I remained confused and was a bit more able to swing each way—that is probably a bad expression; I was able to listen to both sides and accept that either could have been true. I was swayed—with the support of my principal warfare officer, from reviewing the signals and reviewing the witness statements and with the passage of time—that clearly I do not think I said it.

Senator FAULKNER—But did you leave with an impression that there was an expectation placed on you to do what you could to support the government's case on this or otherwise on a matter about which you have indicated to the committee on a number of occasions you had concerns about the public misrepresentations?

Cmdr Banks—Admiral Shackleton and I were left with the opinion that this was clearly something not to worry about. It was out there; it was an issue that would be resolved probably with the passage of time and with the result of the election and, really, I was to concentrate on the job at hand, which was preparing *Adelaide* for Operation Slipper and getting on with that.

Senator FAULKNER—So would you say that politics and the election are basically not matters for the Navy or not matters for HMAS *Adelaide*—you just get on with the job at hand? Is that the sort of impression you ended with?

Cmdr Banks—That is the impression I had—that this was not something for me to worry about; I had more important things to worry about.

Senator FAULKNER—But you were pleased of course when Admiral Shackleton, having had the benefit of his discussion with you, viewed the EOTS tape and went to the wharf at Stirling and did, what I call, a doorstep—a stand-up press conference or the like—and that was then in the public arena. You were pretty pleased with what was being said?

Cmdr Banks—That is true. We were at sea but we remained within TV reception range, and that evening we caught one of the TV channels' news headlines and I saw Admiral Shackleton's remarks. I was not paying close attention to them but they were on and they attracted me. It was my impression, my feeling, that it was great to see the Chief of Navy standing up and, in my opinion, representing our view. I also add that that seemed to be a view that pervaded the ship. The ship's company were pleased that somebody was standing up and telling our version of the events—that this was a rescue, that no children had been thrown overboard, that a child had been held and that *Adelaide* had done a good job.

Senator FAULKNER—Was that reaction somewhat punctured for you and for the ship's company when the Vice Admiral issued the clarifying statement?

Cmdr Banks—We were largely unaware that he had retracted that. We were inside TV range for a period of time and then the reception went, and I do not think that I was aware of that retraction until several months later, perhaps Christmas, when I next spoke to Admiral Shackleton.

Senator FAULKNER—I assume that would be the case for the crew as well?

Cmdr Banks—As I said, we do not have great TV reception off the coast of Western Australia. It is designed for people on the land. The ship's radio and other equipment interfere with TV reception anyway.

Senator FAULKNER—Was the role of the Minister for Defence or his staff discussed by you and the Chief of Navy in the meeting in your cabin on 8 November?

Cmdr Banks—I do not recollect that in November. The Chief of Navy visited me again before Christmas. He came out to visit the Australian task group. He spent some time on *Kanimbla*. He then came across to *Adelaide* on Christmas Day, shared Christmas leftovers with us and spent the night in *Adelaide*. He took the time out, one-on-one, to have some lengthy conversations with me. They ran along the lines that our earlier conversation in November had not panned out, that this was an ongoing issue in Australia, and that he was aware that I did not have full access to the news that you enjoy in Australia. I was undergoing the inquiry process. I had completed the Major General Powell inquiry at that stage. I may have started the Jenny Bryant inquiry at that stage as well. CN advised me that, in his opinion, this was likely to go to a Senate inquiry or a parliamentary inquiry. He gave me some information and advice about this: that really I should not worry too much about it and that this was about bigger issues than *Adelaide*'s involvement in Relex. This was at the core of the government and the policy of illegal immigration. It was about information flow in the various echelons of government and Defence and it was not about what *Adelaide* had done in early October. He mentioned that it was largely about what had been said to the minister's media adviser and had not been passed on.

Senator FAULKNER—This was on Christmas Day, Commander?

Cmdr Banks—It was on Christmas Day.

Senator FAULKNER—My question went to November. The day before 8 November there is Commodore Hancock's request about the EOTS tape, and one of the minister's staffers, Mr Scrafton, is mentioned in that interchange, isn't he?

Cmdr Banks—I understood that Mr Scrafton was going to view the EOTS footage at maritime headquarters in Sydney and that they wanted to know where the copy of the tape was.

Senator FAULKNER—But for the purposes of complete accuracy in the record, the minister's staffer was mentioned to you in November, at least in that context?

Cmdr Banks—With Commodore Hancock, not with the Chief of Navy, on the afternoon of 7 November and again on the night of 7 November.

Senator FAULKNER—I appreciate the visit by the Chief of Navy on Christmas Day last year. You have said that on that occasion the role of Minister Reith's media adviser was mentioned. Could you please provide for the benefit of the committee your understanding of the context in which that was raised and also what was said?

Cmdr Banks—The context of how it was raised was that I was not to be worried and not to be defensive about *Adelaide*'s involvement in Relex; that this was at a different level. It was about what had been said and what had been provided to the government as advice and what had been misrepresented. Clearly, I was not involved in that and there were other people who were going to be questioned about what they had been told and had not been told. I was in no way to feel threatened or worried. I was to concentrate on the job I had to do and get on with that. The Chief of Navy also advised me that I had not been a great guy—I had made some errors in my media statements—and he encouraged me, in a very gentle way, to perhaps not do that again.

Senator FAULKNER—Let us go to the issue of the Minister for Defence's media adviser. You have never had any contact with the Minister for Defence's media adviser, have you?

Cmdr Banks—No.

Senator FAULKNER—The Chief of Navy talked to you about this. What did the Chief of Navy inform you, on 25 December, about the role of the Minister for Defence's media adviser? I assume this is not your commentary because you did not know much about this—you were a long way away from Australia at that point.

Cmdr Banks—I prefer not to answer that. The Chief of Navy would perhaps best recollect that conversation.

Senator FAULKNER—With respect, Commander, I can understand why you prefer not to answer it but it is like the issue that we were canvassing earlier, the telephone conversation between you and the brigadier, which you appreciate is disputed, at least in part. This is a discussion that takes place in your cabin on HMAS *Adelaide* and there is, I assume, only two parties to it. Let me just take you back a step so that we are absolutely clear. Were there only two parties to this discussion—you and the Chief of Navy—or were others present?

Cmdr Banks—It was a private discussion on the bridge wing. It was a very friendly discussion. The Chief of Navy expressed to me what had gone on because I was clearly not aware of all the things that had happened in Australia. He gave me his understanding of events, what was happening and where they would go. He explained to me what my likely role in that would be and he tried to put at rest my inherent defensive nature, that I was not to worry. I guess the expressions that he used were, 'You're not going to be a scapegoat out of this. You're not going to be the fall guy for this. Probably there are bigger fish to fry. It is clearly about information flow.' My recollection was that he said that the minister's media adviser was one of the people who would be called to answer for what was said and not said, what photos were passed and not passed, and what text was passed and not passed. He said that clearly those were issues for me not to be worried about. In the context of the media I was reminded that I had not helped the situation with the Channel 10 interview because that then precipitated the photographs being released which precipitated the entire sequence of events.

Senator FAULKNER—Did the Chief of Navy mention the media adviser by name?

Cmdr Banks—I am pretty sure he did. I was aware of Mr Hampton's name beforehand, and I am pretty sure he mentioned him by name.

Senator FAULKNER—Did the Chief of Navy express a view about the appropriateness or otherwise of Mr Hampton's role in this episode?

Cmdr Banks—My recollection of that is not sufficiently clear to make a clear statement.

Senator FAULKNER—But you do—

Cmdr Banks—It was suggesting that it was not glorious.

Senator FAULKNER—I do not think anyone would argue with that. But beyond not being glorious, are you able to assist the committee at all?

Cmdr Banks—I do not believe so. The intent of the Chief of Navy's message, in my recollection, was to put my mind at ease—to forewarn me of where this was likely to go, to put my mind at ease to concentrate on the job I had to do and not worry about events of the past. Clearly, apart from one aspect—the Channel 10 media interview—I was not, thereafter, involved in the events that then transpired with the release of information to the Australian media.

Senator FAULKNER—You also, of course, had the benefit of a visit from CDF and Minister Hill. That was, I think, on 17 January.

Cmdr Banks—Yes.

Senator FAULKNER—How did that visit go?

Cmdr Banks—That was a great visit. It was a very short notice visit—the new minister came out to see what ships were doing in the Gulf. He was accompanied by the Chief of the Defence Force. The program was changed on the run owing to the geographic disposition of the ships at the time, and at fairly short order we prepared to embark both the VIPs. They joined us for a briefing, a light lunch and an opportunity to chat to the ship's company, which Senator Hill did—he 'pressed the flesh' with the ship's company and walked away with an understanding of the role of the Navy and the *Adelaide* in maritime interception operations. It was very much a visit with the focus on Operation Slipper.

Senator FAULKNER—Fair enough. Was this the first contact as commanding officer of the *Adelaide* that you had had with CDF or CDF's office since 7 October 2001?

Cmdr Banks—That is correct.

Senator FAULKNER—Subsequent to that visit on 17 January and the discussion with CDF that you had in late February, were there any other contacts that you had with CDF or his office?

Cmdr Banks—I had some conversations with his staff during the period of the development of the Bryant report and the Major General Powell report, where I sought guidance on releasability of information to comply with the instructions for both of those reports. I was operating under guidance from COMNORCOM and Maritime Command not to discuss Operation Relex and clearly I was having phone calls from staff involved in Major General Powell's team and Ms Bryant's team to answer questions. To clear my yard arm I sought direction from CDF's office that I was to comply with those requirements.

Senator FAULKNER—Would you describe the nature of those communications as merely technical or bureaucratic about the development of the reports?

Cmdr Banks—Absolutely. We did not discuss the substance. It was purely, 'Am I allowed to comment, noting my previous instruction not to?'

Senator FAULKNER—Yes.

Cmdr Banks—For the second report I signed an acknowledgment for Major General Powell's report that I would not communicate the information about the operation. Then Ms Bryant's request came through and I sought a clearance to discuss outside the terms of Major General Powell's report. On both occasions I was given guidance from CDF's staff that I was to assist with—

Senator FAULKNER—But General Powell's report, of course, was completed well prior to Admiral Shackleton's visit to you on Christmas Day of last year.

Cmdr Banks—I think that is correct.

Senator FAULKNER—Did Admiral Shackleton raise with you the findings or outcomes of the Powell report at all?

Cmdr Banks—I have no recollection of that. I do not think the Powell report was released until January.

Senator FAULKNER—I am not sure of its release date, but my recollection is that its completion date was 14 December.

Cmdr Banks—If we had discussed it, it would have been in this context: 'I have contributed to it, sir.' 'Yes, I know you have; and, Norm, I think I have contributed to it as well,'—general banter, not specifics of findings or whatever.

Senator FAULKNER—Fair enough. But when CDF visits the *Adelaide* on 17 January, you do ask CDF about whether he wants to discuss the SIEV4 incident?

Cmdr Banks—Operation Slipper was the primary focus of the briefings for Senator Hill. I gave a presentation on the concept of operations for maritime intercepts and operations in the Gulf. I spoke at length about what our boarding capability was and how we were going about operations. I showed another famous video in the privacy of my cabin on how we were doing boardings in the Gulf, and I was not going to talk about Relex at all. It was not a subject for me to raise; it was a very short period that the senator and the Chief of Defence Force were to be on board. Over lunch in my cabin, whilst viewing the video of the Gulf boardings, the Chief of Defence Force made some comments to the senator that these were different to the Relex boardings; and there was some discussion there—that is, I was probably wondering where this was leading to and I spoke quietly in the Chief of Defence Force's ear and said, 'Do you wish me to speak about Operation Relex with the minister and the Chief of Defence Force?' CDF's very gentle voice did not whisper but sort of spoke back to me, 'No, Norm, it's not an issue.'

I wanted to draw the distinction out to the new minister between the different types of boarding that Navy are asked to do, and how the same team can role-transition relatively easily; but also to draw the clear distinction that they were different types of boardings, that Relex was an interception of an immigration, perhaps to provide humanitarian aid; whereas the Operation Slipper boardings were much more military, much more armed and ready to board and seize. That was the point I think he was trying to draw out for the new minister.

Senator FAULKNER—Does CDF at any stage ask you about the accuracy or otherwise of claims that children have been thrown overboard?

Cmdr Banks—To my recollection, no. As I said, we were there really to discuss Operation Slipper. Having had the benefit of having the CDF's statements over the last few weeks, that was the first I knew that he did not know as much as I thought he knew. I had assumed that in January he was fully aware of Relex and all the issues that went with it and, therefore, if there were questions to be asked, he would ask them of me.

Senator FAULKNER—Why did you make that assumption? I am not saying it is unreasonable—it seems a perfectly reasonable one—but why did you assume that?

Cmdr Banks—Because he was Chief of the Defence Force, he would have been privy to all information that was necessary. I believed that the Relex information had been communicated into the chain of command and would therefore have made its way to him in various forms of briefings and notes.

Senator FAULKNER—Did CDF raise with you during that visit to the *Adelaide* on 17 January the question of whether the photographs—which, as we know, have been or were promoted as evidentiary support of the fact that children had been thrown overboard—actually related to that incident? Was the question of the photographs raised at all?

Cmdr Banks—I do not recollect that. We did have photographs, but they were photographs of the Gulf boardings; and I probably made some sarcastic remark about Norm Banks being involved in videos and photographs again. There was no bite on it. We probably both walked away with the impression that we each knew what we were talking about and that it was not an issue.

Senator FAULKNER—In relation to the video, did the CDF raise the issue of whether the EOTS footage of the events relating to SIEV4 indicated that no child had been thrown overboard?

Cmdr Banks—I do not recollect that incident being discussed in any detail.

Senator FAULKNER—In relation to some of the matters that this committee is interested in, is it fair to summarise—and tell me if it is not—that, in your communications, conversations and discussions with the Chief of the Defence Force when he visited *Adelaide* on 17 January 2002, firstly, the accuracy or otherwise of the claims that children had been thrown overboard and, secondly, the accuracy of whether the photographs pertained to such an incident or the sinking of SIEV4 and, thirdly, the question of the video not depicting any child being thrown overboard, those three events, were not discussed by you or the CDF?

