



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

**Reference: Certain maritime incident**

WEDNESDAY, 1 MAY 2002

CANBERRA

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**SENATE**  
**SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT**

**Wednesday, 1 May 2002**

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

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

**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

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**Committee met at 9.35 a.m.**

**CHAIR**—I declare open this meeting of the Senate Select Committee on A Certain Maritime Incident. Today the committee continues its public hearings in relation to its inquiry. The terms of reference set by the Senate are available from the secretariat staff and copies have been placed near the entrance to the room. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private. The committee has authorised the broadcasting of the public aspects of proceedings. The hearing will last until around 8.30 p.m. tonight and will resume at 9.30 a.m. tomorrow morning.

We had expected to take evidence from the Manus Island Asylum Seeker Camp Committee via teleconference at 1.15 p.m., but this may well not proceed. The asylum seeker committee has requested that they provide further evidence in writing rather than orally as originally proposed. The Senate committee has been in further communication with the Manus Island camp and we are awaiting further advice from them. In the event that the camp committee provides further written evidence, the select committee will publish that evidence as soon as it becomes available. Should the teleconference not proceed today, the hearing will be suspended for lunch between approximately 1 p.m. and 2.45 p.m. Dinner will be from 6 p.m. until 7.30 p.m. during which time the committee will hold a private meeting. Witnesses and others will need to make their own arrangements for meals as the cafeteria facilities in the parliament will not be open after 5 p.m. Tea and coffee are available all day outside the hearing room.

I remind everyone that mobile phones are to be switched off in the hearing room. The waiting room next door is for departmental staff and witnesses only and is a private area to which the press and public have no access, although I imagine this morning, given that the press are witnesses, that they have access.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege according to the provisions of the Parliamentary Privileges Act 1987. The action of a witness in giving evidence and producing documents, and the evidence given, cannot be used against the witness in any sense in subsequent proceedings before a court or tribunal. Senate standing order 181 declares that:

A witness examined before the Senate or a committee is entitled to the protection of the Senate in respect of the evidence of the witness.

This is a declaration by the Senate that it will use its powers to protect witnesses against any adverse consequences arising from their giving 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 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, officers may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular

policy was arrived at. When witnesses are first called upon to answer a question they should state clearly their names and positions. Witnesses will be asked to make an oath or affirmation.

[9.39 a.m.]

**BARKER, Mr Geoffrey James, Journalist, *Australian Financial Review***

**DOBELL, Mr Graeme, Foreign Affairs and Defence Correspondent, Radio Australia**

**McPHEDRAN, Mr Ian, Bureau Chief, News Ltd**

**CHAIR**—Welcome. The normal procedure is that we invite witnesses to make an opening statement if they so choose and then make themselves available for questions from the committee. Do you all wish to make an opening statement or will one individual speak on behalf of all of you?

**Mr Dobell**—I am going to speak and Geoffrey is going to speak.

**CHAIR**—Okay. Please proceed.

**Mr Dobell**—First of all, thank you for the chance to be in this rather unusual part of the committee room. I contributed to this submission as the foreign affairs and defence correspondent for Radio Australia and the ABC, which is a job I have been very lucky to have done about four times between various postings. I first did the job in 1978. The reason that I contributed to the submission is because I thought there were some important issues and broader principles that needed to be brought out of this affair.

At the start, I want to submit to the committee that it should look at making a couple of broad recommendations drawing on the evidence that it has already brought out. Firstly, in future the Australian Defence Force should have responsibility for giving a full, timely and accurate account of its operations. It should not give operational reporting through ministers' offices. Secondly, part of Defence's responsibility to the Australian people is to allow timely and independent accounts of its operations by the media. On military grounds, and on military grounds only, should Defence place restrictions on the media accompanying its forces or reporting on its areas of operation. I would suggest to the committee that, on the basis of the evidence you have gathered of the damage to Defence, both internally and externally, and also perhaps a judgment about the political costs to the government of this affair, these recommendations would serve both self-interest and principle. Those are the specific recommendations.

I want to talk more broadly about what I would describe as—and I think our submission described as—the culture of secrecy in Defence. Blaming the victim is not a particularly useful device, but I think that the failure of Defence to protect its own professional sphere from a strong minister, combined with Defence's own culture of secrecy, contributed to some of the problems that you have been examining. Defence cannot be allowed to embrace an 'innocent victim' self-description—it cannot be allowed to tell itself that it was merely the victim of a strong minister, a stern Senate and an uncaring media. Defence must take some responsibility for what it did, and failed to do, in terms of accounting to the Australian people for its operations.

I want to talk very briefly about two examples of the culture of secrecy. One of them is the way that the culture of secrecy is impacting on the most significant military operation that Australia has been involved in in 30 years. We have less on-the-spot coverage of what the SAS is doing in Afghanistan than we had in Vietnam. I would say in passing that some of the accounts of 30 years ago made the point that some senior Australian officers in Vietnam rated Australian journalists as only slightly less dangerous than the Vietcong—so some things have not changed.

The point about the culture of secrecy is that you get a representative of an Australian media organisation turning up to a major American military base at Kandahar and being thrown off that base by the Americans at the request of the SAS. So Australia is learning about what is being done in its name in Afghanistan officially when a brigadier stands up at Russell headquarters, a few kilometres from here, and gives an account of what is taking place in Afghanistan.

The justification for this total secrecy surrounding the SAS is as much, I suggest to you, cultural as it is military. The American military does not ban all media coverage of special forces operations after the event in the same way that the SAS in Britain and the SAS in Australia do. Part of the culture of secrecy surrounding the SAS is adopted from the British model. The British model perhaps has more justification. But I do not really see there is any necessity for Australia's SAS to have their identities protected from the IRA. Just on the SAS issue—because this goes to this cultural issue—I pulled out Professor David Horner's very good book on the history of the SAS. David Horner makes the point in his introduction:

... obviously while on operations the SAS is careful about security, particularly concerning the details of future missions. But in many respects the SAS has little to hide. The regiment is as much under military discipline and control as any other unit in the Australian Army. Its roles are clearly stated and are in accordance with government policy. No particular effort is made to hide the identity of SAS soldiers and, except for specific exercises, they wear a uniform while on duty.

Why then is that culture of secrecy being used to prevent any Australian reporting of what is being done in Australia's name in Afghanistan?

The other example of the culture of secrecy is the Defence Instructions (General). There have been two sets of Defence Instructions (General) issued: one in August 2001 and the other on 25 March this year. I offer up both those copies. The instructions that were issued in August last year—and I think the committee has had some discussion about this—were extraordinarily restrictive. The ones issued this year were less restrictive—they were perhaps only amazingly restrictive. Reading the instructions gives some idea of the flavour of the culture of secrecy. I point, for instance, to the latest instructions and the sort of language that is used:

When speaking publicly Defence members should not assume that the media is not present or that information will not be relayed to the media or others outside the forum.

Media access to seminars, conferences and similar events arranged by Defence requires careful consultation ... The risks of inaccurate reportage, misrepresentation, uncoordinated messages, and inadvertent disclosure of sensitive or pre-emptive information may be high.

Services and Groups should consult ... prior to adding media representatives to mailing lists.

Defence members attending events at which media representatives may be present need to exercise care ...

The tone of this is: ‘Beware of monsters; watch out for the trolls under the bridge.’ It is a warning to intelligent, highly trained and experienced people. It is about not trusting your own people almost as much as you distrust the media. I would suggest that a reading of these two instructions would bring home to the committee the fact that much of what passes for communications policy in Defence is actually anti-communications policy.

**Mr Barker**—I would like to follow that with a few brief observations about the culture of secrecy as it is represented by the mindset in Defence Public Affairs and Corporate Communications—the Defence organisation responsible for this area. I had a history teacher who once told me that the Holy Roman Empire was neither wholly Roman nor an empire. I think, likewise, Public Affairs and Corporate Communications rarely operates in public. It has very little to do with public affairs and communicates very little indeed.

I would like to direct the committee’s attention to the interview that the head of PACC, Ms McKenry, gave to Jenny Bryant. If you look at that, you can see that the head of PACC, who was supposed to be in charge of the Public Affairs and Corporate Communications area of Defence, is quoted as saying, ‘There are still elements in the ADF that believe they should be able to have dialogue with the media.’ She also notes that she has given all of the service chiefs a ‘strategic communications adviser’ whose role is to ensure that all public affairs activities are in line with an overall strategy, which is not really specified anywhere.

Finally, on the specific issue of the children being thrown overboard—and just to follow up Graeme’s point about the amount of information that was controlled through a minister’s office—she tells Ms Bryant that during the operation ‘material was being released by PACC only at the request of the minister’s office’. She suggests that it was Commander Banks’s interview with Channel 10 that triggered the search for photographs and which led to the release of these photographs. She says further that the core of the problem had been Commander Banks’s interview and the wide dissemination of the photographs. I put it to you that the core of the problem was the attempt to control everything. Commander Banks is the one person who, I think you will agree, has come out of this inquiry looking very good indeed. So I wanted to direct your attention to that to reinforce Graeme’s point that this notion of total control of information is impracticable and, quite frankly, damaging to Defence. That is all I have to say at this stage.

**CHAIR**—To begin, I would like to ask a couple of very fundamental questions. Hearing what you have said, Graeme, and you, Geoffrey, it is a complaint about what the current arrangements are as you see them. My question is: what should be the arrangements? In your view, what would be the appropriate communications structure for Defence? Is there a model somewhere else in the world where that appropriate structure applies?

**Mr Barker**—Let me put this to you: I spent quite a few years working as a correspondent in Washington and have had dealings with the Pentagon. Of course, those great American departments of state, the Pentagon and the State Department, have their official spokesmen. They stand up and talk to reporters and you get the administration’s line. But it is also quite easy to go down to the Pentagon and talk to a desk officer in an area. These people are very forthcoming. They generally try to be as open as they possibly can. There is just a different culture in the attitude towards the press in the United States. What I find particularly galling, even now, is that you can go and talk to the American military, or even diplomatic officials, and they are far more open and will tell you much more than your own officials will. So I think that,

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if one were to look at the American approach, one can see that there are guidelines there—if not a complete a model—in terms of openness. Of course, there is a different constitutional culture about the role of the media in that society but, nevertheless, if you want to see the way that things might be done with rather a great deal more openness, I think the American example is not a bad one to have a look at.

**Mr McPhedran**—Just adding to that, I would say that, to be fair, the current Minister for Defence, Senator Hill, has attempted to bring more openness to bear than his predecessor and we do now get regular so-called operational briefings from senior officers at Russell. That by no means counters the culture of secrecy that seems to pervade the entire organisation and prevents the media from getting perhaps a little further into a story in a way that does not jeopardise any operational information. We are all aware of the need to maintain operational security, and those of us who have had anything to do with the D notice issues in the past understand those things only too well. So there has been some improvement but there is a way to go.

**Mr Dobell**—I would not want to say that this is a monolithic problem in Defence. One of the ironic dissident elements last year was that, while all this was going on, we were sitting on the C.E.W. Bean committee—the journalists’ committee—which was actually talking to Defence about reactivating the system of accrediting Australian correspondents to go into operational areas with Defence. Defence had learnt some pretty important lessons from its Timor experience about what it could and could not do in terms of controlling the media. Defence was coming to us, I thought, with a fairly open mind and talking about the old system of censorship, whereby essentially an accredited correspondent would be fed and transported by the military in return for which they would be subject to censorship. The military was accepting that that was no longer practical and was looking at a much more open system, whereby essentially correspondents would be briefed, told what the parameters were and would essentially be self-regulating.

Perhaps to lighten the picture a bit, I think there is an understanding in some parts of Defence that the culture does have to change. I think that is why there was a lot of frustration in some areas of Defence, that they were not being allowed to apply some of the very lessons that they had drawn.

**CHAIR**—I have just two quick questions and then I will vacate the arena. If the structure that you have referred to had applied during Operation Relex, would it have been likely that anyone from the media would have talked directly to Banks? How would you have obtained the photographs? The second part of it—I might as well put both questions down—is that when the Defence Instructions (General) came out in August 2001, did you or your agencies complain to the Defence Department about the highly centralising nature of the information flow as a consequence of that instruction?

**Mr Dobell**—We wrote stories about the directive for a start. You have heard about the sorts of conversations that we had with Tim Bloomfield and others. I do not remember making a complaint directly related to the Defence Instructions (General) as such, but we did certainly write quite a few stories about what it meant.

**Mr Barker**—Certainly I wrote several columns reasonably critical of it, and what was astonishing was that one got absolutely no response. Defence obviously had nothing to say about it, although, as Graeme has pointed out, when you looked at the first one particularly, it

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was extraordinarily stringent. Following up Graeme's other point about the slightly more open attitude within Defence, I think that is on the uniform side of things, particularly when people are in the field and have to deal with you. It is the people who are on the civilian side—and maybe the political side, too—who tend to be much less open and flexible about these things.

**Mr Dobell**—I would merely say, too, that if the two points I made to you about right of media to cover exercises and the responsibility of Defence to account for its operations had been in place, I would have expected Defence to have been briefing in the normal way—publicly, through its chief spokesman, a brigadier—about what had happened and, quite possibly, that there might well have been a journalist on board. We had instances during the Gulf War when an Australian reporter was on board an Australian Navy ship in the Gulf. I did not make the point, but I would have thought that if C.E.W. Bean or Denis Warner, who is still with us, or Harry Gordon, who covered Korea, could see the way the Australian media is covering Afghanistan—Australian troops essentially doing conventional military exercises—and the fact that there is no Australian reporter there, they would be astonished, and rightly so.

**Mr McPhedran**—Adding to that, I did not write much about the Defence Instructions (General) because, frankly, I do not understand it. I would defy anybody to read it and give me an explanation as to what it means. I do not really think it is coherent; I think it is incoherent and unreasonable. I think that Geoff's point about the military civilian thing is a valid one, only that you just have to be a bit careful about some of the performances by the uniform side regarding some of the operations that have been held in the last few years. I think it is an across-the-board thing. The willingness of the people across the board to be played—as we contend in our submission they were—is an area of concern and one which I think both sides of federal politics should be aware of, given Graeme's earlier point about the recommendations that might come from this inquiry.

**Mr Barker**—In a genuinely open society, when the Navy is deployed to the north of Australia to enforce an immigration policy—stop boats and pick up people—I would have thought that there is a very strong case for the media to be present, to witness it, to report it and, yes, to talk to the commander on the ship if necessary.

**Mr Dobell**—And no more military rules; the only thing you can't report is exactly where the ship is for obvious reasons.

**Senator BRANDIS**—I take it, gentlemen, that you put forward your written submission as part of your evidence?

**Mr Dobell**—Yes.

**Senator BRANDIS**—I see that it was submitted over the names of, among others, Mr Forbes of the *Age*, Miss Kelly of the ABC and Mr Skehan of the *Sydney Morning Herald*. Have any of you gentlemen at the table—and you will appreciate I have not followed all the press reportage of this committee's work—been involved in preparing reportage as opposed to commentary pieces on this committee's hearings as such?

**Mr Dobell**—No.

**Mr McPhedran**—Yes, early on.

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**Senator BRANDIS**—Mr Barker, I think you have done some commentary pieces but not—

**Mr Barker**—I have done some commentary pieces and if you have a look at today's paper you will see some reportage too.

**Senator FERGUSON**—Not because of the press report.

**Mr Barker**—It was completely coincidental—opportunistic.

**Senator BRANDIS**—I know that Mr Forbes of the *Age*, Miss Kelly and Mr Skehan, among others, have prepared reportage on this committee's hearings and they sign off on the written submission which is part of your evidence. I will express a proposition and invite each of you to comment on it. While I do not find anything you have said in your oral evidence particularly striking—I may or may not agree with it—it seems to me to bear immediately upon term of reference (b)(iii) of this committee's terms of reference. What I do find striking is the highly rhetorical language of the written submission, and not merely the style of it but the fact that plainly it pre-announces conclusions on the very matters which this committee has been given the task of inquiring into. I will give you a couple of examples. The very opening words of the written submission read:

A Government campaign of censorship and misinformation, which peaked during the Tampa incident and continued through the HMAS Adelaide 'children overboard' affair, is unprecedented in recent times.

The submission refers to 'blatant political manipulation of the bureaucracy'. It refers to Reith, Hampton, Hendy and Scrafton being clearly at the centre of efforts to prevent the truth coming out regarding false claims that asylum seekers threw children into the sea in October last year. There is reference to journalists being lied to and a comment that secrecy was not used for operational reasons but to control information for maximum political effect. I could go on as there are plenty of examples.

I have asked the secretary of the committee to put before you a copy of our terms of reference. Those terms of reference require this committee to inquire in particular into the incident under discussion, the role of Commonwealth agencies and operational procedures employed by the Navy. I am sorry it is a very long preamble to my question, but if I can come to the question it is this: how on earth are any of the signatories to this submission going to be in a position to report objectively, or even to offer a credible commentary, on any report this committee might bring down on those terms of reference to which I have referred when you have—and by 'you' I mean collectively the co-signatories to the submission—prejudged the issues in advance of hearing the evidence, let alone of reading the report of the committee?

**Mr Barker**—Firstly, Senator, I acknowledge that the style of the document is somewhat florid. It certainly got your attention, which was part of the purpose.

**Senator BRANDIS**—Mr Barker, I know that is a nice remark but it did not get my attention. The more credible submissions before this committee are those which are matter of fact and unemphatic and rooted in facts rather than rhetorical claims, from my point of view.

**Mr Barker**—I put it to you that we have lived through this incident and it reflects the views of the signatories as to the way they have been dealt with and invites you to accept or reject

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them as you will. I certainly do not prejudge any report that comes from this committee. I await it with great interest. I do not think anything we say there means that we cannot make an objective assessment or a fair report of your final report. We may well have different views with it, but I do not think that what was said in that document somehow disqualifies us from reporting on it or commenting on it. Those reports and commentaries will have to be judged in the light of what you produce, I suspect.

**Senator BRANDIS**—But my point is that you have become a protagonist in the argument, even before the first syllable of evidence was taken. This submission was received on 22 March, and presumably written before then. How can—as a protagonist in the argument who has announced conclusions before a syllable of evidence has been heard—you be an objective commentator, let alone reporter?

**Mr McPhedran**—I think we announced our position; I do not think we announced any conclusions. I think we announced our experience.

**Senator BRANDIS**—I have read you a few extracts, Mr McPhedran.

**Mr McPhedran**—You have—and please do not put words into my mouth, Senator—but I just wanted to say to you that what you have read out there has almost entirely been borne out by subsequent evidence. If you think that we are going to be judged by our editors and our readers as being biased because we make a submission like this to an inquiry on our reporting, I think you have a fundamental lack of understanding of how the media works. By writing the submission, it merely reflects our experience of the time—and our experience was not a pleasant one.

**Senator BRANDIS**—Mr McPhedran, I am not criticising you for bias. I think there is a subtle but real distinction between bias and prejudgment. I do not pretend to have read all the reportage of the evidence of this committee. But I might say that I have read one piece of reportage—at least in the print medium—in which a journalist has actually tried to go through the arduous process of analysing the evidence and getting to what the evidence suggests. That was a piece by Mr Patrick in the *Financial Review* two weeks ago, which actually did, with great and painstaking care, analyse the evidence. It is hard work doing that; reading hundreds of pages of transcripts is hard work. Making colourful, rhetorical claims is easy. I am not accusing you of bias, but if you prejudge factual conclusions before the evidence is on the table, what credibility can that have?

**Mr Dobell**—I would say that we were putting to you the facts that we had reported on and experienced last year, so we were reporting our experience of what had happened. Secondly, I would suggest that the word you are looking for is not ‘protagonist’ but, at the risk of being pompous and florid, I would suggest that the word you are looking for is ‘citizen’. We treat this inquiry and this Senate committee with great respect and we have actually gone to the trouble as citizens to put a submission to you on an issue of great importance. As someone who has on and off reported on the Australian Defence Force for over three decades, I thought that it was important that we should put to you our experience of what had happened and our view on the way it had been handled by the ADF. So I would put to you that the word that I would see is ‘citizen’, and that when I took my vows of journalistic poverty and chastity I did not give up my role as an Australian citizen.

**Senator BRANDIS**—I do not dispute that for a moment; I do not for a moment treat your submission with any lack of respect and I do not for a moment doubt your bona fides. I do have a concern, though. If I can use a metaphor from my previous professional existence as a lawyer, you cannot be a juror if you are also witness. Surely the conflict in your position between being, to use my word, a protagonist and then being the people who mediate this committee's work to the general public and critically comment on it is a plain conflict of interest—a fortiori when you have written your conclusions before the first piece of evidence is on the table.

**Mr Dobell**—We have given you evidence.

**CHAIR**—But isn't it a fact that as working journalists you report the events as they unfold and analyse the significance of them up to that point? For example, when the photographs came out they came out before this inquiry started and they were revealed to be wrong before this inquiry started. You would not wait for the inquiry in order to report that fact, would you?

**Mr Barker**—We were trying, and continue to try, to explain and report on the way we were dealt with in trying to get information and to establish what was going on. Senator Brandis, the objection you make is that somehow there is a notion of objectivity: that we do not have a value system, that we do not have professional interests, that we are somehow neutered by what we do. It is very difficult to be trying to deal with a major issue like this when you run up against roadblocks all the time in your daily work trying to deal with a minister's office and when you try to deal with this organisation Public Affairs and Corporate Communications. Inevitably you come away from it, as Graeme might say, as a citizen with the sorts of perceptions that are reflected in that document, if reflected in somewhat overheated language perhaps. It does make you cross. That does not seem to me to mean that we will not be able to fairly and decently report on what this committee finds and to comment on it.

**Senator MASON**—Gentlemen, I want to briefly touch on principle. I think in essence your evidence before was that in general there is perhaps more secrecy surrounding defence matters than there was 30 years ago and that specifically operational briefings should be conducted by members of the ADF and not siphoned through the minister's office. I think Mr Barker and Mr Dobell said in effect that to do so was wrong in principle and it was also impractical. I think that is the evidence thus far in a nutshell.

My problem in principle—perhaps it is a question in philosophy, but help me if you can—is that that assumes that there is a distinction between, on the one hand, politics and, on the other hand, operational requirements. I will let you know where I am heading: politics and operational requirements are two distinct things. I am not convinced that they are. In fact I think there is a large merging of the two. Let me give you two very quick historical examples. One is the leaking of the Pentagon Papers by Ellsberg. He is seen as a traitor by one half of the country and as a hero by the other half of the country. It undoubtedly impacted on operational requirements and it had an enormous political impact. Secondly, when President Johnson sent troops into Vietnam in 1965, he said, 'If television cameras had been around 100 years before'—that is, before the Civil War—'America would not be a nation today.' The press always make the argument that as a matter of principle you can somehow distinguish from politics. I think history shows that we cannot do that. My question to you is: how do we arbitrate that distinction?

**Mr Dobell**—Military doctrine spends a lot of time making some distinctions between the political directives at the top and the tactical requirements of the grunt in the field. There is a huge amount of theoretical work done on that. The military spend a lot of their life thinking about those issues. There is a lot of literature on that, partly influenced by some of the things that you refer to. We are not arguing—I suppose I should have said this earlier—about obvious chains of command and the need for the military to do as ordered and to pursue the objectives so ordered. All I was talking about was almost at the other end of the chain: as operations are carried out on the ground, at sea or in the air, Defence has a professional sphere.

**Senator MASON**—Yes, I accept that; it does.

**Mr Dobell**—And it should be responsible as a profession for accounting for its actions.

**Senator MASON**—I understand that. My problem is that I find it difficult to draw the distinction. In your opening statement you said that the Americans found Australian journalists as dangerous as the Vietcong.

**Mr Dobell**—No, it was the Australian officers. I think the American officers had a slightly different perspective.

**Senator MASON**—Sure. Australian officers found Australian journalists as dangerous as the Vietcong.

**Mr Dobell**—No, the way that they were treated—in other words, the distance that was maintained between Australian journalists in Vietnam during that period.

**Senator MASON**—But that is exactly my point. I am sure that at times the military find that journalists impede operational matters. That is my concern. I raise it because there is the assumption that there is some delineation between the two. The Vietnam experience showed that it is a harder delineation to find in practice than it is in theory.

**Mr Dobell**—I would agree with you, but that is a delineation between military and media. Yes, I would agree with that: that is one of the difficulties, obviously, yes.

**Senator BRANDIS**—We have heard the evidence as to all of these episodes of apprehension of SIEV vessels. Do you seriously suggest that the military could have done their work and carried out their rules of engagement under Operation Relex with the news crews and television helicopters circling above? Eyewitness news bringing it to you live from Ashmore Island! Do you seriously suggest that that would not have been an impediment to the operational effectiveness and indeed the safety of these exercises?

**Mr Barker**—The media and the military are capable, if they agree to have coverage of things, of agreeing on rules for the coverage. That does not mean you will have helicopters flying overhead. Yes, there would be ways in which you could have the media present that would not necessarily be impeding. They have their provisions for pooling, for example. It could be arranged with enough consultation. I seriously suggest that there would have been ways in which the media could have covered this through pooling arrangements and through other sorts of sharing of facilities among the media so that you did not have a circus going on around it but that you did have an outside independent eye on what was going on.

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If I just pick up Senator Mason's point about the distinction one makes between operational and political requirements and needs, what you are really talking about more broadly is the relationship between any executive government and its civil service, either in its civilian or its military incarnation. The mind-set of Defence is, quite properly, that they are subordinate to the civil authorities—the executive government—and they carry out orders. Indeed, it would have been a very political act if they had not. But the idea that the government owns completely the civil service and that the civil service or the military has no values or no responsibilities of its own beyond what it is ordered to do by the executive government is a fairly dangerous one too. What if one day some mad executive government goes and orders the military to go and round up certain minorities it does not happen to like? Should the military just salute and say, 'Yes, sir,' and go off and do it? There are issues here. Just to respond to your point there argumentatively, the relationship between, if you like, operational requirements and politics needs to be examined.

**Senator FERGUSON**—Can I follow on from Senator Mason—

**Senator MASON**—It is just drawing a line in the sand; that is the problem.

**Senator FERGUSON**—And in that line in the sand is it not possible that the military could be somewhat wary of agreements of rules between themselves and the media when you have had instances in the past—and I think particularly of the Carleton incident in East Timor—when the reporter or journalist went past the agreed position that had been reached at that time? Do you understand why Defence could be wary, particularly when someone is seeking to sensationalise everything or to get that extra yard or two so they have got the best story, and that it could be very difficult for them to maintain the rules that have been agreed on?

**Mr McPhedran**— I can understand that reluctance, but I can say to you that if there aren't rules or isn't some kind of genuine attempt to get truthful information to the public then media will make their own judgments about that and will respond. I do not know if we will see the media chartering a helicopter and teaching a crew to propel down onto a ship like the *Tampa* in the future, but really if we cannot get honest information from on the ground through someone because a minister or someone else is blocking it then we will take our own steps.

**Mr Dobell**— I think the East Timor example would suggest that the answer to Senator Brandis's last question is yes, the Australian military experience of not just the Australian media but the international media in that coalition operation in East Timor was that the media were prepared to cooperate and, as you say, to play by some of the rules.

**Senator FERGUSON**—Except for a couple of instances.

**Mr Dobell**— The rules Richard was breaking were rules agreed with Tim Fischer and a party of parliamentarians; so perhaps there is a different dynamic at work there.

**Senator FERGUSON**—Wasn't it a matter of putting people's lives in danger?

**Mr Dobell**—I am not here to argue that. But from the operation of that coalition force—and coalition operations, as you know, are much more complicated than straight national operations—Defence drew some very positive lessons about how you handle media and how media can actually be a contributor to the success of the mission.

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**CHAIR**— I am going to give the call to the opposition, but Senator Brandis has one more question and so I will give the call to him for that purpose and then go to Senator Faulkner and Senator Collins. While I am talking, I might as well say that what we are focusing on now is access to reporting on the activities of the defence forces, and that is part of this inquiry. The other part of this inquiry relative to the media is what happened when it passed up the chain beyond the control of the defence forces and issues related to the management of the media or the mislabelling of those photographs and things of that nature at election time. That is part of what we are interested in too. If there are not sufficient questions on that to bring out some of those points, I would like your views on that some time before we close.

**Senator BRANDIS**—Do you want them to respond to your question now?

**CHAIR**—No, I am happy to leave it there. If they want to pick it up as they go, that is fine by me.

**Senator BRANDIS**—Just one last thing. The whole gravamen of your submission is that the media have been unfairly constrained in, as it were, enforcing the public's right to know of these matters. It is implicit in that that you believe that there ought to have been more scrutiny by the media of these operations than there in fact was. I take it that you would also agree that the more scrutiny there is of these matters by the parliament, in particular through this committee, the better.

**Mr Barker**—Yes, of course.

**Senator BRANDIS**—The reason I say that is there has been a little criticism of the government senators for asking hard questions of certain military officers to try and get to the bottom of what in fact happened in the episode in question. Do you agree with my view that the military, including on occasions officers in charge of operations, are every bit as properly susceptible to parliamentary scrutiny as any other agencies and individuals in control of agencies of the Commonwealth government?

**Mr Barker**—Of course they are.

**Mr Dobell**—Yes, Senator, I agree. In fact I think that is a very fine principle, and perhaps one that you might extend to ministerial staffers as well.

**Senator MASON**—Thank you, Mr Dobell!

**Senator FAULKNER**—Can I just ask a little about the specific incident we are talking about in relation to the so-called 'certain maritime incident' itself. First of all, it appears—and I would like you to indicate to the committee whether this is the case or not—that Mr Reith and his office made themselves very available on some other matters of significant defence interest during the period of the federal election campaign, particularly, for example, the issue of the proposed deployment to Afghanistan. Were you able to discern a very different approach or a different approach between the attitude of the then minister and minister's office on that issue, for example, and on the question of allegations of children being thrown overboard?

**Mr Barker**—There is not much doubt that that incident and those issues were held much more closely. There were no Defence briefings on the matter. As the Public Affairs and

Corporate Communications lady has told you, everything had to go through the minister's office. Those matters were held very closely. Yes, there was. Broadly, it was much more carefully held and obviously there was much more political sensitivity about it.

**Senator FAULKNER**—But there is a significant number of contacts between the gallery and Minister Reith's office. As you rightly point out—and we are well aware of this—Defence is hamstrung, the PACC organisation is hamstrung: it cannot respond to your questions and it has to refer all your questions and inquiries to the minister's office. That is how it worked during the election campaign, isn't it?

**Mr McPhedran**—Yes.

**Senator FAULKNER**—In that circumstance, any issue relating to children being thrown overboard or photographs that allegedly related to that incident had to go to the minister's office, did it not?

**Mr McPhedran**—That would be our understanding, yes.

**Senator FAULKNER**—You were always referred by the Defence organisation to the minister's office when you asked Defence questions about those issues?

**Mr Barker**—'Everything has to go through the minister's office' was the standard reply.

**Senator FAULKNER**—And it was a significant number of inquiries that went from members of the gallery, as I understand it, to the minister's office from the period of 8 October 2001 onwards about these issues, and they basically had to go through Hampton in the minister's office?

**Mr Dobell**—That is correct, Senator. I cannot give you a date, but I can recall one day where we were trying to work out how many ships were still at sea in the Indian Ocean. I can remember ringing Tim Bloomfield and saying, 'Look, I don't want to know where they are. All I want is a number. It is a straight operational question to you. How many ships are there in the Indian Ocean today?' The response was, 'I understand what you are saying, I understand it is an operational issue, but you must go to the minister's office.'

**Senator FAULKNER**—Mr Dobell, you tabled for our benefit the Defence Instruction (General), so you are well aware of it. I noted that there was a canvassing of that issue in the media at the time. I accept that it is certainly the case. So the gallery is well aware of the constraints that Defence personnel, particularly from the PACC organisation, were working under. That is fair, isn't it?

**Mr Dobell**—Sure.

**Senator FAULKNER**—When you look at the role that the PACC personnel in Defence played, is it valid to criticise them? Could they, or should they, have been more proactive in correcting the record when they were hamstrung the way they were? What could they do? What options were available to them?

**Mr Barker**—I think they brought to it a mind-set, as revealed by Ms McKenry, even before this issue became the political issue it grew into during the election campaign and subsequently. The whole history of PACC since it was set up was one of minimal disclosure about everything and not disclosing anything if they could possibly get away with it. There was the idea that everybody and everything had to be controlled within Defence, so when this issue became the hot political issue it became it was very easy for PACC to just fold its tent and say, ‘I will go and talk to the minister.’ There was no attempt by PACC to negotiate, to carve out some space which I suspect it might have been able to carve out, with the minister’s office to maintain some sort of information that was not filtered and preshrunk and sanforised through the minister’s office.

**Senator FAULKNER**—I do not think that is altogether fair. We have heard from PACC officials that they were not happy with the situation, particularly when they knew that some of the information that was being made very public by organisations that you work for was wrong and was better described as ‘misinformation’. They knew that was the case. They were not able to do anything to correct the record. They were hamstrung. How fair is it to lumber Defence with that criticism when they had a level of frustration that was made quite clear before this committee and other Senate committees in sworn evidence? They were very frustrated too.

**Mr McPhedran**—I think they were working within a flawed framework. That is what I think the issue is. Despite the resistance that some members of the Defence PR organisation had to this issue—and I agree with you that there was resistance to it—the fundamental plan they were working under opened them up to this sort of level of control. There was no way out for them. They could not argue the toss. Reith had made it perfectly clear that he was running the show and, under the system of government that we have, that was entirely appropriate, and they just had to cop it on the chin. It would only be through some background briefing that any accurate timely information made it into the public arena.

**Senator FAULKNER**—There was some background briefing, of course, wasn’t there?

**Mr McPhedran**—Yes.

**Mr Dobell**—To go back to the metaphor: it is always dangerous to blame the victim. But I do want to come back to this issue of culture. While it is glib, I still think there is some truth in the fact that the Defence Instruction (General) which was signed by Allan Hawke and Chris Barrie is, on any fair reading, a media policy which is anti-media. It is a communications policy which is about not communicating. If you start from that as a cultural base then you are hamstrung.

**Senator FAULKNER**—Isn’t it true that, once the media started to question the veracity of the photographs—in other words, started to question whether the photographs that received such wide publicity, as we are all aware, actually related to children being thrown overboard—Mr Hampton then resorted to this extraordinary excuse for not being able to answer your questions, or the gallery’s questions and concerns? He ran up this extraordinary excuse, ‘I can’t answer these questions because these are operational matters.’ That is when the excuse was run out, wasn’t it?

**Mr McPhedran**—I think ‘operational matters’ has been widely used as an excuse for censorship and misinformation throughout not only this affair but also others. But I do recall that that was the excuse used widely by Mr Hampton during this period.

**Senator FAULKNER**—The three senior journalists at the table would know that often in a parliamentary committee like this I will not ask questions—whether it be police matters, Defence matters, intelligence services or whatever—because I accept that there may be operational matters and I certainly would not think it was appropriate for those issues to be canvassed in a public hearing of a Senate committee. You would all have heard senators like me not proceed with questioning on that basis, wouldn't you? You would have heard us say that in the parliament from time to time. Would you accept that?

**Mr Barker**—Yes, of course.

**Senator FAULKNER**—I just do not understand how the gallery could be fobbed off with an excuse of 'operational matters', particularly in relation to these photos. I cannot believe it.

**Mr McPhedran**—I think if you read some of the material that was reported at the time you would realise that we were not fobbed off. We were angry about that and upset. I think that is reflected in some of the material that was written. Perhaps that anger and frustration is crucial to what we are talking about in this hearing today. It was just entirely unacceptable to ask a media flack what colour the sky is today and for him to say it is operational. That was the sort of level we were getting to.

**Senator FAULKNER**—I agree with you, Mr McPhedran. You are absolutely right, and that is the point. There is no way in the world that what a photograph pertained to—a still photograph of children and Defence personnel, or asylum seekers and Defence personnel, in the water—could possibly be an operational matter. How could that excuse possibly be used or accepted in this particular case?

**Mr Barker**—I do not think anybody really just accepted that that was operational and so we do not talk about it. The matter did keep going on, I think. I agree with Ian that we were not fobbed off. People kept after it—they kept asking questions about these photographs. I certainly remember writing a few columns about it.

**Senator FAULKNER**—I recall reading them.

**Mr Barker**—The frustration that Ian talks about does, I think, spill into the attitude we end up having towards PACC and the public servants. You are saying, 'You are being a bit unfair—'

**Senator FAULKNER**—But does it end at frustration or do you take it further? I accept that Reith's office treats the gallery and the Australian public with utter contempt. I accept that. Does anyone think of going to the Prime Minister's office? Do any of the journalists in the press gallery do that? Is that the next port of call?

**Mr Barker**—In my experience, the Prime Minister's office refers you back to the line minister in each case.

**Senator FAULKNER**—So gallery journalists did go to the Prime Minister's office at the time?

**Mr Barker**—I cannot answer that yes or no.

**Senator FAULKNER**—You would know whether you did.

**Mr Barker**—All I received from the Prime Minister's office were occasional criticisms about what I had written.

**Senator FAULKNER**—I am sure you do not get as many as me.

**Senator MASON**—Just like us, Mr Barker.

**CHAIR**—Is this true confession time?

**Mr Barker**—On this issue of whether we were being a bit unfair to PACC, which you raised before, I do not think we addressed that completely. You might say that, in view of the real seriousness of this misrepresentation and particularly in the context of an election, in an organisation with another culture and another mindset there might have been a bit more background and whistleblowing than there in fact was. I think Graeme has seen the centre of this, which is that there was this anti-information culture there before this came up. I think, yes, maybe we have been unfair and maybe we are playing out our frustrations on them.

**Senator FAULKNER**—Yes, that is true: there was an anti-information culture, I accept that. But there has never been a situation—which is the point Mr McPhedran made and you, Mr Barker, made earlier as a result of the Defence Instruction (General) that your colleague Mr Dobell tabled here today—where all these matters however minor, whether they are just minor technical issues, go through the minister's office? For example, was this discussed by the press gallery committee at the time?

**Mr Barker**—I do not know. I am not a member of it.

**Mr Dobell**—No, it is not really the sort of thing. The press gallery committee is much more administrative. It is not the sort of—

**Senator FAULKNER**—You discussed it after the event, and I just wonder what level of frustration there was. I suppose to my mind I would like to understand—

**Mr Barker**—I think our presence here reflects the fact that we take it seriously.

**Mr McPhedran**—I think the covering note from the press gallery committee to our submission reflects the frustration level—

**Senator FAULKNER**—Ex post facto.

**Mr McPhedran**—across the gallery and across all sorts of correspondence at all sorts of levels.

**Senator FAULKNER**—You could properly criticise members of the opposition on this point, too. In retrospect, obviously I could have asked some of the questions that I am asking now a little earlier. You could say that to me; I would acknowledge that. What I think would be interesting is for you, very briefly, to answer this: what would have happened in the election

campaign context if the record had been corrected in the campaign when it should have been corrected? I think most people will acknowledge the record should have been corrected around 11 October. Is it your view, as professional journalists, that that would have been viewed as, if you like, a low-level campaign gaffe or a major campaign gaffe? Would it have been a one-day wonder? Would the photographs have received as much or such significant publicity as they did when they were produced and splashed across the front page? What would it have been like?

**Senator FERGUSON**—Is that a hypothetical?

**Senator FAULKNER**—It is.

**Mr Barker**—I think you can make some judgments about that.

**Senator FAULKNER**—It is a hypothetical.

**CHAIR**—It calls for a professional judgment.

**Senator FAULKNER**—Yes.

**Senator FERGUSON**—Landslide to Labor!

**Senator FAULKNER**—Because this was the motivation. What you have to understand is that this was the motivation—or at least part of the motivation—for covering it up at the time. So I am just asking these journalists what their view is. They know what publicity these photographs received when they were produced. What would have happened if people were told, ‘Oh, it was a different incident’?

**Mr Barker**—The world changes during the period of election campaigns. They are frantic. They come up with this ‘issue a day’. The whole thing is conducted in a superheated atmosphere. I suspect, if the record had been corrected, it would have been a front page story for a day or so with the opposition trying to play it up and the government trying to play it down. I think it—

**Senator FERGUSON**—What about editorial opinion, Geoff?

**Mr Barker**—Yes, a bit of a splash, and that would have been the end of it. I really don’t believe—

**Senator FAULKNER**—When they were found to be false—

**Senator FERGUSON**—A bit of a splash?

**Senator FAULKNER**—you had as a headline in one tabloid newspaper, as you would recall, ‘It was a lie’, with the photographs. Mr McPhedran, I will ask you this, given your current professional role: do you think there would have been a similar reaction in an election campaign context to that which occurred after the election campaign?

**Mr McPhedran**—Yes, I think it would have been ‘It was a lie’ across the front page, as it was when it was discovered. I am not sure that you could expect it to be any other way. I do not understand how anyone could expect it would be played down, because people were misled and the record was being corrected.

**Senator FAULKNER**—Can I ask this: how did Hampton and Reith flog these photographs to the journalists? I wonder if any of you can draw on your personal experience. It might be best directed to you, Mr McPhedran, because I suspect that in Mr Dobell’s current incarnation photographs are not of great interest to him. How were these photographs flogged to the gallery by Reith and Hampton?

**Mr McPhedran**—As I recall, there was a mention of the photographs by Reith during a radio interview. I think that is how it went—I stand to be corrected; my memory might be slightly incorrect here. But I think he mentioned it and said, ‘We have photographs,’ and then the reporter said, ‘Well, can we see them?’ and then it became an all in, ‘Can we see them? We demand these photographs.’ The photographs were then handed over.

**Senator FAULKNER**—How did you get them? Did you get them by email or were they literally handed over as prints?

**Mr McPhedran**—I think they were JPEGed on the email system but, again, there could have been some hard copies passed as well—but I think it was a JPEG situation

**Senator FAULKNER**—On the email system?

**Mr McPhedran**—A lot of our Defence material comes through email.

**Senator FAULKNER**—I gather there are no captions or text attached when that occurs.

**Mr McPhedran**—I believe not. I did not actually see them at the time but I believe that is the case. That has been spelt out here in evidence.

**Senator FAULKNER**—I am just making sure that that is the case as they go to the gallery.

**Mr McPhedran**—That is my understanding.

**Senator FAULKNER**—This is something which the gallery’s submission does not canvass.

**Mr McPhedran**—No.

**Senator FAULKNER**—I am not being critical in that regard at all—

**Mr McPhedran**—It is just a physical thing because the JPEGs are dealt with by the photographic staff. The photographic staff are somewhat remote from the editorial staff, and therefore the editorial staff, such as me or others, may not have actually seen the form in which they arrived because the photographers dealt with them and forwarded them on to the papers.

**Senator FAULKNER**—Did Hampton trawl the gallery with hard copy prints of the photographs?

**Mr McPhedran**—No, Mr Hampton was not in the habit of trawling the gallery very much at that particular time or any time really.

**Senator FAULKNER**—And when these photographs were sent to you via the JPEG system, can you say if there was any spin attached to them by the government and, if so, what it was? Can you or any of the other witnesses say that?

**Mr Barker**—I was not involved with the photographs. My first knowledge of a photograph was seeing it on the *Australian* with the claim that this was the children being thrown overboard. It was a very fuzzy photograph, and my first reaction to seeing them was, 'Well, this photograph really does not show anything at all.' I do not know whether the government or anybody else put any spin on them at all, but the first photographs, if I recall them, were rather closely cropped and showed very little and were very unfocused photographs.

**Senator FAULKNER**—Do you think it is fair for me to say to you that the gallery seemed to swallow these photographs hook, line and sinker?

**Mr Barker**—Some of them did, yes.

**Senator FAULKNER**—Do you feel like dills?

**Senator FERGUSON**—That will not be reported, Senator!

**Senator FAULKNER**—I am serious. How do you feel about it?

**Mr Barker**—My own view would be that the first report in the *Australian* made the *Australian* look fairly silly.

**Senator FAULKNER**—The front page story?

**Mr Barker**—Yes, in the way the matter ultimately played out, because there seemed to be a fairly uncritical acceptance that they were what they were said to be.

**Senator FAULKNER**—I know Senator Collins wants to ask you about that, so I will not.

**Mr McPhedran**—How we feel is reflected in our submission.

**Senator FAULKNER**—I understand that.

**Senator BRANDIS**—I wanted to ask something following on from one of your questions. May I do that?

**Senator FAULKNER**—If you want to interrupt me, that is fine. You know I am much more generous than other people.

**Senator BRANDIS**—I know there is a very high degree of artificiality in trying to reconstruct what may have happened, to trace through the likely news coverage of what might have happened and to trace through, and further remove from reality, the political consequences of that in a highly mobile, electoral campaign environment, which is essentially what you are being asked to do by Senator Faulkner. However, let us assume that this exercise is not—

**Senator FAULKNER**—That was a commentary, as opposed to a question.

**Senator BRANDIS**—totally useless, and one can offer observations about that.

**CHAIR**—I think they are being asked as professional journalists to make a professional judgment.

**Senator BRANDIS**—Was media access to these events to the north-west of Australia as extensive as you would have wished it to be? Had there been television or news coverage of the event on 24 October, when a child was thrown into the sea from the SIEV7 vessel, what effect do you think that would have had in terms of the media treatment of these episodes? In particular, do you consider that the child-throwing incident from SIEV7 would have been a major news story?

**Mr Barker**—Obviously, I think a lot of things would have been major news stories. That would have been one of many, if we had been able to witness the spectrum of events that went on on those ships and the way they were dealt with. I would have thought the whole thing would have been a much more fully and floridly reported exercise. I get quite worried when the media will accept official photographs from a department and print them almost uncritically.

**Senator FAULKNER**—Without captions?

**Mr Barker**—Without anything. That is not just military; I see this often in newspapers.

**Senator FAULKNER**—But the photographs are being misrepresented, aren't they?

**Mr Barker**—Yes, I think they were being misrepresented, but even when—

**Senator FAULKNER**—And no-one can really blame the media for that, can they? At the end of the day, the government misrepresented what these photographs showed, didn't they?

**Mr Barker**—Yes, I accept that. But I also say that, in other circumstances, the media tend to just uncritically accept photographs without knowing whether they are being misrepresented—well, they did not know on this occasion. I have a prejudice in favour of the media sending their own photographers and taking their own pictures.

**Senator BRANDIS**—And had you been able to do so, as you and your colleagues have said you ought to have been able to do, and cover the sequence of events as fully as you would have wished to, the pattern of conduct that this committee has heard so much evidence of—including repeated threats to the wellbeing of children and the incident that we know happened on 24 October, when the child was thrown overboard—would have been a big story, wouldn't it?

**Senator JACINTA COLLINS**—Thrown?

**Mr Barker**—I think there would have been much more detailed reporting of the conduct of both the asylum seekers, or whatever you like to call them—SUNCs, I think you call them—and also the Navy personnel and the way they dealt with the situation. Of course there would.

**Senator BRANDIS**—May I suggest to you that that would have been an even bigger story than the event of 7 October.

**Mr Barker**—I really do not know. It would depend on what—we just do not know what played out there.

**Senator FAULKNER**—But it would not be as big a story as a deliberate misrepresentation and cover-up during an election campaign, would it?

**Mr Barker**—I do not believe so, no. The press likes action and it likes events moving.

**Senator FAULKNER**—It likes a good story.

**Mr Barker**—It likes a good story.

**Senator BRANDIS**—Mr Barker, you do not say there was a deliberate deception and cover-up at this stage, do you, because you have told us you are not prejudging the evidence?

**Senator JACINTA COLLINS**—Oh, for goodness sake, Senator Brandis!

**Mr Barker**—No. My whole experience right through this period was that we were given a story and it was very difficult to check it. One is left with the strong impression that there has been a cover-up and one has been seriously misled.

**Senator FERGUSON**—So you are just as disappointed that you were not able to report accurately and timely on SIEV5, SIEV6, SIEV7, SIEV8 and all the other incidents that happened during the election campaign too—just as disappointed?

**Mr Barker**—Yes.

**Mr Dobell**—I think you have both put your finger on a strange element in the logic of the whole thing. We were told this was a policy to police Australia's borders, that this was a policy to deter asylum seekers setting out, but we were given no access to actually report the policing action or the deterrent effect.

**Senator FERGUSON**—Senator Faulkner is trying to suggest that misinformation was given in order to highlight one particular incident which was to the advantage of the government. SIEV5, SIEV6, SIEV7 and SIEV8—

**Senator FAULKNER**—I was actually talking about a cover-up.

**Senator FERGUSON**—Surely, if the government had wanted to use that information for electoral purposes, it would have read all of that information out as well.

**Mr Dobell**—As I say, Senator, with regard to the logic of the declared policy which was a policing action and a deterrent action—and the deterrent part as I remember was very much highlighted—one would have thought that one of the easiest ways to get the message out would have been to give domestic and international media access to get the story out in the most vivid fashion, as you suggest.

**Senator FERGUSON**—But they wanted to use it for electoral purposes.

**Mr McPhedran**—I think your question is a valid one and I think that is one that should be asked of the officials and ministers involved.

**Senator FERGUSON**—We have asked that repeatedly.

**Mr McPhedran**—Why wasn't that material made public like the 7 October incident? That is a very valid question.

**Senator FERGUSON**—We have been asking.

**Senator BRANDIS**—It follows from what you say, Mr Dobell and Mr McPhedran, that in fact to the extent to which the government or individuals within the government might be accused of having a political agenda, the policy did not serve that political agenda because what you call a cultural secrecy concealed events which, had they been publicly known at the time, would have served the government's alleged political agenda very well.

**CHAIR**—You have asked and answered.

**Mr Barker**—That depends.

**Senator BRANDIS**—Do you agree with that proposition?

**CHAIR**—That was asked and answered.

**Senator BRANDIS**—It seems to follow from what you just said.

**Mr Barker**—No, because it would depend on what in fact happened in all of this; we just do not know.

**Senator BRANDIS**—If the evidence was, as we now know it to have been from the evidence that has been brought out before this committee—

**Senator JACINTA COLLINS**—The evidence you have misrepresented.

**CHAIR**—Order!

**Senator MASON**—I think we all agree that there was a pattern of conduct.

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**CHAIR**—Order! Senator Faulkner had the call. He deferred to you, Senator Brandis.

**Senator BRANDIS**—Yes, I have finished.

**CHAIR**—Back to you, Senator Faulkner, and then I will go to Senator Collins.

**Senator FAULKNER**—You are right. I do not think I should have allowed myself to be so generous to Senator Brandis.

**CHAIR**—I am just a generous person. Please go on.

**Senator FAULKNER**—It is a weakness we both have, Mr Chairman. I will just ask you for a comment on this final issue. I do not know if you are aware of evidence that we extracted from Mr Humphreys about some of the background to the PACC involvement in the development of the Defence approach. He gave evidence to the committee that they had ministerial instructions not to humanise or personalise the asylum seekers. I think one or two of you may have made some comment on that evidence and that is why I ask you. I would like you to appreciate that I do not ask you this on behalf of the gallery; I can really only ask you this question as individual journalists: how do you react to that level of incident and media management?

**Mr Barker**—I was aware of that evidence. I heard it and I have written on it. I found it one of the more disturbing pieces of evidence to come out. I gather that evidence has not been challenged at this stage. When I heard that, it just offended my whole notion of the way human beings ought to be treated. I do not want to get into a philosophical discussion with Senator Mason now, but my best answer to what you ask me is to read the column I wrote last Monday week.

**Senator FAULKNER**—I am interested in understanding: is this a different type of media spin?

**Mr Barker**—It certainly was unique. I had never heard of anybody ordering military photographers, ‘Photograph only the heroic deeds of our boys and for goodness sake do not photograph these refugees in any way that will humanise or personalise.’ That seemed to me to be a new level of media management. It is alarming.

**Senator FAULKNER**—Thank you. Could I ask Mr Dobell or Mr McPhedran whether they see this as a different form of censorship—or cover-up, if you like. You may not care to comment on it.

**Mr McPhedran**—I do not know that it is different. I think it is disturbing when they ban the media from attending an event or reporting on something, when they bar free access by the free press and have only their own photographers photographing events or only their own system censoring the images that have been picked up by Navy sailors or whatever. Whether it is new or not is a moot point.

**Mr Dobell**—I come back to the point I began with. We were told that we could not cover, for operational reasons, what was happening on the *Tampa* and later events. I can see no operational reasons why we should not have been able to cover that very important event, and the events

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that followed, fully. That is why I suggest to the committee that the military must be responsible for reporting and allowing reporting of operational issues—and that is what this was.

**Senator JACINTA COLLINS**—Gentlemen, your earlier verbal comments and your submission cast Defence and the bureaucracy into a particular framework, and I will go through a few of those. This relates in part to your earlier discussion with Senator Brandis and with Senator Faulkner. You have indicated that Defence was working in a flawed framework—and perhaps that could apply to the cultural component of your comments—Defence not being innocent victims, and the bureaucracy being blatantly manipulated. I think that was in the submission. To what extent do some of those criticisms also relate to the media and the framework in which the media was operating during that period? I think it is implicit in some of your comments and in your submission, but you are more explicit in your criticisms of the bureaucracy as opposed to the media.

**Mr Barker**—I think we are probably open to criticism but there were times when too much was accepted too uncritically. This comes about partly because of the attempted manipulation by the government and partly because of the rush with which newspapers are put together and printed every day. Journalists themselves are flawed and imperfect people. I think at times we do go for the quick ‘good story’ without pausing long enough to think critically enough about what we might do. There is enough blame to go around in all this, but I do think on these particular issues the primary reason for what went wrong was the campaign, which was sustained right through the period, to hide and misinform.

**Senator JACINTA COLLINS**—I do not think there is any question about that point.

**Mr McPhedran**—In our defence, though, I would say that reporters were asking questions—hard questions—about what they were being presented with on a daily basis, every hour. Short of getting a helicopter and rappelling onto the ship and having a look, we were confronted with a brick wall. At the end of the day, there is only a certain amount that a reporter, with the pressures of deadlines that Geoff has talked about, can do. I think the bases were pretty well covered and, short of writing a story saying, ‘The government is lying’ without any evidence, we were hamstrung.

**Senator JACINTA COLLINS**—I understand that element of it, but there is a small component of this situation that pertains to the media that I want to explore further—and I certainly do not want you to take it as an indication that anyone believes the blame lies at your door. One of the problems for the media which you mentioned earlier was being able to get a little further into a story. You were hitting a brick wall and you were not able to get a little further into this story because of that. However, when you encounter that, some of the reporting actually reinforces the flawed system. I want to take you to a particular example because I think it highlights that perhaps this lesson was not learnt from the kids overboard incident. I am referring to a page one headline in the *Australian* which stated, ‘Boatpeople tried to kill child: Libs’. Senator Brandis accused you of prejudging. This incident is a classic example of prejudging, because the incident that occurred there was the reported strangulation case. When we finally got beyond the lack of any primary evidence and finally saw witness statements, it was pretty clear that it was not a case of strangulation—

**Senator BRANDIS**—It was not clear, Senator Collins.

**Senator JACINTA COLLINS**—It was very clear, Senator Brandis.

**Senator BRANDIS**—At the very best for your case, there was one primary document that supported it and one primary document that left it in doubt.

**Senator JACINTA COLLINS**—I am not going to debate this here, Senator Brandis, you can have this debate at another time. This is my chance to ask questions—

**Senator BRANDIS**—You are just making false claims.

**Senator JACINTA COLLINS**—No, I am not.

**CHAIR**—Order!

**Senator BRANDIS**—You are making false claims.

**Senator JACINTA COLLINS**—Rear Admiral Smith made that comment in evidence. You might not like it, but that is what he did.

**Senator BRANDIS**—On a point of order, Senator Collins is making false claims.

**CHAIR**—Order! I think Senator Collins has made a statement which, in the way in which we have dealt with all of this, is justifiable.

**Senator BRANDIS**—I would argue that.

**CHAIR**—It may well be arguable—

**Senator JACINTA COLLINS**—You go and argue with Smith.

**CHAIR**—but if we were to apply that standard to everything that every senator says, we would not get very far at all.

**Senator BRANDIS**—Well, we haven't really.

**CHAIR**—Indeed, but we would have been even further behind.

**Senator JACINTA COLLINS**—Mr McPhedran, do you accept the proposition that some media behaviour, in reporting simply on sensationalist reports rather than, to use your own words, to get into a story properly, reinforces the government's very behaviour here?

**Mr McPhedran**—That is a difficult question. I will have to think about that; I could get myself into a lot of trouble here on a whole lot of levels. The desire to get a story and to get a result is a fairly heavy pressure and if you were not working in the game, you would not understand the daily pressure that that brings to bear. I think you are, I guess, fundamentally accusing us of playing into the government's hands on an issue.

**Senator JACINTA COLLINS**—No, I am not accusing you of anything. I am reflecting on what behaviour has occurred and looking at what potential solutions could avoid this problem in the future. I am particularly concerned about this case because, when we had a press gallery submission and, given all that has transpired, we still had a front-page headline in the *Australian* on 26 March reporting claims for which there was no primary evidence at the time and one week later when the primary evidence arrived, Rear Admiral Smith tells us that that primary evidence indicates that the event in all likelihood did not occur.

**Mr McPhedran**—I would not be able to comment on any of that because I do not know the issue. However, if you are saying to me that the media was perhaps played a bit during this affair because of the need to get a story, perhaps that is true, but we have to rely in good faith on what we are being told by governments and people of all persuasions. I think that is the basis on which this material was written.

**Mr Barker**—Can I just say that I do not know anything about that issue, but if the general point is that periodically people in public life make sensational statements about public affairs—and as I said, I am not commenting on this at all—the press will report them just because they are like that, and they will report them somewhat uncritically. However, one of the problems is that if the person is a person of some authority in his profession, pressure group or political party or wherever they come from, the press cannot ignore it either. Even if something turns up on your desk late in the day, and ‘so-and-so has said this so we had better report him,’ the press is not in the business of censoring out views that they might feel are a bit suss here and there.

**Senator JACINTA COLLINS**—No, but the suggestion in this case—

**Mr Barker**—I don’t know that case.

**Senator JACINTA COLLINS**—is that, yes, you put the rider in as ‘Libs’—as a claim of the Libs—but it was still run as a lead headline on the front page of the *Australian* that day.

**Mr Barker**—You should ask the editor of the *Australian* about that.

**Senator JACINTA COLLINS**—Perhaps we should. But the general point is that the media had already indicated in its submission, I think at that point, that in your experience the government had been peddling misinformation on this issue and, then, uncritically it was reported again. That is my general point.

**Mr Dobell**—We have talked about the Defence culture, but if we start talking about the culture of the way the press gallery interacts with you people, we could be here for weeks.

**Senator JACINTA COLLINS**—That is true.

**Mr Dobell**—There is a very old wire service line that says, ‘Well, it was true at the moment I filed it’—that is, the wire service culture, the journalist culture, is that you file it. You do not sit on it; you don’t judge it; you file it. If subsequent events prove that it is wrong, you file again.

**Senator BRANDIS**—Presumably your editorial judgment is influenced by the existence or non-existence of source material to support an allegation.

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**Mr Dobell**—And the person who is speaking, too.

**Senator BRANDIS**—In the particular case that Senator Collins has referred to about me reading to a witness from a document written in the Department of Defence and inviting the witness to comment on it, is the existence of a source within the defence department who reported that as a matter of fact a relevant editorial consideration?

**Mr Dobell**—I would have thought so.

**Senator BRANDIS**—Thank you.

**CHAIR**—The fact that the headline said ‘ Libs’ probably led me to believe, in the context of all of this, that it was a lie in any case.

**Senator JACINTA COLLINS**—The principal issue here is the point that Mr McPhedran made earlier about the hampering of the media’s ability to get a little further into a story. We all know that, in the SIEV incidents presented by the government in this case, the media were hampered in their reporting to us. They were constrained on precisely what context they could report, and when we had the full context on those stories we found a very different picture, which was that the strangulation did not occur.

**Senator BRANDIS**—Mr Chairman, there has to be a point at which you, with respect, ought to exercise a bit of control over unfair questions.

**Senator JACINTA COLLINS**—Don’t be a hypocrite, Senator Brandis.

**Senator BRANDIS**—When one of the source documents plainly verified the secondary document which was quoted to the witness—the source document was not available at the time and the second source document was ambivalent about the matter. When both source documents—the clear one and the ambivalent one—were available at the soonest opportunity, they were put to the relevant witnesses and those witnesses were invited to comment on them. Mr Chairman, there is such a thing as a question based on a false and misleading premise—

**Senator JACINTA COLLINS**—Which are most of yours.

**Senator BRANDIS**—and I submit to you that you ought to exercise your authority to rule such questions out of order.

**Senator JACINTA COLLINS**—Oh, for goodness’ sake!

**CHAIR**—Yes, and I do. Please proceed, Senator Collins.

**Senator JACINTA COLLINS**—Mr Barker, the final issue that I want to cover is in relation to your report this morning. I raise this matter because of the comments that you made earlier about there being, perhaps, a new and slightly different environment under the new minister. Can you explain to us why, in your view, it took two months for that report to make public the concerns that you were commenting on?

**Mr Barker**—Because I received a copy of Senator Hill's letter only a couple of days ago, and I was not aware of it until then. On seeing it, I thought it was interesting and that it reflected, in a way, the more open approach and willingness to offer information that we are now seeing from Senator Hill's office. I received a copy of that letter yesterday or the day before, and the timing of it was purely when it came into my hands.

**Senator JACINTA COLLINS**—I am not suggesting any delay at your end. I am asking you whether you are critical of the fact that these concerns have been on the public record now for quite some time. The letter that you got was a response to a letter that Mr Crean wrote to the minister, but Mr Kevin has been on the public record, his submission has been on the public record and it has been a matter of commentary within this committee for months now. Why do you think your report occurred on the day that Mr Kevin is appearing before this committee?

**Mr Barker**—Because I received the document just a couple of days ago.

**Senator JACINTA COLLINS**—No. I know about your end, but I am asking why this information has become available at this time from this minister.

**Mr Barker**—I cannot speak for the minister. Actually, I was not clear from looking at the letter about when it was dated—my copy of the letter anyway. That might be something that you would be better to ask Mr Kevin about. If I might just say, that incident is a very disturbing one—300-odd people drowning—but there has been a lot of comment in this committee about it and Mr Kevin has written fairly widely about it. It is not something that has been entirely ignored. Why this—

**Senator JACINTA COLLINS**—The answers were not that complex though, were they? They should not have taken two months for the minister to dig up.

**Mr Barker**—That is a question for Senator Hill. I just do not know.

**Senator JACINTA COLLINS**—Precisely.

**Mr Barker**—I just do not know.

**Senator JACINTA COLLINS**—Get him to come.

**Mr Barker**—I just do not know.

**CHAIR**—Are we all done? I want to break for morning tea and move to the next witness.

**Senator FERGUSON**—I have one question. This is a very brief question and it might not even warrant an answer. I notice that we have had a lot of witnesses before this inquiry—and there seems to be dissipating interest from the media and the general public, I might say—who went unreported over the last couple of days. I just wonder whether you can assure us that the appearance of the press gallery will get at least some coverage tomorrow in the newspapers.

**Mr Barker**—I would not have a clue, frankly.

**Mr McPhedran**—I could not possibly comment on that.

**CHAIR**—I think we are done at our end. I thank you very much for your attendance this morning. We will shortly go to morning tea. I have got an announcement to make though: later on in our program today we had provided for teleconference evidence to be given from the asylum seeker camp on Manus Island. We now have a communication from that camp which, without going into it, means that that evidence will not be able to be taken today and the committee will have to consider the correspondence, which means that we will not be hearing from the Manus Island Asylum Seeker Camp Committee at 1.15 p.m. As a consequence, I have spoken to the secretariat. Over morning tea we will try to confirm a reorganisation of the program for the day.

There is a view expressed by many of the committee—and that includes me—that, if we can go to the lunch for the Prime Minister of Japan without impeding any of the other witnesses or inconveniencing the structure of this committee, then we should. But let us confer about that over morning tea. We are now adjourned. We will come back at 11.30 a.m. and resume with Mr Kevin.

**Proceedings suspended from 11.18 a.m. to 11.31 a.m.**

**KEVIN, Mr Tony (Private capacity)**

**CHAIR**—I welcome Mr Tony Kevin. I have in front of me a document embargoed until delivery and release by the Senate select committee, and it is headlined ‘An opening statement’. I assume that is yours. Would you like to present it to us?

**Mr Kevin**—Yes. It is quite short, just over 10 minutes. I live in Canberra. I retired from the Department of Foreign Affairs and Trade in 1998 after 30 years of career service. My last postings were as ambassador to Poland and to Cambodia. My previous 13 years of service in Canberra, in the departments of Foreign Affairs and Prime Minister and Cabinet, involved senior level policy advice and policy coordination on foreign affairs, defence and security matters. In Cambodia, I worked closely with members of the Australian Defence Force who were conducting an Australian defence cooperation program. I had the pleasure on one occasion of sailing for some hours off the Cambodian coast as a guest of the Australian patrol boat HMAS *Dubbo*, which was on a goodwill visit to Cambodia. I greatly admire the professionalism, camaraderie and integrity of the Navy and of the Australian Defence Force as a whole. My testimony today is not intended to discredit or dishonour them.

Something went seriously wrong in the information chain in Australia’s border protection system during October 2001 that had terrible human life consequences. A boat left Bandar Lampung in southern Sumatra on 18 or 19 October, bound for Christmas Island, carrying over 400 people, more than double the average load of nine suspected illegal entry vessels—SIEV vessels—of similar size that were intercepted by the Navy between September and December. This boat was grotesquely overloaded, under armed duress and probably also sabotaged. It sank on 19 October, drowning 353 people and leaving only 44 survivors. It is important to note that the exact location of the sinking is in dispute. The original news report was that it sank 80 kilometres south of Java, out in the Indian Ocean. It is now being claimed officially that it sank in the Sunda Strait, between Java and Sumatra. Pending the production of clear evidence, I believe the original report is more likely to be true. I will be pleased to set out my reasons for this belief, and I hope I will be able to do so.

Coastwatch Australia knew from an intelligence source when this boat had left, where from, its likely speed and that it was heading for Christmas Island. This information was not given to Operation Relex or the Navy or the RAAF or Jane Halton’s People Smuggling Task Force. Coastwatch, which comes under Customs and is an integral part of Australia’s border protection system, did not pass this information on to the sharp end of Australia’s border protection system—that is, the aerial surveillance and naval interception force units belonging to Operation Relex. As a result, the Navy was not told about a grave safety of life at sea situation that was taking place only 150 nautical miles north of the nearest Navy ship, the frigate HMAS *Arunta*. Had *Arunta* known, it could have had its onboard helicopter at the site within 30 minutes. *Arunta* itself could have been there within four or five hours fast steaming. But *Arunta* was not told, Operation Relex was not told, Jane Halton’s PST was not told. Eventually, Coastwatch told the Australian search and rescue authority, Rescue Coordination Centre, RCC Australia.

The Navy and Operation Relex finally found out on Monday, 22 October, three days after the boat had sunk. They found out from an overdue notice issued by the Rescue Coordination

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Centre. The RCC issued this boat-overdue notice after Coastwatch advised it that the boat had failed to appear at Christmas Island on its estimated arrival date. It is not clear when Coastwatch advised RCC or when RCC issued the overdue notice. The RCC notice was only sent to its Indonesian search and rescue counterpart, BASARNAS. Oddly, the notice was never made public or circulated to all shipping, but the *Australian's* correspondent in Jakarta, Don Greenlees, got to hear of the overdue notice. It was reported in one of his 24 October stories on the sinking.

When I asked both Coastwatch and the Australian Maritime Safety Authority a few weeks ago for further information about this overdue notice, they refused to tell me anything on the matter. Why was information about a SIEV departure, which Coastwatch clearly had, not given to Operation Relex and the Navy until far too late to save lives? How can such an important piece of information have been shunted off into a siding for up to three days at a time when the Australian government was giving top priority to its tough new border protection exercise, Operation Relex?

An argument of administrative error is not credible. The ADF, Coastwatch, our intelligence source agencies and the RCC are all efficient organisations. The first three were working together on a top priority, whole-of-government border protection operation. They would not have mishandled by accident the information that came into the Australian system about this boat. If this reporting was taken out of the information chain, this was done deliberately. Assuming the original intelligence report on this boat's departure had said that this grossly overloaded boat would soon founder and would not reach Christmas Island, there may well have been a view in Canberra, 'Well, we don't have to worry about that one.'

Somewhere along the line—more probably at a political level because I cannot see that such a serious decision would have been taken by senior officials without direction from ministers or their senior policy advisers—a person or persons may have read this report and decided that it should not be passed in to the official PST and Operation Relex information chain. Had PST and Operation Relex had this information, they would have been duty-bound to investigate a known or suspected SOLAS, safety of life at sea, emergency. This may have been seen as a complication and a distraction from the Navy's priority task at the time of intercepting and repelling asylum seeker boats that were reaching Australia's northern waters. 'This one is not our problem because it clearly is not going to arrive. Don't tell the Navy because, if we do, they will have to honour their safety of life at sea obligation.'

That is the central thrust of my testimony today. It is obviously a very serious matter. I submit that all of the Australian border protection system, not just the Navy, has a safety of life at sea obligation. With respect, I believe that obligation also now falls on this committee under its term of reference (c). Mark Metherell in the *Sydney Morning Herald* of 3 September 2001 quoted Prime Minister Howard as saying:

'We don't in this nation sink boats.'

Mr Howard assured that Australia's interception operation would be conducted lawfully and decently, yet on 19 October, in the middle of an intensive Australian border protection exercise, only a few hours steaming time away from HMAS *Arunta*, an asylum seeker boat sank in the most terrible way, drowning 353 men, women and children. I hope that senators might have had a chance to read the heart-rending accounts of survivors that were attached to my original

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submission. There are key issues at stake here both of human rights and justice and of the Australian Defence Force's integrity that need to be fearlessly investigated. The death of 353 people on their way to Australia, in my view, transcends normal restrictions about the privacy and deniability of all intelligence matters.

In any case, the questions that I ask today do not go to the sources of Australian intelligence about this boat. The important thing is that such information was in Canberra already and that it was mishandled in Canberra, with callous disregard for human life and with tragic consequences. There is clear public knowledge now from Australian official sources that there was some Australian official foreknowledge of the circumstances that led to the deaths of these 353 human beings. This cries out for explanation and accountability. Also, to leave the public record as it now stands would cast a serious slur on the honour and competence of our Navy and ADF generally, a slur that I do not believe should be laid at their door.

I will be pleased to offer detailed testimony this morning which is mostly based on previous testimony offered by others at this committee and also on a letter from the Minister for Defence, Senator Hill, to the Leader of the Opposition, Simon Crean, and which Mr Crean sent on to me. I would like to table this letter at the end of this opening statement.

My testimony will support the following propositions: (1) *Arunta* was 150 nautical miles away at the time this boat sank. *Arunta* was preparing for, or engaged in, the interception of SIEV6. *Arunta* did not know about the boat that was travelling in grave danger of sinking or had sunk already. Had *Arunta* known, its safety of life at sea obligation would have taken precedence over its interception mission. It would have immediately taken action to assist the threatened vessel or to try to rescue survivors during the 22 hours that they were in the water. (2) All the Navy's SIEV interceptions—and we now know there were 12 of them between September and December—relied on a three-stage process: first, a timely and accurate intelligence report giving place and time of embarkation, intended destination and number of passengers; second, aerial surveillance up to as close as 30 miles from the coast of Indonesia in the window of sea where the boat might first appear; and, third, the Navy's interception in the contiguous zone adjacent to Ashmore Reef or Christmas Island. For all this to work, information about SIEVs needed to flow efficiently through the information and command chain in Canberra. (3) An efficient system of Australian intelligence gathering was in place. (4) The second and third phases of Operation Relex had very good success rates. Only one out of 12 intercepted SIEVs arrived unexpectedly, and this was SIEV2 early in the operation on 10 September. By mid-October the border protection system was already highly reliable. (5) The testimony in this committee and Senator Hill's letter show that data on the vessel that sank was taken out of the information chain in Canberra and handled very differently from those 12 other SIEVs. We need to find out why. I now table Senator Hill's letter, which I regard as a public document. Mr Chairman, I believe you already have that letter.

**CHAIR**—I have a copy of it, yes.

**Mr Kevin**—I also table a set of illustrative maps and notes that may assist senators in their further investigations. I believe you have that information also. This completes my opening statement, the text of which I will be pleased to make public if the committee so permits. Thank you.

**CHAIR**—The letter is from Simon Crean to you, Mr Kevin, so it is your property. Is there a view in the committee about releasing this letter?

**Senator BRANDIS**—I do not see any difficulty.

**CHAIR**—I do not see any difficulty either. Okay, that is done. I take it that the maps are associated with your submission, Mr Kevin. I do not see any difficulty in releasing them in that context, so that is done as well. Thank you for your comments.

**Senator FAULKNER**—Mr Kevin, I have a question arising from paragraph 4 of your opening statement that this boat was grotesquely overloaded, under armed duress, and probably also sabotaged. I think it is unarguable that it was grotesquely overloaded, but could you explain to the committee in a little more detail why you described the boat as under armed duress and probably sabotaged?

**Mr Kevin**—I would be glad to. I am very grateful to Senator Brandis for having assisted in the publication of all this information about these 12 boats, and the matrix that Rear Admiral Smith presented is really quite invaluable in terms of public information and transparency. Most of these boats were about the same size; a few were smaller. When you look at the numbers that were loaded—and I think it is important to read out the numbers—you see the point that I am making about it being grotesquely overloaded. I will read the numbers out quickly: SIEV1, 228; SIEV2, 132; SIEV3, 129; SIEV4, 223; SIEV5, 238; SIEV6, 227—SIEV7 seems to be a smaller one, so I will not include that—SIEV9, 152; SIEV10, 164; and SIEV12, 162. All of these boats were roughly 19- to 20-metre fishing boats and they all carried numbers of people of that order. Honourable senators have seen photographs of how overcrowded these boats were. Just imagine a boat like that with about 420 people going on board. I rely for my information about the circumstances of loading on essentially two very high quality reporters.

**Senator BRANDIS**—Mr Kevin, before you go on, just to clarify my understanding, are you saying that our knowledge of the size of this vessel is a fair inference from the fact that the other vessels we know about were 19 to 20 metres, so you invite us to infer that it was probably the same size?

**Mr Kevin**—No. I have more information on that, Senator Brandis.

**Senator BRANDIS**—I am sorry.

**Mr Kevin**—One of the reports I have—but I may not be able to lay my hands on it immediately—says that it was a 19- or 20-metre vessel. I will get that information for you later. The story by Don Greenlees on 24 October went into great detail on how the boat was loading. The story by Ginny Stein on the ABC went into even more detail. She said on *PM* on 24 October:

People are saying that in the middle of the night they were taken down to a port, they can't say exactly where, they weren't aware of it, it was dark, they could not see the sign. But from there they were put on small boats and taken out to the ship which was moored some way out to sea. When they got there, what they saw was a boat that was very, very, low in the water. They realised it was horribly overcrowded and some did not want to get on board, but they were forced at gunpoint to do so.

On land, people also knew about what was happening. There were about 30 police there and they said that they did not want to go on either. At that stage, police it's claimed, beat them and forced them at gunpoint to get on the boats, and

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there police were in those boats where they had about 25 people at the time being taken out, and they were forced to get on the vessel.

She went on:

It was the same story that was told by virtually everyone there today that we spoke to. They had the same story—

that the police:

had guns, they were preventing anyone leaving. They forced them on to the boat.

**Senator FAULKNER**—And that is why you used the terminology ‘under armed duress’?

**Mr Kevin**—Correct. A similar story was told by Don Greenlees.

**Senator FAULKNER**—By the way, I was making clear that it seems to me to be unarguable that it was grotesquely overloaded. I appreciate you providing that background. You also made the statement that the boat was also ‘probably sabotaged’. Could you indicate to the committee why you make that point?

**Mr Kevin**—That judgment comes from the whole improbable list of coincidences associated with the sailing, sinking and subsequent rescue and return to Jakarta of the 44 survivors from this boat. One reaches a point where the string of coincidences is simply so long that it cannot be attributed to coincidence any longer.

As the boat was leaving, there were reports of a long crack in the hull requiring bailing almost from the start of the voyage. The engine failed after 30 hours of travel. That is fairly unusual because, even though these boats were at the end of their useful life, the engines were generally reliable enough to get them to Christmas Island or Ashmore Reef. Being so grossly overloaded, the boat overturned very quickly once it lost way, and that in itself indicates that the overloading was a kind of a strategy of sabotage, quite possibly. It broke up into planks almost immediately after it foundered, suggesting that the hull may have been weakened, and that ties in with the long crack in the hull.

Then we have this mysterious story of boats in the night, with searchlights, that witnessed the scene but did not try to rescue survivors. Then we have the miraculous arrival the next day of one or two fishing boats that say they saw luggage floating in the water and came out to look in an area where they do not normally fish. Then we have all the survivors being picked up by one fishing boat which turns out to be from Jakarta, 300 kilometres away—down here in the Indian Ocean, 300 kilometres away. It has not yet started to fish. It does not have any fish in the hold. It immediately drops everything and proceeds to take them back to Jakarta.

**Senator FERGUSON**—The boat came from Jakarta; therefore you are assuming that it was in the Indian Ocean, not the Sunda Strait.

**Mr Kevin**—Yes.

**Senator FERGUSON**—So you are making that assumption yourself, that it is not the Sunda Strait?

**Mr Kevin**—No, I am not making that assumption. The original report by Don Greenlees is that the boat sank 80 kilometres from land, into the Indian Ocean.

**Senator FERGUSON**—Is that a paper report?

**Mr Kevin**—Yes. And I would be happy to elaborate on that, but perhaps I could finish my reply to Senator Faulkner.

**Senator FERGUSON**—It is just that you said the Indian Ocean—because the official report is that it sunk in the Sunda Strait, that is all.

**Mr Kevin**—Yes. As I have said in my opening statement, Senator, that is an important point at issue.

**Senator FERGUSON**—Yes, I understand that.

**Mr Kevin**—As I say, the passengers were taken back 300 kilometres to Jakarta on this fishing boat that had not yet started to fish. They were transferred to another boat halfway along and they were met by Indonesian immigration police on arrival at Jakarta. All of that to me sounds an improbable chain of coincidence and it suggests that the sinking may have been a managed event. But that is not central to my testimony today. The central point about my testimony today is the whole issue of how information came down to Australia and how, once it got to Australia, it apparently was not handled in the normal Operation Relex chain of information and command, thereby creating a safety of life at sea situation that could have been prevented.

**Senator FAULKNER**—No, but you did make the statement in your opening address that the boat was probably also sabotaged. I was keen to understand why you made it. Is it those factors that you have just outlined to the committee that draw you to that conclusion?

**Mr Kevin**—Yes, those factors—primarily, the gross overloading. That strikes me as not sensible commercial conduct on the part of a people smuggler who wanted to remain in business. It is not very good for business to have 353 people drown. The substantial presence of uniformed personnel, whether police or military, suggests to me that the people smuggler's operation may have been taken over by a stronger force. And I am not saying here the Indonesian government. Indonesia is a very lightly governed country and it is entirely conceivable that some kind of operation may have been developed that the Indonesian government knew nothing about.

**Senator FERGUSON**—Who are you suggesting sabotaged it?

**Mr Kevin**—I am not suggesting anything at this point. I am just setting out the known facts about the departure, the sinking and the rescue and saying it creates a very great puzzle. And that therefore throws light on the importance of establishing what happened to the information about this boat when it got to Canberra.

**Senator FERGUSON**—It is just that all the other evidence of sabotage that we have had has been sabotage by the unauthorised arrivals.

**Mr Kevin**—I am sorry, I did not quite hear that.

**Senator FERGUSON**—All the other evidence that we have heard previously is that any sabotage that has occurred has been done by the people attempting to come to Australia.

**Mr Kevin**—Are you talking about after interception by Operation Relex forces?

**Senator FERGUSON**—Not always after interception, either, I don't think.

**Mr Kevin**—I understood from Rear Admiral Smith's summary of events that most of these things happened after interception.

**Senator FERGUSON**—Most of them; that is true.

**Senator FAULKNER**—But you have not drawn any conclusions about who or what might have been responsible for this probable sabotage?

**Mr Kevin**—Senator, I think we are dealing with a very complex and serious mystery here. The way into the truth, I suspect, will be quite long and tortuous. I do not think, in the limited time available for this committee hearing, that it is enormously useful for me to speculate further on what might have been the reasons for the sabotage or the agencies involved. Once the committee, as I hope it will, begins to address the question of what was in the intelligence report that came down to Canberra and why that information was not passed to the Navy, I think truth will flow from that process. I think the implications of this tragedy are so enormous that it is important that that be done.

**Senator FAULKNER**—I think these events are, as you say, extraordinarily tragic events. I am exploring the issue of probable sabotage because I think it is of interest to the committee. I think you just have to accept that perhaps the perspective on this side of the table as to the priority of issues is sometimes different from that of the witnesses. That is often the case here. I am concerned to hear what you have said about sabotage and that is why I am exploring it. But if there are any other concerns that you have or light you can throw onto this, I would appreciate your doing so. If there is no other information you have available to you that you can share with the committee, I am happy to move on to other issues.

**Mr Kevin**—Senator, there is something I would like to say that might be relevant to what you have just said. Without making any allegations or accusations, I want to say that the context and the timing of this sinking were enormously useful for the Australian border protection operation. Consider the chronology: until this time, there had been a number of SIEVs come down, six in all. *Arunta* intercepted SIEV6 on the 19th. In all of those cases, prior to this event which took place on 19 October, the strategy of repelling asylum seeker boats had not succeeded. Asylum seeker boats basically were not prepared to turn around and sail back to Indonesia. We were faced, as has been set out by official witnesses, with safety of life at sea situations in which, usually, the only way to deal with them was to take the people on board and transfer them to *Manoora* or *Tobruk*.

After this time, it became possible to escort or tow boats back to Indonesia—something that had not been politically possible before 19 October. Clearly, there had been considerable Indonesian resistance to that at the political level, especially at the level of the parliament, but

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this terrible tragedy perhaps made it easier to enable the government to simply lock the people in the hold and, without telling the people where they were going, tow them back to Indonesia. So it made the operation of Operation Relex a lot easier. It also allowed the Australian diplomatic initiative of a joint conference with Indonesia on people smuggling to be launched. It was under the shock of this incident that the Indonesian foreign minister announced two days later that he would host with Australia a people smuggling conference.

Finally, of course, the tragedy sent an enormously powerful signal of deterrence to both the people smugglers and the paying passengers—that travelling to Australia on these boats was no longer safe. It is interesting that only a few weeks beforehand Mr Downer was saying that travelling on these boats to Christmas Island or Ashmore Reef was pretty hazard free. The hazards may have begun, of course, after the interception by the Australian Navy, but until that point they were hazard free, yet after this they were clearly no longer hazard free.