Cmdr Banks—That is correct: those three events were not discussed by me or the Chief of the Defence Force.

Senator FAULKNER—Did that surprise you?

Cmdr Banks—No. We were there to talk about Operation Slipper. I did not have access to all of the information regarding what was happening in Australia—that this was recurring in the media. I guess my view was that he would have had the information I had.

Senator FAULKNER—I appreciate, of course, that you were a long way from home and you did not have access to what was happening in Australia, but you did have the benefit of your discussions with Admiral Shackleton on Christmas Day 2001. So it is fair to say, isn't it, that you had a genuine awareness of the interest in this issue and its possible impact on the Navy but, most particularly, its possible impact on you as the commanding officer of HMAS *Adelaide* and the ship's company?

Cmdr Banks—I was calmed by Admiral Shackleton's advice to me at Christmas. By January, I was not all that fazed about Operation Relex. If either Senator Hill or the Chief of the Defence Force had introduced the conversation or had raised concerns, I would have been quite happy to have addressed the issue and expressed my recollection of the events. It was not raised as a subject, although at one stage during the luncheon, viewing other videos, the CDF raised the subject of boardings—specifically Relex boardings. I then spoke to him and said, 'Do you want me to talk about Relex?' I was thinking that that was perhaps where the conversation was going to head. The CDF made it clear that he did not want to discuss it any detail, that he was going down another avenue over the boardings. The other aspect was that it was a very short visit, and the primary aim was for me to get a quick briefing on what we were doing and then for Senator Hill to meet the ship's company in a bit of a rah-rah, press the flesh—'I'm the minister; well done; nice to see you guys.'

Senator FAULKNER—Just for the record, can you rule out that Minister Hill, any staffers, officers or officials accompanying the CDF and the minister raised those self-same issues that we have been discussing with you?

Cmdr Banks—I have no recollection of anyone raising it. I do not think the minister was accompanied by any staffers. He was accompanied by his military escort officer and Brigadier Gillespie, the Commander of Australian Service Contingent in the Gulf, and I think there was one more person. I do not believe there was a ministerial staffer in company.

Senator FAULKNER—Can you be satisfied that a member of the crew would not have raised this issue with the CDF or the minister in casual conversation? It is probably hard for you to be satisfied of that.

Cmdr Banks—I was in the company of the Chief of Defence Force when we went down to the ship's cafe to meet the ship's company or elements of the ship's company. We divided up into two or three groups. The Chief of Defence Force went one way with one or two of the *Adelaide*'s officers and met the *Adelaide* ship's company. Brigadier Gillespie, I think, left fairly quickly. It was the same day that the sad news of the loss of the Australian soldier in Afghanistan came through, and that issue was happening pretty well at the same time. I accompanied Senator Hill on a brief walk through the cafe. I have no recollection of Senator Hill raising it. We spoke about Adelaide, South Australia, football and what a great city Adelaide was. He wanted to meet people from Adelaide.

Senator FAULKNER—He was not talking about the Crows again, was he?

Cmdr Banks—I think he was crowing about the Crows. He spoke about—

CHAIR—There is not much to crow about these days.

Cmdr Banks—Operation Slipper and what the troops were doing, how they were enjoying it, and all those sorts of things. I have no recollection of ever even entering the realm of Operation Relex.

Senator FAULKNER—We have a similar situation, if you like, with the 24 October visit of the Prime Minister. You are able to rule out on that visit—because you did so in your opening statement yesterday, I recall—there being any communications or discussion with you about the question of the children thrown overboard incident. Again, are you able to rule out any such communications being had in casual conversation and the like as the Prime Minister and his party moved around the ship?

Cmdr Banks—The Prime Minister and his party again subdivided and went their ways around the café; I stayed with the Prime Minister throughout, and other people stayed with Mrs Howard and the minister. I have no recollection of Prime Minister Howard raising the subject of Relex. The only time he raised it was in his remarks to the entire assembly of what a great job they had done and his general good wishes that we would continue that level of commitment and professionalism in our next job and those sorts of general remarks.

Senator FAULKNER—I think we know from the tabling of an earlier document that you were ‘flummoxed’ at this time. Perhaps you might explain for the benefit of the committee why that might have been the case.

Cmdr Banks—That was a word I chose, because I think it accurately describes my state when confronted with the opportunity to meet the Prime Minister and the Minister for Defence for a one-on-one private tour at fairly short notice. That state was also exacerbated by my own confusion over the events in the lead-up to the election of how the information was being, in my words, misrepresented in the media. I did not shy away from the conversation; I did not introduce the conversation. If the conversation had been raised, I would have addressed the issues. But clearly I was not going to make a point of raising an issue that was topical. I was delighted that Prime Minister Howard acknowledged the significant contribution of the ship’s company of *Adelaide* to the rescue of the 223 Iraqi and Middle Eastern nationals and that they had performed well. I was delighted that he drew reference to the fact that they would continue to perform well in their next deployment. The Prime Minister also spoke to the media on the forecastle and I think he repeated those words about how well the ship had performed.

Senator FAULKNER—I certainly saw a clip of that on one of the news programs.

Cmdr Banks—It was not the great photo I would like it to have been. I recollect at some stage, I think in conversation with Minister Reith, that EOTS was discussed: ‘That’s it,’—physically pointing to it, and what EOT stands for being explained by me. I vaguely recollect that the minister got the acronym slightly wrong, and I corrected that.

Senator FAULKNER—Were there any instructions to the crew about talking to the PM?

Cmdr Banks—The ship's company were instructed to be respectful of the Prime Minister and his position, and to be honest to the Prime Minister about how they felt. If they were asked questions about any operations, they should answer those honestly as individuals. I did give instructions that I would prefer that they did not speak about the conditions of service for Operation Slipper. I was aware that the ship's company were becoming focused on the deployment and the conditions of service they would be deployed under, and I was also aware that those had not been resolved yet at a departmental, or indeed a government, level; and therefore that it would be unfair to ask the Prime Minister questions on allowances, medals and all those sorts of things. I was disappointed that one member of the ship's company pressed the point on an issue that clearly the Prime Minister would not have been able to answer. But, in his good nature, he listened to that question and he said he would take it on board as an issue to be followed up, and I reported that back into the chain.

Senator FAULKNER—So there were no instructions to you or the ship's company about issues, apart from that in relation to allowances and medals: nothing else was off limits?

Cmdr Banks—I have no recollection of being given any guidance on that. I was given guidance on timings, where to meet him, which car he was going to be in, how tight the time frame was and how important it was to get the media on board—a whole host of things. There was a meeting the day before where all those issues were thrashed out. I have no recollection of being given any riding instructions on how to deal with—

Senator FAULKNER—Fair enough. So you were not, for example, asked or instructed not to discuss the issue of your own initiative and say, 'This is a "children overboard" or related question,' and only respond to questions if asked? No such guidance?

Cmdr Banks—I have no recollection of such guidance. In fact, I probably ought to rephrase that. I do not believe there was any guidance; that is why I would have no recollection of it.

Senator FAULKNER—Yes. If I could just take you to the tabled document at page 30 of 35, to the last dot point there—

Cmdr Banks—The incident liable to parliamentary or press comment signal?

Senator FAULKNER—Yes. What does 'signalled' mean in this sense?

Cmdr Banks—'Signal' is a formal defence message.

Senator FAULKNER—Yes; that is what I was wondering.

Cmdr Banks—On every occasion that a—

Senator FAULKNER—So you would receive a signal. Perhaps the best question to ask you is this: could you explain what that means?

Cmdr Banks—Every time an incident happens that involves a ship, I am required to report that. Also, when ministerial visits take place and/or events where the media are involved take

place, there is a Defence Instruction Navy that tasks me to report that into the chain. I sent a signal immediately on completion of the Prime Minister's visit because it was not a well-known visit—it was on short notice that that had taken place. I also wanted to draw attention to the fact that one of the ship's company had raised the issue of conditions of service. It was a formatted message, and I had that released on 24 October.

CHAIR—I wonder whether I might give the signal myself that we will be breaking for lunch earlier than I have indicated; we will be breaking at midday. Senator Faulkner, for your information, at about quarter to the hour, if you have no strenuous objection, I intend to pass the call to Senator Ferguson for a few minutes, because he will not be able to be here this afternoon and he does have some questions for Commander Banks.

Senator FAULKNER—I might just flag with—

CHAIR—I am not suggesting that you cannot then resume.

Senator FAULKNER—I am trying to be as brief as possible, as you can see, and I would just flag that I would like to canvass some issues with Commander Banks, if I could—

CHAIR—You have the right to conclude your questioning.

Senator FAULKNER—in relation to his discussion with CDF later in February—24 February, I think.

CHAIR—Is there a problem about handing over the call at about a quarter to?

Senator FAULKNER—Why don't you, given that you have broken at this point, do it now if you like?

CHAIR—All right.

Senator FERGUSON—I must say that in my experience in the Senate it is the first time that a government senator has had to wait 4½ hours of witnesses being questioned before they get a chance to ask some questions. Mine will be reasonably brief, Commander Banks. I want to refer you back to your telephone conversation with Brigadier Silverstone. At the time you were responding to Senator Faulkner you said, 'The whole issue comes down to the telephone conversation.' If I also remember rightly, when you were further questioned about Brigadier Silverstone's attitude as to whether or not your report was accurate—I think I have got written down exactly what you said—when he asked you how serious it was, you said it was serious because you could see it with your own eyes. That is not an unfair recollection of what you said to Senator Faulkner, is it?

Cmdr Banks—The 'I could see it with my own eyes' referred to the people in the water and also the child being held and dressed on the starboard side of the SIEV.

Senator FERGUSON—The fact is that you really could not see everything that was going on with your own eyes, could you?

Cmdr Banks—If I could address that again in context: I had an unencumbered view of events from the starboard bridge wing of the *Adelaide*.

Senator MASON—Encumbered or unencumbered?

Cmdr Banks—Unencumbered. Throughout the boarding operation I manoeuvred *Adelaide* such that I could see both the port and the starboard side of the SIEV at separate times. We were viewing the events from a position of height; that is, we were looking down upon the SIEV. I was in at close range and I had good visibility, and good conditions to see. Obviously I could not see everything because I was not there the entire time, but for the significant majority of the time I was viewing events as they unfolded in real time. The only time I was not viewing them was when I went into the bridge wing to answer the telephone. And throughout most of that conversation I would have been looking out the bridge window, a few feet further back from where I had been previously.

Senator FERGUSON—If I could just quote you from your own report:

The SIEV was on the starboard bow-beam of *Adelaide* and whilst I had an unobstructed view of the SIEV's port side, I could not see the vessel's starboard side.

This is your own report.

Cmdr Banks—No, I could not see the starboard side of the vessel. I could see the port side, the length of the vessel, the breadth of the vessel and the top of the vessel. I could not see events that were happening starboard side on its one deck until I manoeuvred the ship to the starboard side to have a look.

Senator FERGUSON—That is not what your report says.

Cmdr Banks—And then when I was on the starboard side I would not be able to see the port side. My point is that I could see as best as could be possible.

Senator FERGUSON—During your comments to the committee you have repeatedly said how proud you are of the crew of the *Adelaide*, which we all accept, and how competent and efficient they have been in the execution of their duty. If your boarding party was reporting back to you that there were children in the water on the far side of the SIEV from where you were, in view of your expressions of confidence in the crew would you not naturally accept that to be an accurate reflection of what was happening?

Cmdr Banks—There were a number of reports made throughout that morning. In an effort to maintain situational awareness of what was going on, we were assimilating information from the boarding party, the EOTS operator, our own observations, the observations of other people in the bridge area and the reports coming over the radio from members of the boarding party. There was certainly confusion over what was going on and certainly surprise. It was unusual to see people leave that vessel and go in the water. Those people were recovered and I have no recollection of reports that children were recovered in the RHIB. I know that all people were recovered. We literally counted them off and we went to some length to count that the same

number who jumped in the water and whose heads were seen bobbing were recovered by the RHIBs.

At one stage a RHIB returned to HMAS *Adelaide* with two SUNCs embarked, both of whom were male of Middle Eastern origin, one of whom I assessed, because I went over there and had a look, as being a youth. That is clearly shown in the photograph. In that confusion of lots of information happening in a short space of time and the surprise of people going overboard, it would not surprise me that there may have been comments that children were being thrown overboard.

Senator FERGUSON—Okay. Can I just read part of your report, which says:

A second wave of six or so jumpers certainly entered the water though I recollect this may have been just before the child incident. Throughout, my boarding party and the other witnesses on the bridge wings were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

In view of your expressed support for the competency of your crew, if sailors on board the HMAS *Adelaide* were at the same time reporting to you that children were in the water, wouldn't you naturally expect to believe that report from the sailors?

Cmdr Banks—There was a large amount of information coming in and I have no doubt that what people reported is what they believed they were seeing. In the subsequent investigation, where we took the statements, some of those claims were not substantiated.

Senator FERGUSON—I accept that. But we are not talking about subsequent claims because we are referring to the telephone conversation, which is the key—you said the whole issue revolves around the telephone conversation. In fact, that conversation was had at the height of this incident. Given that you have had reports from the boarding party and from the sailors on board the *Adelaide*—whom you have spoken so highly of—doesn't it seem incomprehensible that during the course of your conversation with Brigadier Silverstone, which was at the height of this incident—when in fact I think you said last night you did not even have time to turn your tape recorder on and off—that you claim that you never said children were in the water, particularly as you have no reason to doubt the veracity of what both your boarding party and your crew were telling you at the height of this incident when you had the telephone conversation with Brigadier Silverstone?

Cmdr Banks—There are a couple of questions in that one statement. I could tackle them and you might refresh me as we go through. Over the period of about an hour a lot did happen. A lot of information came in and I assimilated information and I made situational reports, which are written documents, which are my summary, my recollection, of all that information that has been fed into the ship. In the earlier situation report—which you would know as Sitrep 8 or Oprep 69—I reported that some SUNCs were making threats to jump overboard, commit suicide and other veiled threats including gesturing with wooden sticks, and that one SUNC had jumped overboard. That is the official statement I made. I subsequently added a second sit rep where I said that, after the SUNC man-overboard incidents had taken place, 14 had jumped or had been thrown overboard and they had all been recovered, and that I now maintained some semblance of control.