The government has recently been congratulating itself on how successful it has been in halting the flow of people smuggling, and it mentions a number of reasons for that, but I would suggest perhaps the most important reason was this terrible tragedy, which really slowed things down. Of course, it took a week or so to take effect, but I think that tragedy continues to reverberate around the world.

**Senator FAULKNER**—I want to be clear on this. You are not suggesting any direct or indirect Australian involvement, or possible Australian involvement, in what you describe as the probable sabotage, are you?

**Mr Kevin**—I am not going to go beyond what I have said in my submissions on that. I have said that it is conceivable and I have said that the possibility has to be taken into account, but clearly one has to begin to get some hard evidence.

**Senator FAULKNER**—But you do not have any hard evidence.

**Mr Kevin**—The route into that sort of evidence, I believe, is finding out why this SIEV boat's embarkation for Australia was not normally handled in the Australian information and command system of Operation Relex. Once we know why that happened we will have a basis on which to investigate further these very serious matters.

**Senator FAULKNER**—Yes, but you do not have any evidence of this, do you? You do not have any evidence of any possible Australian involvement.

**Mr Kevin**—If I had that kind of evidence, I would be putting it in the hands of the police.

**Senator FAULKNER**—Yes. So you do not have any, do you?

**Mr Kevin**—No.

**Senator FAULKNER**—That is what I was trying to get to.

**Mr Kevin**—Yes.

**Senator FAULKNER**—I am not suggesting that you would not act properly and do as you suggest—put it in the hands of the police—but I wanted to be clear that that is the situation.

**Mr Kevin**—Yes.

**CHAIR**—Wherever the site of the sinking is, it is in Indonesian territorial waters, isn't it?

**Mr Kevin**—Not according to the *Australian* report of 24 October.

**CHAIR**—Are you saying that site in the Indian Ocean is outside Indonesian territorial waters?

**Mr Kevin**—That's right. If you go to map 2, you will see the site of the sinking.

**CHAIR**—Yes.

**Mr Kevin**—It is 80 kilometres from Panaitan Island, which is where I would guess that the boat overnighted, and it is probably about 50 kilometres from the nearest coast of Java—that is 30 miles in old language. The territorial sea extends 12 miles. It is of interest that Rear Admiral Smith said in his testimony that Australian Coastwatch and RAAF Orion surveillance aircraft operated to within 30 miles of the Indonesian coast. Where that boat sank—if the Greenlees report is right, which I believe it is—was both outside Indonesian territorial waters and within range of Australian air surveillance.

**Senator FERGUSON**—How many people besides Greenlees suggest that that is the position where the boat sank?

**Mr Kevin**—That is the only report.

**Senator FERGUSON**—So there is just this one report?

**Mr Kevin**—Yes.

**CHAIR**—I must say that I am confused when I look at these maps, because I am unable to automatically convert kilometres into nautical miles—

**Mr Kevin**—Nor am I.

**CHAIR**—and I need to do that. The close-up map only has a legend in kilometres.

**Mr Kevin**—Yes.

**CHAIR**—Has there been any coronial process in Indonesia about the loss of this life?

**Mr Kevin**—As far as I know, not. The only things that I know have happened are, firstly, a couple of policemen were arrested in Riau, which is up near Singapore, while trying to escape. Secondly, the people smuggler concerned was arrested and charged with documents fraud. That is all that has happened, as far as I know.

**Senator FAULKNER**—In paragraph 2 of the summary of your submission of 4 March 2002, you submit that there is a circumstantial case to be investigated: did any Australian agency or agent act in such a way as to bring about or make more probable the sinking of this boat on 19 October? Since the development of that submission, have you been able to go any further in answering the question that you asked in the submission?

**Mr Kevin**—Yes, I have, Senator. I have been able to rule out certain disturbing possibilities. I have been able, thanks to the evidence in this committee—and I am grateful for it—to rule out in my mind any possibility that an Australian naval boat may have been present at the scene of the sinking. I accept, without qualification and with relief, the information that the nearest Australian Navy vessel was 150 nautical miles away. But in ruling out one difficulty a new one presents itself, because Senator Hill's letter to Mr Crean and testimony by Rear Admiral Smith—which are completely consistent with each other—make clear that something very odd happened to the information that should have been coming in to Operation Relex about this boat and that it would have required a safety of life at sea response. One has to ask: did that happen? If it did, why did it happen? Conspiracy or stuff-up? We say in Australia that 'stuff-up' is usually the right explanation. But this one is more disturbing and I believe it will require on the part of the committee a vigorous examination of witnesses who can give the answers to these questions, which I cannot.

**Senator FAULKNER**—Do you mean Coastwatch and AMSA?

**Mr Kevin**—I would not want to teach the committee to suck eggs, but I think that obviously the players in this are both Coastwatch and Search and Rescue. Also, possibly it would require going to the Australian Federal Police and perhaps going back to some of the previous witnesses.

**Senator BRANDIS**—Senator Faulkner, do you mind if I ask a question?

**Senator FAULKNER**—Not at all.

**Senator BRANDIS**—Mr Kevin, I want you to go back to the answer before last when you said it was a conspiracy or a stuff-up. It is not really a binary choice like that, may I suggest to you, because if it were either a conspiracy or a stuff-up it assumes that something untoward happened. The other possibility, which so far the state of the evidence appears to me to be the overwhelming possibility, is simply this: your conjecture is baseless.

**Mr Kevin**—Sorry, what conjecture, Senator Brandis?

**Senator BRANDIS**—The circumstances referred to in Senator Hill's letter. You have drawn an inference from that and said, 'This is disturbing, it was either a conspiracy or a stuff-up.' But it is not a binary choice. It may be that your conjecture that something untoward happened is simply baseless, that nothing untoward happened. If you can direct us to some evidence to suggest something untoward did happen, then we will listen carefully.

**Mr Kevin**—I would be happy to, Senator. When we look at the whole issue of why this vessel was handled differently to the other 12 SIEVs, we have testimony from Rear Admiral Smith on 4 April—CMI *Hansard*, page 461—where he says:

... the first time that the Navy knew that this vessel had sailed was when we were advised through the search and rescue organisation in Canberra that this vessel may have foundered in the vicinity of Sunda Strait.

On the next day, 5 April—*Hansard*, page 488—he goes on to say:

At no time under the auspices of Operation Relex were we aware of the sailing of that vessel until we were told that it had in fact foundered.

This is the same Rear Admiral Smith who has told us—and I have no reason to doubt his testimony—that, in almost every case of these SIEVs coming down, we knew they were coming and that information was based on intelligence material. Operation Relex knew that and was therefore ready to prepare air surveillance and the Navy to intercept. So I do not think it is conjecture, with respect, to say that there is something very odd here.

**Senator BRANDIS**—Why, because in 12 instances we knew of SIEV vessels through surveillance—

**Mr Kevin**—Eleven out of 12.

**Senator BRANDIS**—And on this occasion we were unaware of it, at least at the same early time in its progress that we became aware of other SIEV vessels. Is that your point?

**Mr Kevin**—My point is that in the normal system these vessels were obviously tracked early so that the Navy could be positioned to intercept them at the right place. If I could go back to some of the things that were said by Admiral Smith on that, he said—

**Senator BRANDIS**—Before you go on to that, on map 3 of the document you have produced, where you identify the point of sinking, that is nowhere near Australian territorial waters.

**Mr Kevin**—I have not suggested it was. I have, however, suggested that that was well within the area at which Australia was conducting forward air surveillance of boats that were known to be coming down to Australia.

**Senator FAULKNER**—What you are saying is that there is an intelligence report or reports, as happened so often, including on-the-ground reporting, it appears, in Indonesia as well as air surveillance and whatever other intelligence sources are available to Australian government agencies in relation to SIEV vessels. There is also intelligence reporting in relation to this vessel, the vessel that sinks on 19 October. That is right, is it not?

**Mr Kevin**—Yes.

**Senator FAULKNER**—Coastwatch has that, does it not?

**Mr Kevin**—Yes.

**Senator FAULKNER**—We know that Coastwatch has it, trying to work through this now, because Senator Hill sends Mr Crean a letter and paragraph 1 on page 2 of that letter describes the process.

**Mr Kevin**—Yes.

**Senator FAULKNER**—It says ‘Consultation with the Rescue Coordination Centre (RCC) Australia’, which I described broadly as AMSA a few moments ago. I probably should have said the Rescue Coordination Centre, which I think is an agency of AMSA, is it not?

**Mr Kevin**—Yes, I believe so.

**Senator FAULKNER**—It says:

Consultation with the Rescue Coordination Centre (RCC) Australia has indicated that Coastwatch Australia advised the RCC that a vessel had departed the Sunda Strait on or about 18/19 October 2001 bound for Christmas Island, and that the vessel was overdue.

So we know that that advice goes from Coastwatch to RCC. That is right, is it not?

**Mr Kevin**—Yes.

**Senator FAULKNER**—Do you have any view as to when that advice might go from Coastwatch to RCC?

**Mr Kevin**—There is no public information on that.

**Senator FAULKNER**—This is why I said earlier we can ask Coastwatch when they come before us and we have AMSA a little later in the day and obviously we can ask them that question and no doubt our witness will be able to answer it. You are saying, are you not, that at least in relation to the sort of normal intelligence reporting there is information that this vessel is leaving Indonesia. Is that your point?

**Mr Kevin**—Yes.

**Senator FAULKNER**—And after that somehow, but you do not know how, it is possible that the normal processes in terms of the information flow to other Australian government agencies do not apply. Am I understanding you correctly? Is that not what you are saying?

**Mr Kevin**—That is right. And there is evidence to that effect in this committee.

**Senator FAULKNER**—That draws you to say to this committee—I am just following through what Senator Brandis has I think usefully asked you—that there is a possibility here that this is either a conspiracy or a stuff-up. That is what you said, isn't it?

**Mr Kevin**—Yes.

**Senator FAULKNER**—And Senator Brandis puts to you that it may be neither.

**Mr Kevin**—Or perhaps, as Senator Brandis puts it to me, it may be somewhere along the spectrum between conspiracy and stuff-up.

**Senator BRANDIS**—No, that is not at all what I said to you, Mr Kevin. I said it may have nothing to do with conspiracy or stuff-up, both of which imply that there was something untoward. It may be the very opposite of that—that is, that there was nothing untoward and what you are saying is merely baseless conjecture unsupported by any empirical fact to which you can point.

**Mr Kevin**—Your colleague Senator Faulkner has just helped me clarify it in my own mind. I just find it very strange—why doesn't information that Coastwatch has about a suspected illegal entry vessel coming down to Australia go to the other parts of the border protection interception system?

**Senator FAULKNER**—We do not know that. Let us try to deal with this logically. I made the point to you a moment ago. You say that it is a conspiracy or a stuff-up. Senator Brandis put to you that it is neither a conspiracy nor a stuff-up—it might be something else. You do not accept that. You are satisfied that it is either a conspiracy or a stuff-up or somewhere on the continuum between a conspiracy and a stuff-up. That is what you are saying, is it?

**Mr Kevin**—Yes. Clearly something went very wrong.

**Senator FAULKNER**—Would you still say that if this committee received evidence that Coastwatch perhaps did not receive these intelligence reports as early as it might have in the case of the other SIEVs, for example?

**Mr Kevin**—I think that would simply take the burden of question back one stage in the system to the intelligence agency that provided the report. What has come through in the general testimony in this committee is the importance of accurate and timely reports coming down on these boats so that the Navy has time to send its air surveillance out to survey the windows in which the boats are expected to appear and then to position the boats to intercept them. We are dealing with very limited assets here—only a few boats and a few aircraft. The intelligence, if it is late, is not terribly useful.

**Senator FAULKNER**—I appreciate that. I want to be clear on this and I am going to try and choose my words advisedly. I think you are saying to us that your thesis is that, given the intensity of this issue in terms of its prominence, government policy, the sensitive time and the priority that Operation Relex has, with the resources applied to Relex it is not likely that any of these vessels would not have been closely tracked. Is that what you are saying to us?

**Mr Kevin**—Yes.

**Senator FAULKNER**—Without going into all the detail of it, you are making that assumption?

**Mr Kevin**—It is not really an assumption. It is based on my careful reading of evidence in this committee by expert witnesses.

**Senator FAULKNER**—I think it is fairly described as an assumption at this point because we do not have any evidence to either support it or not support it. I am not dismissing what you are saying to the committee at all—I am, as always, open-minded about these sorts of things.

But I think it is fair to say that that is a conclusion you draw. You may draw that on the basis of the experience with the other SIEVs—which I think is also true, isn't it?

**Mr Kevin**—Yes. To make this a little more concrete, could I just read out some of the things that Rear Admiral Smith actually said in this committee to remind senators that, even if I am making an assumption, it is an assumption based on good empirical knowledge that has emerged in this committee? Rear Admiral Smith said, on page 454 of *Hansard*, that intelligence sits behind all monitoring and interception activities. He said that he was not 'able to share that information at this time'. He went on to say:

On the basis of some of that information, we were able to make some assessments on windows when these vessels might appear. We then were able to adjust our patrols and so forth to make intercepts.

He says that they did not know every time these things were going to happen—'We planned on not knowing.' He said that their surveillance operation involved ships, RAAF P3 Orions and Coastwatch aircraft. He says:

We had a patrol arrangement in place, and we were relying upon a whole series of activities to give us the information that we needed ... We certainly had some information that boats might be being prepared in different parts of the archipelago.

He says that, apart from one SIEV—and that was the early one, SIEV2—'we pretty much knew where things were going'. I think all of that is fairly conclusive information that the Navy normally had a good idea of what was coming and when it was coming.

**Senator BRANDIS**—How is the piece of evidence that you just read from Admiral Smith—let me quote it back to you, 'We did not know every time these things were going to happen,'—conclusive of the opposite proposition, which you have just articulated?

**Mr Kevin**—Simply because we did know something, because Coastwatch had a report that a boat was coming and the boat failed to arrive, and then Coastwatch asked Search and Rescue to put out an overdue notice.

**Senator BRANDIS**—Hang on a second. You just said, 'I can show you some evidence from Smith that supports my proposition.' That evidence included his statement, 'We did not know every time these things were going to happen.' How does that support your proposition?

**Mr Kevin**—There are two different propositions here: one is the proposition that we knew pretty much about all the boats that we intercepted, so—

**Senator BRANDIS**—Even the qualifying words 'pretty much' suggest that that was not universally true.

**Mr Kevin**—He said actually, 'Apart from one SIEV, we pretty much knew where things were going.' Those were his words.

**Senator BRANDIS**—'Pretty much'?

**Mr Kevin**—Yes.

**Senator BRANDIS**—So he qualifies himself. He says, ‘We generally knew, pretty much knew.’ But he does not say, ‘It was universally true that we knew.’ Then he says, ‘We did not know every time.’ How does that support what you are saying? It says the opposite, Mr Kevin.

**Mr Kevin**—I do not think so, Senator, with respect. It simply says that we knew about 11 of 12 boats that came, in advance, and, in this particular case, we knew about the thirteenth boat—let us call it SIEV13, an unlucky number—because Coastwatch knew it was coming.

**Senator MASON**—But even then, Mr Kevin, ‘in advance’ means different things in different contexts—it is when they left port in Indonesia or sometime subsequent to that. ‘In advance’ means different things with respect to different SIEVs.

**Mr Kevin**—That is an important question—

**Senator MASON**—You would agree with that, wouldn’t you?

**Mr Kevin**—I am glad you asked that question. I would be happy to reply to it. In the case of SIEV13, the Coastwatch must have known when it left in order to be able to know when it was due to arrive.

**Senator MASON**—In relation to that, yes. But what I am saying is in relation to all the SIEVs. The time of departure from Indonesia was not known in every case. That is all I am saying. When you say it was known ‘in advance’ that means different things in relation to different SIEVs. Do you agree?

**Mr Kevin**—Possibly.

**Senator FAULKNER**—As I said before, we can ask other agencies—in this case particularly Coastwatch and the RCC as a starting point—and there may be other agencies involved, as you say. The starting point may well be the others providing intelligence reports to Coastwatch and the like. I understand all that. But at issue here in the first instance is when the process starts from Coastwatch to AMSA and beyond.

**Mr Kevin**—I would not necessarily confine it to Coastwatch and AMSA because—

**Senator FAULKNER**—I am not, but we have substantive information now from Senator Hill, in black and white—you accept what Senator Hill said to Mr Crean, don’t you? Or do you? You do not have to.

**Mr Kevin**—It is an interesting question.

**Senator FAULKNER**—Do you accept the veracity of what Senator Hill said to Mr Crean on that matter?

**Mr Kevin**—I have a problem with the statement that it has been assessed that the vessels were in the vicinity of Sunda Strait. That is a very important point.

**Senator FAULKNER**—You have a problem with that. Is there anything else you have a problem with?

**Mr Kevin**—I must say I have not been reading the letter in that light. I was more reading it as a source of reliable information.

**Senator FAULKNER**—Do you, for example, dispute the advice that the closest naval vessel was 150 nautical miles away?

**Mr Kevin**—No, I do not.

**Senator FAULKNER**—You accept that?

**Mr Kevin**—I do. In fact, I have used that information to try and verify my analysis that the boat was not in the Sunda Strait. In fact, it could not possibly have been in the Sunda Strait if it was 150 nautical miles away from *Arunta*.

**Senator FAULKNER**—So you also accept what Admiral Smith has said in relation to the inability or incapacity of any Australian naval vessel to assist in this circumstance?

**Mr Kevin**—I would not put it that way. There is an important qualification: had the Navy known, *Arunta* could have had a helicopter there in half an hour and *Arunta* itself could have been there in four or five hours steaming time.

**Senator FAULKNER**—Yes. I read that in your opening statement. Let me ask the question another way: do you accept the Navy did not know?

**Mr Kevin**—I accept that Operation Relex and the Navy did not know in their official capacities, yes.

**Senator FAULKNER**—You think they might have known in an unofficial capacity?

**Mr Kevin**—Senator—

**Senator FAULKNER**—You qualify, which is fine—we all do. I am in politics; I have even qualified the odd answer from time to time—I admit it. That is a very qualified answer. Why do you make the qualification?

**Mr Kevin**—I think there is a great need for clarity in all of this and both Jane Halton, who said that the task force was not aware of the vessel that sank, and Rear Admiral Smith, who said:

At no time under the auspices of Operation Relex were we aware of the sailing of that vessel until we were told that it had in fact foundered.

might welcome an opportunity to also say that they did not have any corridor knowledge of these matters.

**Senator BRANDIS**—But you have no evidence of that, either. You bring to this committee no evidence that the Navy knew of this, either officially or unofficially, do you?

**Mr Kevin**—I have evidence which has come from this committee that the Navy did not have official knowledge of this.

**Senator BRANDIS**—And you have no evidence that the Navy had—to use your expression—unofficial knowledge either, do you?

**Mr Kevin**—No.

**Senator FAULKNER**—What I am exploring is whether you do have any or why you qualify your answer in the way you do. It is because Admiral Smith, in your view, has given a qualified answer to this committee in that he talks about the Navy under the auspices of Operation Relex. That is why you qualify your answer to me. Is that right?

**Mr Kevin**—I found that qualification interesting. I am conscious of the fact that Coastwatch is part of Operation Relex, and so I am a little curious as to how Coastwatch had the information and other parts of the system did not. That is strange.

**Senator FAULKNER**—If I could try and sum this up: you are concerned about when Australian authorities first knew about this vessel leaving Indonesia. That is right, isn't it?

**Mr Kevin**—I am concerned that if information about this vessel included information about its unseaworthy state that information should have been handled in the normal way to enable a safety of life at sea response. I am concerned about that.

**Senator FAULKNER**—Beyond the matters you have canvassed in answer to questions asked so far this morning by committee members and in your opening statement, is there any other matter or evidentiary support that you have or that you can provide to this committee today that you believe it would be appropriate for this committee to explore? I accept that this is a serious issue. I am sure that is a view shared by every member of this committee. I would certainly hope it would be. The number of people that drowned on this vessel is horrific and I accept your very deep concern about it. But if there is any other matter or piece of evidence that you have that you have not outlined to us and that you can draw to our attention, it would be appropriate for you to place it on the record.

**Mr Kevin**—There is. It is the issue of why I believe it is reasonable to conclude that the boat was 80 kilometres south of its last landfall when it sank and not in the Sunda Strait. This is not—

**Senator FAULKNER**—Let us deal with that in a moment. Is that the only—

**CHAIR**—I wonder if this might not be a bad time to break for lunch and come back at 2.18 p.m. Can I divine from the questions that Senator Faulkner is wanting to try to get the thing wrapped up again? That might give you a chance to order your thoughts as well, Mr Kevin.

**Mr Kevin**—Thank you.

**Proceedings suspended from 12.30 p.m. to 2.18 p.m.**

**Senator FAULKNER**—I asked Mr Kevin prior to the luncheon break whether there were any other outstanding matters that he had not presented to the committee in either a submission or an answer to questions that he felt might be beneficial to us. I think he was about to respond to that when we went to lunch, so we should give him that opportunity.

**Mr Kevin**—The main matter on which I wish to speak at some stage is the issue of the location of the sinking, but before I get to that I would like to say a couple of things. Firstly, I would like to give Senator Brandis the information about where the 19-metre boat reference came from. It came from an article by Don Greenlees in the *Australian* on 24 October, ‘Forced on to death boat’, and it contained the sentence: ‘Authorities say the 19m vessel could safely carry fewer than 100’.

I would also, in the same context, like to say something about the importance of the reporting of Don Greenlees in this affair. I think there was a reference by Senator Ferguson at one point that I was relying on one newspaper report. Don Greenlees has just won a Walkley Award: he is the winner of the 2001 Walkley for the best Asia-Pacific coverage, largely arising from his series of articles on people-smuggling and on this event. The judges were impressed by the detail of names, faces and connections revealed in a difficult operating environment. I have read all of Greenlees’s articles on people-smuggling; they are remarkably detailed and remarkably well informed. I admire them for that. What I am about to say is not in any sense intended to reflect adversely on Don Greenlees.

As a former ambassador in Cambodia, which in some ways is a similar environment to Indonesia, I know that this sort of detailed, intensive journalism reflects fairly intensive contact with Australian official sources. I am confident that, first of all, all this detail that Greenlees has is pretty accurate on the events surrounding the embarkation of this boat. Secondly, it is a reasonable supposition, not conjecture, that Australian Federal Police up in Indonesia would have had access to the same kind of detailed information. I think that is a reasonable deduction from the available information.

**Senator BRANDIS**—Like a lot of the things you have said to us, you still do not know. This is inference and conjecture. In fairness to you, some of the inferences are more readily drawn than others. Nevertheless, you still cannot point to any evidence to support the propositions you have been advancing.

**Mr Kevin**—Senator, we are not in a court of law. I am not tendering evidence.

**Senator BRANDIS**—This is a fact-finding inquiry, and a conclusion as to whether or not a fact exists must be based on evidence.

**Mr Kevin**—Senator, you mention inference and conjecture. I think there is a great deal of difference between the meanings of those two words. I am prepared to accept that what I have said this morning is inference, but it is inference from known facts. To me, there is a big difference, with respect, between that and conjecture. It is a known fact that this boat sank, that 353 people drowned. It is a known fact that Coastwatch Australia had information on the boat’s departure and was expecting it to arrive on or about Monday, 22 October. It is a known fact that Operation Relex and Jane Halton’s People Smuggling Task Force did not have that information. Those are important discrepancies in the Australia information and command chain. I do not

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feel comfortable with the description of them as conjecture. They are certainly inference, but they are not conjecture.

At this point perhaps I could say something about the location of the sinking because it is quite important, not in terms of search and rescue obligation, because Rear Admiral Smith said that the Navy would have gone to the rescue, even into Indonesian territorial waters, but obviously in terms of the politics of the whole thing it is fairly important to establish where the boat sank. I have circulated a set of three maps. Map 1 is the only map that I have seen plotting the presumed location of the sinking, and it appeared in the *Australian* on 24 October. As you see, it is well out to sea, out into the Indian Ocean south of the western tip of Java. In Greenlees's article of that same date we have a statement that:

About 80km from land at 2pm on Friday—

that is the 19th—

the fishing vessel began to take heavy water, listed violently to the side, capsized and sank within an hour.

I have done the exercise of creating these two new maps, map 2 and map 3. I should perhaps say that, although I am not a navigator, I do have a degree in civil engineering and I do know how to read maps, measure and make basic calculations. I worked backwards from the known facts of *Arunta*'s interception of SIEV6. We do know quite a bit about that from the information provided by Rear Admiral Smith. I will read from the event summary for SIEV6:

ARUNTA intercepted the SIEV at approximately 190109Z Oct (0809 local) north of CI.

That is, Christmas Island. Later on it says:

SIEV 06 entered the ASCZ—

Australian contiguous zone—

and was boarded by ARUNTA at approximately 191045Z (1745 local) without incident.

That means that *Arunta* was shadowing SIEV6 for approximately 9½ hours, travelling south towards Christmas Island, and intercepted it at the 24-mile edge of the contiguous zone. That is 20 nautical miles north of Christmas Island. I am making a judgment that SIEV6 was travelling at five knots. That seems to be the average speed at which these fishing boats are quoted as travelling, and the sort of travel times we have seen in the reporting of them coming down to Christmas Island indicates that is, give or take a knot or two, about right.

Applying that speed of five kilometres an hour to that time of 9½ hours, we get a position that *Arunta* first encountered the SIEV 45 nautical miles north of the contiguous zone where it finally intercepted it. That puts the point of first encounter at 65 nautical miles north of Christmas Island. I have plotted that point on map 2 with the reference 'Presumed position of HMAS *Arunta*'. I have then measured 150 nautical miles north of that, back towards the Sunda Strait, based on the evidence of Rear Admiral Smith and also Senator Hill's letter that *Arunta* was at no time closer than 150 nautical miles from the sunken vessel. Where I have marked the cross is the position of the sunken vessel. I have marked its sinking site. Reassuringly, from the

point of view of my thesis that the boat did sink at that point, that point is precisely the same point as is shown on the small Australian map on 24 October.

It also fits with the Greenlees account of the voyage because Greenlees has the boat leaving from Bandar Lampung in the early hours of Thursday morning, travelling through the day, overnighing at an island and the next morning, Friday, going on and sinking about six hours later. If you look at map 3—I have not plotted the course here—you can see that the distance from Bandar Lampung, which is up in the top left-hand corner of the map, down to Panaitan Island is about 120 kilometres, which is the sort of distance that one of these boats would cover in a day. Also, the distance from Panaitan Island down to the sinking site that I have marked is about the same sort of distance the boat would cover in half a day, that is, until it sank on the Friday. So that fits also. We have this position triangulated both from the information we know about how far *Arunta* was from it and also from the information we know about the voyage—they both lead to the same conclusion as to where it was.

The alternative hypothesis that it sunk in Sunda Strait breaks down for several reasons. Firstly, it means that HMAS *Arunta* would have had to have been about 70 nautical miles further north at the point at which it intercepted SIEV6 for it to have been still 150 nautical miles from the sunken boat. When we do that, we find then that when *Arunta* was accompanying SIEV6 down to the edge of the contiguous zone, *Arunta* and SIEV6 would have had to have been travelling at about 12 knots for 9½ hours. These SIEV boats, particularly ones with the load factors that they were carrying, would not have travelled comfortably or safely for 9½ hours at 12 knots. This particular SIEV boat was carrying 227 people. It would not have gone for 9½ hours at 12 knots, so that does not seem to hold water.

There is also the point that there is a lot of shipping in the Sunda Strait. It is a very busy area, and it is rather difficult to conceive that a wreck of this kind would have taken place in Sunda Strait and that the survivors would not have been found for 22 hours. There is also the fisherman's report that they had gone out well beyond their normal fishing grounds, and this also suggests a location well beyond the Sunda Strait.

The survivor's journey back to Jakarta took two to 2½ days to cover a measured distance of some 300 kilometres. If you look at my projected route back on map 3, that is a distance of about 300 kilometres and it took them 2½ days travelling, once again, at about five knots. If you go for the hypothesis of a sinking in the Sunda Strait, you are dealing with a much shorter distance and you must ask yourself: why would it take 2½ days to cover 150 kilometres?

For all those reasons, the deduction that the Greenlees' position of sinking is correct seems to be reasonable on the known facts. That is why I made the statement in my opening statement that I would stick to that position as the site of the sinking. Again, the important thing about that position—and it is very important—is that, firstly, it is outside Indonesian territorial waters and, secondly, it is within the normal operating range of Australian air surveillance, had Australian air surveillance known that there was a boat coming from that general direction at that time.

**Senator FAULKNER**—Are you aware of any photographs of the vessel that sank? There are some P3 Orion photographs, aren't there, of the vessel?

**Mr Kevin**—I have heard a bit of gossip that there may have been P3 Orion photographs, but I have never pursued it and I do not know any more than that.

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**Senator FAULKNER**—It is only gossip, as far as you know?

**Mr Kevin**—That is all that I have heard at this stage. I am hoping that one result of my testimony in this committee will be that others who know a lot more than I do may be encouraged to come forward and offer information about this very serious tragedy that happened to an asylum seeker boat that was on its way to our country.

**Senator FAULKNER**—How did you become involved or develop an interest in this particular incident? As I said before, it is a horrific tragedy and it is understandable that anyone would take a close interest in it, but you have taken a particularly close interest in it. I just wonder why you have put so much effort into it. Do not read into that that I am critical in any way, because I am not. I am pleased that an Australian citizen would take such a close interest in something like this. How did it develop?

**Mr Kevin**—First of all, like all senators, I was shocked and appalled by the whole thing. I am sure you all remember these terrible pages of the *Australian*. They are indelibly cast in my memory. Even at the time, I felt this was just too enormous and too horrible to contemplate—how could such a dreadful thing have happened. Then there was an article by Vanessa Walker in the *Australian* on 21 December about one of the survivors being granted a temporary protection visa in Australia. I was going through my clippings towards the end of January, and I noticed a couple of paragraphs at the end that said that a survivor's account suggested that he had seen large boats with searchlights and was told later by fishermen that these were Australian. The next paragraph said that a Department of Defence spokesman said that the nearest Australian boat was 230 nautical miles away.

I was interested in that. At that time I did not know anything about it. I rang Vanessa Walker and asked, 'Where does this come from?' She gave me the name and contact details for Mr Keysar Trad, who is an Australian of Lebanese origin, who had translated into English the full set of videotaped survivor accounts that were taken at the UN hostel in Bogor on the first day after the people were brought back to Bogor, on 23 October. He emailed me those survivor accounts. I read them all and I was appalled, distressed and horrified. I started to re-read the Greenlees reports from 24 and 25 October in the context of those detailed survivor testimonies, I suppose you could call them. More and more I became convinced that this horrible event could not have been an accident; there were just too many strange coincidences piled upon coincidences.

It went from there. I have to say that this has been a long process of circling closer to the truth. It has been done by the scientific method of eliminating things that are clearly not true and, as one eliminates things that are clearly not true, hopefully, in the end, one gets to what may be true. In the process of that work I spoke to a couple of Australian journalists based in Jakarta—Ginny Stein, now with *Dateline*, and Lindsay Murdoch, from the *Age* Fairfax group. I also spoke with personnel from the International Organisation of Migration and the UN High Commissioner for Refugees. I spoke with a couple of Indonesian speakers I know in Canberra to ask them how this event had been covered in the Indonesian press. And, perhaps most importantly of all, I started reading very carefully the *Hansard* of this committee. I was obviously looking at it from a particular point of view, which was to see what light might be shed on, first of all, the general intelligence and aerial surveillance and interception procedures that came out of the committee's work. Also, I was looking at the way witnesses responded to

specific questions regarding this boat. There has been, I think, a very useful process of getting closer to the truth. That is really all I can say.

**Senator FAULKNER**—Thank you very much.

**CHAIR**—I am trying to recreate your position and I would like you to comment on the following. In your submission, under the heading ‘The sinking on 19 October’, in the second paragraph down you say:

In rough seas, it put into an island in the Sunda Strait on Thursday night. 24 passengers refused to continue and disembarked. The remaining 397 people decided to continue the journey to Christmas Island early on Friday 19 October.

Do you have any idea what island in the Sunda Strait that was?

**Mr Kevin**—I believe that, on the basis that they had sailed all day—and it would probably be better to look at the larger scaled map 3 at this point—it would be that rather big one down near the corner of Java, which is called, Panaitan Island.

**CHAIR**—What I am trying to come to grips with is that, according to the reports, these people were forced onto the boat, using smaller rowing boats or whatever, at gunpoint, if they put ashore at Panaitan Island. What forced them to continue? The boat clearly was not seaworthy and a number of people had left. Was there any suggestion of compulsion to force the others to continue?

**Mr Kevin**—That is a very good question. I can only suggest a number of possible reasons. First of all, these people had a huge and urgent desire to get to Australia. Many of them had relatives here and so on. Second, they had made it through one day sailing to Panaitan—if this is correct—and, most of them being very deeply religious, they may have thought God would help them through the rest of the journey. If they had got this far perhaps they could keep going. It is strange, isn't it, that they did get through that whole first day without sinking?

**CHAIR**—The point I am coming to is that if they were forced onto the boat, when they came ashore and disembarked at Panaitan Island—if they were not forced to continue at that point—presumably more of them would have left the boat, I do not know.

**Mr Kevin**—I think that by that stage most of them might have decided in a fatalistic sort of way, ‘We have got this far, let's hope we get the rest of the way.’ I think those who wanted to leave the boat at Panaitan were able to do so, judging by the accounts. Can I also say—this might be important for future investigations—that the people who left the boat at Panaitan are actually still in the UN hostel at Bogor. Unlike the survivors of the sinking proper, they have not been sent to various resettlement countries. I think that all of the original group of 44 survivors have now been resettled around the world. I think three or four came to Australia and the rest went to other countries. But the 24 people who got off at Panaitan Island are still in the UN hostel at Bogor. They would be a very valuable source of information if this were to be pursued seriously further.

**Senator FAULKNER**—What about the 10 who refused to embark at Bandar Lampung?

**Mr Kevin**—I have heard no more about them. All I know about them is what is in the—

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**Senator FAULKNER**—I am not doubting for a moment that people are basically forced onto the boat at gunpoint. Why are these people able to avoid embarkation, do we know?

**Mr Kevin**—Because they paid \$400 in bribes to get off—and money will take you a long way.

**Senator FAULKNER**—How do we know that?

**Mr Kevin**—That is in the Greenlees report.

**CHAIR**—This boat, when it departed Panaitan Island—if that was the land fall—was motoring at about three nautical miles an hour or about five kilometres an hour. Is that correct?

**Mr Kevin**—I am working on five knots, which is five nautical miles an hour.

**CHAIR**—Five knots?

**Mr Kevin**—A knot is one nautical mile per hour.

**CHAIR**—I know that, but I am just trying to make the conversion to kilometres because these things are in kilometres as well.

**Mr Kevin**—It is difficult.

**CHAIR**—You say they were about 80 kilometres from land at 2 p.m. on Friday, and I am just trying to make the conversion to what time they would have departed Panaitan Island to be in that region.

**Mr Kevin**—Eighty kilometres is about 50 nautical miles, give or take.

**CHAIR**—No, it is not. A nautical mile is longer than a land mile.

**Senator FERGUSON**—Yes, which means there will be fewer of them.

**CHAIR**—Which means there will be fewer of them—that is right.

**Senator FERGUSON**—There will be 45 instead of 50.

**CHAIR**—So 45 is probably about right. I will go and work on those sums.

**Senator FERGUSON**—The only thing I was ever good at was maths.

**Mr Kevin**—So say 45 and five knots—that makes nine hours travelling. They left very early in the morning on the Friday morning, according to the account. They sank at about two o'clock in the afternoon, so that would fit reasonably well.

**CHAIR**—So they must have left at 5 a.m. or some such time?

**Mr Kevin**—Yes, about six o'clock.

**Senator FAULKNER**—It is an educated guess.

**Mr Kevin**—Yes.

**CHAIR**—I am just trying to put the thing together, that is all.

**Senator MASON**—As Senator Faulkner and our chair, Senator Cook, have said, you raise a very important issue. It is one that certainly should be examined. As you say, the loss of hundreds of lives is certainly tragic and, indeed, horrific. So thank you for your submissions. Committee members have got a letter, I think, dated 18 February from you to various parliamentarians, submission No. 2 to the committee dated 4 March, a letter from Senator Hill to Mr Crean dated 26 March, submission No. 2A dated 11 April and, of course, your opening statement here today and your examination today.

You speak about the development of your thesis. What I want to quickly put to you this afternoon is that your explanation to account for the tragic events of 19 October last year has shifted and seems to continue to shift. I would draw you to your first letter. I think it is fair to say that, in your first letter, which is dated 18 February, you argued that there were allegations that two Australian naval ships visited the site of the sinking of the Indonesian vessel and shone their lights—they were the allegations put—and then departed. I examined the Chief of the Navy, Vice Admiral Shackleton, and he, I am sure you would agree, denied it emphatically. Then I think Senator Bartlett examined Rear Admiral Smith, and Rear Admiral Smith denied it emphatically. I think Senator Cook also asked questions of Rear Admiral Smith on that point, and again it was denied. So would you say that you no longer give any order at all to the first hypothesis that naval ships attended the site of the sinking of the vessel?

**Mr Kevin**—I do not want to quibble about words, but in that first letter of 18 February—which was a request that the Senate urgently examine a survivor's account that Australian naval patrols witnessed the sinking refugee vessel—I was not advancing a hypothesis; I was simply saying, 'There is this survivor account on the public record. It is a very serious matter. I am hoping that it will be considered in the context of the Senate select committee.' I think to call it a hypothesis overdignifies it. I made it very clear in my testimony today that, from the testimony that has been given and the letter from Senator Hill, I am completely satisfied that there was no Australian Navy boat at the scene.

**Senator MASON**—All right, let us move on from that then. Let us leave that behind us, if that is all right. I would now like to go to your submission No. 2 to this committee dated 4 March. You touched on this in your opening statement. Following the denials of Vice-Admiral Shackleton and Rear Admiral Smith, I think the argument you particularly developed in submission 2 was that the Australian intelligence authorities—it is a loose description, but let us leave it at that—knew of the departure of the Indonesian vessel and potentially even knew of the sinking of the Indonesian vessel but either (1) passed it on and it was not acted upon or (2) deliberately did not pass it on. Are you with me, Mr Kevin?

**Mr Kevin**—Yes, I am with you.

**Senator MASON**—I just want to get this correct in my own mind. Which part of that do you now say is correct? Are you saying that Australian intelligence authorities either passed the information on and it was not acted on or that they did not pass the information on?

**Mr Kevin**—I am sorry; could I have that question again?

**Senator MASON**—Sure. I am just trying to cut straight to the chase. In submission 2, I think it is your argument that Australian intelligence authorities knew of the departure of the vessel from Indonesia—it is just unclear from your submission—and also knew of its sinking but either (1) passed that information on to perhaps the armed forces and it was not acted upon or (2) deliberately did not pass that information on.

**Mr Kevin**—I would say—and I am looking at the last page of that submission—that I was asking a series of questions which I requested the select committee to examine. I cannot really simplify that into the either/or proposition you just put to me.

**Senator MASON**—That is fine.

**Mr Kevin**—I think my concerns were fully expressed on page 15 of that submission when I asked a series of questions and I asked the select committee to try to seek answers to them from expert witnesses.

**Senator MASON**—That is fine. You do not need to be any more particular. Can we call that second part of the development of this argument a crime of omission—in other words, intelligence knew about something but they failed to pass it on and certainly no Australian authority has acted on the basis of that intelligence? Is that a crime of omission? Is that a fair description of what you are arguing?

**Mr Kevin**—At the time I wrote that submission I did not conceive of the possibility that an intelligence report that this boat was coming might have been sent to Canberra and that Canberra then mishandled that information. That submission was really written more on the basis of: what happened to the intelligence report? Yes, I had deduced that there was an intelligence report, on the basis of what I have already said about the Greenlees very detailed reporting, which I assumed was also known to Australian intelligence sources. At that time I did not conceive of the possibility that reporting might have come down to Canberra and then been derailed or shunted into a siding in Canberra, as I said this morning.

**Senator MASON**—That is another part of the potential conspiracy. The third part I understand—and Senator Faulkner touched on this before—was that people were, for want of a better word, loaded on to the boat in Indonesia and then, to use your word from the opening statement today, there was sabotage. That is another aspect of the potential conspiracy. Is that right?

**Mr Kevin**—Once again, I am simply looking at the known public record and saying that for a boat to leave in this condition and sink is not normal.

**Senator MASON**—Mr Kevin, I accept that, but what I am trying to do is to deconstruct the conspiracy and all facets of it. Do you understand? First of all, we had the naval ships turning

up at the site of the sunk vessel. No-one says that is the case. Okay, we have finished with that—

**Mr Kevin**—We are happy that that has been proved.

**Senator MASON**—Secondly, there are intelligence reports that are either not passed on or not acted upon; and, thirdly and finally, we have an overloading, in a sense, of a boat and then, potentially, sabotage. And they are all parts of this conspiracy.

**Mr Kevin**—On your second point, we know now from committee testimony that the intelligence reports were passed on.

**Senator MASON**—That is fine.

**Mr Kevin**—That is no longer part of my ‘hypothesis’, if you like. I know that at some point intelligence reporting came down to Canberra.