Those are the two official sit reps that were provided—one very early on the incident and one at the end of that incident. There was certainly one telephone conversation, and possibly two telephone conversations, in that time frame. The brigadier's timing of, I think, 7.20 India kilo time would make it 4.50 in Golf time at Christmas Island. At 4.50 in the morning, the boarding had been effected some eight minutes earlier. So *Adelaide's* boarding party had been inserted and in the subsequent eight minutes events had taken place and a phone call—if that 7.20 time frame is correct—had taken place. That is the time that the information was provided about them threatening suicide, waving sticks and being clearly not impressed that we had boarded them. I think, shortly after that, one person went in the water, and I believe it was a male. So that is the first time a conversation could have taken place. I would have to go through the statements provided by the boarding team. I do not recollect whether those early statements make reference to children.

Senator FERGUSON—But the references that I make, Commander Banks, are the references that are in your own statement here. What we are concerned about is the conversation you had with Brigadier Silverstone.

Cmdr Banks—I am coming to the second part of that. I do not know when the conversation took place, because if it was 7.20, in accordance with the brigadier's notes—in his statement—then it was 4.50 in the morning. If it is the conversation I recollect, where children were involved, that conversation would have taken place at about six o'clock Golf time zone at Christmas Island, which would have been about 8.30 India Kilo-Darwin time. That event sticks in my mind, because I clearly saw a man take a child out of the coach-house, put her on top of the coach-house, dress her in a life jacket and, over a period of time, take her over to the starboard guardrail and hold her over. The boarding party statements, I believe, talk about that event. Certainly conversations with the ship's company talk about them interceding in that event to deter the Iraqi man, whom we assessed to be the father—but that is not proven—and vocally encouraging him not to do that and to take the child back inboard. The child was taken back inboard and two other Middle Eastern, or Iraqi, men assisted the man and the child back into the coach-house. Thereafter, the boarding party retained effective control of the situation. One more man overboard event, which was more a falling into the water than a jumping or a throwing into the water, took place and events stabilised. My recollection of the conversation is that I discussed the child being threatened with being thrown overboard. But I have gone to great lengths to say that my recollection is such that I cannot recall the detail of all those conversations with any veracity. There was a lot going on.

Senator FERGUSON—I understand there was a lot going on, which is the reason—

Senator JACINTA COLLINS—You mentioned earlier another report about children in the water. Can you take the rest of the committee to that purported report?

Senator FERGUSON—I have quoted two incidents from Commander Banks's statement, particularly the one in which it says that a second wave of six or so jumpers—and this is from the ship's company—

Senator JACINTA COLLINS—The jumpers—not in the water.

Senator FERGUSON—Yes—certainly entered the water. It advised that there were some men, some boys and some children and that the reports of the number going into the water varied greatly. The question I really want to ask you, Commander Banks, is in relation to the telephone conversation. If your boarding party had reported that to you, and you would have no reason to doubt the accuracy of their report, and if the sailors on board the HMAS *Adelaide* were at the same time reporting that there were children in the water, isn't it highly unlikely that, if you were having a conversation with Brigadier Silverstone at that time, you would ignore those reports from your boarding party or your sailors and not relay that information?

Cmdr Banks—To the contrary, it is quite possible that I would have relayed that conversation—those sorts of words—but I have no recollection of having done so.

Senator FERGUSON—I take you to a couple of other matters you raised last night. One is that you talked about the issue of 24 October, I think it was, when you were visited by the Minister for Defence, or was it the Prime Minister?

Cmdr Banks—Both.

Senator FERGUSON—It was when you were farewelled, and you said that the events that occurred on 6, 7 and 8 October were not even discussed. Isn't it simply a fact that at that time, in the height of an election campaign, this simply was not an issue? Between the end of that weekend in October and 7 November, the issue was not raised by either the opposition leader, as part of an election campaign, or the government as a particular issue, so why would you have expected that the issue should have been raised on that visit on 24 October?

Cmdr Banks—It was an issue in my mind.

Senator FERGUSON—Yes, but not in the public's mind.

Cmdr Banks—In my mind, I had seen reports that were inaccurate. If the Prime Minister—

Senator FAULKNER—I am sure it would have been if they had known.

Cmdr Banks—or the Minister for Defence had asked me questions about Operation Relex, I would have had answered those, but I was not going to go seeking the conversation.

Senator FERGUSON—But the issue had not been raised by either the Leader of the Opposition or anybody in an election context at that stage?

Cmdr Banks—I believe it was still being discussed in the media in that period. I was aware that what had been reported around the time was not accurate, in my mind, and that that had not been corrected publicly.

Senator FERGUSON—You also said last night that on the way—I presume you mean on the way to the *Stirling*—you briefed your crew that the matter of the 7th and 8th would eventually go, I think the words you said were, to a joint standing committee or a committee of inquiry. What made you brief your crew when, as I said, at this stage it was not an issue in the

context of an election campaign until 7 November? Why would you brief your crew that this matter would eventually go to a joint standing committee or an inquiry?

Cmdr Banks—I did not brief the crew; I briefed some of the officers.

Senator FERGUSON—Some of the officers?

Cmdr Banks—Some of the officers—my PWOs in particular, and the officers I deal with on a routine basis. That comment was made early on in Operation Relex in the 8, 9, 10 October time frame. That comment was based on my previous time in Canberra and also on the fact that I viewed this as a pretty significant watershed event. I had no recollection of an event where people had gone in the water and such a number of 223 had to be rescued. Call it a gut instinct, I viewed that this was not going to be an issue that was quickly wrapped up and put away aside.

Senator FERGUSON—So you thought that you should brief your crew?

Cmdr Banks—I did not brief the crew.

Senator FERGUSON—Sorry, your officers.

Cmdr Banks—I spoke to some officers, in a conversational sense, of a prediction: ‘Guys, I think this is going to be a big deal.’

Senator FERGUSON—As Commander of the HMAS *Adelaide*, were you aware of the other SIEV incidents that occurred during that period of time?

Cmdr Banks—I was aware of SIEV3, because I had been given access to HMAS *Warramunga*’s boarding reports and her post-operation summaries with a view to try and learn the lessons learnt from that experience so they were not repeated in subsequent events, were there to be more SIEV incidents. The other SIEV incidents that took place I was unaware of.

Senator FERGUSON—So you were not aware that there was in fact a child thrown overboard from one of the SIEVs?

Senator JACINTA COLLINS—That was later, Senator.

Senator FERGUSON—Yes, I know it happened later.

Senator JACINTA COLLINS—How would he be aware of it? It had not occurred yet.

Senator FERGUSON—Senator Collins, you will get a chance to question later. We have been waiting 4½ hours. Your side of politics has had a chance.

Senator JACINTA COLLINS—I have been waiting too.

CHAIR—Order!

Senator FERGUSON—So, in other words, even while you are on operations elsewhere, you never received any information about the activities that were taking place?

Cmdr Banks—Again, to put it in context, *Adelaide* chopped into Operation Relex on, I think it was, 19 September and I chopped out of Operation Relex on 11 October. When I chopped in I also transferred into the communications loop for Operation Relex and when I chopped out I effectively also removed myself from the communications loop. There is a huge volume of message traffic in relation to each operation and if you kept that pipeline open for each operation you would just over inundate yourself with information. So after 11 October—and certainly after 14 October when we got alongside *Stirling*—*Adelaide* was no longer in receipt of joint task force 639.0 related message traffic.

Senator FERGUSON—In your opening statement you went to great lengths to say that you make your statement voluntarily, of your own volition, and that you have not been coached, instructed or directed—direct or implied. It is unusual, I think, in a statement to start in such a defensive mode when in fact we do not ever expect anybody that gives evidence here to give anything other than evidence of their own volition or not to have been coached or to have been instructed or directed, so I wondered why you saw it necessary to put that in your opening statement.

Cmdr Banks—As I said earlier, my own nature is to be defensive. That would be indicative of that. I have been made aware over a period of time that this is an extremely sensitive matter. The very fact that I am here would suggest that it is a sensitive matter. I wanted to make it clear that I, as the junior member of the chain of people involved in this incident, have not been instructed, coached or given riding instructions in any way other than to open with a straight bat—along the lines of when it was raised there in the *Hansard* record that Admiral Shackleton's recollection of a conversation is different from mine. I wanted to make it clear that I was making my own statements and I was not put in a position where I had to follow a party line.

Senator FERGUSON—I am conscious of the time and I know that Senator Brandis wants to follow up one of those questions.

Senator BRANDIS—I have one question arising directly from what you just said, Commander Banks. You do not say that you have ever been put under any political pressure, do you?

Cmdr Banks—No, absolutely not.

Senator BRANDIS—I only ask because that assertion was made about you in the press this morning, so I wanted to give you the opportunity to clarify your position.

Cmdr Banks—The only pressure that I am under is self-induced pressure.

Senator BRANDIS—Thank you, Commander Banks.

Senator FERGUSON—I am conscious of the time, Chair; you said 12 o'clock so I will stop there.

CHAIR—I am conscious too that you are leaving shortly, Senator, and that you will not be around this afternoon, so I will indulge you if you have got anything further.

Senator FERGUSON—No, I am quite happy to stop there. Senator Brandis can ask further questions.

CHAIR—In that case we have come to the lunch break. Commander Banks, thank you very much for your attendance but we will require you, unfortunately, after lunch.

Proceedings suspended from 12.01 p.m. to 2.03 p.m.

CHAIR—Before we commence questioning, there are a couple of announcements that I wish to make. Firstly, in regard to the program, at this stage—after having had the benefit of a private meeting of the committee—it would be our desire to finish your evidence this afternoon, Commander Banks, although looking at what members of the committee believe would be the amount of time their questions may take, the probability is that we may not complete your evidence this afternoon. If that does create a problem, perhaps you might let us know about that. We will need to give thought to how we do complete your evidence if we do not finish this afternoon. I reiterate that we would like to if we can. What is there about that confusion that is clear? Not very much, but we will see how it unfolds.

Secondly, I wish to announce our approach to the release of submissions to this committee. This committee has received a number of submissions, and submissions delivered to the committee will all be released as of now. The witness statements provided by the Department of Defence as attachments to the Powell report and the Bryant report contain in some parts information which is not necessarily germane to the statement, which could—I put it no higher than that—mean that sensitive material gained public currency. It is not our desire to enable that to occur and, with the assistance of the defence department, those references are being removed. It is my understanding that those statements have been through the office of the Minister for Defence who has ensured that a check has been made by the individuals who have signed off on those statements as to whether they can agree with those statements being released to this committee. I understand that, yes, they can be. We have made a decision to release those witness statements—and there may be questions based on them this afternoon—but only after we are satisfied that no sensitive material, which should not be in the public arena, would be collaterally released. It may be, therefore, that those statements are not released and made available to the public until some time tomorrow. It may not be logistically possible to complete the editing that is required before then.

Thirdly, the category of document which I think we are relatively clear about—but nonetheless we want to be careful about, and therefore I raise it—is the logs that you, Commander Banks, tabled yesterday and of which the committee now has a copy. My understanding is that they can be made publicly available but I do seek advice from you on that. Whatever advice you offer, we will respect.

Cmdr Banks—I would like to take that on notice.

CHAIR—Okay, that is fine. Those logs will not be released until such time as we can hear your reply. This hearing will close at 4 o'clock today. It is a pity that we have to be so decisive but the vicissitudes of a one-airline country mean that people will not be able to catch planes

and we will be in a hurry, probably, if we do not do so. It is best to face that reality so we will be closing at four. As I said at the beginning, it is our desire to try to complete your evidence today if we can.

Senator BRANDIS—Commander Banks, let me start by reading you something that Admiral Shackleton said to the Senate estimates on 20 February this year and which he repeated in his opening statement yesterday. He was talking about the phenomenon sometimes called ‘the fog of war’ which I assume is an expression you are familiar with.

Cmdr Banks—I am.

Senator BRANDIS—His description of the fog of war phenomenon was this:

It is related to the reality that everything is real but it is not real. You are trying to pull threads and strands from many miscellaneous and sometimes disconnected information flows. You are trying to build a puzzle from many disconnected pieces. Sometimes the pieces fit accurately, sometimes they do not. It is fair to say that, often as not, you are dealing with millions of shades of grey and it is only as events start to get to a point of culmination that they start to form up into a real pattern, and then sometimes it disintegrates again as the events change. This is constantly moving and going up and down all the time. The commanding officer has to make hypotheses, judgments and calls based on what he sees at the time. It is never absolutely right; it is never absolutely wrong.

Is that something that you can relate to in relation to your experience on 7 October with the SIEV4?

Cmdr Banks—I consider Vice Admiral Shackleton’s statement 100 per cent accurate. The fog of war is a recognised phenomenon. I do not dispute what he has said there. In my own view, it is an accurate statement because I myself am not absolutely sure what I did or did not say. What I am sure about is what I did see. My statements have been tendered and have been cemented with the passage of time based on the additional information provided by the 15 formal witness statements that were provided.

Senator BRANDIS—Sixteen.

Cmdr Banks—There were 15 witness statements which were provided that say there was no child thrown overboard and one witness statement that says a child was possibly thrown overboard.

Senator BRANDIS—We will come to statements in a moment, Commander Banks.

CHAIR—I think it actually said, ‘I believe a child went overboard.’

Cmdr Banks—I think that is a statement from Gerrits, who said, ‘I believe a child went overboard.’

Senator BRANDIS—The witness statements are obviously something that has, as you have told us, influenced your thinking and we will take you to those—I will and Senator Mason will—in the course of this examination. Do I understand from your answer that you adopt that descriptive account of what the fog of war means to a man who was actually on the scene and in command of a highly mobile situation?

Cmdr Banks—I accept that statement.

Senator BRANDIS—I want to take you, first, to your statement to the Powell inquiry. I think you have a copy there.

Cmdr Banks—I do.

Senator BRANDIS—The first page of the copy that I have been provided with is a letter with the emblem of the HMAS *Adelaide* on top. It is addressed to Major Powell from you. That is, I suppose, the covering letter. Then a couple of pages in there is a longish document entitled ‘Scoping questions in the routine inquiry into Operation Relex: The interception and boarding of SIEV4 by HMAS *Adelaide*’. Do you have that there?

Cmdr Banks—Yes, I do.

Senator BRANDIS—Let me take you, in particular, to about halfway down the page—that is, the first contact on 6 October between the *Adelaide* and the SIEV4. Am I right in understanding that the first contact was in fact advised by an Orion aircraft?

Cmdr Banks—Yes, it was.

Senator BRANDIS—And the first report, as I understand your statement, that was received that the personnel on board were all wearing life jackets came from the crew of the Orion aircraft?

Cmdr Banks—Yes, it did.

Senator BRANDIS—And that is something that when you made visual contact with the SIEV4 you yourself observed?

Cmdr Banks—No. *Adelaide* long range RHIB made contact with the SIEV. *Adelaide* did not make contact until first light on 7 October—*Adelaide* the ship did not; the RHIB made all the contact before that.

Senator BRANDIS—Let me go back. We will take it in two phases. When the RHIB first made contact they in due course reported to you that they had observed what the Orion crew observed—that is, the people on the SIEV4 were wearing life jackets?

Cmdr Banks—That is correct.

Senator BRANDIS—And you observed it when you first saw it?

Cmdr Banks—That is correct.

Senator BRANDIS—In the last paragraph on that page you say that just about all personnel seen, at least 80 per cent, were wearing life jackets. Is that your recollection?

Cmdr Banks—That is the information that was provided to me and I have tabled in the statement.

Senator BRANDIS—And you adopt that, do you?

Cmdr Banks—Yes, I do.

Senator BRANDIS—The *Adelaide* did not respond to a distress call from SIEV4, did it?

Cmdr Banks—I would like to answer that question cautiously.

Senator BRANDIS—Well, you do not say it did.

Cmdr Banks—Define what you mean by ‘distress’ and what time?

Senator BRANDIS—When you first made the critical contact of interest—the expression you use; I assume that is a military expression—that critical contact of interest was not made by the *Adelaide* in response to a call of any kind from SIEV4; it was something notified to you by the Orion aircraft?

Cmdr Banks—That is correct.

Senator BRANDIS—When the RHIB first approached the SIEV4, the RHIB was not responding to any distress call from the SIEV; it had embarked from the parent vessel, the *Adelaide*, at your order. Is that right?

Cmdr Banks—That is correct.

Senator BRANDIS—Then, when the *Adelaide* drew towards the SIEV4, again, it steamed towards the vessel under your order—not in response to any form of call from the SIEV4.

Cmdr Banks—That is correct. There were no calls from SIEV4 on the radio.

Senator BRANDIS—When you sighted the SIEV4—and I now mean you—your statement, in the third last line on that page, reads:

Adelaide determined the vessel was seaworthy and that an in extremis or safety of life at sea (SOLAS) situation was not evident.

Was that a judgment you made when you saw the SIEV4 for the first time?

Cmdr Banks—The judgment was made on the information provided by the boarding officer and the executive officer who were embarked in the RHIB. They conveyed back to me in the *Adelaide*, a distance of six to eight miles away, that it was their opinion that this was the situation. I accepted that advice and communicated that in formal sit reps. I had not physically seen the SIEV4 myself, other than through long-range binoculars, which are not very clear. I did see it in darkness at about two or 2.30 in the morning as we approached it, but in daylight the first occasion would have been five o’clock in the morning.

Senator BRANDIS—Let me gather these threads together. Your contact was not contact made in response to a distress call. The first contact of *Adelaide* crew with the SIEV was contact by crew in a RHIB that you had initiated, and they reported to you that there was no in extremis or SOLAS situation—that the vessel was seaworthy. You accepted that advice. Was that also the view that you independently arrived at when you first had visual contact with SIEV4?

Cmdr Banks—Your statements are correct. The boarding party did that and, when I saw the vessel myself, I was happy that it was seaworthy.

Senator BRANDIS—That is all that I wanted to establish. Since this vessel, in the professional judgment of you and your officers, was a seaworthy vessel not evidently in distress, did you wonder why 80 per cent of the people on it were wearing life jackets?

Cmdr Banks—Yes, I did.

Senator BRANDIS—Did you arrive at any views about that?

Cmdr Banks—This was beginning to fit into a pattern of advice we had received beforehand that indicated that these people would change their modus operandi and would endeavour to generate a safety of life at sea situation where we would be forced, in the worst-case situation, to embark them all on board and hence have responsibility for them.

Senator BRANDIS—Let me stop you there. You were half expecting this?

Cmdr Banks—I think I said in my statement that I was ‘beginning to situate the appreciation’.

Senator BRANDIS—Yes. Can you tell us where the advice that you had received came from?

Cmdr Banks—From the intelligence briefings and some of the message traffic that preceded this operation.

Senator BRANDIS—These were intelligence briefings that you, as the commander of the *Adelaide*, received from naval authorities prior to, or in the course of embarking upon, this particular deployment.

Cmdr Banks—After we had embarked on this patrol, we had received signal sit reps, intelligence sit reps and some conversations with the commander that had intimated that we were entering a time when the modus operandi of the potential illegal immigrants had changed and we should expect the unexpected.

Senator BRANDIS—When you say modus operandi, ‘modus operandi’, of course, means ‘method of operation’. So, for there to be a method, there must be a pattern, I suppose.

Cmdr Banks—We were seeing a change from the transition from the more traditional route of people smuggling from Roti to Ashmore Reef, and we were seeing the use of transit corridors from Sunda Strait to Christmas Island.

Senator BRANDIS—Cutting to the chase, it amounts to this: the modus operandi that you were anticipating was that these people would create a SOLAS situation in order to compel a naval ship to rescue them. Is that right?

Cmdr Banks—That is largely correct. That is why we had prepared—

Senator BRANDIS—When you say ‘largely’, would you like to qualify it in any way?

Cmdr Banks—That was one of the scenarios that could have been generated. The end state would always have been a SOLAS situation where we were rescuing people. Whether they abandoned their ship, they sank their ship or they were found afloat, it would have been a recovery into *Adelaide*. That is why we had developed the embarkation plan, which we signed on 29 September. At that stage I had the plan released. It concerned how to embark these people in that safety of life situation or, indeed, a containment situation. It had taken several days to develop that plan. So, from late September I had had that in my mind.

Senator BRANDIS—Thanks, Commander. Now, the SIEV3 incident—which, according to the document that Air Vice Marshal Titheridge produced for the minister, was on 16 September, and was the first of the sequence of these events, and the only one immediately prior to that concerning the HMAS *Adelaide*—suggests that not only were you expecting or anticipating this, but you had actually developed a contingency plan because it was the very thing you were expecting.

Cmdr Banks—It was the end state I did not want to have, but it was the most likely outcome.

Senator BRANDIS—Thank you. You also say in your statement to Major General Powell that you saw a small child—an infant—holding a sign that read ‘SOS’ at a time when the vessel was apparently seaworthy. Was that consistent with the expectation you had that the game, if I can use that expression, of those in control of this vessel was to create the SOLAS situation?

Cmdr Banks—Yes, it was. The boarding party did not convey that piece of information straight away. That was a piece of information that came out slightly later, and it was the cause of some concern because that jigsaw piece, using Admiral Shackleton’s analogy, was quite important, and it was not conveyed until well after the event. But, in any case, the boarding party, which had been supplemented by the XO to give it a more credible experience, was happy that the vessel was seaworthy. As I said, it was transiting south south-east at eight knots, which was indicative of a vessel that is ‘seaworthy’.

Senator BRANDIS—Are you able to say—perhaps you are not—whether eight knots, in those conditions and in that swell, would have been a reasonable speed for a vessel of that type, in that condition?

Cmdr Banks—It was very reasonable. It was six to eight knots, but it was more than reassuring that the vessel was fine.

Senator BRANDIS—To put it simply, if it had not been seaworthy, it would not have been travelling at that speed in the manner in which it was appearing to proceed.

Cmdr Banks—That is my professional judgment on it.

Senator BRANDIS—I want to come to the circumstances of the apprehension of the SIEV. As I understood your evidence, a boarding party was embarked and the vessel was taken under tow; is that right?

Cmdr Banks—There was a significant time difference.

Senator BRANDIS—Remind me, Commander, when roughly was the vessel first taken under tow?

Cmdr Banks—Late afternoon on the 7th.

Senator BRANDIS—I am sorry; I am getting ahead of myself. Come back then to the circumstances in which the so-called ‘child overboard’ alleged incident occurred. It was early in the morning of the 7th, wasn’t it?

Cmdr Banks—That is correct.

Senator BRANDIS—This event commenced about half an hour before sunrise, but as you have told us and as we can see from the photographs, in circumstances of perfect visibility and light; is that right?

Cmdr Banks—That is correct. The first man overboard was at approximately 0506G. Sunrise was 0540G. The series of man overboards commenced at 0543 and ran until just after 0600.

Senator BRANDIS—At the time of the first man overboard incident, in your professional judgment, was there any change to the seaworthiness of the vessel?

Cmdr Banks—That was the first occasion that I had seen the vessel. I saw the vessel with my own eyes in the hours of darkness at about 0230 to 0300. As we closed to prepare the interception, the warning shot and the boarding phase, I was able to see the vessel for the first time. At that stage, I was not concerned with its seaworthiness.

Senator BRANDIS—Was it an issue to which you directed your mind at that time?

Cmdr Banks—I was not concerned about its seaworthiness. I had formed the opinion that this vessel was continuing to transit at speed. It was maintaining a steady course and speed, and I had no concerns about this vessel. With twilight and dawn coming, I was able to see the vessel through natural light and I continued to have the opinion that the vessel remained seaworthy. My attention was drawn to the water which was occasionally coming out over the gunnels and through the deck which indicated the vessel was taking water. Clearly, the vessel was overladen which was of concern but it continued to make speed and I was quite happy with it.

Senator BRANDIS—I am a landlubber, but I take it that a vessel taking water does not of itself demonstrate that it is not seaworthy?

Cmdr Banks—No.

Senator BRANDIS—Particularly a leaky, old, overloaded vessel like this—it has bilge pumps and so on. The fact that it may be taking some water is perfectly consistent with seaworthiness as long as that water is being pumped out at the same time.

Cmdr Banks—This was free water that was coming onto the deck and washing out.

Senator BRANDIS—I see.

Cmdr Banks—I had nothing to indicate that the vessel had taken water within its hull. There was no evidence of that. The vessel had a reasonable freeboard. Indeed, based on later experience in the Arabian Gulf, this vessel had significantly greater freeboard than many of the errant Iraqi tankers plying trade which we were asked to board. ‘Freeboard’ is the amount of a vessel’s hull above the water.

CHAIR—I know the point that is trying to be established—it may well be true—is that it was a leaky boat. We all accept the evidence yesterday from Vice Admiral Shackleton that this boat was nearly derelict or of that nature. These are one-way boats; they are not meant to necessarily go back. From a visual external inspection at distance, you cannot say that it is true that they are seaworthy; you can only say that they appear to be seaworthy, can’t you? It depends on how the pumps work and what the planking on the side of the hull exposed to the sea allows in by water and things of that nature.

Cmdr Banks—Both statements are correct, and I can see where you are both leading.

Senator BRANDIS—We are leading wherever you want to take us, Commander.

Cmdr Banks—The vessel was not in distress; however, the vessel was also not a Lloyd’s seaworthy vessel. For the conditions it was in and for what it was trying to do, I did not see the need to commence action to embark these people.

Senator BRANDIS—You have said in your report that it was not in extremis and that there was not a SOLAS situation. You are completely comfortable with that evidence, aren’t you?

Cmdr Banks—I am. If you ask me, say, to lodge it on Lloyd’s register—

Senator BRANDIS—No, I did not ask you that. To put it really simply, it was not sinking, was it?

Cmdr Banks—No.

Senator BRANDIS—All right. You say in the telex of 11 October, which is incorporated into your statement to Major General Powell—unfortunately, it is not paginated—

Cmdr Banks—Is that the signal?

Senator BRANDIS—It is a signal, yes. ‘My own signalled statement also sheds light, as follows...’ Do you see that? Have you got that bit?

CHAIR—What page are you on?

Senator BRANDIS—It is not paginated.

CHAIR—I know, but how many pages in front are we?

Cmdr Banks—We are talking about the seaworthiness of the vessel and that it subsequently sank?

Senator BRANDIS—It is seven pages beyond the page that I was taking—

CHAIR—‘You should also read for context...’ Is that the first sentence at the top of the page?

Senator BRANDIS—‘...existed, SUNCs were not to be embarked in Adelaide’ are the first words on the page. Have you got it? All right.

I want to locate where you were at the time of the man overboard incident. You say in numbered paragraph 3 of the telex:

I ... HAD FULL VIEW OF THE EVENTS AS VIEWED FROM APPROX 200-300 YARDS AT AN ELEVATION OF 12 METRES.

Do you see that there?

Cmdr Banks—I recollect that statement and I see it written here.

Senator BRANDIS—That is the position, isn’t it? I quote:

THE SIEV WAS ON THE STBD BOW-BEAM OF THE ADELAIDE AND WHILST I HAD AN UNOBSTRUCTED VIEW OF THE SIEVS PORT SIDE, I COULD NOT SEE THE VESSEL’S STBD SIDE.

Cmdr Banks—That is correct, and you would see that from—

Senator BRANDIS—And you can see that from the photos.

Cmdr Banks—the photographs.

Senator BRANDIS—Okay, so those were the visual conditions in which you observed the events that we are about to explore of the man overboard incident? Thank you.

Cmdr Banks—To clarify one point of context, I had also seen the starboard side, if that is from the seaworthy distress side. I then repositioned myself to the port side, when the subsequent events took place. The boarding party were actually stationed on the starboard side

of the SIEV and the practice was to have both sides of the vessel effectively covered or under surveillance throughout.

Senator BRANDIS—So, you had seen the starboard side and you were around now viewing the port side because you had repositioned the vessel, and whatever you saw you saw from the port side of the SIEV?

Cmdr Banks—Yes, I did.

Senator BRANDIS—You were on the bridge, I gather?

Cmdr Banks—I was on the bridge wing.

Senator BRANDIS—And you were doing all these things: you were in command of the situation, it was a highly mobile situation and you had many things—events fast happening upon the heels of one another—to deal with?