**Senator MASON**—Sure, but it does not establish a conspiracy, does it?

**Mr Kevin**—I am not trying to establish a conspiracy; I am trying to establish the facts.

**Senator FERGUSON**—What do you mean by the ‘known public record’?

**Mr Kevin**—The authoritative journalism of the man who has just won a Walkley prize for best—

**Senator FERGUSON**—Authoritative journalism—you keep talking about a Greenlees report. What you are talking about is a Greenlees article in a newspaper; it is not a Greenlees report. When you talk about a report, you are talking about the sort of thing that we are going to deliver at the end of this. But you are talking about the Greenlees newspaper article, which you place all the weight of your theory on, don’t you?

**Mr Kevin**—No, I place most of the weight of what I have said today on the public record of this committee.

**Senator FERGUSON**—But you have also talked about the Greenlees report—

**Senator BRANDIS**—What about Admiral Smith’s testimony?

**Mr Kevin**—Admiral Smith’s testimony is extremely important.

**CHAIR**—Greenlees might be a reporter or a journalist or a correspondent—

**Senator FERGUSON**—I do not think the Greenlees report is a public record; it is a newspaper report, a newspaper article.

**Mr Kevin**—It is investigative journalism; it just won the Walkley Award for the best Asia-Pacific coverage, and I respect the credibility of that journalism.

**Senator FERGUSON**—It does not mean it is infallible, though, does it?

**Mr Kevin**—Nothing is infallible.

**Senator MASON**—Just to summarise where we are, Mr Kevin, I think that the two aspects of this left are: (1) we have in effect an intelligence report passed on, you have just said, which was not acted upon and (2) let us call it sabotage following the overloading of a boat. That is the second arm.

**Mr Kevin**—On the second arm, gross overloading to that degree, under armed duress, in itself I believe is an act of sabotage.

**Senator MASON**—Do you think the two arms of this hypothesis are linked in any way?

**Mr Kevin**—I do not know.

**Senator MASON**—In a sense, all this argument comes together on page 3 of your opening statement where you say:

There is clear public knowledge now from Australian official sources, that there was some Australian official foreknowledge of the circumstances that led to the deaths of these 353 human beings.

**Mr Kevin**—Yes.

**Senator MASON**—You go on:

This cries out for explanation and accountability.

What you are arguing is that there was some official foreknowledge of the circumstances. That is a direct reference in particular to page 2 of the letter from Senator Hill to Mr Crean regarding the Rescue Coordination Centre. Are you referring to that part in particular?

**Mr Kevin**—I was referring there more to Rear Admiral Smith's testimony where he said two things: firstly, on page 461 of *Hansard*:

... we had some information that a boat might have been being prepared in the vicinity of Sunda Strait but we had no real fixed information as to when it was going to sail.

So we establish from that that the Navy, Operation Relex, knew that a boat was being prepared in the Sunda Strait area but they did not yet know when it was going to sail. On page 676 of *Hansard*—we have now moved from 5 April to 11 April—we have a statement by Rear Admiral Smith:

They had advice from Coastwatch Canberra to say that the vessel believed to have sailed on or at the 19th—

of October—

for Christmas Island was overdue.

They had got that information from intelligence and it was sensitive information.

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**Senator MASON**—So you have the evidence from Rear Admiral Smith and Coastwatch.

**Mr Kevin**—So there I have the evidence that something definitely was known about this boat sailing at the time it did. I believe that supports the statement that there was some Australian official foreknowledge of the circumstances that led to the death of these people.

**Senator MASON**—I agree that those two bits of evidence from Rear Admiral Smith and Coastwatch seem to indicate that it is some evidence about the boat and the date of its departure.

**Mr Kevin**—Yes.

**Senator MASON**—So you say there was official foreknowledge of the circumstances that led to the deaths of these 353 human beings.

**Mr Kevin**—Yes.

**Senator MASON**—So that is drawing a different bow. Foreknowledge of the boat and its departure is not foreknowledge of the circumstances that led to the death of these people—it is a different issue.

**Mr Kevin**—I have not mentioned the activities of Kevin John Enniss to this point, but this is a good opportunity to do so. We have the reports of the Channel 9 *Sunday* program on the activities of Mr Enniss. We also have official testimony to the Senate Legal and Constitutional Legislation Committee on 19 February at pages 137 and 138. I think it is very important to know that the Australian Federal Police were aware that Mr Enniss was a people smuggler and they knew that he was engaged in people-smuggling because he was telling them what was going on.

I think it is also interesting and important to note that, in a subsequent article by Lindsay Murdoch—and this is on page 12 of my original submission—Enniss said that he was in a position to pass on to the Australian authorities information on ‘when the boats were going, who arranged them and who was on them’. And, of course, it was important for the Australian authorities to know how many people were on the boat because they used that information to prepare reception and interception facilities for them. They needed to know whether 50, 100, 200 or 400 people were coming. So I think, once again, it is one of my reasonable inferences. It is reasonable to infer that, if there was intelligence reporting of when this boat left and from where this boat left, that also contained the information that there were over 400 people on it.

**Senator MASON**—I might yield to Senator Brandis who is itching to ask you a couple of questions.

**Senator BRANDIS**—I am itching to understand what are you saying Mr Kevin. You directed us to page 461 of *Hansard* of this committee where Rear Admiral Smith tells us:

... we—

that is the Navy—

had some information that a boat might have been being prepared in the vicinity of Sunda Strait but we had no real fixed information as to when it was going to sail.

**Mr Kevin**—Yes.

**Senator BRANDIS**—It goes on:

Indeed, the first time that the Navy knew that this vessel had sailed was when we were advised through the search and rescue organisation in Canberra that this vessel may have foundered in the vicinity of Sunda Strait. At that time our nearest ship was about 150 miles away. The reason it was so far away—

you did not read this—

was that we were not permitted to intercept or board vessels in Indonesian territorial waters. Indeed, our patrols were such that we were intercepting closer to our own territorial waters rather than to Indonesia so as not to create any tensions in those sorts of areas. That is the reason why there was no ship nearby. We were not in a position to do anything.

Now you have directed us to that bit of the *Hansard* or parts of what I have read to you. All I can get from this, Mr Kevin, is that you say, because at some unspecified point the Navy had some information that a boat might have been being prepared to sail, and that at some much later time the Navy received information that that ship had sunk within Indonesian territorial waters when there was no Australian ship closer than 150 miles away—and you point to no intermediate piece of knowledge received by any Australian authority—you gather from that the proposition, on page 3 of your statement today, there was some Australian official foreknowledge of the circumstances that led to the deaths of these 353 human beings. Mr Kevin, can you please tell me what fact—other than the knowledge that a boat might have been being prepared to sail—constitutes official Australian foreknowledge of the circumstances that led to the death of these 353 people? Not inference, not conjecture, what fact, if any—in addition to those to which you have already referred—can you point to?

**Mr Kevin**—That is a long question.

**Senator BRANDIS**—That is a long preamble but a short question: what if any other fact can you point to?

**Mr Kevin**—All of the facts I have already cited from *Hansard*, but I will go on offering more detailed references from *Hansard*. I am happy to go on doing that.

**Senator BRANDIS**—Sure. We have Rear Admiral Smith on page 461. That gets you nowhere, with respect. We have Rear Admiral Smith on page 676, which gets you nowhere.

**Mr Kevin**—Would you like me to answer the question, Senator?

**Senator BRANDIS**—Go on with any additional references.

**Mr Kevin**—I will.

**Senator BRANDIS**—Give us your best case, as it were—all the relevant facts you point to.

**Mr Kevin**—Senator, first of all, there is no basis for saying that it sank within Indonesian territorial waters. We do not know that.

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**Senator BRANDIS**—That is Rear Admiral Smith's evidence.

**Mr Kevin**—He did not. He simply said that the reason our Navy ship was 150 miles away was that 'we were not permitted to intercept or board vessels in Indonesian territorial waters'. Indonesian territorial waters extend to 12 miles from the coast of Indonesia. Beyond that, you have a contiguous zone from 12 to 24 miles. Beyond that—

**Senator BRANDIS**—That is as I read Rear Admiral Smith, but in any event where does that get you, Mr Kevin, please?

**Mr Kevin**—That is the first statement by Rear Admiral Smith about what we knew, but there were other statements subsequently that made it more concrete.

**Senator BRANDIS**—What were they, please?

**Mr Kevin**—The key testimony is really on 11 April, pages 676 and 677.

**Senator BRANDIS**—Just point me to it, please.

**Senator FAULKNER**—What page is this again?

**Mr Kevin**—Pages 676 and 677. If you go down to the third paragraph, it says:

In that particular instance, our nearest ship to where that boat sank was 150 miles away. We had no knowledge of the boat having sailed.

That is a little bit of a contradiction there to the statement that you previously read out to me, that we had some knowledge—

**Senator BRANDIS**—No, there is not. There is no contradiction at all, with respect. Rear Admiral Smith says at page 461:

... we had some information that a boat might have been being prepared in the vicinity of Sunda Strait but we had no real fixed information as to when it was going to sail. Indeed, the first time that the Navy knew that this vessel had sailed was when we were advised this vessel may have foundered ...

So that is not a contradiction at all; it is completely consistent, Mr Kevin.

**Mr Kevin**—It is not contradictory in terms of the integrity of Rear Admiral Smith's testimony but it is contradictory in terms of what I will go on to remind you of, which is:

the first we were aware that this vessel had sailed from Indonesia was when we were contacted by the search and rescue organisation here in Canberra, on 22 October, when they advised us that this vessel was overdue and it was feared it had foundered in the Sunda Strait area. None of our surveillance that we had operating—aircraft or ships—had detected this vessel.

**Senator BRANDIS**—What is that inconsistent with, please?

**Mr Kevin**—I will go on, if I may. Senator Bartlett then asked how Search and Rescue knew it was overdue if they did not know it had left. Rear Admiral Smith replied:

They had advice from Coastwatch Canberra to say that the vessel believed to have sailed on or at the 19th for Christmas Island was overdue. Where they got that information from is a bit sensitive, I think; it is intelligence.

That is the key question. It is there in black and white that Coastwatch had advice—Rear Admiral Smith indicates intelligence advice—that the vessel believed to have sailed on or at the 19th for Christmas Island was overdue.

**Senator FAULKNER**—It is an important question but I do not know whether it is a key question. Three hours ago we were at the point, or I was at the point, of canvassing with you the possibility of clearly establishing with Coastwatch and the RCC or AMSA about some of those details. We are actually going to have an opportunity to question an official from AMSA at the conclusion of your evidence. It is fair to say that the timing of the advice to Coastwatch is unknown. The point that you make, and I think it is a valid point, is that you are not aware, and I do not think any of the committee members at this stage are aware, of how the process works between Coastwatch and AMSA in this particular instance. Beyond that, we are now starting to go round in ever decreasing circles, aren't we?

**Senator BRANDIS**—I think the point that perhaps in different ways Senator Faulkner, Senator Mason and I have been at pains to make to you, Mr Kevin, is that, torture this testimony from Admiral Smith as you will, it does not seem to support the proposition that you advanced in your statement this morning that it is clear that there was some official Australian foreknowledge of the circumstances that led to the deaths. There is an innuendo, wouldn't you accept, in what you said this morning of some Australian culpability or responsibility for those deaths? That is the innuendo you make. You do not come out and say that; you are willing to wound but afraid to strike. But that is the innuendo, isn't it?

**Mr Kevin**—I do not want to wound anybody and I did not come here to make innuendos. I came here to point out inconsistencies in the public record.

**Senator BRANDIS**—Do you or do you not say that there was any level of Australian culpability in those deaths?

**Mr Kevin**—I say that it is for your committee to find out.

**Senator BRANDIS**—What do you say?

**Mr Kevin**—I say it is for your committee to find out.

**Senator BRANDIS**—You have raised the issue and then said, 'I believe that the public record as it now stands would cast a serious slur on the honour and competency of our Navy and the ADF generally.' You, with respect, Sir, have cast the slur. Do you or don't you say that there was some Australian culpability for these deaths?

**Mr Kevin**—With respect, Sir, I say that your committee has the power to call official witnesses under oath to find out the truth on these disturbing discrepancies in the public record.

**Senator FAULKNER**—You are entitled, Mr Kevin, in answer to Senator Brandis in this case but to any committee member, to say that you do not know. That is a perfectly reasonable answer. There are questions asked to which you do not know the answer.

**Mr Kevin**—Yes, and I said I did not know a moment ago.

**Senator BRANDIS**—So you do not make that allegation.

**Mr Kevin**—Senator, I am not here to make allegations; I am here to bring to your committee's attention discrepancies in the public record of what Australia knew about this boat and what it did with the information. A system of intelligence, surveillance and interception that worked very well in the case of every other SIEV boat that was coming down in this period failed to work in this case and 350 people died.

**Senator BRANDIS**—Do I understand you to be telling me that you do not allege any Australian culpability in these deaths?

**Mr Kevin**—I am not here to allege; I am here to bring discrepancies on the public record regarding the Australian system of information and command to your attention, for your committee to do what you wish to do with it.

**Senator BRANDIS**—Perhaps Senator Faulkner, Senator Mason and I are all stupid, but it is not apparent to us that there are such discrepancies in the public record.

**Senator FAULKNER**—I wish you would not include me in that group.

**Senator BRANDIS**—In any event, Mr Kevin, you do not suggest there is a culpability. Is that what I take from your evidence? At the end of the day, you do not make an allegation to that effect.

**Mr Kevin**—Senator, I am not in a position to say whether there is culpability or not. It is for your committee to find this out.

**Senator BRANDIS**—And it is for you, is it, to leave the slur on the honour and competency of the Navy and the ADF on the basis of no evidence at all?

**Mr Kevin**—No, it is for me to say that this public record shows that the information and the command chain was not working as it should have been in this very important case and 353 people died.

**Senator FAULKNER**—In fact, just following on from that question from Senator Brandis, as I understood your evidence, Mr Kevin, you have made absolutely clear to us that you accept that Navy did not know until the 22nd of that month.

**Mr Kevin**—I do. I accept that.

**Senator FAULKNER**—You do accept that. I am just following through from Senator Brandis's question about the RAN and the ADF. It seems to me that we are still at the point that we were more than three hours ago. I am pleased that you have identified what were questions in the committee's mind. There are some process issues that need to be directed to Coastwatch, the RCC and possibly to other agencies. That really, at the end of the day, is what you are saying to us, is it not?

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**Senator MASON**—Sorry, Mr Kevin, but I am trying to elicit the other issue, Senator Faulkner—what we might call the ‘sabotage’ issue. That is the other part.

**Senator FAULKNER**—I raised that because—in my view—it was new, Senator Mason.

**Senator MASON**—Indeed.

**Senator FAULKNER**—That was raised in Mr Kevin’s opening statement. You would recall that, as I questioned Mr Kevin about it, I did ask him at the end of that line of questioning whether he was suggesting that possibly there was any Australian involvement from Australian agencies, be it direct or indirect, in such sabotage. Like you, I accept that is a very serious issue.

**Senator MASON**—My point was that it was also raised in submission 2A to the committee.

**Senator FAULKNER**—Yes.

**Senator MASON**—It was also in the opening statement. So it is not that new. The thesis is evolving.

**Senator BRANDIS**—Mr Kevin, are you satisfied now that you have placed before the committee—or referred to the committee—every piece of evidence upon which you rely for the statement to which I have directed you in your opening statement, that is, the statement about Australian official foreknowledge? I do not want to be accused of cutting you off. If there is another piece of evidence beyond that to which you have referred Senator Faulkner, Senator Mason and me, let us have it now please.

**Senator FAULKNER**—With respect, Senator Brandis, that is precisely the question I asked Mr Kevin before the luncheon adjournment, as you are aware.

**Senator BRANDIS**—I know that, but these allegations have now been remade. Out of abundant caution, I just want to make sure that Mr Kevin does not have the opportunity to go away from this committee and say, ‘Well, there is other material I did not have the opportunity to give to the committee.’

**Senator FAULKNER**—That is what the committee was saying before lunch, to be honest.

**Senator BRANDIS**—Is there anything else? Do you have anything else, Mr Kevin?

**Mr Kevin**—Senator, I continue to have difficulty with the word ‘allegations’. I do not think that describes my testimony today and I do not accept it as a description. What I am pointing you and your fellow members of the committee to are evident inconsistencies and discrepancies in the record of what was done with information in Canberra about this boat. I think there is a basis for the committee, in terms of the safety of life at sea obligation on Operation Relex and the border protection system, to take this further. That is all I am saying.

**Senator BRANDIS**—Is there any other piece of evidence to which you wish to direct us?

**Mr Kevin**—No.

**Senator BRANDIS**—Thank you.

**CHAIR**—I think we are in a position where we are going back over the same ground a bit. My understanding, frankly, is that you have raised these questions because you are horrified at the number of people who have died. That is a reasonable human response. You have put together a hypothesis which requires further investigation and you are asking us to undertake that investigation. That is my understanding of what you have been saying to us.

**Mr Kevin**—With respect, I think once again we are taking it back-to-front. We are saying I have put together a hypothesis. I have put together a series of questions based on the public record. I am trying to retreat from the word ‘hypothesis’.

**CHAIR**—Okay. Thank you, Mr Kevin.

**Mr Kevin**—Thank you.

[3.20 p.m.]

**DAVIDSON, Mr Clive, Chief Executive Officer, Australian Maritime Safety Authority**

**CHAIR**—Welcome to the committee, Mr Davidson. I apologise that we have taken so long to come to you this afternoon and that you have been called much later than the time we gave you. Unfortunately that is the way this has worked out. Do you have an opening statement?

**Mr Davidson**—I do have a brief opening statement. AMSA is Australia's national maritime safety agency and has responsibility for maritime safety, protection of the marine environment, and aviation and marine search and rescue. In its search and rescue capacity, AMSA had an indirect involvement with three of the 12 interceptions of suspect illegal entry vessels, SIEVs, which occurred between early September and mid-December last year, as identified by Rear Admiral Smith at an earlier hearing. AMSA also had a minor involvement, after the event, in the case of the vessel that has become known as SIEVX, which was reported to have foundered on 19 October last year in Indonesian waters. In each case, AMSA was not involved in active search and rescue operations but received information about these vessels from other agencies and in three cases relayed information to the Indonesian search and rescue authority BASARNAS.

AMSA's division of Australian Search and Rescue, known as AusSAR, operates a 24-hour rescue coordination centre in Canberra, which is responsible for the national coordination of both maritime and aviation search and rescue. Australia's search and rescue region covers almost 53 million square kilometres—or one-tenth of the earth's surface—and comprises the east Indian, south-west Pacific and Southern oceans. Our search and rescue region borders a number of other countries' designated search and rescue regions and we have a number of arrangements with our regional neighbours concerning cooperation in search and rescue operations. Indonesia and Australia have such an arrangement underpinning cooperation between AMSA and the Indonesian search and rescue authority BASARNAS. AMSA also works in close cooperation with Coastwatch and the Australian Defence Force in conducting search and rescue operations, particularly when it involves long-range, offshore operations.

I seek to provide the committee with a document outlining AMSA's involvement in relation to each of the three SIEV events and with SIEVX. I believe that has been circulated to members already. The document summarises AMSA's involvement in three of the 12 SIEV events noted in documents tabled by Rear Admiral Smith at an earlier hearing of the committee. It notes that in one case—SIEV2—AMSA received advice from Coastwatch about the vessel being aground on Ashmore Reef. This advice was for information only and did not require AMSA to take any action. In the other two cases, AMSA conveyed advice to the Indonesian search and rescue authority BASARNAS about the situation of the SIEV. In the case of SIEV9, AMSA was contacted by ADF Maritime Headquarters and asked to advise BASARNAS that a disabled SIEV was drifting in the Indonesian search and rescue region. AMSA advised BASARNAS and asked that it take coordination of any search and rescue operation, which it agreed to do. Subsequently the vessel accepted a tow and AMSA again contacted BASARNAS that its assistance was no longer required. In the case of SIEV10, AMSA was asked by the Maritime Headquarters to advise BASARNAS about the rescue of people on board a burning Indonesian fishing vessel which was thought to be located in Indonesia's search and rescue region, and the

subsequent transfer of the rescued people to Ashmore Reef. AMSA passed on the information to BASARNAS and had no further involvement with the incident.

In relation to SIEVX, I am aware of submissions to the committee raising questions concerning the prior knowledge of Australian authorities about the departure from Indonesia of this vessel, which subsequently was reported to have foundered in Indonesian waters on 19 October last year. AMSA's records show that it had no prior knowledge about the departure of this vessel. The first advice on our records was given by Coastwatch on 22 October last year. Coastwatch advised AMSA on 22 October at about 2.40 p.m. Canberra time that it had had reports from a number of sources that a vessel carrying an unknown number of people had left Indonesia on 19 October, whereas it appears that the actual date of sailing, as later reported, was 18 October. The vessel was reported to be transiting the Sunda Strait and heading for Christmas Island. Coastwatch calculated that by then it was overdue.

Coastwatch recognised that this area was outside Australia's search and rescue region and it was agreed that AMSA relay Coastwatch's advice to BASARNAS. AMSA advised BASARNAS about the suspected overdue vessel: that it had not arrived and there was concern for its safety. A copy of this advice was also sent to Coastwatch, the ADF Maritime Headquarters, the ADF Headquarters Australian Theatre, the Indonesian embassy in Canberra and the Australian embassy in Jakarta.

Contrary to submissions made to this committee, AMSA had no prior warning about this vessel leaving Indonesia. We received no information from Coastwatch on 22 October that suggested the vessel was known to be in distress or known to have foundered and, contrary to media reports, AusSAR did not issue a general broadcast to shipping about the vessel being overdue. AusSAR only passed on to the ADF Maritime Headquarters and ADF Headquarters Australian Theatre the advice it had received from Coastwatch and had no other source of information about this vessel or its sinking in Indonesian waters.

I appreciate the committee providing me the opportunity to make this short statement and I will be pleased to assist with any matters that you may wish to pursue in more detail.

**CHAIR**—Thank you. Before we go to Senator Faulkner, there is one matter that I have to raise. In your attachment, a summary of what you have just said about each of these SIEVs on which you were reporting, on SIEVX on page 2 you say that it left Indonesia on 18 October and foundered on 19 October in the Sunda Strait. On what do you base the statement that it foundered in the Sunda Strait?

**Mr Davidson**—That is an assumption on our part from reports that have been widely promulgated. Whether it was 85 kilometres or otherwise—we have no other basis for that.

**Senator FAULKNER**—I will take this SIEVX issue as my starting point. I do not know if you heard any of the evidence that the committee heard from Mr Kevin recently, but he has raised issues of concern in relation to the reporting between Australian agencies about this particular vessel and its foundering. Is it true to say that normally you receive information about the suspected illegal entry vessels from Coastwatch? Is that the normal way that the departure of such vessels is relayed to you?

**Mr Davidson**—Not in all cases, but yes, through Coastwatch would be the normal way.

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**Senator FAULKNER**—Could you just explain for the committee how and from whom you receive information about suspected illegal entry vessels?

**Mr Davidson**—It would generally be through Coastwatch because that is the normal channel for us to communicate in relation to matters that would touch on AMSA's responsibility in search and rescue.

**Senator FAULKNER**—But there is other information that you receive from other agencies?

**Mr Davidson**—I would need to check that but I would expect that on occasions we may have got advice from other agencies at other times. Coastwatch acts for a range of departmental interests, and on occasion they may advise Coastwatch to look out for a vessel and they may come to us directly. I am aware of approaches from Immigration in the past.

**Senator FAULKNER**—In relation to the numbered SIEVs—this is not counting SIEVX—were there any cases where you were not informed of their departure or of their existence, in the first instance, by Coastwatch?

**Mr Davidson**—In relation to SIEV2, Coastwatch contacted AMSA about it. In relation to SIEV9, the first contact to the Rescue Coordination Centre within AMSA was from Maritime Headquarters. In relation to SIEV10, Maritime Headquarters contacted the RCC in the first instance. In relation to SIEVX, we received it from Coastwatch.

**Senator FAULKNER**—Thank you for that. What about the other numbered SIEVs?

**Mr Davidson**—We were not advised of those.

**Senator FAULKNER**—That is the full picture as far as these SIEVs are concerned?

**Mr Davidson**—That is correct.

**Senator FAULKNER**—That is helpful. In the supporting documentation to your opening statement you indicate that the RCC hears about SIEVX by telephonic advice from Coastwatch on 22 October 2001. That is correct, isn't it?

**Mr Davidson**—That is correct.

**Senator FAULKNER**—In fact, you are able to identify that at 2.40 p.m. Canberra time. You go on to say that a number of sources reported that a vessel had departed Indonesia on 13 October 2001. Are you able to indicate to the committee what that number is?

**Mr Davidson**—That was the advice that we were given, in that language and in those terms. We were not advised what the sources were. It was simply advised to us by Coastwatch in those words.

**Senator FAULKNER**—Fair enough. There are two issues here: you were not informed of the number of sources and the actual sources themselves were not identified. I just want to be clear on it.

**Mr Davidson**—That is correct.

**Senator FAULKNER**—That is what you are saying to us. You are also indicating that it was heading to Christmas Island via the Sunda Strait.

**Mr Davidson**—That is correct.

**Senator FAULKNER**—Do you have a watch keeper or a desk officer who takes contemporaneous notes of these sorts of things?

**Mr Davidson**—That is how it operates. We have a 24-hour-a-day, 365-day-a-year operation. The centre is staffed with both mariners and aviators trained in search and rescue techniques and when they get telephone calls, they will keep contemporaneous notes of the calls and act on those.

**Senator FAULKNER**—Have you been able to check those notes to your own satisfaction so this information that you have provided for us is accurate?

**Mr Davidson**—Yes, I have.

**Senator FAULKNER**—And they were taken by one of your desk officers?

**Mr Davidson**—Yes, that is correct.

**Senator FAULKNER**—I see. I think you are saying to us that this is standard operating procedure.

**Mr Davidson**—Yes, that is perfectly correct.

**Senator FAULKNER**—What does not appear to be standard operating procedure—not for the Rescue Coordination Centre but, if you like, for the operations on the SIEVs in the broad—is for such a time lapse to occur. Would that be fair?

**Mr Davidson**—In what sense do you mean a time lapse?

**Senator FAULKNER**—In the sense that it appears that this particular SIEV—SIEVX—leaves a port in Indonesia either late on 18 October or on 19 October and you do not actually hear a report from Coastwatch until effectively three days later. It seems unusual.

**Mr Davidson**—No, because when we were informed of most of the contacts, they were already in contact with Australian Navy forces or Coastwatch had identified them. In this case, there had been no contact with the vessel. It was presumed that the vessel had left. No-one had picked it up or identified it and so, no, it was not unusual. I would suggest that, once it is in contact with the Navy or when Coastwatch had located it, that would be when they would normally advise us.

**Senator FAULKNER**—The next step for you is to pass it on to BASARNAS. Is that right?

**Mr Davidson**—Yes, that is correct.

**Senator FAULKNER**—Do AMSA or the RCC have any other contacts? Is it only to BASARNAS?

**Mr Davidson**—The fax was copied to the other people I listed there.

**Senator FAULKNER**—But is that your standard approach? You advise BASARNAS by facsimile. Is that right?

**Mr Davidson**—That is correct.

**Senator FAULKNER**—Is that the normal way you do these things?

**Mr Davidson**—Yes.

**Senator FAULKNER**—And a copy of that fax message goes to the list of agencies—

**Mr Davidson**—Automatically.

**Senator FAULKNER**—In a sense, it is a broadcast fax. It is an automatic thing.

**Mr Davidson**—There is a list of people that it would be copied to because of the nature of the particular transmission. We would send it to BASARNAS. We would copy it to the Australian embassy here in Canberra and to the Australian embassy in Jakarta and, as a matter of course, we copy it to Coastwatch, Navy and Headquarters Australian Theatre.

**Senator FAULKNER**—In this case, Headquarters Australian Theatre comes back to you and you refer all inquiries to Coastwatch.

**Mr Davidson**—That is correct.

**Senator FAULKNER**—As far as Australian agencies are concerned here, is it fair to say that Coastwatch is the key or central agency in this particular incident in terms of the detail of a broader understanding of the background and process?

**Mr Davidson**—I think you would have to test that with them.

**Senator FAULKNER**—Have you tested it with them?

**Mr Davidson**—No, I have not.

**Senator FAULKNER**—You have had no discussions with Coastwatch about the SIEVX incident?

**Mr Davidson**—No, I have not.

**Senator FAULKNER**—Have you had discussions with any other agencies about the SIEVX incident?

**Mr Davidson**—I had a brief discussion with Defence about it.

**Senator FAULKNER**—And when did that occur?

**Mr Davidson**—Last night.

**Senator FAULKNER**—And what was the nature of that?

**Mr Davidson**—Merely touching on the issues associated with the fax that we are putting forward.

**Senator FAULKNER**—Did it relate to your evidence today?

**Mr Davidson**—No.

**Senator FAULKNER**—Could you outline just briefly the nature of that contact so that we can understand?

**Mr Davidson**—We are tabling before you a fax which has been copied to Defence and we wanted to ensure that Defence agreed that the fax that we were putting up was consistent with their understanding and that there had not been other contacts that we were not aware of on our files but which had happened from their perspective.

**Senator FAULKNER**—That is fair enough. I am just trying to understand.

**Mr Davidson**—Just to clarify, the purpose was to ensure that we had captured all the contacts that we had recorded and that they were complete to the best of our knowledge.

**Senator FAULKNER**—But you are saying to us that this is done basically via facsimile; it is not done by people getting on the telephone and the like. I assume it is a reasonably quick turnaround, but it is exclusively by facsimile message.

**Mr Davidson**—The contacts?

**Senator FAULKNER**—Yes, in relation to the SIEVX event.

**Mr Davidson**—Not necessarily, Senator. There would be telephone conversations between officers in relation to clarifications or follow-up matters.

**Senator FAULKNER**—Are you able to share with us what might have occurred in terms of any exchange of information in the SIEVX incident that was not by the facsimile messages that you have outlined to us?

**Mr Davidson**—The first contact that we had from Coastwatch was by telephone.

**Senator FAULKNER**—Yes, I appreciate that.

**Mr Davidson**—And from that was generated the fax that has been circulated. Beyond that, I think there were a couple of other phone calls.

**Senator FAULKNER**—Can you say who they went to?

**Mr Davidson**—I can. A phone call was received from Coastwatch at approximately 2.40.

**Senator FAULKNER**—Sorry?

**Mr Davidson**—Coastwatch telephoned us at approximately 2.40.

**Senator FAULKNER**—Thank you.

**Mr Davidson**—At 2.45, Coastwatch sent a fax confirming the conversation. At 2.52 AMSA rang Coastwatch. At 3.05, the RCC within AMSA did its own calculations in relation to the potential overdue nature of the vessel. At 3.15 or 3.16 we sent the fax we have attached. At 3.46 Headquarters Australian Theatre rang advising that they had received the fax and that was the end of the contact at that time.

**Senator FAULKNER**—For the benefit of the committee, would you describe that process as pretty standard in a circumstance like this?

**Mr Davidson**—I would.

**Senator FAULKNER**—It was nothing out of the ordinary in terms of the amount, number and nature of communications? Please understand that I do not have a close understanding of how the RCC works.

**Mr Davidson**—It was quite typical. I would regard that as quite normal.

**Senator FAULKNER**—Are you clear as to who had presumed that this vessel had left, whether it was Coastwatch or some other source? Are you able to shed any light on that at all for us?

**Mr Davidson**—No.

**Senator FAULKNER**—So, as far as AMSA is concerned, your standard approach is to accept the nature of the information that is passed to you by Coastwatch—or, for that matter, by any other agency—and to act upon it?

**Mr Davidson**—That is correct.

**Senator FAULKNER**—But in this case you did not at any stage get behind that original communication from Coastwatch and explore it any further?

**Mr Davidson**—No.

**Senator FAULKNER**—Given the tragic loss of life in SIEVX, are there any special procedures that apply within AMSA in a situation where lives are lost, in this particular case in a very significant number?

**Mr Davidson**—We do conduct reviews, depending on the nature of searches that we have been involved in. We share the concern about the loss of life and the numbers involved but, at the time, this was not known to be a search and rescue event. The review, to the extent that one has been done, is more within my own sphere within the organisation as to whether we acted reasonably in the circumstances at the time.

**Senator FAULKNER**—Has there been a review in relation to this incident?

**Mr Davidson**—There has been no particular review.

**Senator FAULKNER**—Have you satisfied yourself?

**Mr Davidson**—Yes, I have.

**Senator FAULKNER**—Would you tell us very briefly how you have done that. Was it a records check? How have you come to that conclusion?

**Mr Davidson**—Obviously, we have been preparing for our appearance before the committee. We are aware of the submissions that have been made. I have looked at the submissions put forward and have examined the actions that were taken at the time with the knowledge that we had at the time, and I have formed the view that, in all the circumstances, those actions were reasonable and complete.

**Senator FAULKNER**—Mr Davidson, I do not know if you have had the benefit of seeing Senator Hill's letter to Mr Crean that has been canvassed this morning. Has anyone drawn that to your attention?

**Mr Davidson**—I saw it this morning, very briefly.

**Senator FAULKNER**—I am glad that you have because I want to ask you about the additional Senate estimates for the Rural and Regional Affairs and Transport Legislation Committee, just to wind the clock back for a moment to 19 February this year. I do not know if you recall a question on notice that Senator O'Brien asked. He placed this question on notice during questions on AMSA output 2.1:

Did AMSA have any role, receive any information or provide any assistance or advice in relation to the refugee boat that sank on 19 October last year?

.....

I want to know whether you received any distress information or calls, or had any knowledge of the boat being in difficulty and what response, if any, AMSA took.

The answer to that question, provided on notice, is that 'AMSA records show that it did not'. I wonder if you could explain to me how that answer fits with the advice to Mr Crean that has been provided here by Mr Kevin.

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**CHAIR**—Mr Kevin introduced it into the proceedings by tabling it.

**Senator FAULKNER**—While it is a letter from Senator Hill, it is provided via Mr Kevin. That answer does not seem to fit with the written response from Senator Hill, and I wondered if you might just explain that the committee. In other words, when AMSA is asked if it had any role, received any information or provided any assistance or advice in relation to the refugee boat that sank on 19 October, how can AMSA records show that it did not when you have just informed us of what in fact took place?

**Mr Davidson**—The question that was put on notice was very explicit: in relation to actions in relation to a search and rescue or distress situation. At no stage did we act in relation to any of those matters. The fax that we sent related to a vessel that was reportedly overdue, and that was it. There were no actions taken in relation to the distress situation or a search and rescue.

**Senator FAULKNER**—Let me just repeat the first part of the question again: did AMSA have any role, receive any information or provide any assistance or advice in relation to the refugee boat that sank on 19 October last year? Haven't you explained to me what AMSA's role was and what information was provided to you, and from you to other agencies, just a moment ago?

**Mr Davidson**—Senator, I go on with the rest of the question, which was: I want to know whether you received any distress information or calls or had any knowledge of the boat being in difficulty. The answer is—

**Senator FAULKNER**—That is the second part of the question. Yes, sure, there are two parts to the question. The first question is: did AMSA have any role, receive any information or provide any assistance or advice in relation to the refugee boat that sank on 19 October last year? A second question is asked—as you properly point out, as I did earlier—about distress information or calls. And the answer is: AMSA records show that it did not. I do not understand, Mr Davidson, how that answer to the question on notice stands when we now know that you did have a role. I am not saying you had a massive or major role, but there is a series of communications here—a primary one from Coastwatch to you, and you take a range of other actions and receive phone calls, send faxes and the like. I am not critical of any of that. I do not understand how you could provide that answer to the question on notice.

**Mr Davidson**—I can only answer it as I said: the minister's answer to the question on notice is tendered in relation to the question posed. I regard that second sentence as a qualifier: the question was tendered and then the second part of it is to qualify it. Our response to that is we did not know that it was a distress situation. There were no distress calls, there were no search and rescue actions taken and there were no matters in relation to it being a search and rescue event.

**Senator FAULKNER**—Was this answer—'AMSA records show that it did not'—the draft answer that went to the minister?

**Mr Davidson**—I could not recall, Senator. I have no idea at the moment.

**Senator FAULKNER**—It is standard operating procedure in AMSA to prepare the answers for the minister, isn't it?

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**Mr Davidson**—That is correct.

**Senator FAULKNER**—The minister ticks off on it—I am going to accept that—but you prepare them, don't you?

**Mr Davidson**—Yes, we do.

**Senator FAULKNER**—So can you tell me, please, is that the draft answer prepared by AMSA for the minister?

**Mr Davidson**—Senator, I will have to take that on notice, because I have no recollection of this specific matter.

**Senator FAULKNER**—I would appreciate you coming back, because I might need to follow it through with you, but do you understand my concern about this, Mr Davidson, given the two parts of the question? When asked on notice by a senator:

... did AMSA have any role, receive any information or provide any assistance or advice in relation to the refugee boat that sank on 19 October last year?

the answer provided is 'AMSA records showed that it did not'. That answer is wrong, isn't it, Mr Davidson?

**Mr Davidson**—Senator, I submit that the answer, in relation to the details of whether AMSA was involved in receiving any distress information or distress calls or had any knowledge of the boat being in difficulty and in relation to the response, if any, that AMSA made to that, is that in this matter there was no such action taken. Our records show that they did not take place.

**Senator FAULKNER**—You did receive information, didn't you, from Coastwatch?

**Mr Davidson**—We were advised on 22 October that there was a vessel that was thought to be overdue.

**Senator FAULKNER**—Yes, and you did have a role, didn't you, because you passed this on to a range of other agencies?

**Mr Davidson**—We passed it on to BASARNAS.

**Senator FAULKNER**—So, I say again, the answer is wrong, isn't it, Mr Davidson?

**Mr Davidson**—I do not accept that, Senator.

**Senator FAULKNER**—Anyway, I would like you to check the draft answer that went from AMSA to the minister, if you would not mind, Mr Davidson. Chair, I would like to move to some more general matters, and I do appreciate that, in relation to SIEVX, maybe one or two of the other senators would like to follow some issues through.

**CHAIR**—I have had an indication that none of the government senators, at this stage at least, have questions for this witness.

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**Senator FAULKNER**—I have some and Senator Collins does too.

**CHAIR**—I have some general questions for the witness myself.

**Senator JACINTA COLLINS**—I have direct ones and some general ones too.

**Senator FAULKNER**—I would like to come back to some more general questions at a later stage. I just thought it useful to do that while we had Mr Kevin's evidence fresh in our minds.

**Senator JACINTA COLLINS**—Mr Davidson, further on the SIEVX incident—and I also have some general questions, because I want to visit the *Tampa* episode with you as well, but I will do that later—you have gone through the detail of the actions taken between 2.45 p.m. and 3.46 p.m., but my question relates to some of the information provided by the minister to Mr Crean in the letter that you were discussing with Senator Faulkner a moment ago. Did you prepare the information to the minister on which this letter was based?

**Mr Davidson**—Are you referring to Minister Hill?

**Senator JACINTA COLLINS**—Yes.

**Mr Davidson**—No, we did not.

**Senator JACINTA COLLINS**—Do you know from the AMSA end how the minister required this information about AMSA?

**Mr Davidson**—Not in detail at the moment.

**Senator JACINTA COLLINS**—So when the minister tells Mr Crean:

Consultation with the Rescue Coordination Centre (RCC) Australia has indicated that Coastwatch Australia advised the RCC that a vessel had departed the Sunda Strait on or about 18/19 October bound for Christmas Island, and that the vessel was overdue.

you are not aware of how that advice went to the minister?

**Mr Davidson**—No, I am not.

**Senator JACINTA COLLINS**—The question that flows from this that you may or may not be able to help me with relates to one of the comments made in the minister's letter:

No response was received from BASARNAS.

Is that your understanding of what followed the series of activities that occurred within AMSA?

**Mr Davidson**—That is correct. Our records show that there was no contact from BASARNAS with us, as a consequence of our notice to them.

**Senator JACINTA COLLINS**—You referred to a couple of the SIEV incidents where you indicate there was contact with BASARNAS and, in fact, agreement as to the role that BASARNAS would then undertake. Can you explain to us why that did not occur in this case?

**Mr Davidson**—I can only speculate, Senator, but the facts, as known at that time, were that a vessel was thought to have departed and, by calculations, was overdue. On that basis, that information was simply passed to BASARNAS for their information and attention.

**Senator JACINTA COLLINS**—Is it common for BASARNAS not to respond?

**Mr Davidson**—If we send a fax to BASARNAS on a matter, it depends on whether or not we ask for a response. It would be common for them not to respond.

**Senator JACINTA COLLINS**—It would be common for them not to respond?

**Mr Davidson**—Not to contact us back again, correct.

**Senator FAULKNER**—How are you sure they get it?

**Mr Davidson**—We do ring them from time to time and have discussions to ensure that they are aware of the situation. In a case like this, I think our records show there wasn't any phone contact.

**Senator FAULKNER**—When there are 300- or 400-odd people floating around on a leaky boat—

**Senator JACINTA COLLINS**—And you said in your communication 'concerns have been expressed for its safety'. I am not sure how you define what does or does not get to the calibre of a distress signal, but you have clearly indicated in this facsimile that concerns have been expressed for its safety. Do you just sit back and accept that there is no response?

**Mr Davidson**—The nature of the number of people on board the vessel was unknown, the departure point was unknown, the calculations that were undertaken were based upon assumptions being made by Coastwatch and then confirmed by the RCC and, on that basis, BASARNAS was advised of the information.

**Senator FAULKNER**—Admiral Smith was able to say, if his memory served him correctly:

... we had some information that a boat might have been being prepared in the vicinity of Sunda Strait but we had no real fixed information as to when it was going to sail.

He then said—which we already know:

Indeed, the first time that the Navy knew that this vessel had sailed was when we were advised through the search and rescue organisation in Canberra ...

That is you.

**Mr Davidson**—That is correct.

**Senator FAULKNER**—So it does appear that there is some knowledge that ‘a boat might have been being prepared in the vicinity of Sunda Strait’. That is an indication that there is some knowledge at least in the hands of Navy. It does not mean it is in your hands, of course; I appreciate that. I assume that information would not normally come to you?

**Mr Davidson**—No, not in the normal course.

**Senator FAULKNER**—But it might?

**Mr Davidson**—Not normally and not in this case.

**Senator FAULKNER**—Not in this case.

**Senator JACINTA COLLINS**—The next component of the minister’s letter that concerns me is the comment:

... RCC Australian did not issue a broadcast to shipping on the overdue vessel, as there was insufficient information on the vessel’s location.

Did you seek at any time to clarify information with Coastwatch as to the vessel’s location?

**Mr Davidson**—The information we had at the time was that a number of sources were reporting that a vessel carrying an unknown number of potential illegal immigrants departed the west coast of Java on Friday 19th transiting the Sunda Strait and heading for Christmas Island. That was the sum total of our information.

**Senator JACINTA COLLINS**—When the decision was made that there was insufficient information on the vessel’s location, was that decision made in the light of attempts to acquire further information being unsuccessful?

**Mr Davidson**—I do not think we concluded at any stage that there was insufficient information on its location.

**Senator JACINTA COLLINS**—With respect, the minister’s letter to Mr Crean states:

... with respect to the notice and RCC Australian did not issue a broadcast to shipping on the overdue vessel, as there was insufficient information on the vessel’s location.

**Mr Davidson**—As I said earlier, I am unaware of where that information was gathered from within AMSA.

**Senator JACINTA COLLINS**—So you are telling us that the information that the minister has provided to Mr Crean has come without your awareness and you tell us, contrary to what is in this letter, that at no stage did AMSA reach the conclusion that there was insufficient information on the vessel’s location?

**Mr Davidson**—I can say that there was complete uncertainty about whether the vessel existed at all. There were sources of information that went to a whole range of issues and we acted, in my view, at the time in an appropriate fashion.

**Senator FAULKNER**—How do you know about the sources of information?

**Mr Davidson**—We were advised from Coastwatch that there were a number of sources of information that were advising that the vessel was departing on or about the 19th and that it was overdue by their calculations

**Senator JACINTA COLLINS**—On your evidence, why did RCC Australia not issue a broadcast to shipping on the overdue vessel?

**Mr Davidson**—We would not, in the normal course of events, issue a broadcast to shipping unless we had a specific, known distress alert; that is, a vessel has issued an SOS or has set off an emergency beacon or a flare or has indicated a distress. In the absence of anything of that nature, we would not go out and do a general broadcast to shipping.

**Senator JACINTA COLLINS**—What occurred then, for instance, in the *Tampa* incident, when we had aerial surveillance of a ship outside our territorial waters? The difference there is that there was actually a plane in the vicinity to see a distress signal; is that the case?

**Mr Davidson**—That is correct.

**Senator JACINTA COLLINS**—How did that plane happen to be in the vicinity whereas there could not be one in this case?

**Mr Davidson**—I have no idea, Senator. That is a matter that is up to Coastwatch. It was a Coastwatch aircraft.

**Senator JACINTA COLLINS**—Okay, so we are back to Coastwatch again.

**Mr Davidson**—Yes.

**Senator FAULKNER**—Have you ever sighted or heard of any P3 Orion photographs of SIEVX?

**Mr Davidson**—No, Senator, I have not.

**Senator FAULKNER**—The committee has had drawn to its attention rumours about such photographs, but let us be clear: you have not seen or have any knowledge of those at all?

**Mr Davidson**—The first I heard of it at all was in relation to the evidence that was taken before this committee a matter of moments ago. I have not heard of any suggestion before that.

**Senator JACINTA COLLINS**—I have one clarifying point that I wanted to raise at this stage. You said in your submission that, contrary to submissions made to the committee, AMSA had no prior warning about this vessel leaving Indonesia. I am certainly aware of concerns expressed that Australian authorities may have had prior knowledge. I am not aware of a claim that AMSA is the body which did. Is there something that I have missed?

**Mr Davidson**—Merely that, being in charge of AMSA, I am able to say to the committee that we had no prior knowledge about it.

**Senator JACINTA COLLINS**—No, I understand that, but you are saying ‘contrary to submissions made to the committee’. I am not aware of submissions that said AMSA had prior knowledge. Have I missed something or are you referring to submissions which stated that an Australian authority may have had prior knowledge?

**Mr Davidson**—That latter point—yes, that is correct.

**Senator JACINTA COLLINS**—So it could well be Coastwatch, which leaves AMSA completely in the clear?

**Mr Davidson**—It may be, yes.

**Senator FAULKNER**—Would you be able to provide, for the benefit of the committee, copies of those communications that you mentioned to us a little earlier—the hard copies, the records in whatever form they are kept? There are only a few of them.

**Mr Davidson**—I will take that on notice, Senator.

**Senator JACINTA COLLINS**—I have one further question: you have gone through the details of communications with AMSA at the time of the incident. We have heard evidence about concerns about how much organisation there appeared to be back at the Indonesian end when the ship got back. Were there any later communications with AMSA in relation to this vessel?

**Mr Davidson**—In relation to SIEVX, there were communications, not with Indonesia at all, but in February, post Senate estimates hearings, on 5 March, and on Wednesday, 10 April, in relation to the Maritime Headquarters.

**Senator JACINTA COLLINS**—But there was nothing within the next few days after this—

**Mr Davidson**—No, nothing at all.

**Senator JACINTA COLLINS**—Just this fax that went out.

**Mr Davidson**—The last record in relation to the few days around it was on the afternoon of 22 October.

**Senator FAULKNER**—What were the communications on 5 March and 10 April?

**Mr Davidson**—They were merely in relation to questions that I believe had been raised during Senate estimates hearings with the Department of Defence in relation to the SIEVX matter.

**Senator FAULKNER**—Who were those communications with?

**Mr Davidson**—They were with Maritime Headquarters Australia.

**Senator FAULKNER**—Did you say that was on 10 April?

**Mr Davidson**—It was the same again, yes.

**Senator FAULKNER**—More generally, how did AMSA operate, prior to the formation of the People Smuggling Task Force, in relation to suspected illegal entry vessels? In this case, I am using lower case letters for those sorts of vessels, in the broad. Could you briefly explain to the committee how AMSA undertook its responsibilities prior to the PSTF establishment?

**Mr Davidson**—It would not have been largely different from the arrangements; in fact, I would be hard-pressed to identify any differences at all. We would become aware of vessels that may have arrived at Christmas Island. For example, we were advised of a search and rescue when an Australian yacht, sailing off Christmas Island, discovered swimmers in the water and notified us that there was a search and rescue. They saved the people involved; the rest of the crew and people had perished. So, in terms of the actual events, that would be almost the same as what is currently operating: we would use largely the same contacts—Coastwatch operations were a principal point of contact—and if there was a search and rescue we would get involved and we would be responsible for any search and rescue effort if it was in the Australian search and rescue region.

**Senator FAULKNER**—Your charter really extends only to illegal entry vessels in distress, doesn't it?

**Mr Davidson**—That is correct.

**Senator FAULKNER**—You mentioned that you might become aware of those. Again, would that normally be as a result of a communication from Coastwatch? Would that be the normal situation?

**Mr Davidson**—That would be more normal, yes.

**Senator FAULKNER**—At times, would you have this drawn to your attention by other agencies or authorities?

**Mr Davidson**—In the period we are talking about—September to December, when the presence of Navy was at a high concentration in that area—the Navy may have been aware of those things ahead of Coastwatch or contemporaneously with Coastwatch.

**Senator FAULKNER**—My questions really go to prior to the establishment of the task force; pre-*Tampa*, if you like. I am really asking if it would normally be Coastwatch that—

**Mr Davidson**—It would normally be Coastwatch, yes.

**Senator FAULKNER**—Is there any capacity to pick up SOSs, distress signals, directly or indirectly, at AMSA itself?

**Mr Davidson**—There is a capacity: we have a satellite based system for picking up emergency position beacons, which are beacons that can be set off by boat owners who carry such a thing. It would not be common for vessels of this nature to carry equipment like that.

**Senator FAULKNER**—Yes, that is what I wondered. I assumed that would not be a common event for an illegal entry vessel.

**Mr Davidson**—I cannot recollect any case where they have used one.

**Senator FAULKNER**—I understand the point you make about the Navy from August 2001 on; it was Coastwatch prior to that. Are there any other major sources of information that you could draw to the committee's attention?

**Mr Davidson**—No, Senator.

**Senator FAULKNER**—When you are informed of such a situation, what are AMSA's procedures? Do you try to locate the vessel in the first instance? Alert shipping? Call in whatever resources might be appropriate—air support or whatever might be the case?

**Mr Davidson**—Are you talking about when we have been advised of a distress situation?

**Senator FAULKNER**—Yes.

**Mr Davidson**—To my recollection, there have not been very many of them. We would take appropriate actions. If it were in the Indonesian search and rescue region—which Christmas Island is—and the vessel were transiting to Christmas Island, we would notify BASARNAS as a matter of routine and in accordance with the agreements that operate between Indonesia and ourselves.

**Senator FAULKNER**—What was the situation that applied in the case of the *Tampa* and the *Palapa*, which was the illegal entry vessel there? Can you explain to me what role AMSA had in that particular incident?

**Mr Davidson**—To the best of my recollection, the information came to us that there was a vessel signalling that it was in distress. In accordance with the procedures, we immediately notified BASARNAS of a distress situation within their search and rescue region, which this was. At the same time, we issued a broadcast to shipping, giving the position of the distress vessel as we had received it. That is consistent with the protocols that exist internationally, which is that the search and rescue agency that first becomes aware of a distress event prosecutes all actions until it has been handed over to the authority responsible for that search and rescue region.

**Senator FAULKNER**—In this case in relation to the *Palapa* and the *Tampa* incident, did that information come to you from Coastwatch?

**Mr Davidson**—That is correct.

**Senator JACINTA COLLINS**—Can you tell us how Coastwatch acquired that information?

**Mr Davidson**—I believe they had an aircraft which was overflying the vessel.

**Senator JACINTA COLLINS**—So they had an aircraft which was overflying Indonesia's responsibility area?

**Mr Davidson**—The search and rescue responsibility, yes.

**Senator JACINTA COLLINS**—Can you explain to us why that would be?

**Mr Davidson**—The boundaries between search and rescue regions and any other boundaries of international agreements are based upon what country is best placed to act. The boundary between Australia and Indonesia—and we have given you a chart which actually shows that on the back of the tendered material—relates to nothing more than an area which each agency is best placed to respond. That corresponds with both the aviation search and rescue region as well as the maritime one. It has no material influence on where aircraft fly or where boats sail; it just dictates who will respond to a search and rescue event.

**Senator JACINTA COLLINS**—But both of those incidents were in Indonesia's search and rescue zone, but in one of those instances we had an aircraft available to receive a distress signal and in the other one we did not.

**Mr Davidson**—I cannot comment on—

**Senator JACINTA COLLINS**—The zones do not necessarily explain that difference in those two circumstances, do they?

**Mr Davidson**—No.

**Senator FAULKNER**—When did you receive the advice from Coastwatch in relation to the *Tampa*?

**Mr Davidson**—I would have to take that on notice.

**Senator FAULKNER**—I would appreciate it if you would. Can you indicate whether there was a delay between when you received that advice about the *Palapa* and when you took the next steps?

**Mr Davidson**—To the best of my recollection, we acted pretty promptly. The vessel was signalling a distress, an SOS, and actions were taken consistent with the fact that the people were declaring a distress situation.

**Senator FAULKNER**—So we do not get bogged down on this at this stage, would you be happy to take on notice, please, a time line in relation to AMSA or the RCC's role with the *Tampa* from the time that this issue was drawn to your attention by Coastwatch? Would you be able to do that for us?

**Mr Davidson**—Yes.

**Senator FAULKNER**—I am happy to laboriously work through this, but it does sound as if, which is fair enough, you may not have been necessarily prepared to answer—

**Mr Davidson**—I certainly have not come prepared to answer questions on that matter.

**Senator FAULKNER**—I understand that; that is fine. Could you provide a time line for us of the key involvement of AMSA or the RCC after the detection of the *Palapa*? My recollection is that that is Saturday, 25 August, but I might have that wrong. This is right through to the time, of course, that people are rescued and they find themselves on board the *Tampa*. Would you be able to do that for us?

**Mr Davidson**—I think we could do that for you.

**Senator FAULKNER**—And if you need to put in any explanatory material if there are time delays, I would appreciate that too.

**Mr Davidson**—Yes.

**Senator FAULKNER**—Were you asked to monitor the situation in relation to the *Tampa* in any way after those on board the *Palapa* embarked on the *Tampa*?

**Mr Davidson**—My recollection is that we were, yes.

**Senator FAULKNER**—Could you explain the nature of that to the committee, please?

**Mr Davidson**—I need to check the records in relation to that to give you an accurate answer.

**Senator FAULKNER**—If you would not mind again taking on notice—we may have to follow this up, Mr Davidson—where this advice comes from. I would be interested to know when it goes, what the nature of the advice is and what AMSA's response is. I would like to have a broad understanding of that, if I could, in relation to AMSA's ongoing role. Would it be normal in a situation like this that AMSA would have an ongoing role?

**Mr Davidson**—Senator, I would never describe that incident as being normal. It was in my view unprecedented.

**Senator FAULKNER**—When did AMSA get involved in the People Smuggling Task Force?

**Mr Davidson**—I think I attended on a couple of occasions, but again I would have to check my records on that.

**Senator FAULKNER**—Were you invited to the People Smuggling Task Force on Tuesday, 28 August and a second meeting on Saturday, 1 September?

**Mr Davidson**—I think that sounds about correct with my information, but I need to check my records on that; I do not have that with me.

**Senator FAULKNER**—I am interested to understand why, if the rescue had been completed, AMSA would be attending those meetings. Can you broadly explain that to the committee?

**Mr Davidson**—I think there were concerns that there were other vessels potentially arriving and that indeed they may get into a similar situation requiring search and rescue action.

**Senator FAULKNER**—So AMSA's involvement on those task forces on those dates was not in relation to the *Tampa*?

**Mr Davidson**—You are testing my recollection of the issues that were discussed. There were a whole range of issues discussed, as I broadly recollect, and AMSA's involvement went to a range of issues. Matters associated with the condition of the vessel and whether it was seaworthy or otherwise were also matters that were discussed.

**Senator FAULKNER**—Was it the department of immigration that asked you to monitor the *Tampa* after the rescue of the people from the *Palapa* was completed?

**Mr Davidson**—I need to confirm that, but that is my recollection.

**Senator FAULKNER**—I would like you, if you could, to confirm that, and who conveyed that request and when, and if it was only the department of immigration. Could you take that on notice?

**Mr Davidson**—Yes, I will take that on notice.

**Senator FAULKNER**—How often would a request be made by Immigration to AMSA to monitor a vessel that had undertaken a rescue? Was that new ground too?

**Mr Davidson**—I suspect it was new ground.

**Senator FAULKNER**—So that had never happened before?

**Mr Davidson**—Not in my recollection.

**Senator FAULKNER**—Do you know what the purpose of that particular request was?

**Mr Davidson**—No, Senator, I do not. I think it was reasonable that people would want to know what was happening. My recollection is that the vessel was proceeding on its way. The expectation had been that the vessel was intending to drop off the rescuees in Indonesia and then proceed on to Singapore.

**Senator FAULKNER**—What has that got to do with AMSA?

**Mr Davidson**—Other than the fact that we had issued the broadcast, no particular interest.

**Senator FAULKNER**—Do you remember how long after the *Palapa* was detected that the broadcast had been issued?

**Mr Davidson**—No, I do not. I do recollect that the vessel initially was described as drifting and there was no distress situation initially. It was subsequent Coastwatch flights that determined that the vessel was then in distress and that actions were taken.

**Senator FAULKNER**—So it is when a vessel is in distress that you take the action to contact shipping in the area? It is only when a vessel is in distress?

**Mr Davidson**—Absolutely. It is only when a vessel is in distress.

**Senator FAULKNER**—So in the time line that you are providing for us—so that again we do not get bogged down and spend a long time here unnecessarily—could you indicate when that advice came through from Coastwatch also?

**Mr Davidson**—Yes, we can.

**Senator FAULKNER**—I assume this was coming through from the Orions?

**Mr Davidson**—I am not sure what aircraft would have been flying.

**Senator FAULKNER**—You might be able to establish that.

**Mr Davidson**—It would be the Coastwatch aircraft.

**Senator FAULKNER**—Is there any truth to the suggestion that AMSA—having fulfilled whatever the normal obligations and requirements are in relation to distress signals, which in this case were from the *Palapa*, and once those people were on board the *Tampa*—became effectively the communication vehicle by which government agencies communicated with the captain of the *Tampa*?

**Mr Davidson**—We were the principal communicator.

**Senator FAULKNER**—You were the principal communicator. Is that how it normally works in situations like this?

**Mr Davidson**—I repeat that I do not think it was a normal situation. But, yes, we have the facilities to communicate with vessels via fax. We have the lists of the Inmarsat sea satellite phone contact numbers for ships. So we would become the principal source of communication and we would do that as a matter of routine.

**Senator FAULKNER**—So when did the involvement of AMSA in the *Tampa* incident end?

**Mr Davidson**—I would need to check the records on that.

**Senator FAULKNER**—Our time line can be extended through to the end—if you do not mind—to answer that.

**Mr Davidson**—Thank you. If that is useful.

**Senator FAULKNER**—It may or may not be useful. It is hard to judge at this point. No doubt, the time line itself will suggest a range of other questions. Did AMSA effectively lose its search and rescue function in relation to the suspected illegal entry vessels after Operation Relex was established, would you say?

**Mr Davidson**—‘Lose’—I think that is a word I would not use to describe the situation.

**Senator FAULKNER**—Fair enough. Could you describe the situation for me so I can understand it?

**Mr Davidson**—I think the situation once Operation Relex was in place meant that there were resources on the water that were available to respond to search and rescue. That is not the normal situation with search and rescue. A normal search and rescue comes via a distress alert and vessels are not in the vicinity specifically to track or be proximate to these vessels. I think some of the search and rescue events were being instigated by either the crew or the people on board. There is evidence that they were taking actions to disable and scuttle their own vessels, and so the whole dynamic is not your usual search and rescue event. In those circumstances, the response to it does not require a coordination centre to manage and coordinate the search and rescue action.

**Senator FAULKNER**—But in relation to the *Tampa*, you are facilitating communication by Commonwealth officers to the captain of the *Tampa*, aren't you?

**Mr Davidson**—On the whole, yes.

**Senator FAULKNER**—So do you keep a record of those communications?

**Mr Davidson**—Yes, we do.

**Senator FAULKNER**—Could you please provide that for the benefit of the committee too?

**Mr Davidson**—I will take that on notice.

**Senator FAULKNER**—Thanks very much. When did Mr Moore-Wilton ring you after the *Tampa* issue blew up? What was your first contact with Mr Max Moore-Wilton?

**Mr Davidson**—I would need to check my records on that.

**Senator FAULKNER**—Basically, didn't he take this out of your hands on the Sunday night?

**Mr Davidson**—I would need to check the records, but I do not even relate to the statement you made. AMSA was involved in the search and rescue up to the point at which we issued the broadcast and advised BASARNAS that it was in their search and rescue area. The *Tampa* was one of three vessels that responded to the broadcast. When the *Tampa* reached the scene, the master at that time determined the actions that he was going to take. He boarded the people, dismissed the assistance of the other vessels that had also responded to the broadcast and advised them that they were no longer required. The master of the *Tampa* notified the Rescue Coordination Centre in Norway that he had picked up the people in distress, and we were

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notified by them and by the other vessel that was in attendance that had been dismissed by the master of the *Tampa*. At that stage, as far as the search and rescue was concerned, for all intents and purposes the issue was over.

**Senator FAULKNER**—Yes, but you do not recall having any contact with Mr Moore-Wilton around the time of the *Tampa*?

**Mr Davidson**—I recollect a number of contacts with Mr Moore-Wilton, yes.

**Senator FAULKNER**—Could you outline those contacts for the benefit of the committee, please?

**Mr Davidson**—I would need to check my records. As I say, I have not got the information with me.

**Senator FAULKNER**—Are you sure you did not have one very late at night or early in the morning? You do not recall that one?

**Mr Davidson**—No, I do not recall that one.

**Senator FAULKNER**—If you would take it on notice, please—when you had contact with Mr Moore-Wilton, what the nature of that contact was and what impact it had on AMSA's operation—I would appreciate it.

**Mr Davidson**—To the extent that I have records about that, I will endeavour to provide it. But I am not confident that I have those records.

**Senator FAULKNER**—Thanks very much. What about Ms Philippa Godwin from the department of immigration? Did you have much contact with her at the time?

**Mr Davidson**—I had a number of telephone conversations with her, yes.

**Senator FAULKNER**—Could you share those details with us?

**Mr Davidson**—I remember we had a number of conversations. They were at the time at which the *Tampa* had responded to the search and rescue and had picked up the rescuees. To the best of my recollection it was probably heading to Indonesia, but had indicated in a conversation with the Rescue Coordination Centre that they were under duress and were being threatened—being told that they had to go to Christmas Island. My recollection is that I had conversations with Ms Godwin at that time in relation to exactly what her understanding of the situation was and what were my understandings about it.

**Senator FAULKNER**—Did you receive any advice from either Mr Moore-Wilton or Ms Godwin about the actions that you ought to take in terms of your responsibilities with AMSA?

**Mr Davidson**—No.

**Senator FAULKNER**—None at all?

**Mr Davidson**—None at all.

**Senator FAULKNER**—These are just about contact with the *Tampa*? Is it limited to that?

**Mr Davidson**—We had a situation where, to all intents and purposes, at the time the vessel appeared to have been hijacked or was being threatened with hijack and where the actions it was taking were under duress, extreme duress or danger to the crew. In the communications that were taking place with the vessel at the time it was unclear as to the nature of the threats that were being made to the master and the crew and whether the master was able to communicate in an open fashion with anybody at the time. There was grave concern about the safety of the crew.

**Senator FAULKNER**—Sure. Anyway, we might chase this down further if you are able to reconstruct the contact between you—or AMSA more broadly—and Mr Moore-Wilton and Ms Godwin over this period. Again, I think it is probably easier if you take that on notice so we do not delay the committee too much. I would appreciate that very much, indeed. I assume that in AMSA's case—in your organisation's case—there certainly would not have been any contact by ministerial or prime ministerial staff at any point from late August to 10 November 2001?

**Mr Davidson**—No.

**Senator FAULKNER**—You have provided the AMSA involvement in relation to the SIEVs—these are the upper case SIEVs, for want of a better description, or the numbered SIEVs as I have described them. Thank you for that, that is very helpful for the committee. I assume this means that there was no involvement, as far as AMSA was concerned, with SIEV4. Would that be right?

**Mr Davidson**—That is correct—not to our records. We do not have any record of that.

**Senator FAULKNER**—I think we have heard evidence that SIEV4 sent out a distress signal on 7 October. In this case, I assume AMSA did not pick it up. I know it was picked up by HMAS *Adelaide*, as you probably appreciate also, but I assume that then was not picked up by AMSA. Would that be right?

**Mr Davidson**—That is correct. Our records show no contact.

**Senator FAULKNER**—Thank you.

**Senator MURPHY**—With regard to your introduction, you say that in a search and rescue capacity AMSA had an indirect involvement in three of the 12 interceptions. Did you receive advice about the other nine?

**Mr Davidson**—No we did not.

**Senator MURPHY**—So you received no advice about the other nine?

**Mr Davidson**—That is correct; we received no advice at all.

**Senator MURPHY**—It might be my misunderstanding but I thought that, from a briefing given to the Public Works Committee, I think, some time back with regard to how the Department of Defence at NORCOM deals with these matters, there was a fairly close working relationship between AMSA, Coastwatch and Defence in monitoring all of these things. So you are not advised if there is an illegal entry vessel heading towards Australia unless something goes wrong; is that what you are saying?

**Mr Davidson**—That is generally the case. We would not be advised unless there were concerns for its safety in some fashion, and even then the search and rescue event may be over and done with before we get advised.

**Senator MURPHY**—It may be over and done with before you are advised that there was a problem, but you say that you receive no advice about whether the vessels that are heading towards Australia are in difficulty or not.

**Mr Davidson**—Our records show that the ones we have identified are the only ones we have any record of having been advised about from any source.

**Senator MURPHY**—Would you restate the outline you gave earlier on the time frame for the SIEVX? It started at 2.40 p.m., can you restate the action that was taken thereafter?

**Mr Davidson**—At 2.40 p.m. we received a telephone call from Coastwatch. At 2.45 we received a fax confirming the telephone conversation. At 2.52 AMSA, the RCC, rang Coastwatch to ensure that Defence had been informed. At 3.05 calculations were undertaken on the file in relation to assumptions as to the speed and distance travelled for the vessel.

**Senator JACINTA COLLINS**—I am sorry; would you just repeat that last time frame?

**Mr Davidson**—The RCC calculated the times travelled from the Sunda Strait at four, five and six knots and the number of hours that it would take for a vessel at that speed, being 75, 60 and 50 hours respectively. At 3.16 p.m. a fax was sent to BASARNAS and copied to, as I indicated—and there is a copy provided in the material tended—and that is the end.

**Senator MURPHY**—Is the time on the copy you have tended here the time it was copied?

**Mr Davidson**—No. If you would go to the section that says, 'Sent via fax, created 0516, 22nd October 01,' that is UTC time, which is Greenwich Mean Time, which is 3.16.

**Senator MURPHY**—I understand that now; I was just confused with the times. It seems that on other occasions when you have advised BASARNAS you have had some other contact, either by phone or by follow-up fax. If you were advising a search and rescue organisation in another country, I would have thought that you would send a notice or fax that says, 'We've been advised that a vessel carrying an unknown number of persons departed the west coast of Java on Friday, 19 October, transiting the Sunda Strait, heading for Christmas Island. The vessel has not yet arrived and concerns have been expressed for its safety.' Did they not contact you to ask for further information?

**Mr Davidson**—Firstly, this would not be a common sort of event, I would say. In this particular case, the concern was raised with us by Coastwatch. The action we took in relation to

the information that was then available was that, as best as I can determine, it was concluded that it was appropriate to advise BASARNAS; that action was taken.

**Senator MURPHY**—Why would they not want to know? Even with regard to Coastwatch, I think I understood you to say earlier to Senator Collins that there was some doubt as to whether the vessel even existed. It all seems a bit odd to me, having regard to a briefing I received from the Department of Defence representatives in Darwin. They know the exact movement of every boat that heads in any direction towards Australia.

**Mr Davidson**—I cannot comment on that, Senator; only this particular case.

**Senator MURPHY**—And I think they stated very proudly that that was the case.

**Mr Davidson**—I have no comment to make on that, Senator.

**CHAIR**—We are going to have to move this along a bit because we have some witnesses banked up who have to catch planes out of here at six o'clock tonight. Are there any further questions?

**Senator JACINTA COLLINS**—I want to wind up quickly on the point that Mr Davidson just went back to. Why was it determined that the appropriate course in this case was just to simply send this fax to BASARNAS? Why was it, for instance, not determined that Coastwatch should search as, indeed, it was in that region in the case of the *Tampa*? We are trying to understand the decision-making process that would occur within AMSA with respect to this type of report.

**Mr Davidson**—I can only say that, on the records that we have, the course of action that was taken and determined to be appropriate in the circumstances was to do this. Whether Coastwatch itself was planning to do searches or whatever is a question you will have to put to Coastwatch.

**Senator JACINTA COLLINS**—But you said to us that it was determined that the appropriate thing to do was to advise BASARNAS. I am asking you the reasons for that determination, and twice now you have not been able to elaborate further on why it was determined.

**Mr Davidson**—I have not had personal discussions with the people who were on duty at the time to get to the issues that were in their minds as to why they decided that that was the appropriate course of action. What I have is—

**Senator JACINTA COLLINS**—Could you take that on notice for me?

**Mr Davidson**—Yes.

**Senator JACINTA COLLINS**—Could you also take on notice for me why no follow-through occurred in relation to there being no response from BASARNAS? And, thirdly, could we have a copy of the fax that Coastwatch sent at 2.52 p.m. confirming the telephone advice?

**Mr Davidson**—I will take that on notice.

**CHAIR**—I have a few wrap-up questions for you. AMSA covers 53 million square kilometres or one-tenth of the earth's surface. By that you mean you have maritime safety, protection of the marine environment, and aviation and marine search and rescue coordination and overseeing responsibilities for those areas.

**Mr Davidson**—That is our search and rescue region that we have lodged with both the International Civil Aviation Organisation and the International Maritime Organisation. It is the search and rescue responsibility.

**CHAIR**—So, if an incident occurs within the Indonesian search and rescue region, you notify the Indonesians and they, not you, do the work of coordinating the rescue?

**Mr Davidson**—That is correct.

**CHAIR**—But you are the authority that nominates to the Indonesians that something must be done?

**Mr Davidson**—If we are advised of an event and it is in an adjacent search and rescue region or, indeed, in another part of the world, the protocols require us to notify the appropriate authority—that is, the people who are responsible for that search and rescue region—and we do that as a matter of course.

**CHAIR**—Christmas Island, which is an Australian territory, is in the Indonesian search and rescue region, not in the Australian one.

**Mr Davidson**—That is correct.

**CHAIR**—So, for an incident in and around the region of Christmas Island, the search and rescue work would be done by Indonesia?

**Mr Davidson**—That is correct.

**CHAIR**—Is there a search and rescue capability on Christmas Island itself?

**Mr Davidson**—Very limited, I think.

**CHAIR**—If a plane goes down in an Australian area, we have an authority—its name just alludes me for the moment—that investigates what caused that plane to crash and reports. I think it is BASI, the Bureau of Air Safety Investigation. Are you the equivalent authority as far as marine incidents are concerned?

**Mr Davidson**—No, the ATSB, Australian Transport Safety Bureau, is responsible for doing safety investigations and it does marine and aviation investigations.

**CHAIR**—Do you notify them of any incidents to which their attention should be drawn? Is that part of your responsibility?

**Mr Davidson**—Yes, it is, and we do.

**CHAIR**—A boat containing 383 people capsized and about 350 of them drowned. That would be a quite significant incident, would it not?

**Mr Davidson**—It certainly would, yes.

**CHAIR**—It would appear from the map that it occurred in the Indonesian search and rescue region. What do the Indonesians do to investigate incidents like that?

**Mr Davidson**—I have no information in relation to what their investigation functions or powers are.

**CHAIR**—No, but they have an analogous authority that in the event of loss of life in their zone they would, like you do to the Australian mob, identify the Indonesian mob and they would get to and investigate it? Do they have an analogous authority like that?

**Mr Davidson**—One would assume they may have, yes.

**CHAIR**—Do you know for sure whether they do or not?

**Mr Davidson**—No, I do not know for sure.

**CHAIR**—You are responsible for safety in this area, though. You are not responsible for recovering the people from the sea, but you are responsible to keep an overview on the safety—

**Mr Davidson**—No, we are responsible for maritime safety in Australia's jurisdiction in relation to marine events, that is, large vessels that operate within the direct jurisdiction of Australia. We undertake port state control. We inspect ships. We are responsible for coordinating the search and rescue activities. If there is a maritime incident and it is one that requires investigation, or an investigation is undertaken or warranted, we may undertake an investigation with a view to a prosecution—for example, in relation to a pollution event or in relation to a collision between two vessels where there has been failure to keep a proper lookout and for which there are regulations that manage those events—but search and rescue, and certainly within the Indonesian search and rescue region, is a matter that would go to the Indonesians.

**CHAIR**—But you have a coordinating role to notify the Indonesians in overview as to whether there is an incident occurring in their area.

**Mr Davidson**—No. The situation is that if a party becomes aware of a search and rescue incident which occurs within somebody else's region then it is their responsibility to notify the responsible agency. It is in that context that, if Australia becomes aware of a search and rescue event which is taking place in the Indonesian search and rescue region, we notify BASARNAS. That is the protocol. We have no overview responsibility whatsoever. It is just that in certain circumstances search and rescue incidents have come to our notice and we have no knowledge of whether they have been notified to BASARNAS. In those circumstances, we automatically notify BASARNAS.

**Senator MURPHY**—And yet you do not seek a response from them to see whether they have been notified.

**CHAIR**—If a boat was going down off Christmas Island, you would ask the Indonesians to rescue it; you would not alert Australian rescuers to go and rescue it.

**Mr Davidson**—We would notify BASARNAS, and if there were resources at Christmas Island that could respond promptly to that event we would take all actions necessary to effect a proper rescue. The responsibility on all search and rescue agencies around the world is to respond comprehensively and completely to every search and rescue event, wherever they may be. In the event that the knowledge is held by one agency first, they must continue to prosecute the search and rescue effort until such time as they can hand it off to the agency that is better placed to take it over and complete the exercise.

**CHAIR**—Sticking with this example, this would be in the Indonesian zone but your responsibility would be to notify people in the Australian zone to go to the rescue of that event and hand it over to the Indonesians if they were better placed.

**Mr Davidson**—Yes.

**CHAIR**—Can you take on notice for me whether there is an analogous body in Indonesia that does investigate loss of life or major incidents of this nature? It would seem to me that it is logical that they would have one, but if you do not know I am not sure whom I ask to find out other than the Indonesians. Can you take that on notice for me?

**Mr Davidson**—We can take that on notice and inquire.

**CHAIR**—Has any effort been made to pinpoint where SIEVX might have gone down?

**Mr Davidson**—No, not by AMSA. Only through my knowledge of AMSA can I have such certainty, but I know of no efforts to pinpoint the location by anybody in particular. I did hear the evidence given by Mr Kevin where he has attempted to pinpoint it, but his are the only efforts I am aware of.

**CHAIR**—Those efforts are relating to trying to calculate steaming time from points of departure, but that is not a matter of drawing a rhumb line between the point of departure and where the suspected incident occurred because there are other calculations in marine navigation, aren't there?

**Mr Davidson**—I would hazard that you are correct.

**Senator FAULKNER**—Have you got any reason at all, Mr Davidson, to be concerned that there was any direct or indirect Australian involvement, by any means, that may have contributed to the sinking of that vessel? Have you got any concerns in that area at all?

**Mr Davidson**—Categorically, none.

**CHAIR**—I think we are done, Mr Davidson. There is a number of matters that you have taken on notice. We are eager to try to complete this inquiry in a reasonable time, so we would be grateful if you could get back to us reasonably quickly with comprehensive answers so we are not in a situation of wanting to examine you further based on the answers that are given.

**Senator FAULKNER**—We do appreciate your taking those on notice, Mr Davidson. I think at the end of the day it probably will save us a bit of time. If you could take the approach that the chairman has outlined, I would certainly appreciate it and I am sure all of the committee members would. Thank you for that in advance.

[4.59 p.m.]

**ENSOR, Mr James, Director, Public Policy, Oxfam Community Aid Abroad**

**REID, Mr Malcolm, Manager, Advocacy, Oxfam Community Aid Abroad**

**CHAIR**—Welcome, Mr Reid and Mr Ensor. Do you have an opening statement?

**Mr Ensor**—Yes, we have a brief opening statement.

**CHAIR**—Please proceed.

**Mr Ensor**—Oxfam Community Aid Abroad is a development agency working in more than 30 countries around the world, including many countries in the Pacific; in particular, Papua New Guinea, the Solomon Islands, Bougainville, East Timor and Vanuatu. We are a member of Oxfam International, a global network of development agencies, and also of the Australian Council for Overseas Aid.

Concerns coming to us from partner organisations with which we have relationships within the Pacific late last year led to us researching and publishing a report titled *Adrift in the Pacific* in February 2002. The report, we believe, asks a number of important questions about the Pacific solution which are being raised both in the Pacific and increasingly here in Australia. We acknowledge that the issue of asylum seekers is an extremely complex humanitarian and political issue which demands attention and financial commitment from Australia. We applaud the Australian government's financial commitment and recent political commitment to addressing the issue.

There are, however, material questions that we think are arising in the Pacific regarding the current policy. We believe those questions warrant addressing by both this committee and the Australian government. We believe these questions fall into three broad categories. The first category surrounds the impact of the Pacific solution on the Australian aid program. Arrangements for housing of asylum seekers in Nauru and Papua New Guinea have been accompanied by financial commitments from the Australian government, notably \$30 million in development assistance for Nauru.

Whilst we welcome increased development assistance to Nauru per se, some key questions around that assistance remain unanswered. Firstly, Nauru is budgeted to receive \$3.4 million in aid in 2001-02 through the Australian government's aid program administered by AusAID. A further \$16.4 million was committed via AusAID during the financial year following the government's mid-year financial review. This combined funding—that is, the \$3.4 million and the further \$16.4 million—is insufficient to cover the \$30 million commitment made to Nauru, leaving a potential \$10.2 million shortfall. The question that is being asked in this instance is: where will those funds be drawn from? The concern in the Pacific and from a number of development agencies is in particular whether those funds will be drawn from other countries as part of Australia's bilateral aid program or regional programs.

The relationship between the Pacific solution and the aid program is creating a lack of clarity, particularly in some public statements. On 24 September, parliament was told by Senator Robert Hill that assistance was being managed by AusAID. He stated that the aid is managed and administered by AusAID and that AusAID is responsible for the procurement of all goods and services procured as part of the aid package. However, on radio on 5 February 2002, Chris Gallus stated that the formal aid program was totally separate from the Pacific solution. The two were said to be totally separate and the asylum seeker program funds were said to not impact on the aid program. The other aspect regarding the relationship between the funds generated through the Pacific solution and the formal aid program concerns potential distortions of the aid program.

In 2001-02 Nauru is to receive more aid than it received in the preceding eight financial years. Questions are being asked. Will that arrangement continue into future financial years? Is that a one-off payment of \$30 million in aid? If our relationship with Nauru over housing asylum seekers is continued into the future, what incentives through aid or other mechanisms would be provided to support that?

The fourth area of concern is the consistency of funding to Nauru from AusAID, with the stated intentions of Australia's aid program in the Pacific, which are to focus primarily on poverty reduction, good governance and regional coordination. In particular, there is the provision of \$10 million for fuel supplies and repairs for generating equipment. We cannot see where that fits within those stated priorities.

The second broad area of questions relates to some constitutional and human rights issues associated with the current arrangements. These are, firstly, whether it is appropriate for asylum seekers to be detained in countries which have not signed or ratified the 1951 refugee convention, to which Nauru is not a signatory. Papua New Guinea, although a signatory, is a signatory with significant caveats—explicitly, not accepting its obligations under the convention in a number of key areas, including the rights of refugees to housing, employment and education. The second area of questions concerns whether it is appropriate to export mandatory detention to other states, given concerns that have been expressed about this practice. Whilst Oxfam Community Aid Abroad agrees with the need for detention of asylum seekers for an initial period for the purposes of security, health and identity checks, the question arises as to whether it is appropriate capacity building for Australia to export longer-term mandatory detention to other states. We note that the UNHCR describes the practice of mandatory detention as inherently undesirable, especially for vulnerable groups.

There are questions being raised as to the legality of mandatory detention in Nauru, and specifically in relation to section 5 of the Nauruan constitution, which states that no person shall be deprived of personal liberty, except in a range of circumstances which do not include asylum seekers, and that people are entitled to legal representation in their place of detention. There are questions around what will happen to asylum seekers beyond the agreed periods of detention expiring in May 2002 and October 2002 in Nauru and Papua New Guinea respectively. The International Organisation for Migration and the UNHCR have both stated that they will not be involved in removing asylum seekers from those places against their will.

The third area of questions that are arising concern sustainability and the impact of the policy in Pacific communities. The report that we produced in February documents concern at the policy within Nauru and, more broadly, regionally. Within Nauru the concern relates primarily

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to the impact of the 10 per cent increase in population associated with the asylum seekers detained there and the impact that it is having on service provision, especially in the health and water sectors. There is concern documented in our report around the sacking of the former foreign minister in Papua New Guinea and other suggestions being made that the policy will stretch an already delicate political fabric in many Pacific nations. Our report outlines concerns at Australia's reputation in the region associated with the policy, and it documents concern from government leaders, church leaders and regional forums that the policy is an imposition of Australian domestic political concerns over appropriate foreign policy for the region.

We make a number of recommendations both in our report and in our submission to this committee. Those recommendations are an end to the mandatory detention of asylum seekers in Pacific nations; that the Australian government provide support for Pacific island governments to sign and ratify the 1951 Convention relating to the Status of Refugees and the associated 1967 Protocol relating to the Status of Refugees; increased support to improve the situation of refugees and internally displaced people in Pacific islands and Pacific states, particularly West Papua, Bougainville and the Solomon Islands; potential special programs targeted at peace-building in areas of conflict, particularly in countries that are drivers of the current refugee problem such as Pakistan and Iran; detention of asylum seekers only for short periods to allow health, security and identity checks followed by their release into the community with adequate funding for services such as English language training, employment assistance and trauma counselling; and, finally, a review of resettlement policies with a recommendation that Australia increase the number of refugees accepted through our refugee program.

**CHAIR**—Thank you, Mr Ensor. Mr Reid, do you have any supplementary remarks.

**Mr Reid**—No.

**CHAIR**—Mr Ensor, could you make that written statement available to one of the assistants to this inquiry so that we can each have a copy in front of us. It is about 12 minutes past five and you have to be out of here by six o'clock. That means that we have roughly 50 minutes for questioning, if we are to let you go.