Cmdr Banks—Not at that stage.

Senator BRANDIS—As the situation unfolded you did, though, didn't you?

Cmdr Banks—Again, to frame the context of it, we had been up for some time; it had been a busy night; it had been a very interesting night. By first light, I had formed the view that the drama of the night had abated and there was now a period of calm.

Senator BRANDIS—Sure.

Cmdr Banks—Daylight had come, I felt my boarding party was on board, I had contained the situation and there was almost a pause as if to say, 'What next?' And 'what next' was to unfold.

Senator BRANDIS—Commander Banks, I am not going to ask you any more questions about seaworthiness. I think we have established that, at the time the so-called man overboard incident occurred at around sunrise on the 7th, you had satisfied yourself that in your professional judgment the vessel was not sinking and that was also the professional judgment of your officers?

Cmdr Banks—That is correct.

Senator BRANDIS—You are looking at it from its port side. Isn't it the case that, when the people on the boat started entering the water, they entered the water from both the port and the starboard side and some of them entered from the starboard side—that is, the side that was beyond your view?

Cmdr Banks—That is correct.

Senator BRANDIS—Indeed that is what you say on the next page of the report about half-way down. You say:

UBAS WERE ALSO ENTERING THE WATER FROM THE VESSELS STBD SIDE OUT OF MY VIEW ...

Then you say you later saw ‘heads bobbing’. So I am sure you will accept, Commander—indeed, you say so in your own words—that there were occasions when people entered the water and you did not see them entering the water.

Cmdr Banks—That is correct. About half jumped from the coach-house or the forward part of the boat, where you could see them. The other half entered the water and were seen as they came clear, which was why there was some doubt about the numbers and my priority became ‘let’s just count the numbers’.

Senator BRANDIS—When you first saw the people in the water, as you say at paragraph 9 of the cable, you were surprised. You say:

AT ABOUT 0530 I WAS SURPRISED TO WITNESS SEVERAL PEOPLE BOBBING IN THE WATER, PROBABLY SIX OR SEVEN AS THEY CAME CLEAR OF THE SIEVS STERN AND INTO MY FIELD OF VIEW.

That suggests to me that when the people first started entering the water you were unaware of it. So your first awareness of the fact that people had entered the water from the SIEV was when you saw them in the water, rather than when you saw them leaving the side of the vessel.

Cmdr Banks—There are several pieces of information there. I personally did not see them until they came clear. With the aid of binoculars and my eyes—yes, there are people.

Senator BRANDIS—If this helps just to shorten things, I am particularly interested in exploring what you saw. I understand that you arrived at some conclusions on the basis of both what you saw and what was reported to you by others. Senator Mason and I, in due course, will put to you the direct evidence of your crew members, which, as I understand it, forms part of your ultimate conclusions, but for the moment would you restrict yourself to what you saw rather than what was reported to you?

Cmdr Banks—I will accept that, but I would like to caveat that with this: my job is actually to fuse all the information together.

Senator BRANDIS—I understand that. That is perfectly understood but, in trying to find out precisely what happened, I would like to start by finding out what it is that you saw.

Cmdr Banks—If that is the premise, I am happy to continue.

Senator BRANDIS—Please do.

Cmdr Banks—My attention was brought to this situation because it was reported that people had jumped into the water. ‘Man overboard!’ is a cry you do not like to hear on a ship because it means somebody is in the water. We have preplanned responses within the ship to deal with the recovery of that person. Nominally, it would be a member of the ship’s company. It is a mind-

focusing activity. The report that there was a man overboard drew my attention. It became a significant event because I was now dealing with a situation I had not expected.

Senator BRANDIS—By the way, did you identify at that point, when you first heard, ‘Man overboard!’ that that was a SOLAS situation? Is a man overboard situation something lower down the range than a SOLAS situation?

Cmdr Banks—If I can answer that in a moment—

Senator BRANDIS—Sure.

Cmdr Banks—The broader SOLAS situation we may have been anticipating had not eventuated but I was wondering whether this was to be a precursor for that. The man overboard—I think there was one earlier on and the RHIB recovered it very quickly—and then there was a mass—and I use the term loosely—of five, six or seven that went over. I gave instructions that this was not a SOLAS situation where we were going to embark these people on board. We would effect a recovery of these people and we would make sure they were okay and we would transfer them back to the SIEV. I was pretty explicit—implicit—about that statement that they were not to be brought back to *Adelaide*.

Senator BRANDIS—Do you mean explicit or implicit?

Cmdr Banks—Explicit—clear, unambiguous. I ordered that they were to be taken back to the SIEV and that did take some time, and they were all in turn returned to the SIEV.

Senator BRANDIS—Was the RHIB in the water at the time you first saw the people overboard, or did you order it to be launched after you had first seen the people in the water?

Cmdr Banks—Both RHIBs were in the water and had been—

Senator BRANDIS—Were they already in the water from the night before?

Cmdr Banks—They were in the water from the ongoing activities of the night before through to morning.

Senator BRANDIS—I understand.

Cmdr Banks—I think one of the RHIBs came back at one stage to get either fuel or some more stores or some food. But, certainly, when the man overboard took place, one RHIB was in very close proximity and the second RHIB was not that far away.

Senator JACINTA COLLINS—Can I just clarify a point there? I might be incorrect in my recollection of looking at the log. Didn’t this incident occur just as you were looking at inserting the second boarding party, so the second RHIB was just disembarking *Adelaide*?

Cmdr Banks—The second RHIB had been in the water all the time. It had come back to *Adelaide* to collect stores, collect the boarding party and collect the medic—

Senator JACINTA COLLINS—It took on board the second boarding party clarifies that.

Cmdr Banks—at some stage, and I cannot recollect whether that was before the man overboard or after the man overboard event.

CHAIR—I just want to be clear about a safety of life at sea, SOLAS, situation. If someone is in the water—MOB, a man overboard—that is a SOLAS situation per se, isn't it?

Cmdr Banks—Yes, it is. I am careful of the answer here. There was an imperative to rescue that person and bring than SOLAS event to closure.

CHAIR—But you are distinguishing between the numbers of people and a SOLAS situation that would create the need to bring them on the *Adelaide* and a SOLAS situation in which you could return them to their vessel?

Cmdr Banks—Yes, I am.

CHAIR—I think that is implicit, but I just thought that it was worth while clarifying. Another question I have, while Senator Brandis is conferring—

Senator BRANDIS—No. I am listening to you too.

CHAIR—is about the seaworthiness of the vessel. In your statement you said that it was marginally seaworthy. I do not think that anything that has been adduced here changes that, does it?

Cmdr Banks—I would not have wanted to own that boat and undertake that journey, personally. But, mindful of my mission and my responsibilities, I was happy that this vessel was seaworthy for the journey that they had freely embarked on of their own volition.

CHAIR—But, in case a connection is made, I just ask this question. The people on board the vessel were wearing life jackets, and some feature has been made of that. If you are sitting on, to use Senator Brandis's words, 'a leaky boat', out of sight of land and the bilge pumps are working and water is rising in the hull—it is being pumped out, but nonetheless it is a leaky boat—

Cmdr Banks—We did not know that information at that stage.

CHAIR—No. But to a landlubber—I do not think these people were seagoing folk—it might just be prudent to put on your life jacket, mightn't it?

Cmdr Banks—That would be a reasonable conclusion. To put it in perspective, *Adelaide's* RHIB crew, our own boat, were all wearing life jackets.

CHAIR—That would be normal procedure, wouldn't it?

Cmdr Banks—That is normal procedure for us. But it was unusual for the SIEV SUNCs, and it had not been reported before.

Senator BRANDIS—Commander Banks, just glance through the cable that I have been directing you to—I am sure you have read it many times. Is the structure of it meant to be sequential? Are you reporting these things in the sequence in which you recall them happening?

Cmdr Banks—My common statement seems to be ‘to put this in context’ but, again, I was busy with a number of activities—

Senator BRANDIS—I am sorry. Perhaps you misunderstood me. This cable is written on 11 October, which is four days after. When you were writing it on 11 October, were you trying to convey sequentially what you remembered happening on 7 October?

Cmdr Banks—On 11 October I was busy. We were preparing to enter Christmas Island to disembark the SUNCs. Based on the previous events, that disembarkation had not taken place, and I had no guarantee that that would continue on this occasion. I did a data dump, purged what was in my head on to the laptop in my cabin and then set about to format it into the text that you see here. It is largely a sequential and what I would consider a logical flow, although I will stand by for comment or criticism on that.

Senator BRANDIS—I am not trying to hold you to some sort of council of perfection. We all know that memory is an imperfect thing. All I want to know is: when you wrote this down, what you were trying to do—as well as you could remember four days later—was give a sequential account.

Cmdr Banks—Largely.

Senator BRANDIS—All right. We have heard a good deal about the event you describe in paragraph 12 of the little girl in the pink jumper being held overboard. You estimate that she was five years old, and it was, as you tell us, your instruction to the RHIB crew to intercede to prevent her being thrown overboard. In the cable, you reported:

At the time I assessed it was his intent—

that is, the man holding her—

to throw the child overboard.

Do you see that?

Cmdr Banks—Yes, I do.

Senator BRANDIS—You said that half-way down paragraph 12:

At the time I assessed it was his intent to throw the child overboard.

You go on to say:

The boarding party was directed by me to take firmer control and they subsequently escorted the man and child clear—

You there report that you saw something happening, and you obviously made a call, a judgment in your own mind, as to what you thought was happening, and you issued an order—you actually ordered the RHIB crew to intercede. Is that a fair assessment of what you are there reporting?

Cmdr Banks—That is a fair assessment. That took place over a period of several minutes. I am no judge of children's age.

Senator BRANDIS—I am not going to ask you anything about that.

Cmdr Banks—That was formed based on the opinion of other people around.

Senator BRANDIS—We have a variety of statements—whether she was five, four, three or seven, it was a young child.

Cmdr Banks—It was clearly unusual to see a child being dressed in a life jacket in an exposed separate area and being taken to the guardrail.

Senator BRANDIS—What I am interested in is that you state quite firmly that, at the time, you assessed it was the man's 'intent to throw the child overboard'. What I am interested in is giving you the opportunity to expand upon all of the considerations that led you to form, or to make that assessment, at the time.

Cmdr Banks—The word 'throw' could be a euphemism for 'put', 'place', 'drop', 'lob' or any number of things.

Senator BRANDIS—Cause to end up in the water.

Cmdr Banks—It was clearly an unusual intent by that man to dress that child and take it to that position and put her in that position.

Senator BRANDIS—It is still your position that but for your order to the RHIB crew to intercede that is what would have happened?

Cmdr Banks—And without the intervention by that RHIB crew.

Senator BRANDIS—Yes.

Cmdr Banks—I think I mentioned in my statement yesterday, where I adlibbed, that the verbal exchange between the boat coxswain and the man left the father, or the person I assessed to be the father, in no clear doubt that the action he was doing was not that of a Western gentleman. If he were here, he would express it slightly differently, but you would probably get the intent.

Senator BRANDIS—You might be chastised by Senator Bartlett for being politically incorrect if you talk about the West, Commander Banks. In paragraphs 13 and 14 of your

statement—Senator Ferguson asked you some questions about this too—you report a second wave of six or so jumpers entering the water. Then you say, in paragraph 14:

Throughout, my boarding party and the other witnesses on the bridge wings were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

Would you please expand, as well as you are able, on these reports of men, boys and children entering the water?

Cmdr Banks—Are you happy for me to comment now, outside my own focal viewpoint and introduce other people—

Senator BRANDIS—I want you to tell us everything that was said to you and everything you saw. That is right: both sources of information—direct and hearsay—which caused you four days later to refer to ‘men, boys and children entering the water’.

Cmdr Banks—I have already recollected for you the things I saw. I said earlier that I was assimilating information that was coming in from a number of sources. The EOTS video camera was being viewed by the operator, Able Seaman Gerrits.

Senator BRANDIS—Was that Wade Theo Gerrits?

Cmdr Banks—Able Seaman Gerrits. It was also being viewed on the bridge on a remote monitor and also in the operations room by the PWO and other people on another remote monitor. They were communicating verbally on what we call 10MC—a microphone system—up to the bridge.

Senator BRANDIS—Let me interrupt you: was the 10MC microphone system a system that was constantly on in your ear, as it were, so you could hear all the talk, or did you have to switch it on and off?

Cmdr Banks—It was a loudspeaker and a microphone.

Senator BRANDIS—I see. You could hear all the voice traffic over the loudspeaker?

Cmdr Banks—I was not wearing a headset at any stage. I physically needed to move around. I was relying on information that was coming over the speaker or was being conveyed verbally in my audio range. There are three monitors for the EOTS, so there were at least three other people watching the EOTS footage.

Senator JACINTA COLLINS—Where were the three monitors? Operations room, bridge and—

Cmdr Banks—There was a second one in the operations room. They were conveying their alarm at what was happening over 10MC. I believe Able Seaman Gerrits would have been on an internal headset and he would have been conveying that within the ops room and that would have been relayed up.

Senator BRANDIS—But you were not wearing a headset?

Cmdr Banks—I was not wearing a headset.

Senator JACINTA COLLINS—We understood he was on the bridge.

Cmdr Banks—He may have been on the bridge. There is an EOTS remote on the bridge, which has a remote control station and a monitor. There is a second monitor on the bridge, which was in my viewing area. There is the EOTS primary station in the port aft corner of the ops room, which is where I thought Gerrits was, but I am happy to stand corrected on that.

Senator BRANDIS—I do not want you to be deflected from this answer.

Cmdr Banks—I was hearing the information from people watching the EOTS. I was hearing information from people with binoculars adjacent to me on the bridge and on the GDP above me, also relaying information on 10MC.

Senator BRANDIS—What is the GDP?

Cmdr Banks—The gun direction platform, which is about three metres above where I was standing. They have binoculars as well and were conveying that information. The boarding party were relaying that information by radio, back to Adelaide—

Senator BRANDIS—To you directly or to someone else?

Cmdr Banks—To both—directly to people on headsets and on loud speaker to me.

Senator BRANDIS—You were on the bridge yourself, so this was all in front of you and you were seeing things with your own unassisted sight?