**Senator BRANDIS**—Mr Ensor, Oxfam's primary work is as an aid agency; is that right?

**Mr Ensor**—Yes, that is correct.

**Senator BRANDIS**—In delivering aid, the Oxfam Australian operation primarily applies through funding windows with AusAID; is that so?

**Mr Ensor**—Not primarily. We have about 24 different funding sources. AusAID is one of the six largest of those 24.

**Senator BRANDIS**—Can you tell me, either precisely or approximately, how many aid projects Oxfam Australia currently administers in the Third World.

**Mr Ensor**—I could only tell you very approximately, and I would be happy to go away and research and give you some more accurate figures. I think it is around 300 projects per annum.

**Senator BRANDIS**—May I take it that you, or perhaps you, Mr Reid, are involved in the decision making as to which of those projects you will fund and administer?

**Mr Ensor**—No, not directly.

**Senator BRANDIS**—You are familiar with the process by which those decisions are arrived at?

**Mr Ensor**—Yes.

**Senator BRANDIS**—May I take it that, although not an exclusive criterion, one of the primary criteria you would apply in deciding which projects to fund would be need?

**Mr Ensor**—Yes.

**Senator BRANDIS**—I take it that an element of your aid portfolio is emergency relief?

**Mr Ensor**—Yes, correct.

**Senator BRANDIS**—Obviously, it almost goes without saying that the principal criterion to which you would have regard in deciding to fund emergency relief programs is urgency?

**Mr Ensor**—Humanitarian need would be the main criterion.

**Senator BRANDIS**—And is that generally the case with all of your decisions: that the extremity, if I can use that word, is the principal criterion according to which you make your decisions to offer funding?

**Mr Ensor**—No, it is not the single major criterion. We work as a confederation of 11 agencies around the globe, and the impact of that is that it enables us to develop economies of scale and efficiencies in focusing in particular sectors.

**Senator BRANDIS**—So you can play to your strengths, as it were, where you have a particular capability?

**Mr Ensor**—Exactly.

**Senator BRANDIS**—And your possession of that capability is itself an independent criterion other than the need or the urgency of potential funding recipients?

**Mr Ensor**—They link to each other, but that is essentially correct. To give an example, in southern Africa our development interventions are now primarily in the area of HIV-AIDS prevention across five or six countries. In the Solomon Islands we manage a large peace-building program that is funded by the British government through DFAT. We have a sectoral focus on natural resource management in East Asia.

**Senator BRANDIS**—Would I be right in thinking that, as a general principle, all other things being equal—those other things being capability, your particular expertise and so on—if faced

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with a choice between funding one of two programs, the ultimate criterion you would apply would be to confirm which was the needier of those potential beneficiaries of your assistance?

**Mr Ensor**—It would be a significant factor, yes.

**Senator BRANDIS**—The reason I am concerned to ask these questions—and it does not relate directly to your evidence on the Pacific solution—is that I was rather struck by some evidence that we received from the Department of Immigration and Multicultural and Indigenous Affairs earlier in these hearings. Among other things, we were told that the world's refugee population, as assessed by the department, was somewhat in excess of 20 million. Does that accord with your understanding?

**Mr Ensor**—Yes.

**Senator BRANDIS**—We were told that most of those people live in circumstances of abject destitution in refugee camps in the Third World. Does that accord with your experience?

**Mr Ensor**—Yes.

**Senator BRANDIS**—We were told that the length of time most of those people have to live in those refugee camps is a period of years, not months. Does that accord with your experience?

**Mr Ensor**—Yes.

**Senator BRANDIS**—The circumstances in which they live in those refugee camps—these are generalisations, of course—were described by Mr Farmer, the head of our Department of Immigration and Multicultural and Indigenous Affairs, as at best basic and at worst most exiguous. Does that accord with your experience?

**Mr Ensor**—Yes.

**Senator BRANDIS**—We were told that about 80 per cent of the people in those refugee camps are women and children. Does that accord with your experience?

**Mr Ensor**—I do not have any direct experience consistent with that.

**Senator BRANDIS**—That is also a figure quoted in a most illuminating article by Eileen Pittaway and Linda Bartolomei titled 'Refugees, race and agenda: the multiple discrimination against refugee women' which appears in volume 21, the current edition of *Dialogue*. Certain references are given to support the figure that 80 per cent of the world's refugees are women and children.

**Mr Ensor**—I would have no reason to question that. My direct experience might not be that, but that is fine.

**Senator BRANDIS**—The evidence we heard from Mr Farmer was that people in the refugee camps are provided, at best, with elementary and inadequate health care. Does that accord with your experience?

**Mr Ensor**—I guess it would be a fair generalisation. I think there are variations between situations.

**Senator BRANDIS**—Quite. We were told that the standard of nutrition which they can expect is, at best, at subsistence levels. Do you agree?

**Mr Ensor**—Yes.

**Senator BRANDIS**—In a population of 20 million, one would assume that tens or hundreds of thousands of refugees are at immediate medical risk. Would that accord with your experience?

**Mr Ensor**—Again, our experience varies between situations. It could be a generalisation, yes.

**Senator BRANDIS**—But would you expect to find a substantial proportion of the world's refugee population—20 million people—at any given time to be at immediate medical risk?

**Mr Ensor**—Yes, I think that would be a reasonable conclusion.

**Senator BRANDIS**—But the educational needs of the children in these camps are barely catered for, if at all. Does that accord with your experience?

**Mr Ensor**—Again, variations.

**Senator BRANDIS**—Sure, I understand these are generalisations. But is that generally so?

**Mr Ensor**—It could be a general conclusion.

**Senator BRANDIS**—And these people are destitute. They have no financial resources whatsoever. Is that generally true of the 20 million people in the refugee camps?

**Mr Ensor**—It could again be a generalisation. Some refugees that we work with are certainly in that position and others are not.

**Senator BRANDIS**—I do not want to be political about this. I just want to make the point and invite your comment on it. We also have evidence from the department's intelligence sources in relation to the occupants, the so-called asylum seekers on the vessel that has been described as SIEV4. That tells us, among other things, that they each paid on average a fee of between \$2,500 and \$7,000 to people smugglers for their passage. But Mr Farmer's evidence was that, in about 90 per cent of cases, they flew to South-East Asia or the ports of embarkation of the illegal entry vessels by commercial airliners from West Asia. The average period from the point at which they entered the people-smuggling pipeline—to use his expression—to when they sought to embark on vessels to Australia was a period of some weeks up to six months but not longer than six months.

The point I am at pains to make to you—and I invite your response—is this: I cannot for the life of me see how, from the point of view of prioritising Australia's humanitarian programs,

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including its refugee program and its humanitarian access program, people who have not been in refugee camps for years and who have access to thousands of dollars—and that is not a lot of money but is more money than the people in the refugee camps have—should be prioritised. These people have the money to pay people smugglers and they have the capability to fly by commercial airliners across the world to a point of embarkation and who are—as the DIMIA report revealed—while waiting to embark, accommodated in apartments and hotels in Indonesia at perhaps a fairly basic standard. I cannot for the life of me see how, in terms of humanitarian priorities, those people should be prioritised above the destitute, exiguous and at risk people in the refugee camps. Can you?

**Mr Ensor**—I think the issue is to do with assessing the refugee status of people who are claiming that status, irrespective of point of origin. There are a range of circumstances that people are in. A number of reports that we have had regarding asylum seekers coming from Iraq and Afghanistan in particular indicate that people have either flown or travelled over land. In order to do so they have sold all their disposable assets—land, businesses et cetera—to accumulate the funds to do so. In other circumstances, we are dealing with refugees and internally displaced peoples around the world who are clearly not in that situation. I think it is difficult to make a judgment on prioritisation based on the financial capacity to the exclusion of the other factors that need to be considered according to the refugee convention.

**Senator BRANDIS**—I cannot help the fact that I always used to be very moved during the more than 10 years that I was a director of another one of our aid agencies, UNICEF Australia. For more than 10 years, I sat on the board of UNICEF and I was moved by the absolute desperation of so many of the people that UNICEF used to fund and, no doubt, that Oxfam funds. I am more than a little cynical about the humanitarian claims made by some on behalf of people who are not destitute, who are not starving and who are not at immediate medical risk to be prioritised in the intake into Australia's humanitarian programs above people who are.

**Mr Ensor**—There are other factors, though, in the convention that deal with, as I understand it, people's fear of persecution associated with political regimes and political process—

**Senator BRANDIS**—But I think, *ex hypothesi*, because the fear of persecution is part of the definition of refugee status—is it not?

**Mr Ensor**—Yes.

**Senator BRANDIS**—*Ex hypothesi*, all the 20-plus million refugees live in fear of persecution so—given that there are that many people claiming that status but given that the resources available from recipient countries have nowhere near the capacity to take them all—within that large class of people with a justified fear of persecution, there must be other criteria applied. I know these are hard choices, but my point to you, as a matter of policy, as a matter of experience and, indeed, as a matter of philosophy, is that surely, in prioritising for a nation just as for an aid agency like yours, need has to be the ultimate test.

**Mr Ensor**—Need is a significant factor, but I would not agree with the conclusion that one would prioritise only on the basis of the factors that you have outlined, to the exclusion of issues associated with fear of persecution. There are instances in many countries—

**Senator BRANDIS**—I did not say it was exclusive, and I think we have established that these are all people who, *ex hypothesi*, have a justified or a well-founded fear of persecution. But surely you would agree with me that need, among these people, is the most important criterion.

**Mr Ensor**—I would say it is a significant factor; I would not say it is the most important.

**Senator BRANDIS**—Can you think of a more important one?

**Mr Ensor**—I think, generally, the spirit of the convention reflects the importance of people being able to demonstrate adequately that fear of persecution. The fear of persecution can apply in circumstances where there is wide disparity in people's material wellbeing—from impoverished West Papuans on the PNG side of that particular border through to those fleeing Afghanistan, who may well have had, essentially, middle-class backgrounds, in response to what they claim to be a fear of persecution from the Taliban. Both, in our view, are entirely legitimate grounds for people to seek refugee status.

**Senator BRANDIS**—Mr Ensor, I will finish on this: I am not for a moment suggesting that middle-class people fleeing a country in which they are persecuted might not be just as liable to have a bona fide, well-founded fear of persecution as people who are lower down the economic scale of advantage. My point is simply this: if you are dealing with two people who both have a well-founded fear of persecution—one is a middle-class person with some assets at least, perhaps relatively few, who is not destitute, who is not starving, who is not in exiguous circumstances, and one who is—surely of those two people, both of whom have a justified fear of persecution, you take the neediest. The humanitarian considerations plainly dictate that. Do you agree with that as a principle?

**Mr Ensor**—I understand where you are coming from with that view. My opinion on this is that you need to deal with both categories.

**Senator BRANDIS**—But if you are forced to choose? It is about prioritising—you have 20 million refugees in the world and nine countries that take them. The number of places is less than one-hundredth of the demand for those places in the world. You may well be right—I may well agree with you—that we should take in more refugees. But when it comes to the point of prioritising between two claimants, both with a well-founded fear of persecution, when you are faced with the agony of choice surely you have to take the neediest and the most immediately at risk?

**Mr Ensor**—I think that in terms of assessing—if we are talking about assessment: accepting asylum seekers and assessing their refugee status—I would still maintain that, under the convention, states are expected to assess both categories.

**Senator BRANDIS**—Thank you.

**Senator MASON**—I have questions on mandatory detention and other issues, but we are not going to have the time to do that. Perhaps I can just ask a supplementary question following on from Senator Brandis. Senator Brandis touched on this. In your submission you suggest that, as a matter of policy, we should lift our refugee intake. Like Senator Brandis I agree that maybe that is a good idea. But forgetting the principle for a second and looking at the politics of it, you

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must understand that it is very difficult to sell that policy where many people in this country believe that people are jumping the queue. It does not matter in what context this idea would operate—in Immigration it operates in terms of refugees and elsewhere. I have looked at your submission and I understand it. But not only the principle that Senator Brandis outlined but also the politics of this is such that, increasingly, it is difficult to convince the public that we should do that. What do you say to that?

**Mr Ensor**—I think your point is legitimate.

**Mr Reid**—We understand that it is difficult in this current environment necessarily to sell an increase in the refugee humanitarian intake program. However, there are a couple of points in that. We have pointed out in our submission that we would like to see, following on from what Senator Brandis pointed out, increased Australian aid directed at the conditions of people in the refugee camps to really make a difference there.

Therefore, in that context, we would ask that the government strongly consider an increase in our overseas aid program. At the moment the percentage of GNP of the aid program has dropped to 0.26 per cent. Really, that does not reflect community support. Surveys that have been taken consistently show that there is an 85 per cent support for the aid program. My point is that there is consistent community support for tackling the problem at source and for dealing with some of the humanitarian issues that Senator Brandis outlined and at the same time allowing Australia to live up to its obligations under the refugee convention and process the applications of those people who arrive in Australia for refugee status.

**Senator MASON**—Putting it really bluntly, the issue still seems to be that, if you have money and can in effect put yourself in the face of Australian refugee authorities, you then have a markedly higher chance of being accepted as a refugee in this country than someone sitting in a refugee camp in Northern Kenya. Yet, as Senator Brandis pointed out, the conditions of those camps and those people in Northern Kenya are far worse, given that there is a well-founded fear of persecution operating in both cases. I have not heard any arguments in the course of the 10 days of this inquiry that overcomes that. In effect, we are dealing in many cases with people who, in a sense, have an advantage and have been able to put themselves in a position where they gain priority. I do not know how to sell that to the Australian people.

**Mr Ensor**—Selling it, as you put it, to the Australian people is a key challenge. It is a challenge for agencies such as us and for the Australian government. One of the key things that we have found that tends to work in selling these sorts of issues to the community is being in a position to explain to people at a personal level the personal stories of these individuals. People relate to people and not necessarily policy or higher processes. I think there is a strong case for government agencies over the next period of time to devote resources to do precisely that.

A broad based community education program is not about policy or \$20 million for this or that, but it explains to people in a very straightforward manner what refugees are and it tells personal stories of individual families who have gone through these experiences in a variety of circumstances—people who have obtained refugee status from situations that you described in Northern Kenya and perhaps at the Thai-Burma border or in Afghanistan—so that the community begins to get a sense of what a refugee is, what the drivers are of the problem and what experiences people have had. That then begins to potentially break down some of those

barriers. I cannot overemphasise the importance of personal stories. You see it in the way that development agencies market their work.

**Senator BRANDIS**—Do you think it is fair that refugees who have a bit of money can buy their way to the head of the queue?

**Mr Ensor**—I would like to test whether they are buying their way to the head of the queue?

**Senator BRANDIS**—They are using their money by paying it to people smugglers to get ahead of other refugees who do not have any money in much worse circumstances. Is that fair?

**Mr Ensor**—The question is: are they getting ahead of other refugees? As you said, there are people sitting in refugee camps around the world who have been processed—

**Senator BRANDIS**—For years, according to our evidence.

**Mr Ensor**—are in the process of being processed or have been determined to be refugees. They are still sitting there because there is no country of acceptance. This is the circumstance that many of the asylum seekers in Nauru, Papua New Guinea and Australia at the moment will also face. The question is: are they getting ahead of the queue? Is there a formal queue in that sense?

**Senator JACINTA COLLINS**—I will take you slightly away from that area. It might be of comfort to you to know that Senator Brandis went down the same path with the immigration department and did not get much more satisfaction from them either on some of these questions. Looking at your comments about the Pacific solution, would you have regarded the policy change that occurred in the months before the last federal election as a significant change in Australia's policy on how to deal with people arriving on our shores in boats?

**Mr Ensor**—Certainly, yes.

**Senator JACINTA COLLINS**—A very significant change?

**Mr Ensor**—Yes.

**Senator JACINTA COLLINS**—Was your agency consulted?

**Mr Ensor**—No.

**Senator JACINTA COLLINS**—Are you aware of consultation that occurred in relation to this significant shift in policy?

**Mr Ensor**—No, we are not.

**Senator JACINTA COLLINS**—So in one sense, the earlier talk about selling policy to the Australian people seems a bit banal when we had such a significant policy change with no consultation at all before the last federal election, doesn't it?

**Mr Ensor**—Certainly there was not any degree of consultation that we are aware of.

**Senator JACINTA COLLINS**—Within that context, I think it is appropriate that we take the opportunity to allow you to elaborate on some of your comments in your submission about the regional impact of the Pacific solution as a new policy and its impact on your operations within the Pacific. You have referred to the potential adverse political and social impacts on the Pacific region. Are you able to give us any examples of your concerns?

**Mr Ensor**—There are a number of examples that have been drawn to our attention by organisations we have relationships with in the Pacific. I will give you some specifics. The Secretary-General of the Pacific Islands Forum has expressed serious reservations about the impact of policy. In October last year Noel Levi, the Secretary-General of that forum, said:

The emerging refugees market in the region where Forum Island Countries lease out their territories for quarantine and processing services carries unknown risks ... Such a substantial population influx places extreme pressure on our already very limited resources, exposing our small and vulnerable economies to further social and economic problems which we can ill afford.

There was strong resistance and concern expressed by the Prime Minister of Vanuatu in relation to the policy. In making that statement and rejecting any approach for that country to receive refugees, he stated that land was a precious commodity in the Pacific and, unlike in Australia, there was very little of it available to set aside for refugees. The situation in a number of countries is that the lack of availability of land, conflict over land, creates political and social tension.

There have been concerns expressed in Nauru over the impact of the establishment of the detention facility in terms of the provision of basic services for people in that country. In particular, the Presidential Counsel and the Senior Medical Officer in Nauru received letters of suspension without pay from their positions as public servants after they raised concerns in that regard. A number of interviews that have been done in Nauru point to concern particularly over access to health services and water. Water is a particularly critical resource in Nauru. Perceptions in Nauru are that availability of water is prioritised for residents of the Topside camp above Nauru citizens. We outline in our report some of concerns and tension that that has created.

The Pacific Conference of Churches and the Catholic Bishops Conference in October last year urged Pacific governments to carefully considered the longer term impacts of accepting these sorts of arrangements for housing of asylum seekers. They made the point that they believed in many instances that has adverse impacts on the communal lives of Pacific communities and that the priority for many Pacific island states needs to remain on finding solutions to overcome political, social and economic problems and tensions at home. They highlighted those as particular priorities. So those are some examples of some of the tensions that are being created.

**Senator JACINTA COLLINS**—Do you have perhaps more up-to-date information for us, since the writing of your submission, about the plans once the asylum seekers on Nauru and Manus Island are moved on?

**Mr Ensor**—No, we do not. That in itself has been raised as a question to us by partner organisations in the Pacific—that is, the longevity of the arrangements. People understand that

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the arrangements are to be finalised in May and October respectively but are unclear as to what happens at those points in time, particularly given the UNHCR and the IOM have indicated that they will not be involved in removing asylum seekers who have had their applications for refugee status refused and who themselves have refused to leave the camps. So the issue then becomes how we move those people out of the camps in those situations given that the multilateral organisations with responsibility for those areas have indicated their unwillingness to do that.

**Senator JACINTA COLLINS**—That would be a fairly interesting legal question too, would it not? I was also interested in the facilities that have been established in these places and the longer-term aid implications for the resources that have been put in at Nauru and Manus Island. Have there been any commitments or ongoing commitments about the use of those resources?

**Mr Ensor**—The information that we documented in our report in February is that commitments have been formally made for this current financial year. But in media interviews last year the Prime Minister and the foreign minister left open the question as to whether the arrangements could continue in the future, and we documented that in our report. The specifics of that, to our knowledge, have not been publicly released.

**Senator JACINTA COLLINS**—This is one of my questions. For instance, housing has been established for the asylum seekers; is that housing to remain or will it go with the asylum seekers?

**Mr Ensor**—I think that is a legitimate question.

**Senator JACINTA COLLINS**—We do not know the answer, is that the point?

**Mr Ensor**—We do not have the answer to that.

**Senator JACINTA COLLINS**—I could probably sit here all day asking legitimate questions and not getting answers. I am sure you appreciate our predicament that this Pacific solution policy has placed these people and significant amounts of Australian funding outside of the reach of our accountability mechanisms. This is one of the issues that we are struggling with, even in whether we can speak directly to some of these asylum seekers, and perhaps one of the most fundamental flaws in the Pacific solution policy—full-stop. Would you care to comment on that issue?

**Mr Ensor**—As a policy, it raises questions around transparency and accountability that we have documented in our submission and also in our report. They are concerns that have been reflected in a number of the comments that our report in February obtained from a number of sources within the Pacific—questions around in particular these funds and whether they are being applied in a manner that is an appropriate way to apply taxpayer funds through the aid program. Our aid program in the Pacific has clearly stated objectives and strategies around poverty reduction, particularly basic education, primary health care, good governance and building regional institutions. I commented earlier on the apparent inconsistency between the allocation of \$10 million for fuel supplies with those stated aims of the aid program.

**Senator JACINTA COLLINS**—Some of the consequences of the Pacific solution policy have actually worked contrary to your objectives with the aid dollars, if you are talking about good governance and some of these other issues.

**Mr Reid**—Coming back to the impact on the local communities to which we referred to earlier, in that context it is important that local community groups and individuals are sensing that the money being spent is not directed according to the priorities of the aid program and they are legitimately concerned about the waste or misdirection of resources that that kind of spending implies. It would be a matter of concern that those social tensions in the community may be increased because of the way the aid program, according to the perception of local people, is being used to further domestic political concerns rather than the publicly stated aims of the aid program.

**Senator JACINTA COLLINS**—You probably look forward to the day as much as I do when we can compare how much it would have cost to house these people in our current facilities and extend them as necessary to what we spend in the Pacific solution.

**Mr Reid**—Yes. I think there is a recognition, particularly in the community—and there is a conference in Fiji this weekend which will address these issues—that it is not so much that money has been spent on the refugee crisis or the refugee issue but that it has been misdirected and misallocated in an unsustainable manner according to our community links.

**Senator JACINTA COLLINS**—In fact in a wasteful manner.

**Mr Reid**—Yes, that has been expressed.

**Senator FAULKNER**—Have you come across any international criticism of Australia, Australia's approach or the Australian government as a result of the Pacific solution? If you have, what was its nature?

**Mr Ensor**—Certainly there was considerable criticism emanating from within the Pacific. Some of the statements that we have documented in our report indicate concern over the prioritisation of this issue over issues in the Pacific per se. The examples that we have used in our report include Australia's absence at ministerial level from the signing of the Bougainville peace treaty and the perception of the symbolism of lifting sanctions against Fiji just a few days before it was announced that Fiji was considering the proposal to host asylum seekers. Our report documents concern at the absence of Australia's presence at ministerial level to attend the signing of the Bougainville peace treaty.

**Senator FERGUSON**—You know why that was, don't you? It happened to be on 31 August—the time of the *Tampa* crisis.

**Mr Ensor**—Yes.

**Senator FERGUSON**—I am not offended, but I went up and signed it on behalf of the minister.

**Mr Ensor**—What we have documented in our report is concern from partners that we worked with in Bougainville, saying that the minister was scheduled to attend the process. We thought this was a significant issue in the Pacific.

**Senator FERGUSON**—It was. If it had not been for the issues that were boiling at home, he would have been there. It was only at two hours notice that I had to go up there and sign it.

**Mr Ensor**—Yes.

**Senator MASON**—You did a very good job, Senator Ferguson.

**Mr Ensor**—These are perceptions that are coming to us through our partners in the Pacific. Similarly, there is concern around our lack of presence at the Pacific Islands Forum and there is the perception that our level of engagement with the Pacific is somewhat lower than it should be, given the geopolitical proximity of the Pacific to Australia and the importance of Australia to that region. These are some of the things that have been noted.

With regard to the more specific concerns around the policy, I have outlined the comments of the Prime Minister of Vanuatu. The President of Fiji opposed taking any asylum seekers on the basis that he believed the country had enough problems to deal with. The coalition of church groups in Fiji—the NGO coalition—described the policy as reactionary and smacking of political expediency. In Nauru, Independent MP Anthony Audoa said he believed that the policy was not right. He said that, when you try to dangle a carrot in front of a country that is desperate with its economy, it will accept that carrot because it is desperate. In Papua New Guinea, there has been extensive criticism on the record from former Prime Minister Sir Michael Somare saying that the policy is an infringement of Papua New Guinea sovereignty. After his sacking, the foreign minister, Pundari, criticised the arrangements as being an election issue for Australia and expressed dissatisfaction over the extent to which the domestic issue in Australia was impacting Papua New Guinea. They are some of the examples of some of the criticisms coming from a range of sources.

**Senator FAULKNER**—Do you think that the government has been honest in its dealings with Nauru and PNG in relation to the Pacific solution, when you look at issues such as how long asylum seekers will be detained in their countries and whether any asylum seekers will be permanently resettled there and the like?

**Mr Ensor**—The perception that we have documented is at best a lack of clarity in the Pacific about the arrangements. Political leaders, in both Papua New Guinea and Nauru have been on the record, as we have documented, saying that their understanding of the arrangements is that after the expiry dates in May and October respectively there will not be asylum seekers or refugees in their respective countries. The details of the memorandum of understanding leave open the option, as we read it, for ongoing extensions of those periods.

**Senator FAULKNER**—Is it fair to say that, at best, a lack of clarity and, at worst, downright dishonesty?

**Senator MASON**—Are you sure you are not leading the witness?

**Senator BRANDIS**—Mr Ensor, are you in a position to answer that question? Do you know what the dealings are between the Australian government and the Nauruan government?

**Mr Ensor**—We will find out.

**Senator BRANDIS**—Don't be impelled to answer a question if you do not know the answer.

**Senator FERGUSON**—Especially a leading question by Senator Faulkner.

**CHAIR**—I do not think Senator Faulkner would be the first person to try to lead a witness.

**Senator BRANDIS**—If he knows the answer, he can answer it. But he should not feel impelled by Senator Faulkner's forceful presentation to give evidence, when he has sworn an oath to give honest evidence, on something of which he has no knowledge.

**CHAIR**—I am sure Mr Ensor can speak for himself. We are about to go to dinner, so please proceed.

**Mr Ensor**—The text in the memorandum of understanding clearly leaves open the option of these arrangements continuing. As we have documented in our report, both the Prime Minister and the foreign minister have indicated that it is at least a possibility that those arrangements will be ongoing beyond those periods of time, and leaders in Papua New Guinea and Nauru, as documented in our report, have been on the public record saying that their expectation is that, as of those dates, there will not be asylum seeker detention facilities occupied by people in their respective states, nor will there be accepted refugees in their states. So there are mixed messages on that issue.

**Senator FAULKNER**—Did you see the ABC's *Foreign Correspondent* program that aired on 17 April? It raised some very serious questions over the illegality and unconstitutionality of the detention of asylum seekers in PNG. I wondered whether you had seen it and whether you have had any feedback about this issue or made any assessment as to the legality and constitutionality of the Pacific solution in PNG and Nauru and, if so, what those legal ramifications were and who was expressing the concerns?

**Mr Reid**—As an organisation we have not had the capacity to undertake that research. We understand that the case is going ahead on the basis that there is a legitimate issue to be decided about the constitutionality of the Pacific solution as it operates in Papua New Guinea but, beyond that, at this stage we cannot add to that.

**Mr Ensor**—The basis of the concern in relation to Nauru is to do with article 5 of their constitution. Article 5(1) states:

5. (1) No person shall be deprived of his personal liberty, except as authorised by law in any of the following cases.

And the cases listed there cover issues such as the spread of disease and criminal offences, but they do not cover asylum seeker situations. Article 5(2) of that same constitution guarantees the right to legal representation for people in situations where they are detained. That right is:

... to consult in the place in which he is detained a legal representative of his own choice.

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So the questions being asked there are to do with under what law are asylum seekers being held in a compound in Nauru from which they are not permitted to leave, except for medical and other reasons. That seems to be, at face value, a legitimate question for the responsible authorities to be answering.

**CHAIR**—It is six o'clock and you have a plane to catch and we have a meeting to attend. I understand that Senator Mason foreshadowed that he had an interest in further questions, but time has constrained him and it may be that that is also true for Senator Faulkner now. If questions were put on notice to you, would you gentlemen be available to answer those questions on notice?

**Mr Ensor**—Yes.

**Proceedings suspended from 6.03 p.m. to 6.56 p.m.**

**HODGES, Mr John Charles, Chairman, Immigration Detention Advisory Group, c/o Department of Immigration and Multicultural and Indigenous Affairs**

**CHAIR**—Welcome. First of all, can I say that the committee and I apologise for the delay and any disruption that may have been caused to your workday. That is regrettable, but at last we have you this evening. That is the only upside to it. Do you have an opening statement to make?

**Mr Hodges**—Yes, I do. Thank you for those comments. I appreciate the difficulties the committee has from time to time. Thank you for your thoughts. I thought it might be useful to the committee if I were to make a brief statement. I will endeavour to keep it as brief as possible. It is just to outline some of the background of the Immigration Detention Advisory Group, IDAG, which I chair, and what we have been about over the past 12 months. It is a little more than 12 months since we were formed—indeed, February last year. Minister Ruddock brought the group together with a view to having us primarily examine conditions in the existing immigration reception and processing centres and the detention centres around the nation. In addition to that, I did travel privately at the request of the minister to Manus Island and Nauru. I went to Manus from 28 February to 2 March and to Nauru from 25 March to 26 March.

The objective of the minister was fairly clear. The terms of reference are clear and are available to the committee. We have looked at all matters from health standards, education, the standard, quality and quantity of food to clothing, bedding and accommodation. You name it and we have looked at it. We have talked to hundreds of detainees over that period and visited all of the detention centres, some more frequently than others. We have spoken individually to detainees. We have also spoken to them in groups and with representatives of the detainees on some occasions. It has been fairly comprehensive. We have unfettered—as you probably appreciate—access to detention centres. We do not have to give notice and we do not have to have staff with us. We also have very open and free and easy access to the minister as well. That was for the part of the process of having a group that was able to go into detention centres without notice, if need be, to talk to detainees.

We had made it a policy not to get involved with the cases of individual detainees; however, it is inevitable when you visit detention centres that you will get some people who come to you, either singly or in groups, to talk as you are wandering around. We have made it a practice to eat in the dining halls so as to be with the detainees. We have inspected the kitchens and have looked at their menus, and I do not think there is one aspect of detention in this country that we have not looked at fairly closely.

A specific matter that the minister referred to us in January-February was the hunger strike and the lip-sewing and self-harm episodes at Woomera. One other member and I visited Darwin and met a boat at about 5.30 one morning—that is, the HMAS *Dubbo* and another vessel that I understand is under charter to Customs. We were accompanied by Brigadier Silverstone at that particular meeting for the unloading of the boat people. We then spent most of the day observing the processing of these people at the showgrounds in Darwin before they were flown out, in this particular case, to Woomera.

**CHAIR**—Was that boat a SIEV?

**Mr Hodges**—Yes.

**CHAIR**—Do you know what number it was?

**Mr Hodges**—No, I cannot tell you, I am sorry. Two of our members, and I was not one of them, went to Christmas Island. We have talked extensively with ACM management and with DIMA management at all levels, including at each of the detention centres. We always have a briefing at the detention centres. Usually we have a briefing when we arrive and a further briefing when we leave. So the experience of the committee members is fairly extensive at this stage. I will leave it at that, because I could go into a lot of detail that you probably do not want to hear about anyway. I will leave it up to you to question me.

**CHAIR**—Thank you, Mr Hodges.

**Senator BRANDIS**—Mr Hodges, I want to focus you only on the Manus Island and Nauru detainees. Would you care to describe for us, as discursively as you wish, your overall assessment of the nature of the conditions in which those asylum seekers are being housed, from the point of view of habitability, sanitation, nourishment, the availability of medical care, educational facilities for the children, and their physical wellbeing generally.

**Mr Hodges**—Perhaps I should deal initially with Manus Island, where there are a little over 350 detainees. The facility has been established at the old US base used during the Second World War. There is good quality food. The accommodation is not as good as the accommodation that we have in Australia in the mainland detention centres, but it is adequate. They are very pleasant surroundings, because it has the water on one side and the jungle on the other. They are pleasant surroundings in that there is no barbed wire or razor wire. We ate at least one meal with the Manus Island detainees. The detainees comprised nearly all Iraqis. There was a handful of Bangladeshis and I think a few Sri Lankans and so forth but, out of about 350 to 360 in total, I think about 330 were Iraqis.

**Senator FERGUSON**—There were no Afghans?

**Mr Hodges**—No. I think there were some initially but they had been moved to Nauru. We were questioned by a number of them during our visit, because they were the ‘children overboard’ people—

**Senator BRANDIS**—By that, do you mean the SIEV4 people?

**Mr Hodges**—Yes. I am not quite up with your terminology in terms of your SIEVs, but I have heard a bit of it today and I have read a bit of it. They were the first, I think, of the two groups to arrive on Manus. They were concerned that they had been depicted in Australia in the newspapers, in the media and politically as people that had thrown their children overboard, and they were very concerned about that. We reassured them that that was not the case, and that the situation was understood fully within the Australian community—or as fully as we felt it could be.

On medical supplies, one of the features of all of the detention centres, you find, is people complain a lot about the medication they are receiving or not receiving, and the medical attention they are not receiving. There are quite interesting figures that in the Australian community we have about one doctor to about 800 people, whereas they have one to 70 or thereabouts in the Manus Island facility. I think it was probably one to about 200 in the case of Nauru, but people would come to you and say, ‘I have got a problem. I have got this or that, or this little growth here.’

I took notes, in moving around the camp—I am talking specifically about Manus now—probably for about a dozen people. I decided then to talk to the doctors, and went to the local hospital. It turned out that for most of them, most of the problems they described, and the fact that they were not having the medication that they thought they should have been, in actual fact, none of the matters that they discussed really had any foundation to them. That was talking person-to-person with the doctors, with nothing arranged; just meeting the doctors and saying, ‘Look, about number so and so’—we took numbers, basically, for ease of identification.

I thought, personally, that they were as good a group of detainees that I had run into. I should mention that on that particular visit to Manus, Dr Alsalami was with me. He is another member of the IDAG group and, because he is Iraqi, had again been requested by the minister, as they were primarily Iraqis on Manus. He and I went to Manus, and he came with me later on with an Hazara Afghani to Nauru, but it was not related specifically to IDAG; I just wanted to make that point.

Getting back to Senator Brandis’s question, I would say that the Manus Islanders were well off and had good food. Malaria is a bit of a problem there. From all reports from the doctors, I think earlier there were a couple of cases of malaria that were reported. One of the difficulties the doctors faced, and the IOM and anybody else that was involved—I think there was only one APS officer present—is that they would not always take their treatment, but malaria was not rampant. I think that some reports indicated that malaria was rampant in the camp, and it was not. There is no malaria risk at all at Nauru. All in all, I would say that the Manus Island detainees were very comfortable in their quarters; they had a full-size soccer field and that was well used.

**Senator MASON**—Can I just ask, in addition to what Senator Brandis asked about children and also prenatal and antenatal care, which was an issue elsewhere, did you find that care for children and for nursing mothers was reasonable?

**Mr Hodges**—There were six doctors on Nauru with 350 or 360 men, women and children. It was not raised at all. I did finish up bringing back four medical cases that I referred to the department, and wrote them a letter about. But they were ones that I had not had a chance to talk to the doctors about, because this is an ongoing process. I only met with the two of the doctors on one occasion. I met three of the doctors in total, but I questioned two of them about the detainees and these health problems—about a dozen, as I mentioned earlier. I visited the hospital, such as it is. It is not a very fine facility by our standards, but I could not really say that there was anything of a major nature that the detainees on Manus were wanting for.

**Senator BRANDIS**—There was no suggestion either from the detainees or from the doctors that any of them were at medical risk?

**Mr Hodges**—No. My recollection of probably one of the worst cases was a woman who was injured apparently—or this was her story—when she was lifted onto the boat, which must have been the *Adelaide*. She was on a homemade crutch. I brought to attention that she was having difficulty in getting around just from her sleeping quarters to the ablution blocks and so on. I hope that something has been done about her. It was a back problem that she had sustained. No, I do not know of any major problems health wise that existed there.

**Senator BRANDIS**—And nutrition was not a problem?

**Mr Hodges**—It was certainly not a problem.

**Senator BRANDIS**—And the educational needs of the children were being catered for?

**Mr Hodges**—On Manus one of the detainees was an accountant who spoke fairly good English and that person was actually taking classes. I said to IOM and our immigration officer there, ‘This woman ought to be encouraged’, because I felt she was doing a very fine job with the children. There were certainly no complaints. We had two meetings. One was with about 200 people, and a second meeting on the afternoon of that same day was with about 90 people. Some of the 200 were at the second meeting. I addressed them, as did Vince McMahon, the first assistant secretary of the department, who was with us. Mohammed Alsalami talked to them in their own language. There were competent interpreters present.

A lot of them wanted to get stories off their chest, as they are wont to do in these circumstances. We felt that at the end of our second day there that they really were played out, so to speak. They had asked all the questions that they wanted to ask us.

**Senator BRANDIS**—On 18 April, you gave an interview to the *AM* program, or one of the ABC wireless programs, to a journalist called Vivian Schenker. I have the transcript here. I do not vouch for the perfect accuracy of the transcript, but you are recorded as having said to Vivian Schenker:

One thing you learn when you talk to detainees—and I’ve just come back from Manus Island and Nauru—is that if you get a report from them, you are speaking to them sometimes direct because their English is okay, sometimes through

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interpreters, but what you've got to be careful of is that you double-check what they've told you, because often the truth, the facts differ quite widely from what they have told you.

Do you remember saying that?

**Mr Hodges**—Yes.

**Senator BRANDIS**—Would you elaborate on that? If appropriate, would you give illustrations of what you mean?

**Mr Hodges**—That is a common thread right throughout detention centres. I have come to the view—and I think a number of members of our group have come to the same view—that people who are in detention for weeks and months, including sometimes six to 12 months and longer, tend to become a little desperate. They will put their own construction or slant on what is happening to them or on issues around the camps. So truthfulness is a real problem.

Just recently, visiting Woomera, a departmental officer and I questioned a man and his wife—he had two children and his wife was expecting. She told me—and, incidentally, if their English is not good we always have very competent interpreters with us—that they had taken blood from her in Woomera and she had never heard the result. If I did, as the Department of Health Services in South Australia had done in some instances, because of the findings that came out of a recent report that was done at about Easter, which was only a matter of weeks ago, and I did not check with ACM or DIMA, then I would have written down what she said. That is one of the failings, of course, when people go into detention centres: they tend to believe the detainees rather than do some crosschecking with the medical staff. In this particular instance of the lady I am referring to in Woomera, the blood results had come back; the blood sample had not been lost or the results lost. She did, I believe, have some anaemia and she was receiving treatment for it. The same happens with children: they sometimes will not allow their children to be immunised. Subsequently sometimes they allow the children to be immunised, having refused in the first instance.

It is a fairly common thread right throughout the detention centres for them to come up to you and complain about the quality or quantity of the food. That is not to say that everything in every detention centre is 100 per cent all the time, because it is not. We have brought various matters to the attention of DIMA and ACM from time to time during our visits. But you just cannot go by what they tell you. I am not saying they are the biggest liars in the world, but the facts are that they just do not get it right. That concerns us, as frequent visitors to detention centres, when we see reports coming out. It concerns all of us.

Two major issues that came out of that recent Woomera report by the South Australian officials were that children were not fed properly and that if they did not have their food at meal times—the dining halls are open for two hours at breakfast and at lunch and I think it might be 2½ hours in the evening—they did not get fed. I particularly checked out the refrigerator on a visit to Woomera a week or so ago. I do not know what the capacity of the fridge was, but it was quite large, a two-door, about 1.6 metres high. I went to the fridge and opened the door. This family did not even know we were coming. The fridge had an abundance of food and milk, including formula—this woman had a baby about six or eight months old. It is a failing that, when people go into these centres, if they do not do the inspections themselves or inquire of DIMA or ACM they go away with a lot of wrong impressions.

**Senator BRANDIS**—In some of the more extravagant circles in the media or, indeed, in politics, there has been a description of some of the detention centres as like concentration camps. I did not know if you have ever been to a concentration camp, but what do you say about that observation?

**Mr Hodges**—I have not been to a concentration camp. Look, these are not the most desirable facilities in the world. But many years back I did visit two camps, one outside Kuala Lumpur and one at Manila, where a lot of their shelter was made out of packing cases and at the Manila one, I think it was, they had one tap with running water. But here in Australia—and I am not saying all this applies on Manus Island because there is not very much airconditioning there—we have airconditioning facilities that they sleep in; yes, there is high wire and razor wire around them, and that is not very pleasant; and there is an abundance of good food and they take part in the preparation of the food, the determination of the menus and so forth.

Education facilities I believe are lacking a little. But you have to appreciate that there are a lot of itinerant people, and it is very difficult to set a curriculum for children who perhaps in some cases have not even been to school in their home countries to start with. Yet they are making it fairly well with English, the little bit of English that they are starting to pick up. Usually, as is the case with most youngsters, they learn quicker than their parents. Education is a bit of a problem, but with clothing and food, and airconditioning in Australia—not in Nauru and Manus—we are looking after them, I believe, fairly well.

**Senator BRANDIS**—Medication?

**Mr Hodges**—I think the medical facilities in Australian detention centres are very good. They are far better than those that a lot of people in rural Australia are enjoying at the moment. I have to say to you, Mr Chair and the committee, that I do not think it would matter whether you put them up in the Hilton Hotel or not. After there is a slowdown of their processing, there is the feeling of hopelessness that creeps in to a lot of people. You are going to have problems in detention centres whether they are in Woomera or Curtin or Port Hedland or the Hilton Hotel because they are confined and their liberty is restricted.

**Senator MASON**—You mentioned, Mr Hodges, that after two days at Manus Island, in a sense, all the stories had been exhausted. Were there any stories from the asylum seekers at Manus Island that related to the conduct of the Royal Australian Navy and HMAS *Adelaide*?

**Mr Hodges**—Not from my recollection, Senator Mason. I think they were fairly appreciative and rather praiseworthy of what had been done for them when they were rescued. Certainly, from my recollection of the situation on Manus, there was no criticism about being ill-treated. There was the woman, as I said to you earlier, that was injured. One or two of them were injured. I think one detainee had some teeth missing—this was a male detainee—because his mouth had been knocked about in a fall or whatever. But no, I did not get the impression that they were at all critical of the sailors and of their handling.

**Senator MASON**—No discussion then about the boarding party or the engine on the Indonesian vessel; no discussion of that that you remember?

**Mr Hodges**—No, not that I recall.

**Senator BRANDIS**—No suggestion that they were lied to by members of the Australian naval forces?

**Mr Hodges**—I think there was a degree of distrust, Senator Brandis, but I do not recall the terminology ‘we were misled’ or ‘lied to’. I think there was a suggestion that they were a bit distrusting of what had happened to them. We have to remember that they had paid money to people smugglers to come to Australia, that was their objective. And they were channelled off somewhere else.

**Senator BRANDIS**—And obviously there was an expectation generated by the people smugglers that they were a sure bet to find landfall in Australia.

**Mr Hodges**—Yes, I do not think there is any question about that. That came through at Nauru as well.

**Senator BRANDIS**—Mr Hodges, are you satisfied that you and the other members of IDAG who travelled to Nauru and Manus Island gave the asylum seekers there every opportunity, free of any apprehension of duress or authority or whatever, to raise with you any complaints they may have had about their treatment either at the detention centres or by the Australian military forces in getting them to the detention centres?

**Mr Hodges**—Yes. The visit we made to Manus was longer than the one we made to Nauru, and it was a better visit. Of course, we were dealing with 350 people as against about 1,150 on Nauru. We gave them every opportunity to tell us their stories—that is, in group meetings as well as individually, person to person. I felt quite comfortable that they had revealed to us whatever they wanted to reveal to us.

**Senator FERGUSON**—Mr Hodges, I think it is fair to say that your independent advisory group is probably regarded as more independent than some other people who have been into detention centres with a particular cause in mind. I think the comments they have made to the public once they have been to detention centres reflect their own particular slant on things. Your advisory group has been in operation for about 18 months. Is that right? Was it Christmas 2000 when you set up?

**Mr Hodges**—No, it was February 2001.

**Senator FERGUSON**—I visited Port Hedland, Curtin, Perth and Woomera in January 2001. I think we were there just before your group’s first visits to those areas. As I understand it, you made a number of recommendations very early after the formation of your group.

**Mr Hodges**—Yes.

**Senator FERGUSON**—Have most of the important recommendations been carried out by the government?

**Mr Hodges**—Yes, they have. The committee is probably aware that there is a new tender going out for the management of the detention centres, and we have had an input into the detention standards. A number of things that we have raised during our visits and at our meetings with departmental officers following such visits have been taken up by those officers

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on the way. The senior officers in DIMIA, I believe, welcome what we are doing, because it focuses them more acutely on the problems. A couple of people have said to me in the past, 'You are a former Liberal member and immigration minister. Ha! Ha! The Minister for Immigration and Multicultural and Indigenous Affairs is a Liberal and he has appointed you.' I do not do Minister Ruddock's bidding. I never have done and I never will.

**Senator FERGUSON**—I am sure he has noticed that.

**Mr Hodges**—I think he has. I think that applies to all of the members. We have been pretty forthright with him. He has not taken all of our recommendations up, as you could perhaps understand, but he has taken up a lot—for example, in health, particularly mental health. And there were little things. For instance, on the first visit to Woomera we noticed that a lot of detainees did not have shoes or thongs on—just minor things that may go unnoticed by ACM staff or DIMIA staff. It was not as though the shoes or the thongs, in this particular instance, were not there, because they were. We noticed the need for more clothing and the lack of landscaping and playground facilities—all those sorts of things. It is nice to go back for another visit and find that you have some results as a result of what you are doing.

**Senator FERGUSON**—I am surprised to hear you say that food for children between meal times was still an issue, because I remember that being raised in January 2001. At that stage they said, yes, that was the case but is no longer the case. Now, 15 or 16 months later, they are still raising the issue as though it is a problem when in fact, as I understand it, for the last 12 months children have been able to get food between meals—that is, young children.

**Mr Hodges**—Yes, toddlers and very young children. The staff at the centres are horrified when they hear that, because it is a reflection on the staff. It is also a reflection on IDAG if it is thought that we are not looking at those things—and we have been. That is why I could not get back to Woomera quickly enough a week or so ago just to check these particular points, because it is a reflection on our group as well.

**Senator FERGUSON**—I have another question in relation to the centres. You said that the living conditions, the housing, on Manus Island and Nauru might not have been quite as good as those in Australian detention centres. Would that include Curtin, where I did not think things were all that flash?

**Mr Hodges**—Curtin is a lot better than Manus Island and Nauru in terms of accommodation. One of the earlier witnesses here from Oxfam did raise the question of water supply, and it is in their submission as well. Water supply is not a problem on Manus—there is an abundance of good, clean, fresh water—but there are some deficiencies on Nauru. The department know of them. They are moving to rectify some of those deficiencies. For instance, fresh water is a problem on Nauru. Their desalination plant breaks down. Their power breaks down too frequently. They are using a mixture of brackish water and fresh water. There is a plan—I do not know whether it is to be implemented; it was going to cost a lot of money—to supplement the freshwater supply with a further desalination plant. They have installed primary treatment for sewerage at the Topside camp in Nauru. Nauru is by far the worst of the detention centres; it is hot. Both camps are built on areas that have been extensively mined, many years ago, and the facilities are just not as good as they are in Australia. We visited Baxter, near Port Augusta, recently and met the mayor of Port Augusta—an interesting lady.

**Senator FERGUSON**—A very interesting lady, I can tell you.

**Mr Hodges**—We had breakfast with her—she could not join us the night before for dinner with the local Salvation Army chief and the Catholic priest. She is a very outspoken lady. Baxter will be the best facility we have got. It is purpose designed but not purpose built. Having said that, no detention centre is desirable in my view, but as a facility it will be far better than Woomera. The quicker Woomera is closed altogether the better, in my personal opinion, and we have expressed that to the minister.

**Senator FERGUSON**—Is that because of isolation? Is that the reason you think Woomera should be closed?

**Mr Hodges**—The culture that has developed in Woomera is very difficult to eradicate. If you transferred the detainees plus the staff out of Woomera to Baxter or anywhere, I think you would have some similar problems. Yes, part of it is the harsh physical environment there. The women and children project has gone quite well. We visited that last week when we were there.

**Senator FERGUSON**—These are those who are living out of the centre?

**Mr Hodges**—Yes, those living out of the barbed wire and the palisade fencing of the detention centre proper. Again, that town facility is not being used—although there are only about 220 people left at Woomera at this stage—as much as it should be and has not been used as much as it should have been. But families sometimes elect not to go there. It is an agreement between the husband and the wife that they do not want to be separated. They can always return to the main compound and some of them do go back to the main compound. The education facility at Woomera is much improved. They are using a disused Catholic school, and the children are doing very well in that facility with the teachers they have.

**Senator FERGUSON**—The conditions at Woomera are still not as harsh for the detainees as they are for some of the people working on stations further out, I can tell you.

**Mr Hodges**—I think that is probably the case—I am not an expert on the bush.

**Senator FERGUSON**—I have been out there.

**Senator BRANDIS**—For completeness, I want to come back to the question of whether any complaints about treatment were made to you. I want to focus specifically on the Manus Island asylum seekers. Did you see, or are you aware of, some allegations made on a *Four Corners* program about three weeks ago in relation to the interception of SIEVs?

**Mr Hodges**—I did see the *Four Corners* program.

**Senator BRANDIS**—You recall there was a suggestion—I will not put it any higher than that—that Australian military authorities used what were described by one person as ‘electronic sticks’. I think the journalist then helpfully used the expression ‘cattle prods’. Was there any complaint or suggestion of that made to you when you visited the asylum seekers?

**Mr Hodges**—No, there was not.

**Senator BRANDIS**—Was there any suggestion at all of violence by any Australian military authorities?

**Mr Hodges**—No, there was no suggestion of violence or brutality in any shape or form.

**Senator BRANDIS**—Or excessive force?

**Mr Hodges**—No, not even of excessive force.

**Senator BRANDIS**—Was there any suggestion in relation to the SIEV4 incident, that is what I think you call the ‘children overboard’ asylum seekers, that the circumstances in which the engine on their vessel stopped and it became disabled was in any way attributable to behaviour by the boarding party?

**Mr Hodges**—No.

**Senator BRANDIS**—Was there any suggestion that the asylum seekers were lied to about the provision of supplies?

**Mr Hodges**—No. I have seen those suggestions, Senator Brandis, in some of the submissions and some—

**Senator BRANDIS**—I am sorry to talk across you but you are familiar with a four-page email from five people purporting to speak on behalf of the Manus Island asylum seekers, which does contain a number of complaints along the lines that I have just foreshadowed to you?

**Mr Hodges**—I have read it, Senator, yes.

**Senator BRANDIS**—May I ask this globally: were any of the complaints or grievances suggested in that email raised with you by any of the Manus Island asylum seekers?

**Mr Hodges**—Not that I recall.

**Senator BRANDIS**—Or with the accompanying member of IDAG?

**Mr Hodges**—No, not that I recall.

**Senator BRANDIS**—I think you told us that the accompanying member of IDAG was an Iraqi speaker.

**Mr Hodges**—Dr Mohammed Alsalami.

**Senator BRANDIS**—Thank you.

**CHAIR**—Mr Hodges, I think you said—and I have to apologise for not recognising this—that you were a former Liberal member and a minister for immigration.

**Mr Hodges**—That is correct.

**CHAIR**—When were you minister for immigration?

**Mr Hodges**—In 1982-83.

**CHAIR**—That would have been in the McMahon government.

**Mr Hodges**—No. It was in the last Fraser government.

**CHAIR**—Of course, yes.

**Senator FERGUSON**—He is a former member for Petrie.

**CHAIR**—That is a very nice area of Australia. What other qualifications do you have to be chair of IDAG?

**Mr Hodges**—I do not know that I have any special qualifications, Mr Chairman. I am a pharmacist by profession and have gone back to pharmacy practice, and I have been practising now for several years since I have been out of politics.

**CHAIR**—There is life after politics.

**Mr Hodges**—There is a life after politics; you do not think so at the time but let me assure you gentlemen and lady that there is life after politics.

**Senator FAULKNER**—Mr Hodges, at this hour of the night it sounds incredibly attractive, I can tell you.

**CHAIR**—We are desperate to introduce some of our colleagues on this committee to that life as soon as possible.

**Senator FERGUSON**—You are trying to.

**Mr Hodges**—I know, Mr Chairman, they will not agree with you. I have a wife, and three children in their late 20s and 30s. I have seen a bit of life but I do not think I have anything special, really, to chair it. I must say that it is a very good group of people. There are a lot of individuals and we do not all agree. Let me assure you that it is very hard to get a consensus around the table on a lot of issues. They are all very individual. I have said to some of them that everyone has an audience—we all have an audience—and sometimes I think we tend to want to play to those audiences. What we have got to try to deal with are the problems that are there and to give the best advice that we can to the minister. That is what I hope we have been doing.

**CHAIR**—Prior to taking on this responsibility, did you have any previous experience or responsibility associated with detention centres as such?

**Mr Hodges**—No, I did not, except, as I said a little earlier, I did visit two camps—one in Manila and one outside of Kuala Lumpur. That was when I was in politics. No, I have not had any experience with detention centres at all.

**CHAIR**—Back in your day, were there centres at airports for people to be detained in while waiting to be deported?

**Mr Hodges**—Yes, there were. As minister, I visited Maribyrnong and Perth. There has never been a centre in Brisbane. About eight or nine months ago I visited the Arthur Gorrie Correctional Centre in Brisbane, where a cell block is given over to Immigration for the detainees picked up who are basically, as you would appreciate, visa overstayers. Maribyrnong was a fairly new facility in the early 1980s. Perth was also a new facility, and from memory I think that Perth was not actually operational; it was very new. Villawood, in Sydney, was there—where I also visited—but not for the purpose that Curtin and Woomera are particularly, and Port Hedland, which is to detain boat people. Yet there were boat people prior to my time as minister; I think there may have been a trickle of them about. Certainly there were refugees from conflict in Lebanon and the Middle East.

**CHAIR**—You have never been a visitor to low security or minimum security prisons or places of that nature?

**Mr Hodges**—No, I have not.

**CHAIR**—When the Bosnian refugees came to Australia, they were put up in Western Australia at the naval station. Have you inspected those quarters?

**Mr Hodges**—No, I have not.

**Senator FERGUSON**—The Kosovo refugees.

**CHAIR**—The Kosovo refugees, yes. So it is fair to say—I just want to try and establish this—that your experience of detention centres, more or less, begins with the experience you are having now.

**Mr Hodges**—That is correct.

**CHAIR**—You were saying that the boat people or people on Manus Island were concerned that they were depicted as people who had thrown children overboard and that they were being seen that way in the Australian media, and you reassured them that that was not the case. I think that is what you said.

**Mr Hodges**—Yes.

**CHAIR**—What did you tell them?

**Mr Hodges**—What we went to pains to tell them was that, although the stories had circulated throughout the Australian media, it was now realised that they were not guilty of throwing their children overboard, and we apologised to them for what had been published. I think another

thing that the committee may have come to realise is that the detainees are fairly well informed. They have their channels of communication, whether it is mail, papers or newspapers that are sent to them or telephone calls they make or whatever. Even in places like Manus and Nauru they are not that isolated, although they are more isolated, of course, than they are in Australian centres.

**Senator FAULKNER**—When were you able to apologise to them, Mr Hodges?

**Mr Hodges**—We had two group meetings on Manus—apart from moving around for hours and hours on end; countless hours spent—one in the morning one day, with about 200 people, and one in the afternoon with about 90. Some of the 90 had been at the morning meeting as well.

**Senator JACINTA COLLINS**—But this was early April or mid-April.

**Mr Hodges**—Manus was February or February-March.

**Senator FAULKNER**—I am wondering if you are able to nail down a specific date.

**Mr Hodges**—We arrived on Manus on 28 February; it would be 1 March. The day we had the two meetings of 200—that is an estimate, but I think it is fairly close—in one group and 90 in another was 1 March.

**CHAIR**—How agitated were they that this allegation had been made?

**Mr Hodges**—It did arise on a number of occasions. It arose at the group meetings and it arose as we moved around the compound as well, so it is true to say that it was raised on a number of occasions.

**CHAIR**—You have said that they are reasonably well informed about what is said and reported in the media. Were they aware that the Prime Minister had said that people like this—that is, people who throw their children overboard—would not be welcome in Australia? Were they aware of that type of comment?

**Mr Hodges**—I think they probably were. I cannot say specifically that someone came to me and said, 'Mr Howard said this or that,' but I think it is true to say that they would have been au fait with who had said what or that it was across the spectrum.

**CHAIR**—And they were concerned to establish with you that they were not that type of people.

**Mr Hodges**—Exactly.

**CHAIR**—And you were able to reassure them that, now that we know that no children were thrown overboard, the view that they had thrown children overboard no longer applies, as far as Australians are concerned.

**Mr Hodges**—That is what we conveyed to them, yes.

**Senator FAULKNER**—How did you know that it no longer applied? I am not saying that you are wrong—you are quite right—but there are some others that do not appear to have come to the same conclusion at the same time.

**Mr Hodges**—We were there on a goodwill mission, I guess. There were some tensions—I think it is true to say there are probably always some tensions within a detention centre—and we knew that the people we were dealing with or at least some of those people on Manus were the ‘children overboard’ people, as they are known, and, because the evidence was appearing to be as though things were not 100 per cent as had originally been depicted, reported or inferred, we felt we should reassure them that—

**Senator FAULKNER**—On whose behalf were you able to apologise in this instance?

**Mr Hodges**—Basically on our own behalf.

**Senator FAULKNER**—That is fair enough. I am just trying to understand.

**Senator FERGUSON**—It was a bit after Admiral Barrie’s clarifying statement, was it not? That was on 25 or 26 February.

**Senator JACINTA COLLINS**—Or were you not aware of it at the time?

**Mr Hodges**—I could not quote you the time.

**Senator FAULKNER**—I imagine Admiral Barrie’s view would not be that important in terms of your committee’s—

**Senator FERGUSON**—But it made headlines. This was something you read.

**Senator FAULKNER**—Was it?

**Senator FERGUSON**—Yes, it made headlines.

**Senator FAULKNER**—Mr Hodges can help us.

**CHAIR**—We should talk to the witness rather than to ourselves. We have plenty of time to talk to ourselves.

**Senator FAULKNER**—My question is, Mr Hodges: was Admiral Barrie’s view important in terms of the group determining that it would apologise?

**Mr Hodges**—I really cannot answer that—I really do not know.

**Senator FAULKNER**—I appreciate that you cannot answer on behalf of the group. That is a frank answer and I do appreciate it. Personally, was it significant?

**Mr Hodges**—No, I do not believe it was.

**Senator FAULKNER**—Thank you.

**CHAIR**—Were they mollified by your apology?

**Mr Hodges**—Yes, I believe they were. There was a deal of outpouring by individuals at particularly the first meeting, and McMahon endeavoured to answer initially their questions as they came forward. He did answer a number—we all did. Then it became obvious that they just wanted to get a lot of this off their chests—all of their problems—and we just let them go until they had exhausted themselves. It was a very orderly meeting—do not get me wrong. Although there was a lot said, it was very orderly and they heard each other out and we heard them out.

**CHAIR**—It sounds like a very civilised exchange.

**Mr Hodges**—It was. In the case of one of the Nauru meetings we had what was obviously a planned walkout because they did not get an answer to a question—but don't ask me what that specific question was. I was a little bit stunned, but it was very obvious that it was a planned walkout. But the same representatives later talked to us. They tend to blow a bit with the wind because of their emotional state and their concerns about their future and when they are going to get out of the camps and so forth.

**CHAIR**—You offered us the terms of reference for your committee, and I would appreciate having a look at those. My understanding is that your basic role is to inspect these camps and make sure that they are in a proper condition and people are being treated responsibly and humanely. Is that the fundamental role?

**Mr Hodges**—That is certainly one of the roles, but I think it is true to say that it is broader than that. It is about the facilities that are there and the adequacy of the facilities. It is pretty broad, actually.

**CHAIR**—As I understand it, from the way you have presented it, one of your roles is not to investigate complaints or whatever—you hear them but that is not your primary role?

**Mr Hodges**—Exactly.

**CHAIR**—When you come into a camp you are not introduced as someone who is going to sit down and listen to their complaints; you are introduced as someone who is going to look at the facilities and check the accommodation, education facilities, food, clothing and all that sort of stuff.

**Mr Hodges**—Correct.

**CHAIR**—And they are clear in their own minds that that is what your purpose is?

**Mr Hodges**—Yes, I think they are probably clear, but that does not stop them from approaching you.

**CHAIR**—Of course.

**Mr Hodges**—I think if you and I were in their circumstances we would probably do the same. I think I would be insufferable if I were in their position. But that is a personal view—a criticism of myself, if you want to take it that way.

**CHAIR**—I think I understand exactly what you are saying. I would probably be the same. I am insufferable as it is, but—

**Senator FERGUSON**—And you are not in a camp.

**CHAIR**—Are you saying that they show a fair bit of forbearance given their difficulties?

**Mr Hodges**—Yes. If we talk specifically about the Manus Island group, I thought—as I think I may have indicated earlier—they were a very good group in that they seemed fairly settled. I went around a group of them and a lot of them did speak quite good English. Of course, some of them did not. I asked them what they did in private life. There was a great cross-section of trades and professions, from accountants, to a doctor, to clerks and a lot of tradesmen—you name it, they were there—and most of them were able to answer me in English. That was in a group of about 12 or 15 that I was with at one stage.

**CHAIR**—Were they mainly Iraqis on Manus Island?

**Mr Hodges**—They were Iraqis.

**CHAIR**—Did any of them denounce Saddam Hussein to you?

**Mr Hodges**—Most certainly.

**CHAIR**—Quite passionately, did they?

**Mr Hodges**—I had one doctor in particular—a 26-year-old. I took him aside to hear his story and it was pretty chilling sort of stuff. His father and mother were both specialists and I think he had another sibling who was a specialist. He was a GP in a hospital. It was pretty chilling sort of stuff. He said that he wanted to go to Europe, but he ended up in Turkey and from Turkey to Malaysia and from Malaysia to Indonesia. He kept protesting—this is what he told me—that he wanted to go to Europe. He had some friends or connection there. But it was pretty chilling sort of stuff.

**Senator FERGUSON**—A fairly middle-class refugee with money?

**Mr Hodges**—Yes, he had a home and a car. Apart from his family, he was. I must say, I was reasonably impressed with him as a good style of guy. I would like to find out whether he was one of the hundred-odd who have been accepted—

**Senator FERGUSON**—Maybe he is circumventing the immigration system as well.

**Mr Hodges**—at least for refugee status.

**CHAIR**—I have seen on TV—I do not know first-hand; I have read reports of it—that among many of these people there is a high incidence of them or a close family member having suffered torture or that they lost a family member in some way or that they had some graphic pain visited on them by secret police or organs of the state apparatus in the countries from which they fled. As a group they have a high incidence of—what do they call it—post-traumatic stress syndrome. Are you aware of any of those types of analyses?

**Mr Hodges**—Yes, I think it is true to say that a number of people that we talk to would be the people who you would see individually or in twos and threes—a husband and wife—but not in a group situation. They would rarely express any of that in a group situation, but certainly individually you would get that.

**CHAIR**—Are there any people who have obviously been physically damaged by torture?

**Mr Hodges**—Yes, there are some, although I have to say to you that we did not really inquire. There were no obvious limbs cut off or that sort of thing but, yes, some of them mentioned that they had been tortured. They would perhaps show you marks where there were cigarette burns or knife marks or wounds that had healed—not a lot, but some.

**Senator FERGUSON**—It is not part of your role to advise the minister on those issues, is it?

**Mr Hodges**—No, it is not.

**Senator FERGUSON**—That is not their role.

**CHAIR**—That is right. Just going on, you talked earlier about education needs. How do you assess what the education needs are? You mentioned the accountant, who was a detainee in the camp and was taking classes, and the need to encourage that type of self-sufficiency in education provision, but is there any sort of qualified assessment of the education needs of the camp populations?

**Mr Hodges**—I do not know that there is or has been in Manus or Nauru—I cannot answer that. Time just got away from us and we were not able to deal in depth with some of those issues there. But certainly in a place, for instance, like Curtin, there is a very good teacher—I do not know whether he is still there. Woomera, as I said earlier, is better set up now that the numbers are down. I do not think it is only because of the numbers, it is just that they are getting their act together more and more. Some of the select students in a place like Curtin are going into Derby to school. Some in Port Hedland are going out of the camp to school. All of the children in Woomera at the moment are going to a disused former Catholic school. So there is a lot being done but I think a lot more can be done.

**Senator JACINTA COLLINS**—Will it be in the future contracts as a condition?

**Mr Hodges**—Yes, the contract, as I said earlier, has been upgraded. It will be tightened a lot in lots of areas—not just in education but across the spectrum. I think it will be a better detention standard document than is currently there—a much better document.

**CHAIR**—I want to conclude by asking you a couple of questions about what was put to you by Senator Brandis. With respect to the *Adelaide* people and with respect to the *Four Corners*

program where there was a statement about the use of a cattle prod, you were asked whether any suggestions were made to you of violence, brutality or the use of cattle prods. You were asked a question of that type; I may not have the phrasing exactly right. Then you were asked a question about the behaviour for the boarding party—this was the *Adelaide* boarding party—and whether those people in that SIEV were lied to about supplies. Did you inquire about those things yourself directly?

**Mr Hodges**—No, we did not. I have noticed some of these allegations about electric sticks or cattle prods and so forth in their submissions. They were not raised with us, and we certainly did not question them about it.

**CHAIR**—Would you say that you have an exhaustive appreciation of what the truth of that matter is or are you saying simply that it was not something that came forward?

**Mr Hodges**—I believe, in a fairly exhaustive session or sessions with the Manus Island people, that they would have raised these issues—I am sure—because they were aware of the accusations in the media here about them throwing their children overboard. One cannot be totally confident but I feel reasonably confident that they would have raised those issues with us because there is a tendency with detainees, who have a lot of time to think about a lot of things, to dwell on often minor things that they tend to blow out of proportion. From my recollection of the visit to Manus—and it is pretty clear—they did not raise those with us.

**CHAIR**—Did you have the submission that the Manus people have put to this committee with you at the time?

**Mr Hodges**—No.

**CHAIR**—So you were not able to ask them about the allegation?

**Mr Hodges**—No.

**Senator FERGUSON**—This committee had not even been set up then. It had just been set up.

**CHAIR**—I am just going to the level of what weight we put on the fact that they did not raise it. Because what you are characterising to me—and correct this if my impression is wrong—is that they did not raise it. They had an opportunity to do so. If there was something in their mind, they most likely would. But no initiative was taken to inquire of them specifically about these things.

**Senator FERGUSON**—Unlike the *Four Corners* reporters.

**Mr Hodges**—That is correct.

**CHAIR**—So it would be hard to be absolutely categorical, one way or another?

**Mr Hodges**—I agree with that.

**CHAIR**—When all is said and done, these people are in detention waiting to be processed and it must be a terribly boring existence for them without much to do or to stimulate or challenge them. You may not be in a position to answer this, but is that a case for trying to speed up the processing, move these issues on? Is the fact that people are idle and bored one of the things that leads to unhappiness in the camps?

**Mr Hodges**—Yes, it is. Some of the recommendations we have made and that have been picked up are that there ought to be more in the way of activities for them: more sport, craft, games, anything at all. But having said that, even if there were, if you are in detention long enough I do not think it matters what you have got. As I said earlier, even if you were in the Hilton Hotel with plush surroundings, five-star or five-star plus, I think if time drags on and hopelessness creeps in you are going to get problems with them anyway.

**Senator FERGUSON**—It is a fact, though, particularly in Australian detention centres, that where time has dragged on and where people have been in detention for more than a matter of two or three months it is because their initial applications have been refused, is it not? We tend to forget that something like 80 per cent are processed within six to eight weeks.

**Mr Hodges**—That is true in the main. However, there are some cases in which—IDAG has been looking at this problem—final decisions have not been made but look as though they are going to be favourable to some people after six or eight months because they do not have security checks back. My understanding is that it often gets back to a body like ASIO. That is unforgivable. The minister has repeatedly said, and most people would agree, that the program cannot be compromised—I do not think that any of us would want it to be compromised—so every aspect of the processing must proceed to finality. What I would like to see is those times—that is the point the chairman has made—reduced if at all possible, and we have to do everything in our power to see that they are reduced. It is also true that most of the problems in the detention centres come about because of the long-term detainees who have been refused, been to the Refugee Review Tribunal, and often to the Federal Court, and have got a refusal right through. Then there are problems in returning people to their countries of origin, and that is not to be underestimated in many instances. Most of those problems exist because of the long-term detainees who have been refused at every stage.

**Senator FERGUSON**—It might help their cause as far as security clearances are concerned if they do not destroy their papers before they come here.

**Mr Hodges**—That is a major problem. Most of them arrive without any identification documents, travel documents or passports.

**Senator FERGUSON**—Although they had them to get into Indonesia.

**CHAIR**—Would it help if there were not so much razor wire and there were a more relaxed security element to it?

**Mr Hodges**—I think it would. There is no razor wire at Nauru or Manus, but you do not go anywhere.

**CHAIR**—You could hardly go anywhere from Woomera either.

**Senator FERGUSON**—Yes, you can.

**Mr Hodges**—When we were there last week there were still 10 or 11 of them at large.

**Senator FERGUSON**—It is not bad country at this time of the year.

**Mr Hodges**—I have been through that country too.

**Senator JACINTA COLLINS**—Alcatraz did not have barbed wire either.

**Senator FERGUSON**—December to February is the only time it is no good. I nearly went up there last weekend.

**Senator JACINTA COLLINS**—When you provide us with the details of the terms of reference that the chair was referring to, could you also give some detail of the members of the group?

**Mr Hodges**—Yes.

**Senator JACINTA COLLINS**—I would like short information about the various people's backgrounds. In the interim, how many people are in the group?

**Mr Hodges**—There are eight in the group. I have the lists here and I have the terms of reference, which I can give to the secretary.

**Senator JACINTA COLLINS**—That is fine. Your trip to Nauru and Manus occurred between 1 March and—

**Mr Hodges**—Manus was 28 February to 2 March, and the visit to Nauru was 25 and 26 March.

**Senator JACINTA COLLINS**—It must have been the trip to Nauru that I saw in the media. Did you have any DFAT involvement in that trip?

**Mr Hodges**—In Manus we had the deputy high commissioner in Port Moresby with us, plus one Australian Federal Police officer, who came along on the visit and stayed one night. The deputy high commissioner stayed two nights at Manus. On Nauru there are Chubb Security and APS officers, and there is now a high commissioner and a deputy high commissioner, Bill O'Brien, who is an experienced diplomat. Both camps are run by the International Organisation for Migration. That is about it.

**Senator JACINTA COLLINS**—Which agency or department facilitated the arrangements?

**Mr Hodges**—It was Immigration. Vince McMahon, who has been before the committee, accompanied the group to Manus and Nauru.

**Senator JACINTA COLLINS**—I was keen to clarify that, because some time before you went to Nauru I had originated inquiries through our normal arrangements with DFAT as to

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what travel might be available for those members of this committee who had an interest in attending the centres. We discovered shortly afterwards that your group had actually gone. Was the travel by VIP aircraft?

**Mr Hodges**—No. The minister had gone with the shadow minister by VIP to Manus and to Nauru before us. The visit to Manus and Nauru, as I said earlier, was not really a part of IDAG, although two of us—Dr Mohammed Alsalami and I—are members of IDAG. We were not invited as IDAG members; the minister wanted a couple of us to go along, together with Vince McMahon. On the visit to Nauru, the two of us went—Alsalami and I—and also another gentleman from Sydney, an Hazara Afghani called Gholam Aboss. He visited as well, basically because of the culture and the language. Those sorts of people are pretty valuable on those visits because they can gain the confidence of the detainees that I cannot, as a non-speaker of their language and appreciator of their culture.

**Senator JACINTA COLLINS**—I appreciate that. I want to revisit the issue of truthfulness when it was being discussed with Senator Brandis. I noted at the time your comment that you felt there was a common thread throughout detention centres that people put their own construction or their own slant. I do not think you wanted to actually be drawn to anything stronger than that statement. When you made it at the time, I thought to myself—and Senator Cook’s questioning led a bit in that direction—that that sounded fairly typical to me of general complaint handling experience. I suppose in a sense that is why I was curious about whether you had also had previous experience in complaint handling, particularly in this sort of environment, which has that extra factor of containment and idleness added into people’s lives. Would you be prepared to accept that dealing with ascertaining facts, when people will put their own constructions on events, was something that was in one sense new to your experience?

**Mr Hodges**—No, not really. I spent many years as a migration agent. There is no doubt that people wanting to come to Australia will often say all sorts of things and put their signature on documents containing so-called facts that are not true. A fair bit of that goes on with people who are trying to get to Australia. I believe that what I referred to is correct—that it is a common thread throughout the detention centres.

**Senator JACINTA COLLINS**—Are you also saying that it is consistent with your experience with others when you were acting as a migration agent?

**Mr Hodges**—Yes, if you are talking about changing countries or having a desire to come to Australia—and I imagine the same thing applies if you want to go from a poorer country to a wealthier, more affluent country. That would probably apply to Canada and parts of Europe, the UK and the US. People tend to give the information that they think is going to advantage them the most, rather than the truth.

**Senator JACINTA COLLINS**—I was a bit curious about a couple of the examples you gave. For instance, the woman who had blood taken: when you described that incident, you said her concern was that she had not been told the outcome. Later on, you said that actually it was a concern that the blood had been lost or misplaced.

**Mr Hodges**—That was her concern—that it might have been lost or misplaced.

**Senator JACINTA COLLINS**—But the fact to her, it appeared, was that she had not actually been told the outcome of the test.

**Mr Hodges**—But she had been, because we subsequently checked with the medical centre.

**Senator JACINTA COLLINS**—That was the bit that you did not tell us.

**Mr Hodges**—I am sorry; I apologise if I did not.

**Senator FERGUSON**—Yes, he did, Senator.

**Senator JACINTA COLLINS**—No, he said that they had got the results back. He did not say that the results had then been translated to the woman.

**Senator FERGUSON**—I thought he did.

**Mr Hodges**—I may have; I apologise if I did not. We checked with the medical staff, because these are the sorts of things that stick in your mind: ‘Is this a real problem? Is there a deficiency to this degree in the medical attention? Let’s go and check it out with the doctor; let’s check it out with the senior registered nurse.’ Usually, off the top of the head, they can tell you; they know the circumstances.

The same happened on Manus and in Nauru, more particularly on Manus because we had more time to question two doctors—I think an Egyptian doctor, and a Thai doctor. They could tell you straight off, ‘We’ve dealt with that problem; it’s so and so,’ and you go to the next number and they say, ‘Yes, we know that case; it’s so and so.’ Yet they would have you believe that nothing had been done, that they had been given no drugs or no treatment.

**Senator JACINTA COLLINS**—So it was not even a case that they misunderstood the nature of the treatment or assistance they had received?

**Mr Hodges**—No, it was too frequent to be a misunderstanding.

**Senator JACINTA COLLINS**—I have a final question about the advisory group. Have you had changes in the membership of the group since it was established?

**Mr Hodges**—No.

**Senator JACINTA COLLINS**—So this was not the body that Neville Roach stood down from.

**Mr Hodges**—No.

**Senator JACINTA COLLINS**—Which group was that?

**Mr Hodges**—I was involved in a small inquiry with Gerry Hand, the former Labor minister, and Ray Funnell, who is on IDAG, on people-smuggling. I did about four or five jobs—one on the points test—but none of those inquiries had a high profile like IDAG, and I did another one

into the migration advice industry. So I have been involved now for probably six or seven years in total but with a very low-key approach. This one has much more notoriety; I do not know whether that is a good thing.

**Senator JACINTA COLLINS**—Which was the body that Neville Roach stood down from? Which advisory group was that?

**Mr Hodges**—It was not one that I was involved with. I cannot give you the name of it, but I know exactly the incident that you are referring to. It was a matter of only months ago now.

**Senator JACINTA COLLINS**—Is that a body that is continuing on now, or do you not know?

**Mr Hodges**—Yes, my understanding is that it is.

**Senator JACINTA COLLINS**—So we need to look at their terms of reference as well. Thank you.

**Senator FAULKNER**—Did you or, to your knowledge, any other member of your Immigration Detention Advisory Group actually receive information on the so-called certain maritime incident—the ‘children overboard’ affair, as we all know it, from any sources other than the media?

**Mr Hodges**—Not that I am aware of.

**Senator FAULKNER**—I was thinking, for example, about Mr Ruddock, members of his staff perhaps, department of immigration officials or the like.

**Mr Hodges**—No, I am not conscious of that matter at all.

**Senator FAULKNER**—Thank you.

**CHAIR**—Thank you very much, Mr Hodges, and once again I apologise for keeping you here past your departure time.

[8.15 p.m.]

**O'KEEFE, Ms Annmaree, Deputy Director General, Pacific, Contracts and Corporate Policy, AusAID**

**TAPP, Mr Charles William Nicolas, Deputy Director General, PNG and Global Programs, AusAID**

**RABY, Dr Geoff, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade**

**WISE, Mr James Joseph, First Assistant Secretary, South Pacific, Africa and Middle East Division, Department of Foreign Affairs and Trade**

**CHAIR**—Welcome. I note that you have said that you do not have an opening statement. You are therefore open for questions.

**Dr Raby**—Yes.

**Senator FAULKNER**—I have indicated to the witnesses and to you, Mr Chair, that I will place a series of questions on notice for both the Department of Foreign Affairs and Trade and AusAID, if that is acceptable. It may save a considerable amount of time this evening. There are a few questions I would like to ask witnesses at the table. I wonder if I could try to fill in a few of the gaps in my own knowledge and information that have become a little clearer to me since we last canvassed some of these issues, albeit mercifully briefly, at the Senate estimates committee hearing some weeks ago. In the first instance, Dr Raby, I wonder if you might indicate to the committee the broad lines of communication on the asylum seeker issues in and out of the Department of Foreign Affairs and Trade—how it worked and who was involved. This is in terms of your departmental organisation.

**Dr Raby**—I am not sure if I can vouch for completeness, but I will do my best. As we canvassed in estimates, there was the *Tampa* task force that was created on, I think, 29 August against the background of that event. That was the principal group inside the department, although it involved other agencies who sat on that group, and we gave you the list of those agencies, I think.

**Senator FAULKNER**—Yes, you did.

**Dr Raby**—The purpose was coordinating information flows. The principal sources of information into that group, and through that group to the department, were a range of Defence regular intelligence reports, the Defence summaries; information channelled from other departments through me as the DFAT representative on the PM&C people-smuggling IDC; cable traffic internationally, in the normal course of events; information conveyed by other departmental representatives on the Tampa task force when they would come to those meetings; and, finally, media sources.

**Senator FAULKNER**—Of the senior executive of DFAT, was it mainly you who was involved?

**Dr Raby**—Yes. I am not a member of the senior executive, but I would keep the senior executive briefed on the issues as they arose in the *Tampa* task force or on relevant matters arising from the PM&C people-smuggling IDC.

**Senator FAULKNER**—So did you report directly to the secretary; is that how it worked?

**Dr Raby**—To the secretary and to the relevant deputy secretaries.

**Senator FAULKNER**—What about your public affairs operation in DFAT? What, if any, involvement was there with your public affairs organisation?

**Dr Raby**—The principal involvement was to provide summaries of international media comment. They would trawl through media comment that came in overnight and prepare a summary, which we would attach to the *Tampa* task force situation reps which were produced on a regular basis. They also helped prepare talking points for our embassies overseas to respond to questions.

**Senator FAULKNER**—Can you briefly outline again the process of compilation of the *Tampa* task force sit reps?

**Dr Raby**—Yes. They would be put together drawing on information from all the sources that I have outlined. The principal sources would be the Defence intelligence summary reports, the summary reports from Operation Relex and the cable traffic. We would also have a section on domestic media comment and then appended to that a section compiled, as I have just mentioned, on international media comment.

**Senator FAULKNER**—Where were they compiled? Who wrote them in the department?

**Dr Raby**—They were by departmental officers staffed from what was then the people-smuggling, refugees and transnational crime section in my division. They would be drafted on a rotating basis; it was a shift-work exercise. We would have present, during the period when we had the task force operating, representatives from the Department of Defence—at least one officer—who were basically the conduits through which we would get the Defence intelligence reports and summaries.

**Senator FAULKNER**—So after a sit rep was drafted was there a signing-off process?

**Dr Raby**—I or my branch head Rod Smith—who appeared in estimates but is overseas at present—would be the ones who would authorise the despatch of the sit rep.

**Senator FAULKNER**—Was there an approval process, so to speak?

**Dr Raby**—Either I or my designated representative Rod Smith would be the sole approver of the sit reps.

**Senator FAULKNER**—In relation specifically to sit rep 59, can you say who drafted it, who signed off on it and what was the source of information? I am just focusing here on the famous 59.

**Dr Raby**—Yes. I would like to take that on notice, if I could, and I will get back to you first thing tomorrow morning.

**Senator FAULKNER**—I am happy if you take it on notice. If I could be clear on it, I would like to know who drafted it, who signed it off and, in the case of sit rep 59, the source information.

**Dr Raby**—Yes.

**Senator FAULKNER**—While we are at it, we might add in sit rep 60, if that is okay.

**Dr Raby**—I am happy to do that. Just on the actual person who drafted it, can I just add a qualification that we may not have the rotation sheet still with us. We will try and do our best by asking.

**Senator FAULKNER**—As always, Dr Raby, best efforts are always appreciated.

**Dr Raby**—Thank you.

**Senator FAULKNER**—But thanks for mentioning that in advance; I appreciate it. Can I ask you specifically for a little more detail about sit rep 59. My recollection is that at the time of the Senate estimates committee we were told that the Prime Minister, Minister Downer, Minister Reith and Minister Ruddock received copies of sit rep 59 at or soon after 9 a.m. on Monday, 8 October 2001. I just want to be clear that that is the case.

**Dr Raby**—Yes.

**Senator FAULKNER**—Thank you. We were of course told that sit rep 59 did not make any reference to children being thrown overboard. Could you perhaps confirm whether or not that is the case?

**Dr Raby**—There was no reference to children overboard. The reference was to people in the water.

**Senator FAULKNER**—If children had been thrown overboard and if Defence had credibly reported that incident, surely we could have expected it to be reported in a DFAT sit rep, couldn't we?

**Dr Raby**—That aspect of the report—what is happening in an operational area—is based solely on what the defence department provided us.

**Senator FAULKNER**—This would be an incident of such significance that it would be included. Isn't that right?

**Dr Raby**—If it were in the Defence summaries that we were receiving.

**Senator FAULKNER**—Is it of more operational or non-operational significance to DFAT than it would be to Defence? Is that fair to say?