Cmdr Banks—Yes, I was.

Senator BRANDIS—Were you using binoculars?

Cmdr Banks—Yes, I was—and my eyes. I alternated between the two. My job was to fuse that information together.

Senator BRANDIS—Before we come to the process by which that was fused, I just want to make sure—I am sorry to take you through this so slowly but I want to get it right. The sources of information to you at the time were what you saw with your own eyes—either assisted or unassisted by binoculars—what you heard other people around you saying or what they told you and what you heard other people saying through the audio system. Are those the three sources?

Cmdr Banks—That is correct.

CHAIR—What hour of the day did this happen?

Senator BRANDIS—This is at about 6.00 a.m.

Cmdr Banks—It is between 5.30 a.m. and 6.00 a.m.

Senator BRANDIS—So the process of analysis and distillation that you were engaged in was a distillation of information coming to you in those three ways: what you were told, what you heard broadcast through the sound system and what you saw.

Cmdr Banks—Correct.

Senator BRANDIS—You were about to proceed, Commander, to tell us what you made of that.

Cmdr Banks—My job is to fuse that information and try and clarify it. What I was concerned about was that clearly there was a situation unfolding that was unusual. I wanted to contain it and I wanted to get some accuracy on that information, because I was hearing lots of people saying, ‘There’s another one, there’s another one, there’s another one,’ and I was trying to capture how many ‘other ones’ there were.

Senator BRANDIS—By the way, when they said, ‘There’s another one,’ I take it that in the speed of the moment they were not saying, ‘There’s another man’ or ‘There’s an adult’ or ‘There’s a child’ or whatever—they were just saying, ‘There’s another one.’

Cmdr Banks—The generality was: ‘There’s another one overboard.’ Then people would pan their binoculars to try and make a determination. It was the same with the radio reports. You are correct—there was a lot of information coming in.

Senator BRANDIS—Sure—and there were two RHIBs in the water at the time.

Cmdr Banks—Correct. And I was trying to gather that information to make it an accurate statement—were there 13, 14 or 15; were there children; were there adults; were they males or females?

Senator BRANDIS—Not only were you trying to do that, Commander, but you were also at the same time making a series of command decisions rapidly on the heels of one another.

Cmdr Banks—Yes, I was.

Senator BRANDIS—It was in that context that you had a conversation with Brigadier Silverstone, of which you speak in your statement, in paragraph 18—

CHAIR—What page is that?

Senator BRANDIS—On the next page, paragraph 18 and 19 of Commander Banks’ statement. You might care to read that to yourself, Commander Banks, and then let me ask you a couple of questions about that.

Cmdr Banks—I have read that.

Senator BRANDIS—We know that by the time you speak to Brigadier Silverstone, the ‘holding the child overboard’ event—that is the little girl in the pink jumper—has already taken place. That is right, isn’t it?

Cmdr Banks—No. I think this is the point of conjecture.

Senator BRANDIS—It is a point of conjecture.

Cmdr Banks—One of several.

Senator BRANDIS—So it may be that you spoke to Silverstone before you saw the little girl in the pink jumper being held overboard?

Cmdr Banks—If—and I am drawing on the other statements—the time was 7.20 a.m. India-kilo in Darwin, that was 0450G at Christmas Island. If COMNORCOM’s notes are correct with the time, then clearly his recollection of that conversation does not fit with mine in that at 10 minutes after the boarding there were no overboard events.

Senator BRANDIS—Are you classifying the holding of the little girl in the pink jumper overboard as an overboard event, or are you merely classifying people who end up in the water as an overboard event?

Cmdr Banks—I will come back to that earlier part later on. The events that transpired into people entering the water were man-overboards. The events where people did not enter the water, but appeared to be held over or threatened to be put over, did not obviously become ‘man overboards’. But that would have become a ‘man overboard’, in my opinion, if the RHIB had not intervened. My recollection is that the phone rang during the incident with the girl in the pink jumper. My point was that that is not 0720 India-kilo. That is about 0600G Christmas Island time, which is 0830 Darwin time. That is what I cannot come to terms with—is there an earlier incident, if the Brigadier’s time of 0720 is the correct time; or is it an incorrect time, and is it about this incident, about my recollection of those conversations?

Senator BRANDIS—If that is right, then your recollection—in paragraph 19, of 11 October, that you discussed the threat to throw the child overboard incident with Silverstone—must be wrong. If it is right that you spoke to Silverstone before that incident occurred then your recollection, and your statement that you discussed it with him, must be wrong—unless you are confusing two or more conversations with Silverstone, or there was another earlier incident involving a child before you spoke to Silverstone.

Cmdr Banks—Those are your words.

Senator BRANDIS—Do you accept that? If it had not happened by the time you spoke to Silverstone, then you could not have spoken to Silverstone about it, could you?

Cmdr Banks—Correct. And that is the whole—

Senator BRANDIS—And if that is right, then paragraph 19 is wrong.

Cmdr Banks—I cannot recollect which conversation took place. I cannot recollect the number of conversations I had that day. It is unusual to conduct telephone conversations in these sorts of situations. I had several conversations during the night on the need to pass detention notices, prepare to board, how to effect the boarding, approval to fire warning shots. I had phone calls from people asking if I had fired warning shots; I had phone calls about the overboards and the life jackets. I cannot recall with sufficient clarity exactly which conversation took place at exactly what time and in what context and the detail of the conversation.

Senator BRANDIS—Nobody is asking you to. That is why I was concerned to ask you about sequence, because people can never remember exactly what time things happen. We do not live our lives looking at the clock. But people generally can remember the sequence in which things happened. So if you say that you spoke to Silverstone about a child being threatened to be thrown overboard then obviously that must have happened before you spoke to Silverstone. If it did not, then that recollection must be wrong, mustn't it?

Cmdr Banks—It is my recollection that that incident—the holding of the child over the side—took place at around 6 o'clock, which was when Brigadier Silverstone and I had a telephone conversation. I was distracted from that incident to take the telephone call. I maintained some visual continuity with that incident by being on the bridge, inside the bridge structure and looking out through the glass bridge window, which made me two or three metres distant from where I had previously been looking out into the natural light.

Senator BRANDIS—Commander Banks, there has never been any suggestion that I am aware of that there was more than one conversation between you and Silverstone at the critical time; that is, in the period between about half-past five and shortly after six o'clock—the man overboard period. Are we agreed on that—there was one conversation between you and Silverstone—or aren't you sure?

Cmdr Banks—I cannot say the number of telephone conversations that were had that day.

Senator BRANDIS—No, I am not talking about that day; I am talking about at this critical point in the day.

Cmdr Banks—In that morning period, but at the time of 0600 when that child over the side in the pink jumper took place, there was only one conversation. To my recollection the brigadier rang me, because it was an incoming call taken on the bridge on extension 110.

Senator BRANDIS—Do you remember at the critical time more than one conversation with Silverstone?

Cmdr Banks—There were several conversations in that period from the interception of SIEV4 all the way through, but certainly there were several—

Senator BRANDIS—No, I am trying to pin you down, you see, Commander. At the—

Senator JACINTA COLLINS—Senator Brandis, give it a break.

Senator BRANDIS—Be silent, Senator Collins!

Senator JACINTA COLLINS—Let the witness answer the question, please.

Senator BRANDIS—I am trying to focus the witness's attention on a particular time.

Cmdr Banks—I certainly recollect the conversation in the order of 3.30 in the morning, where I was given authority to board the SIEV. I also recollect the conversation shortly after that towards four o'clock in the morning, where I was given approval to fire warning shots. I certainly also recollect a conversation that I probably instigated to report that I had effected that boarding. I also recollect a conversation about the child being held overboard. At some stage we had discussed the threat of mass exodus, this wearing the life jackets—'Stick with it, Norm; let's make sure we stay focused on the mission here', which was to determine that I don't get suckered into a SOLAS early—those sorts of general guidance things. My point is I cannot clearly say which one of those conversations took place with which event.

Senator BRANDIS—No, I accept that, and I understand why you have properly limited yourself in that way, but listening to your answer I can still only see that you have a recollection of one conversation at the time of the man overboard incident. There were the earlier conversations about 0400 at the time of the embarkation of the boarding party and so on, of which you have spoken, but while you were watching these people bobbing around in the water, being rescued or jumping into the water in that short period commencing at about 0530, there was just one conversation with Silverstone that I hear you recalling. Is that right?

Cmdr Banks—That is the conversation I recollect.

Senator BRANDIS—Okay. So there could have been others, but if there were you don't recollect them?

Cmdr Banks—That would be a fair statement. I certainly recollect there was a conversation with COMFLOT.

Senator BRANDIS—We know you recollect that one, and I do not want you to be more certain than you can be, and quite properly, sir, you are making allowance for the fact that there may have been other conversations you do not recollect. I want to take you back to the sources of information that were coming to you—that is, I think we have established what you saw, what you were told by those around you and what you heard by electronic means. I asked you that question in the context of paragraph 14 of your cable. May I remind you of what it says throughout:

... my boarding party and the other witnesses on the bridge wings were advising—

presumably that means advising you—

that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

Is that an accurate statement?

Cmdr Banks—That is an accurate statement and that is the classic example of the ‘fog of war’. My job was to take that information—those jigsaw pieces—and put together the picture that was as factually correct as we could make it. In the subsequent period, I was able to talk to people and get more information and determine that the number of people who were recovered from the boat—the number of people who were recovered in the RHIBs—were then accounted for and returned, that there were no children in those lots, that they were all males—

Senator BRANDIS—You are going on to something else now, Commander Banks. I understand that the number of people recovered from the sea is a relevant piece of information that you also had regard to, and I will come to that in a moment. But at the moment I just want to confine myself to the information coming to you on the spot, as it were—that is, directly through your own vision and indirectly through what you were told either by the people speaking to you or electronically. As I read your statement, what you say in paragraph 14 kind of sums up the picture from those three sources at the time. Is that fair enough?

Cmdr Banks—At the time I had received all that information that suggested there were a number of people in the water including men, women and children.

Senator BRANDIS—Thank you.

Cmdr Banks—If I could also add, we spoke before about the sequencing and various things. There is a paragraph there where I clearly say:

A SECOND WAVE OF SIX ... CERTAINLY ENTERED THE WATER THOUGH I RECOLLECT THIS MAY HAVE BEEN JUST BEFORE THE CHILD INCIDENT.

My point was that I wrote this statement trying not to draw on all the documentary evidence. I tried to lock myself in the cabin and reconstruct this from my own thoughts, knowledge and recollections.

Senator BRANDIS—I understand that perfectly.

Senator JACINTA COLLINS—Can I clarify one point on 14? We were talking about two meanings at one stage and I just want to make sure that we actually understand Commander Banks’ meaning in 14. When you talk about ‘jumpers’ are you actually referring to people reporting people in the water, or people who are potentially going to jump?

Cmdr Banks—People who were in the water.

CHAIR—Can I clarify a point too, as I have become a little confused. Looking at the photographs that you gave us yesterday—photograph 4, timed between 0540 and 0550; photograph 5, which is 0550 to 0600; and photographs 6, 7 and 8, which are 0550 to 0600—on photograph 4 the washboard is in place and the distinctive feature of that photograph is an adult male on the upper deck putting a life jacket on a child, and the label refers to ‘Iraqi man and young girl at aft end of the wheelhouse’. The obvious thing about this photograph is that just about everyone on this boat is wearing a life jacket. And here is an adult male putting a life jacket on a child who, prior to that point, was not wearing a jacket—that is true, isn’t it? I make that as an observation. That is what the photo shows in any case.

Cmdr Banks—There are a number of people in the foreground who are not wearing life jackets on the main deck of the vessel.

CHAIR—The other distinctive feature of this photograph that I want to draw attention to is that the bilge water seems to be coming from the boat is about amidships, although there looks like another pump-out point just slightly after amidships. There is not really a wake or a breaking wave at the bow indicating that the boat is moving. Is it wallowing in the ocean?

Cmdr Banks—To begin with the vessel was underway making way. Towards the latter part of this jumper ‘man overboard’ phase, the vessel was dead in the water, underway but not making way. It was our view that the engine had been stopped by the SUNCs.

CHAIR—On some of these photos—photo 5, for example—it looks like it is wallowing slightly to the portside and on later photos wallowing to the starboard side, so it is going backwards and forwards and you are alongside of it. Jumping ahead to photo 7—and this is the point that confuses me—on the portside the washboard is still in place—it comes out in photo 8—but along the side of the vessel there is water streaming from the planking below the level of the deck as well as water coming through the bilge pump hold, is there not?

Cmdr Banks—That is correct.

CHAIR—All this here.

Cmdr Banks—Happy.

CHAIR—If you go to No. 8, you can see it much more graphically, and the washboard comes out. It appears to me to be below the level of the deck because the guardrail part of the freeboard—the white and blue coloured boarding—seems to be the lifeline around the edge of the deck. The black part of the hull seems to me to be below decks. I do not know if that is right, but from looking at it, it seems to be the case. The water seems to be coming from below decks. Is it a reasonable hypothesis to say that the hull was filling with water; they removed the washboard; they put the lifejacket on the kid on the upper deck; people began to leave the vessel because it, in fact, was taking on a considerable amount of water and could have been at risk of foundering?

Cmdr Banks—It is my understanding that the area of the deck that is painted in dark blue—where that line of the blue and the red is—is where the deck is.

CHAIR—So that is above where the water is streaming from the hull?

Cmdr Banks—The water is coming out of the hull at the deck level. The blue area is above that deck. I draw that from the for’ard part of the boat.

CHAIR—The deck at the for’ard part therefore is higher—

Senator BRANDIS—Mr Chairman, you did ask that I defer to you because you had some clarifying questions, as I understood it, from my line of questioning. You seem, with respect, to have strayed well beyond it—

CHAIR—I did not want to interrupt you.

Senator BRANDIS—and I did want to come back to the sequence of events.

CHAIR—I realise that. But having the sequence of events in a straight line is one thing; having a sequence of events in panoramic vision is another—and getting the context here right. The question here is: people were leaving the vessel—

Senator BRANDIS—Mr Chairman, it is my question period, with respect. I will always, as a matter of courtesy, defer to somebody who wants to ask a question to clarify an answer to a question I have asked. But this does seem to be a somewhat different topic, with respect.

CHAIR—Certainly, I will hand the call back to you because it is not my intention to interfere with your line of questioning. But it seemed to me, if we are moving sequentially through these events and making conclusions at particular points of that sequence, rather than me coming back and going through them again later, it might be useful for the inquiry to settle that point. My only point was—and I think it is a reasonable question, and I seek advice—that it looks like the boat is in trouble with water streaming from its decks. One of the few people on board this boat that did not have a lifejacket was the kid on the upper deck. One gets put on that kid; the washboard gets removed; water streams from the vessel's decks. Is it at risk of foundering? That is the question.

Cmdr Banks—I am happy to answer that now. The vessel was not considered to be at risk of foundering at that stage. The boarding party was on board and had been on board since 0443. Whilst they were not able to be everywhere at all times in this, they had made an assessment that the vessel was seaworthy. Its engines were running. Its steering was working, although that began to change. They were happy. The two people you can see standing proud in the for'ard part of the boat are boarding party members. If you come to the portside at the orange water drums, the back view there of the person with what looks like green and then black is a member of the boarding party.

CHAIR—Yes.

Cmdr Banks—They did not report at any stage that the vessel was in danger of foundering. At this stage, they were making their reports—and I will come back to the photos in a second—that the SUNCs were becoming unruly; they were vandalising equipment. There was an awning that was torn off and thrown in the water. The water drum lids were thrown over the side. The washboard was taken up and subsequently returned; it was not thrown over. The situation was becoming unruly but at no stage was the vessel in danger of foundering.

Senator BRANDIS—I think you have had your answer.

CHAIR—And I think it helps your line of questioning, might I say, Senator Brandis.

Senator BRANDIS—It does indeed, and I am sorry I intervened.

Cmdr Banks—The water was coming out I think as a function of the lolling of the ship in the swell.

CHAIR—The wallowing?

Cmdr Banks—The wallowing. As it came to stop in the water, it would have then dipped, picked up some water and taken it across the deck, which is not unusual.

Senator BRANDIS—Coming back to paragraph 14, I think we have established what the sources of information coming to you were, and we see what, at the time, you made of what was being told to you. Is that right?

Cmdr Banks—Yes. I am happy that paragraph 14 is an accurate assessment of the information that was provided to me.

Senator BRANDIS—Or, to put it slightly differently, that is an accurate statement of your state of mind at the time.

Cmdr Banks—That is correct.

Senator BRANDIS—In fact, there is a reference a little earlier in your statement to another piece of information concerning a child in the water, and we pick that up in paragraph 11, where you say this:

UBAS—

unauthorised boat arrivals, or people—

were also entering the water from the vessels stdb—

starboard—

side out of my view but I could later see their heads bobbing in the water. I received frequent radio reports about these manoverboards and quote possibly unquote heard that children were also in the water.

Do you see that?

Cmdr Banks—Yes.

Senator BRANDIS—I understand from the fact that you have chosen to put ‘quote possibly unquote’ in the text that you are, in a very conscious way, seeking to qualify yourself or to make this a very tentative statement. Can I suggest to you that the fact that you saw fit to record it indicates that, at the time you did record it, you were remembering something. You were not certain about what you remember being told, but if you did not have that in your mind you would not have written it down, would you?

Cmdr Banks—And the same applies to my sit reps. If I did not see it, I would not have put it in my sit reps. If I could put this in context—and it may save some time in the cross-examination—if I could categorically say, black and white, this event took place as recollected by Commander NORCOM, I would.

Senator BRANDIS—But he does not recollect anything, because he did not see it. You see, Commander, that is why I am asking these very detailed questions of you—

Cmdr Banks—I was about to answer.

Senator BRANDIS—It is one thing to say what he remembers you said to him, but it is much more interesting for us to know what you remember seeing or hearing or what were the sources of information coming to you at the time you spoke. What I am trying to do is to deconstruct the event so that we can know, as well as we are able with the passage of time, exactly what your state of mind was at the time of the critical telephone conversation.

Cmdr Banks—And I wanted to answer that question about the state of my mind. It almost sounds like I have a problem with my mind.

Senator JACINTA COLLINS—You probably feel like you have, by now.

Cmdr Banks—The state of mind at 0600 hours in the morning on 7 October was that, yes, there was confusion going on. There was lots of information coming in, and I was assimilating that information and trying to fuse it into a comprehensive picture. This, I believe, I had done at that moment of space and time on 7 October. I had satisfied myself in the subsequent sit reps that I had a handle on the information and was conveying that information to my higher authorities in a succinct and accurate manner by the signals.

Senator BRANDIS—Commander, please understand—

Cmdr Banks—I was about to clarify that point. When I sat down and wrote the signal chronology summary here, I was in a precarious state of mind. I had believed that I had reported the events clearly. On 9 and 10 October, I was made aware that the information was not so clear. I had discussions with Commander NORCOM, CJTF 639, on the phone. I cannot remember whether it was the 10th or the 11th, but before writing the statements where he spoke to me and said—and I am paraphrasing here—‘There was confusion, Norm. I thought you said this; in fact, Norm, I recollect that you said this, and I have taken notes.’

I was in a dilemma here. I had my immediate operational commander telling me I said something that I do not clearly recollect saying but cannot categorically deny because I knew that, at the time these events were happening, all of these things were to varying degrees true and were being reported by different people at various instances in time as being true to their recollection or their viewing. I then sat down and wrote this signal as my summary of it, cognisant of the fact that I had said things that I could not recollect with perfect clarity and that my commander had a clearer recollection, in his words, that he had spoken to me, and I paraphrase again, ‘Norm, you’re under a lot of pressure; you’re under confusion. Perhaps you really did say something that you don’t recollect having said because’—to paraphrase him—he

clearly recollected that I had said these words. When I constructed this signal, I tried to be as truthful as I could—

Senator BRANDIS—Just a moment, Commander Banks. I have not asked you a single question about what you said in the conversation. In fact, I very carefully avoided that because what I want to do is to find out as well as we are able to do exactly what information you had at the time you had the conversation. I will come in a moment to asking you about the conversation itself, you see.

Cmdr Banks—The conversation of the 7th or the conversation later?

Senator BRANDIS—The conversation of the 7th.

Cmdr Banks—The point I am trying to make here is that I gave some outs. Because I had some doubt in my own mind, I put all the information down.

Senator BRANDIS—Commander Banks, I think you are being too hard on yourself; I really do. You prepared a report on 11 October, four days after the incident. I think you would agree with me that your recollections four days after the incident would undoubtedly, in the way of these things, have been better than your recollections six months after the incident, as we are now. I do not have a moment's hesitation in accepting that when you wrote this document to form part of an official record you meant to tell the truth. I do not have a moment's doubt in accepting that, when you wrote this document on 11 October, as a professional naval officer you would have been in earnest to ensure that what you wrote down was the truth to the best of your recollection, and where your recollection was imperfect you quite properly, as appears from the text of this cable, qualified your recollection by the use of words such as 'possibly'. Please accept that I am not for a second doubting the veracity of any of this, nor am I doubting your veracity for a second.

Cmdr Banks—Thank you.

Senator BRANDIS—If I can take you back to this cable, which was written four days after the event in an earnest attempt truthfully to record what you saw and what you were told at the time, we see in paragraph 11 that you heard frequent radio reports about man overboards and, as you say, possibly heard that children were also in the water. Then you speak of a different event nearer 0600—as the sequence of this runs, this is evidently a bit later—of the little girl in the pink jumper being held overboard but not thrown overboard. Then, in paragraph 14, in a kind of a summary way, you say:

Throughout, my boarding party and the other witnesses on the bridge wings were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

At the point at which you spoke to Brigadier Silverstone, you had not had the benefit of the count of rescued people from the RHIBS, you had not had the benefit of reviewing the witness statements of your crew because they had not been taken then. We have here a picture of what was in your mind at the time you spoke to Silverstone.

You make reference to children in three places: the little girl in the pink jumper being held overboard—and it is uncontroversial that she did not go into the water; a report from over the radio, presumably from the RHIB operators, that possibly there were children in the water; and the other report, which says throughout:

... my boarding party and the other witnesses on the bridge wings—

these are coming both electronically from the RHIB operators and from other men or women on the bridge wing—

... were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

Those were the pieces of data, as yet unanalysed, in your mind at the time you spoke to Silverstone. Do you agree?

Cmdr Banks—That is correct; that is six o'clock-ish.

Senator BRANDIS—Let me then go to—

Senator JACINTA COLLINS—Senator, before you move on from point 11, just another clarification so that we understand this point. I refer to the qualification, Commander Banks, that you made about 'quote possibly unquote heard that children were also in the water'. Senator Brandis alluded to the fact that there must have been something in your mind when you prepared this statement, leading you to qualify things that way—was that in fact that Brigadier Silverstone had suggested to you that there were reports in your mind?

Cmdr Banks—That is the point I am trying to make here: I was writing this signal days later, only because the event had become controversial and it needed to be clarified. As I said all along, I do not have perfect recall of exactly what transpired on that day. But I was very conscious of the fact that my immediate commander was saying that the information I was saying was in contradiction of the information that had been conveyed up the chain and into Canberra, and into government, and that this was now cause for considerable concern and much media focus.

Senator BRANDIS—But, Commander, I am sure you are not saying that you, as it were, massaged the evidence here when you prepared this cable. I think we have established that you acted properly and with integrity in preparing this cable to be an accurate account of what you remembered—that is right, isn't it?

Cmdr Banks—I am saying that I documented this recollection to the best of my knowledge, cognisant of the controversy that was brewing and the need to not cause that situation to become any worse. When the brigadier had spoken to me on the phone—we spoke about situation awareness, the ability to situate the appreciation of 'the fog of war'; all those things—I was saying that it is quite possible that I heard that. I do not recollect it. I do not recollect saying it, but, sir, it is quite possible I did hear it. If you need that to take away to people and say, 'Norm Banks told you something that he doesn't recollect and we have taken action,' there is a statement to do that. Equally, I wanted to say that, in my recollection, I did not do that, and I

had somebody else subsequently say that they did not recollect me saying that statement, but I was—

Senator BRANDIS—Commander, I think we are going to the conversation and I will take you to that. But before I do, what you have just said could also be put this way—can I suggest to you with respect—that, being aware of this incident, you were being very careful not to be remembering or be seen to be claiming more than you could in fact remember, which is why you, as I said before, quite properly qualified yourself by the use of words like ‘possibly’. It is dishonest to say ‘I remember something’ when I am not sure about it; it is very honest to say, ‘I am not sure about it, but possibly it happened.’ I take it that this statement in paragraph 11 is in the second of those two categories—a qualified concession of the imperfections of memory.

Cmdr Banks—I did a data dump and then sat down to proofread and structure this with those qualifications, to try to make absolutely sure that there was nothing in here that could be misconstrued or lead people down the garden path.

Senator JACINTA COLLINS—Is there any record of reports of children in the water?

Senator BRANDIS—Excuse me, Senator Collins.

Senator JACINTA COLLINS—He is saying that he did a data dump.

Senator BRANDIS—Senator Collins—

Senator JACINTA COLLINS—I am trying to understand what he means.

Senator BRANDIS—I have been so patient with the Labor senators, but I have only got 25 minutes and I would like to get to the end—

Senator JACINTA COLLINS—You will have more time.

Senator BRANDIS—of my cross-examination of the witness by four o’clock.

CHAIR—You are not cross-examining them, Senator Brandis.

Senator BRANDIS—Well, my examination of—

CHAIR—This is not a court.

Senator BRANDIS—the witness before four o’clock.

Cmdr Banks—If I could help Senator Collins, the term ‘data dump’ means that I put all my thoughts and words onto the laptop; I dump my memory. I did not have access to all of the other documents.

Senator BRANDIS—And this was the source?

Cmdr Banks—And that is why I think, if you go through this, you will find that the timings in this statement are at variance with some of the timings in the other reports, and some of the numbers are different.

Senator BRANDIS—I think we have done to death paragraph 11. Going back to paragraph 14, there is no qualification there. There is a report in fact of two sources. You are never saying that you saw children in the water of course; we know that—that is uncontroversial. But you say there that the boarding party, who you are hearing over the audio or electronically, as I said, and other witnesses on the bridge—these are the people you are talking to who either are EOTS operators or have got binoculars out on the bridge—are telling you things, and among the things they are telling you are the things described in paragraph 14.

Cmdr Banks—That is a recollection of the information that was being provided.

Senator BRANDIS—In that frame of mind, you speak to Brigadier Silverstone. Can I remind you what Silverstone's recollection of what you said to him during that conversation was. I am going to read to you from his submission to Major General Powell, which is his elaboration of his diary notes that he took while you were talking to him. The commander of the *Adelaide*:

Vessel [has] disable[d] steering, [it is] dead in the wat[er] 7-8nm south ... [The SUNCs] threaten mass exodus. Men [in the water] child thrown over [the] side.

Silverstone:

How old is the child?

You:

5, 6 or 7. [I cannot tell properly.]

Silverstone:

[Are they wearing lifejackets?]

You:

[Yes, though] some [men have] discarded [theirs] ...

Silverstone:

[Have you recovered the PII—

that is, the potential illegal immigrants. You:

To [the] best of [my knowledge we've] got everyone.

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

Cmdr Banks—No.

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

Cmdr Banks—Yes. The issue of confusion for me is that the events he speaks about there are in that time-loop of the man overboards have taken place and the child is being held.

Senator BRANDIS—There was no reference there of course to a child being held. What he has you saying is—

Cmdr Banks—In my recollection, 'a child being held'. I think he says—

Senator BRANDIS—there are 'men in the water' and 'child thrown over side'. That is his recollection of the words. You accept that that may be correct? That is what you may have said to him?

Cmdr Banks—I was only aware of that statement recently.

Senator BRANDIS—Sure.

Cmdr Banks—I had access to it on 7 March.

Senator BRANDIS—I am putting to you—and I think you have already answered me—that you accept that that is what you may have said?

Cmdr Banks—I accept that that is what I may have said but I am confused about the timings of that.

Senator BRANDIS—I understand. Commander, you subsequently caused, or instructed, that witness statements be taken from the crew?

Cmdr Banks—Yes.

Senator BRANDIS—Let me hand you them, if you do not have them already.

CHAIR—The statements?

Senator BRANDIS—I will hand you a clean copy of one of those statements—there were 16, I think, by my count—of Able Seaman Gerrits. I am going to give you the opportunity to comment on what Able Seaman Gerrits says in a tick, but before I do, I am interested to know the circumstances in which these statements were taken. If you look at the structure of them, they are headed 'Service police statement'; do you see that?

Cmdr Banks—Yes.

Senator BRANDIS—Each of the 16 statements—if you will accept my word for this, as it is evident from the sample I have given you—has the typed signature is JM Koller CPONPC and a reference number in the bottom left-hand corner. Do you see that?

Cmdr Banks—Yes, I do.

Senator BRANDIS—What does ‘CPONPC’ mean?

Cmdr Banks—Chief Petty Officer Naval Police Coxswain.

Senator BRANDIS—And that was Chief Petty Officer Koller?

Cmdr Banks—It is Chief Koller.

Senator BRANDIS—Does that mean—and I am not a military person—that he was like a military policeman on the vessel?

Cmdr Banks—That is his primary job. He is responsible for the maintenance of discipline and for the gathering of information for Defence disciplinary action.

Senator BRANDIS—The date, as you will see in the top right-hand corner, is 7 October. Do you see that?

Cmdr Banks—Yes.

Senator BRANDIS—None of these statements are signed; is there a reason for that that you are aware of? Is it not the practice in the Navy for statements to be signed?

Cmdr Banks—No, they are.

Senator BRANDIS—I am sorry, but the copies I have are not.

Cmdr Banks—Because you don’t have the originals; you have the copies that were emailed.

Senator BRANDIS—All right; that is a red herring. There is nothing in that.

Cmdr Banks—Can I just put that in context?

Senator BRANDIS—Yes.

Cmdr Banks—These are service police statements because he is—in your term—a military police person.

Senator BRANDIS—Yes.

Cmdr Banks—Because this was becoming a serious issue, I directed that we get statements from people and he carried that out in the traditional naval police coxswain way. He asked people to come to his office, make a statement, swear that it was true, sign it, type it, record it, and they were done.

CHAIR—You, as the commander, would not take statements direct, would you?

Cmdr Banks—I directed him to do that for me.

CHAIR—Yes, but you would not take statements direct?

Cmdr Banks—No.

Senator BRANDIS—All of the statements are dated 7 October. I take it that that necessarily means they were taken on that day?

Cmdr Banks—No, they were taken on 10 October. That is the statement in the man overboard incident off Christmas Island on 7 October.

Senator BRANDIS—I understand.

Cmdr Banks—The statements were then signed on 10 October.

Senator BRANDIS—You have just told us the instruction to Chief Petty Officer Koller to take these statements came from you. What did you instruct him to do and, what particular issues, if any, did you instruct him to canvass with the witnesses?

Cmdr Banks—I recollect that either I made the pipe or I had the XO make the pipe over 1MC, the ship's main broadcast system, that the incident involving people going overboard, and particularly children going overboard, from 7 October was attracting a great deal of attention and we needed to clarify what had or had not happened and ask members of the ship's company who were involved in that event, who saw it or were physically involved with it, to come forward and give their recollection as a statement.

Senator BRANDIS—Commander Banks, we have read these statements with care, of course. One of the witnesses—that is, Gerrits—one of the EOTS operators, says:

During that time—

that is, the time when he was the EOTS bridge operator on Saturday, 7 October—

... I witnessed and recorded (video tape) SUNKS jumping off the siev by their own choice and I believe one child also went overboard. One male SUNK was also threatening to throw a small female child overboard by hanging her over the edge but he was persuaded not to do so by the boats crew.

I will just pause there. Would you agree with me—and we will ask Able Seaman Gerrits about this in due course—that where he speaks of his belief of one child also going overboard he seems to be referring to something different from the attempt to throw the child overboard—what I would call 'the little girl in the pink jumper incident'—because he distinguishes between

at I would call ‘the little girl in the pink jumper incident’—because he distinguishes between the two. So what he is talking about in the first sentence is something different from what he is talking about in the second sentence. Would you agree with that statement?

Cmdr Banks—That would be a reasonable assumption.

Senator BRANDIS—I take it that Able Seaman Gerrits, because he was the bridge EOTS operator, was one of the people on the bridge wings who, as you say in paragraph 14 of your cable:

... were advising that they could see more jumpers, some men, some boys and some children. Reports of the number who entered the water varied greatly.

In other words, in the buzz of all these voices you could hear of people narrating and commentating on this incident as it was developing very rapidly, one of the people who was saying things was Able Seaman Gerrits. Is that right?

Cmdr Banks—I have no recollection of Able Seaman Gerrits saying that, but I could not say that he did not say it.

Senator BRANDIS—Could I venture to suggest that, if there are all of these voices buzzing, you could not have a very specific recollection of who said what, and you do not purport to have in your statement. What you say, quite properly, is that all these people were saying various things and among the things that were said this is what they were saying. That is kind of the substance, in effect, of paragraph 14, is it not?

Cmdr Banks—If I were on the bridge wing, I would not be able to hear Able Seaman Gerrits, because he is inside the bridge.

Senator BRANDIS—Right.

Cmdr Banks—If I were inside the bridge, it would be possible that I could hear him. If, as he says, he was the bridge operator, because of the light conditions he would have had the curtain drawn around the EOTS terminal so that the light would not have been affecting his view of the screen. If he was in the operations room—where I think he was, because the videotape recording capability is actually in the ops room—he would have been much more distant and I would not have been able to hear him; his reports would have been made over a headset.

Senator BRANDIS—I see. Does that mean that Able Seaman Gerrits probably was not one of the people being referred to by you in paragraph 14?

Cmdr Banks—Able Seaman Gerrits, along with a whole host of people, contributed the information that went into fusing that picture. I cannot say whose information related to what event and how that was passed. What I am trying to say here is that, in my opinion, there is an inaccuracy in this statement. You are hanging onto the veracity of this statement, to one part of a sentence; I am saying that the preceding sentence is slightly inaccurate to begin with.

Senator BRANDIS—Which sentence is that, Commander?

CHAIR—The other thing which should be said about it is that the whole statement is not before us. The subsequent sentence seems to have some relevance to context, as well.

Senator BRANDIS—Commander Banks wants to point to an inaccuracy in the statement and, in fairness to him, he should be allowed to.

CHAIR—We are in a public hearing, too, and I think it is important to know that all of the statement of Able Seaman Gerrits is not before us and that other parts of the statement shed considerable light on what he may have meant by the sentence that has been selectively chosen for quoting.

Senator BRANDIS—Mr Chairman, I am happy to table the statement now. Is that a course you wish me to pursue?

CHAIR—You know exactly the same as I do, Senator Brandis, that we are awaiting a clearance for all those statements and we cannot make them public until we are sure that any sensitive references have been removed from them.

Senator BRANDIS—On the face of it, there does not seem to be any sensitive reference in this.

CHAIR—That may be on the face of it, but I am not an expert and I have heard you say you are not an expert either on military matters. I am not prepared to allow statements that may contain issues of sensitivity to be made public until I am certain from the relevant authority that they do not.

Senator BRANDIS—There is only one paragraph in the entire statement that is not formal, Mr Chairman, and I have practically read most of it.

Senator BARTLETT—Could I suggest by way of assistance, given that it is only five sentences long and you have read half of it and are probably going to read the rest of it by the time you have finished, that you just read it all out?

Senator BRANDIS—Why don't I do that? Why don't I just read it?

CHAIR—I have no objection to that. The only objection I raised in the first place was that, if we are asking Commander Banks to talk about the statement, the whole statement and not parts of it should be before us, so please proceed to read it.

Senator BRANDIS—I will read the paragraph that is the only part of the statement, I think you will agree, Commander Banks—if you do not, let me know—that is not formal by way of formal introduction and formal signing off. It says:

My full name is WADE THEO GERRITS, I am an Able Seaman CSO in HMAS ADELAIDE. On Saturday 07 October 2001, I was on the Bridge manning EOTS (Electronic Optical Tracking System). During that time I witnessed and recorded (video tape) SUNKS jumping off the ship by their own choice and I believe one child also went overboard. One male SUNK was also threatening to throw a small female child over board by hanging her over the edge but he was persuaded not to by the boats crew. All persons who dove overboard did so by their own accord and were all wearing life jackets. All personal—

I assume that means personnel—

were also recovered by Adelaides sea-boats and returned to the siev. All this was recorded on video tape.

Will you agree with me that that is the only part of the statement that goes to the events?

Cmdr Banks—That is true, and that is one of 16 statements.

Senator BRANDIS—You read all these statements?

Cmdr Banks—I have since.

Senator BRANDIS—They were taken on the 10th, as you have told us. Did you read them by the time you wrote the 11 October cable?

Cmdr Banks—I do not believe so.

Senator BRANDIS—So your analysis which is reflected in the 11 October cable did not take into account and was not affected by anything in any of these statements?

Cmdr Banks—I certainly spoke to Lieutenant Commander Hynes.

Senator BRANDIS—He does not say anything about children one way or the other.

Cmdr Banks—I had spoken to a number of the people on the bridge wings, because we were on the bridge wing together at the same time.

Senator BRANDIS—We will take you through it, Commander. Do you remember speaking to Lieutenant Letts?

Cmdr Banks—He was on the bridge with me throughout.

Senator BRANDIS—No, my question is: do you remember, before you composed the 11 October cable, speaking about these events to Lieutenant Letts?

Cmdr Banks—This was a topical event—a significant event. We would have discussed it on the day that it took place and in the days after.

Senator BRANDIS—Is your evidence that you remember discussing it, or is your evidence that you do not remember but you think you would have?

Cmdr Banks—I do not remember but I think I would have. The navigator is a person who works very closely with me.

Senator BRANDIS—Of course.

CHAIR—Why don't you just ask the commander, given that he has now read the statements since he put his report in, whether he wishes to vary his report in any way in light of the—

Senator BRANDIS—I will ask my own questions, please, Senator Cook. Do you remember discussing the matter with Midshipman Rachel Naree?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Chief Petty Officer Koller? You must do because you asked him to take the statements. Do you remember other than the instruction being given?

Cmdr Banks—I did not know that he made a statement until I got the statements.

Senator BRANDIS—So you do not remember discussing it with him. Do you remember discussing the matter with Petty Officer Chapman?

Cmdr Banks—No. He was in the boarding party.

Senator BRANDIS—Do you remember discussing the matter with Petty Officer Nixon?

Senator JACINTA COLLINS—Sorry, but I did not hear the witness's answer.

Cmdr Banks—He was absent from the ship for most of the time. He was in the boarding party.

Senator BRANDIS—Commander, there is absolutely no criticism implied in any of these questions. I just want to establish who in fact you had spoken to by 11 October. So you do not need to explain why it was that you did not speak to these people. Do you remember discussing the matter with Petty Officer Nixon?

Cmdr Banks—Possibly. He is my yeoman. He is part of my personal staff. He is the man who produced the photographs.

Senator BRANDIS—Is that in the category of 'you do not remember but you think you would have'?

Cmdr Banks—Yes.

Senator BRANDIS—Do you remember discussing the matter with Leading Seaman Barker?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Leading Seaman Blennerhassett?

Cmdr Banks—Yes. She is in the personal staff.

Senator BRANDIS—Do you remember discussing the matter with Leading Seaman Heedes?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Leading Seaman Piper?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Leading Seaman von Kelaita?

Cmdr Banks—No. I had had many discussions with him because he was the Arabic-Lebanese linguist and I used him throughout the period to convey messages in that language. So I had lots of conversations with him.

Senator BRANDIS—But you do not remember discussing the matter with him?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Leading Seaman Walker?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Able Seaman Black?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Able Seaman Gerrits?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Able Seaman Gullidge?

Cmdr Banks—No.

Senator BRANDIS—Do you remember discussing the matter with Able Seaman Skells?

Cmdr Banks—No.

Senator BRANDIS—As I understood your answers, you remember discussing the matter with two of these people; that is, Lieutenant Commander Hynes and—

Cmdr Banks—Lieutenant Letts?

Senator BRANDIS—And Leading Seaman Blennerhassett. And there were two others, as I understood your answers, including Lieutenant Letts, with whom you do not remember having the conversation but you think you would have.

Cmdr Banks—That is correct.

CHAIR—Commander Banks, you have since read the statements as prepared and the ones that are being referred to now?

Cmdr Banks—That is correct.

CHAIR—And you are, of course, aware of what you have reported. Since you read those statements, because you have read them, is there any reason that you would go back and change any word or sentence in your report?

Cmdr Banks—There are words of grammar and vocabulary that, with the benefit of hindsight, I would change.

CHAIR—Any conclusions?

Cmdr Banks—I would leave the content and the conclusions as they are.

CHAIR—Does that mean that you still stand by your report and think it is a true and accurate reflection of what occurred, given the statements or without the statements?

Cmdr Banks—When I wrote that on 11 October and signed it, I did not do it as a service police statement. I did not go down to the coxswain's office and go through that route, but I did have him come up and witness my signing it, to give it that same air of authority. I was making what I considered to be a sworn statement of my version of the truth.

CHAIR—And you are still satisfied that that is a correct statement?

Cmdr Banks—Yes I am. I would love to change a couple of words, the grammar and syntax, and all the rest of it—

CHAIR—Don't we always, after we have finished writing something.

Cmdr Banks—but I am happy to stand by that statement.

Senator BRANDIS—Nobody is criticising your grammar or syntax. Can I foreshadow that I do have a lot more, but obviously we will continue—

CHAIR—This is the problem: it is four o'clock, which is the time we are going to close.

Senator BRANDIS—I know; I have stopped because it is four o'clock. We will resume next Thursday.

CHAIR—Is that convenient for you, Commander?

Cmdr Banks—I think I am at your behest.

CHAIR—I think you are as well. But, if it is not inconvenient for you, we will resume at 9.30 a.m. on Thursday, 4 April. I think that is by agreement. Happy Easter.

Committee adjourned at 4.01 p.m.