**Dr Raby**—I am not sure of the point of the question. It is not a particular DFAT role we were performing there. We were a conduit for information for a range of our—

**Senator FAULKNER**—We know it is of no operational significance to Defence. That has been made absolutely clear on umpteen occasions. The fact that children were thrown overboard—or not, as the case was—is not operationally significant in Defence. It is not unreasonable to think it may be a matter that is of more significance to the Department of Foreign Affairs and Trade than it is to Defence because it has no significance at all to Defence. But you tell me. I just want to know.

**Dr Raby**—I am taking your statement on board—

**Senator FAULKNER**—As opposed to overboard.

**Dr Raby**—Yes. I cannot respond to that point about Defence. All I can say is that we based our sit reps on operational matters on what was provided to us from the Department of Defence.

**Senator FAULKNER**—Who in Defence did DFAT actually have contact with in both the early stage and the later stages of the *Tampa* task force? How was that organised and who was it organised with?

**Dr Raby**—The contact with Defence? Defence volunteered their officers. We did not have a selection process. Whoever came from Defence on rotation came. They sat with us and provided the conduit to Defence communications.

**Senator FAULKNER**—Which is fair enough. But you basically accepted whoever was provided by Defence for that role?

**Dr Raby**—Absolutely, as with any other department that participated on the task force.

**Senator FAULKNER**—Yes, I am not doubting that for a moment. Did you keep a record of who it was through that time period?

**Dr Raby**—I think we could provide you with that if that is what you wish.

**Senator FAULKNER**—If you could, that would be helpful.

**Dr Raby**—There may be gaps, given the nature of how this exercise was conducted, but we will check and provide what we can.

**Senator FAULKNER**—In the broad again, without going to individual specifics, what sort of information would DFAT be receiving from Defence? I am thinking of signals, intelligence

summaries and that sort of thing. How would you describe the categories of information or input you would be receiving from Defence?

**Dr Raby**—Defence intelligence summaries, as I have mentioned, and summaries of Operation Relex reports.

**Senator FAULKNER**—So signals?

**Dr Raby**—No, it came to us as documents, not as signals. That is all processed through Defence. We got what Defence had processed.

**Senator FAULKNER**—And is that all—just the intelligence summaries and the processed Defence reports?

**Dr Raby**—Sorry, I need to correct that; we occasionally received signals.

**Senator FAULKNER**—You did?

**Dr Raby**—Yes. But primarily we received a daily Operation Relex summary.

**Senator FAULKNER**—Was the daily Operation Relex summary developed by Defence for DFAT or was DFAT just one of the agencies to which this was provided?

**Dr Raby**—I believe that we were one of the addressees.

**Senator FAULKNER**—Yes. Would you describe the information that you received from Defence as regular information just received as a matter of course, or would it be more ad hoc in its nature?

**Dr Raby**—It was primarily regular programmed reporting. We would know roughly the time it would come.

**Senator FAULKNER**—On basically a daily basis?

**Dr Raby**—More than daily.

**Senator FAULKNER**—I thought you said daily before.

**Dr Raby**—When we were doing sit reps on a daily basis, they were reduced from many times a day to once a day. We would receive one of these at a time with the production of the sit rep in the morning, but we were able to get other reports like that if we requested at other times during the day if they were available.

**Senator FAULKNER**—Do you keep the sort of information that you received for the development of, say, sit reps 59 and 60?

**Dr Raby**—Do you mean the raw information that came in?

**Senator FAULKNER**—Yes. Let me not ask specifically about those. Generally, does DFAT keep the material that provides the basis for this reporting?

**Dr Raby**—Yes, it is filed.

**Senator FAULKNER**—You do?

**Dr Raby**—Yes. We would file it like other documents.

**Senator FAULKNER**—So it is all on file?

**Dr Raby**—Yes.

**Senator FAULKNER**—So the raw material that forms the basis of sit reps 59 and 60 would be on file?

**Dr Raby**—I would imagine so. When you say it is all on file, we would normally file it.

**Senator FAULKNER**—I am only asking about your procedures, Dr Raby. These are not trick questions or anything; I am just trying to understand.

**Dr Raby**—I am just trying to answer you accurately.

**Senator FAULKNER**—I understand and appreciate that.

**Dr Raby**—Could I just say that all this is communicated electronically. It is coming on to secure computers and it is coming into many different points in the building on to secure computers.

**Senator FAULKNER**—So you would be able to check for us, for example, if some of that could be made available for the benefit of the committee?

**Dr Raby**—Because the originator of it is the Department of Defence, you would have to ask them.

**Senator FAULKNER**—Not if you hold it.

**Dr Raby**—As I understand it, we cannot release information that is generated by another department.

**Senator FAULKNER**—But you have it on file and it has all originated from the Department of Defence?

**Dr Raby**—This particular information we are discussing, yes; the Department of Defence is the originator.

**Senator FAULKNER**—But there is no information that is an input to the preparation of these sit reps from outside the Department of Defence?

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**Dr Raby**—As I mentioned at the outset, diplomatic reporting was also included when relevant.

**Senator FAULKNER**—So it is not all from the Department of Defence, is it?

**Dr Raby**—We were discussing the Operation Relex and intelligence summaries from Defence.

**Senator FAULKNER**—Yes, we are, as part of the raw material that forms the basis of the sit reps.

**Dr Raby**—If your question is wider than Operation Relex, as I said at the outset when I set out the source of information, there were multiple sources of information.

**Senator FAULKNER**—Now you have managed to completely confuse me, Dr Raby. I may be misunderstanding you. Let us be clear. In relation to Operation Relex, are you only using Defence sources?

**Dr Raby**—Only using Defence sources.

**Senator FAULKNER**—I did not understand that. I appreciate that clarification. Your other answer goes to the development of sit reps in the broad, outside the period of Operation Relex.

**Dr Raby**—The sit reps covered much more than just Defence operational matters.

**Senator FAULKNER**—Sure.

**Dr Raby**—They obviously reported on international reactions and other developments that were relevant to be reported to ministers.

**Senator FAULKNER**—I understand. Thank you for that. That is helpful. Did the Department of Foreign Affairs and Trade at any stage, including either the Tampa task force or any other part of your department, receive the photographs which I will just define as those that misrepresented children thrown overboard? You know the photographs to which I am referring.

**Dr Raby**—At estimates I said that, to the very best of my knowledge, we did not receive the photographs either electronically or in any other form. There has been no reason since then for me to revise that advice I gave to you at estimates.

**Senator FAULKNER**—So that is still the best advice you can provide this committee?

**Dr Raby**—Yes.

**Senator FAULKNER**—Fair enough. Could you indicate to the committee just in relation to the ‘children overboard’ claims in the broad what, if any, information the *Tampa* task force or other parts of the Department of Foreign Affairs and Trade may have received on those claims?

**Dr Raby**—The only information, as I recall from our discussion on this in estimates, was information that I had picked up from the PM&C IDC. But it was never discussed as an agenda item or part of that formal discussion. Apart from what I had picked up from discussions on the margin at IDC, most came from the media on that particular issue.

**Senator FAULKNER**—I recall you indicating that to me on an earlier occasion. I just wondered if there is now any more clarity about whether in any part of DFAT any other information had been received at any time about the ‘children overboard’ claims.

**Dr Raby**—To the best of my knowledge, no. No-one has sought to correct my comment to you at estimates.

**Senator FAULKNER**—And that would go to either support for or refutation of the ‘children overboard’ claims, I assume.

**Dr Raby**—Yes.

**Senator FAULKNER**—Have you had a pretty thorough check of the material that goes to form the basis of the sit reps 59 and 60 that have received a little notoriety over the past few months? Have you satisfied yourself about the sorts of issues that I am raising with you now, some of which I have touched on on an earlier occasion?

**Dr Raby**—Yes, we had a look at that before estimates. We have not felt a need since estimates to go back and re-examine any of those issues in the light of the discussions at estimates.

**Senator FAULKNER**—So you did not feel it was necessary to check?

**Dr Raby**—We satisfied ourselves, I felt adequately, before estimates and there has been nothing that we have required to check since.

**Senator FAULKNER**—I know that I asked you a similar question to this one in the estimates hearing, but I wondered about the thoroughness of the checking process given the significance and notoriety of the incident that we are talking about.

**Dr Raby**—There is not a lot to check on this particular point, Senator. There is just the Operation Relex report.

**Senator FAULKNER**—Were the children overboard claims—I am now looking in the broad in terms of your department’s management of foreign relations—significant to the department in the sense of your broader role and responsibility?

**Dr Raby**—They could have been, but I do not recall at the time that they were.

**Senator FAULKNER**—They could have been, but you do not recall that they were. I mean—

**Dr Raby**—Let me rephrase that. We, as far as I know, had no need to address those issues in the normal course of our work representing Australia overseas.

**Senator FAULKNER**—Would you say that the Department of Foreign Affairs and Trade had any role or responsibility in relation to this whole question of whether or not children had been thrown overboard? I think you put it to me on a previous occasion that you considered yourself rather tangential; I do not want to put words into your mouth but I think that is a pretty fair way of describing what you thought was a reasonable assessment of the department's role.

**Dr Raby**—I think the word that we agreed on at estimates was 'peripheral'.

**Senator FAULKNER**—Is that what it was?

**Dr Raby**—Yes.

**Senator FAULKNER**—That goes to show that you have a better memory than me. I knew it was something like that. I will let 'tangential' be struck from the record and replaced with 'peripheral'—it means much the same thing I think, doesn't it? So there was no reason to reassess that at all?

**Dr Raby**—No, not at all.

**Senator FAULKNER**—You also indicated at the time of the estimates committee when you gave evidence, and you have mentioned again tonight, that attached to the sit reps is the summary of national and international media items—I think that is a standard part of the sit reps, isn't it?

**Dr Raby**—The national would be picked up and integrated into the body if there were specific things which were running that we felt should be included. The international was a separate annex; it was not called an annex but it was a separate part of the sit rep. I think that, as much as anything else, reflects the fact that the international part was prepared by our media liaison area.

**Senator FAULKNER**—What is that area called?

**Dr Raby**—That is our Parliamentary and Media Branch. It is now called the Images of Australia Branch.

**Senator FAULKNER**—That is terribly impressive.

**CHAIR**—Everyone immediately knows what it means!

**Senator FAULKNER**—So that we are clear: media summaries on the asylum seekers issues were attached to sit rep 59 on 7 October. That is right, isn't it?

**Dr Raby**—I have been reminded that the sit rep 59 came out on 8 October, not the 7th.

**Senator FAULKNER**—That may be right?

**Dr Raby**—Yes. Because there was extensive media discussion of the issue we had not included much from the domestic media on that subject. I believe it had not been picked up by the international media at that stage.

**Senator FAULKNER**—Okay, but let me come back to it: was there a media summary in sit rep 59 of 8 October 2001?

**Dr Raby**—Only of the international media. I should say that the way we picked up the international media was very ad hoc. What we really did systematically—and that is where we add value—was monitoring the international media and putting that together. We rarely would provide any sort of systematic or extensive cover of domestic media commentary, on the basis that the ministers already had it—unless there was something particular overnight that we thought should have been given a wider airing.

**Senator FAULKNER**—What about the reports that follow 59: numbers 60, 61, 62 and so forth? Did they have media reports attached?

**Dr Raby**—I think they all had international media summaries attached.

**Senator FAULKNER**—They all did?

**Dr Raby**—Until towards the end. The whole thing petered out, I think I explained at estimates—

**Senator FAULKNER**—Yes.

**Dr Raby**—and towards the end we did not bother with international media summaries, mainly because there was almost no international media comment to report.

**Senator FAULKNER**—Is that 60, 61, 62, or all of the subsequent ones?

**Dr Raby**—Nearly all of the subsequent ones would have had some international media comment attached, but we dropped off the international media as it started to peter out.

**Senator FAULKNER**—But what about national? No. 59 has got no national.

**Dr Raby**—How we covered the national was very ad hoc.

**Senator FAULKNER**—Yes. Okay.

**Dr Raby**—I would have to check. I am happy to have someone go through them and indicate where we had national—

**Senator FAULKNER**—By this stage—certainly by 9 October—this is a very major story, as you appreciate. You do know that background, don't you? Yes. What I am wondering is whether, in any of the subsequent situation reports, there is any national public affairs or media coverage of specifically the 'children overboard' incident. Can someone tell me that?

**Dr Raby**—To the best of my knowledge, no, because—for the reason you gave—it was such a big issue, and it was picked up by the separate media clippings that are a daily service the department provides to ministers and Parliament House. So it would just be duplication. The main thing with the domestic media comment was to try to only include it if it was something that would add value, or was particularly noteworthy but not running generally.

**Senator FAULKNER**—So even in the national and international media coverage in sit reps 59 and 60 there is no mention of children being thrown overboard?

**Dr Raby**—I would have to check the international coverage. What I recall is that, certainly in the early days, when we are looking at 8 and 9 October, it is most unlikely that there was international comment on that event.

**Senator FAULKNER**—You might check it just so that we get absolute clarity. There is no need to check it for all subsequent sit reps to 59, just check it for 59 and 60.

**Dr Raby**—I am very happy to do that.

**Senator FAULKNER**—They are the ones that, as you know, have received some focus.

**Dr Raby**—We can get back to you first thing tomorrow.

**Senator FAULKNER**—Your public affairs area is called Images of Australia—this will be read in the *Hansard* by the one person likely to read this in about 100 years time and they will wonder what on earth Images of Australia was. I am sure it is very popular and everyone else knew that except me. That would be right, wouldn't it, Dr Raby?

**Dr Raby**—I have no comment, Senator.

**Senator FAULKNER**—Do you know whether at any stage Images of Australia—in other words, DFAT public affairs—or the *Tampa* task force or any other area in your department, particularly the Images of Australia area, did any checking of media reports of children overboard against the information held and produced in sit rep 59?

**Dr Raby**—I could say almost categorically no, because it is not their function. They have got many functions, but on this particular aspect their function is to collect and collate the information. They would just do for us on international reporting a straight summary of the main issues running in the main international media.

**Senator FAULKNER**—So did the department provide any direct advice to Minister Downer on this issue of children being thrown overboard? Minister Downer got a copy of sit rep 59, didn't he?

**Dr Raby**—Yes.

**Senator FAULKNER**—That does not mention children being thrown overboard, does it?

**Dr Raby**—No.

**Senator FAULKNER**—Was there any advice going to Minister Downer that you are aware of, and I am now talking about departmental advice, again in the broad, on 8 or 9 October about children being thrown overboard—not about the accuracy of the claims but just about that issue in the broad?

**Dr Raby**—To the best of my knowledge not at all, but I want to qualify that with the possibility that I may have discussed this with Mike Smith, who was at the time the head of Mr Downer's office. By that I mean that, being the department's representative at the PM&C IDC, although, as you recall, I was not there for the 7 October meetings, in my debriefing of Mike Smith—which was not on a regular basis, it was on an as needed basis—I may have mentioned hearsay on that issue to him. But, in terms of formal advice to the minister, the answer is no.

**Senator FAULKNER**—But you may have had a conversation with Mike Smith?

**Dr Raby**—I may have. I think I explained at estimates last time that I would brief Mike on an as needed basis after attending these meetings. I would give him a ring if there was something of note coming out of the meetings that required ministerial action or DFAT action.

**Senator FAULKNER**—But you would have kept a record of that, wouldn't you?

**Dr Raby**—No.

**Senator FAULKNER**—You just rely on your memory?

**Dr Raby**—No. The issues that came out of the IDC that were the responsibility of the department to follow up or action were very well defined and they were very much related to specific advice to posts, dealing with boats or whatever. We were not involved with, or had an interest in, the wider set of operational issues that would be discussed, unless it dealt with a particular foreign policy aspect, which is my responsibility.

**Senator FAULKNER**—But you do not know whether you spoke to him or not?

**Dr Raby**—I spoke to him on many occasions.

**Senator FAULKNER**—But you do not know whether you spoke to him on this occasion and you certainly do not know whether you spoke about 'children overboard'.

**Dr Raby**—That is correct.

**Senator JACINTA COLLINS**—But you may have spoken about hearsay?

**Dr Raby**—I may have.

**Senator JACINTA COLLINS**—If that were the case, what do you understand to have been the hearsay that may have been in your mind?

**Dr Raby**—That there had been an event and that there were photos of that event.

**Senator FAULKNER**—How did you know about the photos?

**Dr Raby**—As I gave in evidence at estimates, there was discussion of photo evidence—I do not know the exact date, but it was fairly soon after it—in the margins of the PM&C IDC.

**Senator FAULKNER**—That is right. But the truth of the matter is that no-one picked up, and this is a DFAT responsibility, it seems to me, the discrepancy between these screaming headlines in the newspaper that you refer to—there was so much media activity, and it was not even in your own sit rep—and the actual factual contents contained in the sit rep which were based on the Defence reports. There is such a glaring discrepancy, isn't there? The factual reports do not mention children being thrown overboard. We all know what was in the newspapers. But you accept that there is a massive discrepancy, don't you?

**Dr Raby**—Not really.

**Senator FAULKNER**—What do you mean by 'not really'? It is not in your own—

**Senator BRANDIS**—Let him finish his answer, for heaven's sake. Just because you did not get the answer you wanted—let him finish his bloody answer.

**Senator FAULKNER**—I feel most chided! I think I have been interrupted.

**Dr Raby**—It was not essential business for us. Very soon after the headlines came out there was also knowledge that there were photos and photographic evidence and the thing moved on. It was not of interest to us to pursue.

**Senator FAULKNER**—But do you acknowledge that there is no mention in sit rep 59 of children being thrown overboard?

**Dr Raby**—That is correct.

**Senator FAULKNER**—So you do acknowledge that. Do you acknowledge that that is based on primary sources from Defence?

**Dr Raby**—That is correct.

**Senator FAULKNER**—Do you acknowledge that the sit rep is developed in the Department of Foreign Affairs and Trade?

**Dr Raby**—Yes.

**Senator FAULKNER**—So surely you acknowledge that there is a massive discrepancy between what is in that sit rep—based on factual information from Defence—and what I have described as the screaming headlines or what is happening in the media?

**Dr Raby**—The role of the sit rep was not to shadow the headline coverage; it was to disseminate what was coming to us from Defence reporting.

**Senator FAULKNER**—Exactly. What was not coming to you from Defence reporting that was in the press?

**Dr Raby**—We disseminated what we were receiving from the Department of Defence.

**Senator FAULKNER**—So the answer to my rhetorical question is: the false suggestion that children had been thrown overboard.

**Senator FERGUSON**—Perhaps you should answer all your questions yourself, Senator Faulkner. You are doing a good job of it. These guys could go home.

**Senator FAULKNER**—Not at all. I would not say that. Every now and again I can come up with a better answer than a witness.

**Senator BRANDIS**—Senator Faulkner has not worked out that it is the answers that are the evidence, not the questions.

**Senator JACINTA COLLINS**—Thank you, Senator Brandis, you are most helpful.

**Senator FERGUSON**—Well, you can let these guys go home if you are going to answer them all yourself.

**Senator FAULKNER**—Did Minister Downer have any departmental advice when he made his statements reported on the AAP wire at 11.34 a.m. on Tuesday, 9 October 2001?

**Dr Raby**—He would have had the sit rep from 8 October. I know that for sure.

**Senator FAULKNER**—Yes—sit rep 59, which does not mention children being thrown overboard.

**Dr Raby**—That is correct.

**Senator FAULKNER**—Is that all?

**Dr Raby**—That is all I can vouch for.

**Senator FAULKNER**—So can you explain to me how Minister Downer manages to say this at 11.34 a.m. that morning—

**Senator FERGUSON**—It is hardly a question to ask an officer: why a minister said something.

**Senator FAULKNER**—I am sorry, but he is representing the Department of Foreign Affairs and Trade.

**Senator FERGUSON**—But he is not responsible for what the minister says.

**Senator FAULKNER**—I have not noticed a great propensity for ministers and ministerial staff to come before the committee, so we will just do our best with Dr Raby.

**Senator FERGUSON**—You may be able to answer it yourself.

**Senator FAULKNER**—He is going very well. There is an AAP report of 9 October 2001, in which Mr Downer is quoted as saying:

But I'll tell you where they're not coming - to the Australian mainland ... They will not come to the Australian mainland ... And I don't think any Australian wants people who would behave in such a way as to throw their children overboard to come to our country, and they're not welcome in our country.

Are you aware of that report? The only information from your department that goes to Mr Downer is sit rep 59, but he still makes that statement?

**Dr Raby**—You will have to direct that question to Mr Downer. I would just—

**Senator FAULKNER**—I will not be able to put it to him directly, Dr Raby. I can only ask you about the input to Mr Downer from the department.

**Dr Raby**—I have answered that question, Senator. But I will just make the observation that, between Sunday and Tuesday, from your AAP report, there was a lot of ministerial comment on the subject.

**Senator JACINTA COLLINS**—So he was relying on hearsay?

**Dr Raby**—You will have to ask Mr Downer.

**Senator FAULKNER**—We cannot ask Mr Downer. But I can ask you whether, as far as you are aware, sit rep 59, which does not mention children being thrown overboard, was the only information Mr Downer had when he also said, on Tuesday 9 October at 11.34 a.m:

These people have behaved abominably right from the start ... The disgraceful way they treat their own children. Any civilised person would never dream of treating their own children in that way.

But that was all he had: he only had the sit rep 59, which does not mention the issue at all?

**Dr Raby**—From the department?

**Senator FAULKNER**—From the department, yes.

**Dr Raby**—That is why you will have to check with him on other sources of information.

**Senator FAULKNER**—He may well have a solid base of support; Mr Reith might have told him—

**Senator JACINTA COLLINS**—Shown him his photos.

**Senator FAULKNER**—or Mr Hampton or Mr Scrafton—someone like that.

**CHAIR**—He may even have had the Liberal Party electoral lines for the day.

**Senator FAULKNER**—When did the department first become aware of doubts concerning children having been thrown overboard?

**Dr Raby**—Can I answer that in terms of when I became aware?

**Senator FAULKNER**—Sure; I appreciate that.

**Dr Raby**—I became aware with the media discussion of it.

**Senator JACINTA COLLINS**—Which one?

**Dr Raby**—I have no idea.

**Senator JACINTA COLLINS**—The November discussion or the October discussion?

**Senator FAULKNER**—Towards the end of November; 8 or 9 November?

**Dr Raby**—I am not sure when it first started coming out in the media that there were questions. Like everyone here, I follow the media fairly assiduously, but I cannot recall when the media started to report that there were doubts.

**Senator FAULKNER**—I take that at face value and I accept that this probably means around 8 November, which is towards the end of the election campaign. I think that is probably when you mean, but, if it is not, you might let us know. That is very likely to be the case, Dr Raby. Can you indicate to us what happens within the Department of Foreign Affairs and Trade when these doubts become known to you? Was there checking done by the *Tampa* task force, or other parts of DFAT, to clarify whether children had been thrown overboard?

**Dr Raby**—The *Tampa* task force was not a review or analytical body; it just dealt with the daily issues. So it was not an issue for the *Tampa* task force and there was no checking. Again, it was not something DFAT needed to, could or should have established an independent view on. I participated in the PM&C IDCs, and there was talk of a video and there was still talk of photos. On that basis, I advised those in the department who had an interest in the subject that there was talk of videos and talk of photos.

**Senator FAULKNER**—So what you are saying to us is that the Department of Foreign Affairs and Trade did nothing to check?

**Dr Raby**—We just relied on the advice that others were relying on.

**Senator FAULKNER**—Yes, so the Department of Foreign Affairs and Trade did nothing to check?

**Dr Raby**—We did not set in train any action to check—nor would we have or should we have.

**Senator FAULKNER**—To your knowledge did Defence communicate any doubt about the claims to the Department of Foreign Affairs and Trade?

**Dr Raby**—To my knowledge, no.

**Senator FAULKNER**—You would know if that was the case, though, wouldn't you? It is a serious question.

**Dr Raby**—I guess, at the outset of all of this, I come back to lines of communication. The communications into the department were through me as the representative on the PM&C IDC. This issue was not discussed or analysed or dealt with in the IDC.

**Senator FAULKNER**—But, anyway, you are saying Defence did not inform you about that?

**Dr Raby**—No.

**Senator FAULKNER**—Fair enough. I accept absolutely the evidence that you give us.

**Senator FERGUSON**—That surely goes without saying. The guy is giving evidence and you are saying 'I accept the evidence'—of course you do.

**Senator FAULKNER**—I am not letting it pass without saying it—I am just saying that I accept it. I do not always accept everything I am told by everyone, which is just as well.

**Senator FERGUSON**—I am sure you do not. I have known you for too long.

**Senator FAULKNER**—Dr Raby, to your knowledge did the Department of Foreign Affairs and Trade communicate, either orally or in writing, with any other departments or agencies over reports that children may or may not have been thrown overboard?

**Dr Raby**—That is very broad.

**Senator FAULKNER**—It is.

**Dr Raby**—To the best of my knowledge, no.

**Senator FAULKNER**—Can I ask you specifically about the photographs: when did the department become aware that the photographs—the two photographs of 8 October—did not actually stack up in terms of claims that they represented children in the water who had been thrown overboard? This is, if you like, a separate issue to the incident itself. I am asking specifically about the photos.

**Dr Raby**—I understand, I think, but I cannot give you a date. The timing would coincide with the general public discussion of the evidence.

**Senator FAULKNER**—Did you ever become aware that interviews had been conducted with asylum seekers from SIEV4?

**Dr Raby**—I am not sure. That may have been mentioned in passing somewhere. I really cannot be definitive.

**Senator FAULKNER**—If you would not mind taking that on notice for me I would appreciate it—and also whether the Department of Foreign Affairs and Trade received your report on those interviews.

**Dr Raby**—On the latter I could be categorical now. The answer would be no because, again, that would have come through me. But whether, at some point, someone had mentioned there were interviews that had been conducted I really cannot say. I will look into that for you. I honestly doubt that we will be able to give you a definitive answer on that.

**Senator FAULKNER**—If you could—and could you indicate those who might have been involved and the nature of the account? If it needs any follow-through we can look at that. I would appreciate you taking that on notice if you would not mind. I did want to ask something specifically of AusAID. But I just want to be clear: can you indicate to the committee whether the only briefs or advice that goes departmentally to Minister Downer on children overboard—or matters relating to SIEV4 and hence the children overboard claims—goes in the form of sit reps?

**Dr Raby**—To reiterate my previous comment, yes, in terms of formal written communication. Whether I had a discussion with Mike Smith or someone else in Mr Downer's office following one of the PM&C IDCs I really cannot say.

**Senator FAULKNER**—But what you can say, Dr Raby, is that the communication will be limited to that. Is that a fair way of putting it?

**Dr Raby**—Yes.

**Senator FAULKNER**—Are you aware whether the minister's office ever received the 'children overboard' photographs?

**Dr Raby**—I have no idea.

**Senator FAULKNER**—Are you aware whether there was any communication between the minister's office and the department on that issue of photographs?

**Dr Raby**—Not that I am aware of.

**Senator FAULKNER**—Would you be able to check that for me, too? If you are clear, categorical on each, there is no need to.

**Dr Raby**—If there were, it would probably be of the oral exchanges I had with Mike Smith or someone from the office. I cannot recall, sitting here, that there have been.

**Senator FAULKNER**—How do the sit reps go to Mr Downer's office—electronically?

**Dr Raby**—Electronically, through the secure system.

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**Senator FAULKNER**—That is the standard operating procedure?

**Dr Raby**—Yes or, when he is in Adelaide, he has the secure fax. A hard copy would then go on secure fax.

**Senator FAULKNER**—Are you aware whether Mr Downer's office received signals reports from HMAS *Adelaide*, directly from Defence in this instance?

**Dr Raby**—It is technically possible, I am advised, and there is a probability, but I cannot say whether or not they received those.

**Senator FAULKNER**—Defence told us that. I am wondering whether you have any knowledge of it.

**Dr Raby**—No.

**Senator FAULKNER**—If that is the case, there are, effectively, no drop copies going to the department. They are going to the minister's office as opposed to the department.

**Dr Raby**—This is the—

**Senator FAULKNER**—I am talking about signals reports from HMAS *Adelaide* directly from Defence.

**Dr Raby**—I cannot answer that. I do not know. What has gone to the minister's office I have no idea. Our reports came to us via Strategic Command.

**Senator FAULKNER**—I assume some of the reports you get from Defence have common addressees—the department and the Minister for Foreign Affairs and Trade. Is that right?

**Dr Raby**—It may well be. It could be or it may not be; it can go either way, to a dedicated single address or to a group of addressees.

**Senator FAULKNER**—Can I ask you from the department and also the AusAID officer at the table whether you have any awareness at all whether any of this information was provided to Mrs Gallus.

**Mr Tapp**—She was not the parliamentary secretary at the time.

**Dr Raby**—I can't help you with that, Senator.

**Senator FAULKNER**—That means the answer is no, I assume.

**Dr Raby**—The answer is no; we have no knowledge of it.

**Senator FAULKNER**—If it did occur, it did not occur via DFAT or AusAID? That is all I am asking.

**Dr Raby**—The answer to that is yes; it did not occur via DFAT or AusAID.

**Senator FAULKNER**—Chair, the only other questions I have are to AusAID officers, unless something else arises. Shall I come back and ask those a little later? Other senators might have questions.

**CHAIR**—Are there any questions from other members of the committee? I have some questions for Dr Raby. Senator Faulkner read to you earlier a statement made by Minister Downer. Senator Faulkner, was that statement made on 8 October?

**Senator FAULKNER**—No, I believe it was the 9th. I will pass it to you.

**CHAIR**—No, I do not need to go over the terms of the statement. It mentions children overboard, which is the part of the statement that I want to refer to. I think it has been established—on my count about five times you have replied that the sit rep did not contain that piece of advice that children were thrown overboard. Did Mr Downer come back to you, in view of that non-item in the sit rep, and ask why you were not advising him of that?

**Dr Raby**—No.

**CHAIR**—Did he come back to you subsequently at any time to ask for more or better information about this alleged incident?

**Dr Raby**—No.

**CHAIR**—Is Minister Downer in the habit, if he thinks the information flow is inadequate, of going back to the department and asking why?

**Dr Raby**—He may have thought the information flow was adequate. He would know that we had a limited role in this. We had no opportunity to collect, or any role to establish a position on this.

**CHAIR**—He knows you are on the IDC?

**Dr Raby**—Yes.

**CHAIR**—He knows you are picking up the defence department information flow, and he knows that you would be privy to whatever is scuttling around in the upper reaches of the Australian Public Service at this level?

**Dr Raby**—Yes.

**CHAIR**—So it is reasonable, if he had this information and spoke about it publicly, for him to ask his department for more and better particulars, isn't it?

**Dr Raby**—And it may be that, in the conversations I have had with Mike Smith after the IDC meetings, I have referred to the existence of photographic evidence.

**CHAIR**—On 9 October you would have done that?

**Dr Raby**—No; whenever. I am just saying you have not put a timeframe on those questions.

**Senator JACINTA COLLINS**—What you described earlier as hearsay.

**Dr Raby**—Yes, that there was photographic evidence and that was enough.

**Senator JACINTA COLLINS**—There was hearsay about there being photographic evidence.

**Dr Raby**—Sorry?

**Senator JACINTA COLLINS**—I am trying to understand clearly what you are saying. You are saying that you may have discussed with Mr Smith that there was hearsay about there being photographic evidence.

**Dr Raby**—Yes. What I would have said was that people at the IDC are in the margins saying there is photographic evidence. Certainly, for myself, I took that as the end of the matter.

**Senator JACINTA COLLINS**—But you took it as hearsay, whereas you took what you were receiving from Defence as factual.

**Dr Raby**—Yes, because it was communicated through formal channels to us.

**Senator JACINTA COLLINS**—Yes, but you never identified that discrepancy, whereas within Defence, by 10 October, they had.

**CHAIR**—My point is that Mr Downer never came back to you, and you cannot specifically remember informing his office of anything in addition to what was in the sit rep about children overboard?

**Dr Raby**—That is correct.

**CHAIR**—Yet this was a banner headline on every newspaper in Australia. Did I understand you to say that you prepare talking points for foreign posts on matters associated with this issue?

**Dr Raby**—I will have to check whether it was with this issue. We were doing it with the *Tampa* issue. I will have to check whether we did anything. I cannot recall that we did anything specifically on this. My memory is—again, I would like to qualify it—that there was not a great deal of international interest that required a formal diplomatic response, whereas on the *Tampa*, we made representations.

**CHAIR**—We made representations from foreign posts to foreign capitals?

**Dr Raby**—Yes, to explain the circumstances with the *Tampa*, because it dealt with a ship from another flag state. There was considerable intergovernmental interest in the *Tampa*.

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**CHAIR**—Have you prepared talking points for foreign posts after it became publicly known that the photographs were not true, that they were not of the event that, during the election campaign, they were alleged to be of?

**Dr Raby**—No, not that I am aware of. I will just check that now. No.

**CHAIR**—Has there been foreign reporting of that deceit?

**Dr Raby**—I think some of the issues have been covered in foreign media. I can check that for you.

**CHAIR**—If they have been covered in foreign media, would it be normal for you to prepare talking points in case posts are asked questions?

**Dr Raby**—No, not for media reports. It would just depend on the level of interest.

**CHAIR**—There is a fair level of interest in illegal immigration in the world at the moment, isn't there?

**Dr Raby**—Yes.

**CHAIR**—And there is a fair bit of international knowledge about the issues in Australia on this matter?

**Dr Raby**—The detention issue, yes.

**CHAIR**—But also about the border protection issues?

**Dr Raby**—The offshore processing, yes.

**CHAIR**—And the interception of suspected illegal entry vessels?

**Dr Raby**—Less so.

**CHAIR**—We are talking proportionately, but I am just wanting to establish that there is.

**Dr Raby**—As you correctly say, the illegal immigration issue is of interest, and not only Australia's involvement with it but many other countries are dealing with a similar issue.

**CHAIR**—Have you prepared any talking points on those issues for foreign posts?

**Dr Raby**—Not that I am aware of. I have just been reminded that we have a lot of information on this issue on the web site, particularly through our link into DIMIA's web site. That is basically what people, posts, will draw their information from—the web site.

**CHAIR**—This is publicly available?

**Dr Raby**—Yes. As I said, Senator, the main period, or the only period, really, when I can recall us doing talking points specifically for posts was in the context of *Tampa*. That reflected the intergovernmental aspect of that issue, and that therefore was an important role for the department to address.

**CHAIR**—You have mentioned your discussions with Mike Smith, the chief of staff—

**Dr Raby**—Former.

**CHAIR**—The former chief of staff. When you pass information to him do you assume that it gets passed to the minister?

**Dr Raby**—Yes.

**CHAIR**—That is interesting. Are you aware of what we have come to know today as SIEVX, the vessel that capsized with 350-odd people drowning?

**Dr Raby**—Yes.

**CHAIR**—There was publicity about this in Indonesia. Have any talking points been prepared about that item?

**Dr Raby**—No.

**CHAIR**—Has Mr Downer been briefed in any way by the department about that issue?

**Dr Raby**—I would have to take that on notice, I think. The sit rep seems to be the only brief that we provided on that.

**CHAIR**—It is argued that the concern about that loss of life on the Indonesian side gave rise to the Indonesians being willing to come to a conference in, I think, Denpasar, was it not?

**Dr Raby**—In Bali, yes. That is a big connection. We could talk about that—

**CHAIR**—I am saying it is argued.

**Dr Raby**—I just want to be clear on this. Because it was such a terrible and dramatic event, there was a lot of cable traffic. When you ask, ‘Was the minister briefed?’ he would have been receiving reports from Jakarta, and the embassy was very assiduous in following this up. There is a lot more on an issue like this than just the sit rep commenting on it—not commenting; reporting facts is the case with the sit rep.

**CHAIR**—What I am asking is: was there any briefing of other posts outside of Jakarta or Canberra on this issue?

**Dr Raby**—No formal briefings—

**CHAIR**—None at all?

**Dr Raby**—as far as I am aware, no.

**CHAIR**—They would read the cable traffic, of course.

**Dr Raby**—Yes.

**CHAIR**—Have there been any discussions about trying to tie down the actual circumstances of SIEVX: where it may have foundered; how many people were involved?

**Dr Raby**—The post in Jakarta has been very active in trying to establish all the facts and circumstances, and that is a big post with defence, police and others attached to it.

**CHAIR**—Are you aware of the advice the defence minister has given the Leader of the Opposition in a letter about that? The advice was tendered in evidence today.

**Dr Raby**—No, I am not.

**CHAIR**—No, okay. What I will do is see that you do get a copy of that. It is part of the record of this hearing, and I will put on notice now the question that follows from you seeing that advice as to whether or not that matches your understanding of the circumstances. There is some concern about where this vessel may have actually gone down. I have no further questions.

**Senator FAULKNER**—This is a very brief issue for AusAID. This is a matter that I certainly know very little about, so I quickly acknowledge my ignorance on this. I have just seen this press release from Pacific Petroleum—and I do not know whether you have seen it or not—headed ‘Australia’s refugee crisis creates financial hardship for Pacific company’. Have you had that press release drawn to your attention?

**Ms O’Keeffe**—Yes, I have, Senator.

**Senator FAULKNER**—I have literally only in the last half-hour had a very brief look at it. The gist of it appears to be, as I understand it, that Pacific Petroleum have announced that they have taken Nauru to court over \$US1 million of unpaid fuel bills. If I can just sum it up in a sentence, I think that is right, isn’t it, Ms O’Keeffe?

**Ms O’Keeffe**—It would seem that Pacific Petroleum is unhappy with the way in which Nauru has responded to its debts to the company, yes.

**Senator FAULKNER**—Do you have any more understanding of Pacific Petroleum’s argument that the government’s funding has undercut them?

**Ms O’Keeffe**—Senator, this is an issue that has been brought to our attention on a couple of occasions by Pacific Petroleum, and it goes back several months. Basically, Pacific Petroleum, we understand, has in past years provided Nauru’s petrol needs. Clearly, the commercial arrangements between Nauru and Pacific Petroleum are not things that we are privy to. When it was agreed—as a result of the agreement between Australia and Nauru under the first administrative arrangement—that we would support Nauru in its provisions of fuel, of course

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we had to continue to abide by Australia's own procurement guidelines, which meant that we used the period offer that we currently have for this type of operation and got that company to actually go out in a public tender to seek the best value for the Commonwealth in the provision of fuel for Nauru. Pacific Petroleum has not been able to satisfy the conditions of those various tender offers.

**Senator FAULKNER**—Do you think there is some truth to the thrust of this, that Pacific Petroleum has been left with \$US1 million in unpaid bills?

**Ms O'Keeffe**—As I said, we cannot comment on the commercial arrangement between Nauru and Pacific Petroleum. That is not something we have been party to at all. It is very much in the realm of Nauru, as a sovereign country, to deal with its previous fuel arrangements. We currently, in accordance with the first administrative arrangement, provide a certain amount of Nauru's fuel requirements, and that is what we can comment on. Pacific Petroleum have not been able to satisfy the requirements of the Commonwealth's own procurement guidelines to enable us to purchase fuel through Pacific Petroleum.

**Senator FAULKNER**—Understanding that, perhaps you could comment on the issue raised in this press release about whether this situation is preventing fuel distribution to other smaller, poorer Pacific islands.

**Ms O'Keeffe**—That is very much an issue for Pacific Petroleum.

**Senator FAULKNER**—I thought this might actually be an issue more broadly for AusAID or DFAT?

**Ms O'Keeffe**—No, it is not; it is a commercial arrangement. How Pacific Petroleum has shaped itself in terms of its profitability et cetera is something that only Pacific Petroleum can comment on.

**Senator FAULKNER**—I understand then, from what you are saying, that there is no involvement of AusAID or the Australian government in this legal case?

**Ms O'Keeffe**—Pacific Petroleum may decide to pursue proceedings against Australia. However, that is something that is still to be determined.

**Senator FAULKNER**—Sure. But at this stage, to your knowledge, there is no involvement of Australia or AusAID in this legal case?

**Ms O'Keeffe**—At this stage we are still waiting to see what the situation may be as far as Pacific Petroleum's position is concerned.

**Senator FAULKNER**—Are you saying to us that you are not sure whether or not you will be drawn in? And that is fair enough. I am just trying to understand the situation.

**Ms O'Keeffe**—As I said, this company has had reason to question the Commonwealth's procurement guidelines on a number of occasions.

**Senator FAULKNER**—I am not sure if this is a question for AusAID or DFAT: as we speak, does this situation mean that Australia has had to take some responsibility beyond what ordinarily would be the case for some of these smaller Pacific islands mentioned in the press release and described—and I am not putting anything stronger than that; I do not pretend to be an expert, as I said—as having been left in the lurch because of this supply crisis? Could the appropriate officer at the table comment?

**Ms O’Keeffe**—As I said before, only Pacific Petroleum can comment on its particular operations and how it can or cannot provide fuel to other smaller countries. Other shipping lines operate in the Pacific, and it is not to say that they, too, can or cannot provide fuel.

**Senator FAULKNER**—We will hear more about it. As I had this drawn to my attention recently and you were at the table, I thought I would ask. It does have some bearing, as I am sure you appreciate, on the terms of reference of this committee. The link is drawn, at least, by Pacific Petroleum. Whether you do or do not acknowledge the validity of that is another issue. Thank you for your responses.

**CHAIR**—Have you put some questions on notice, Senator Faulkner?

**Senator FAULKNER**—I have, but not about this. I will leave it to others to address this particular issue.

**CHAIR**—I will look at your questions and, if I need to, I will put some additional questions about this issue on notice. Are there any further questions?

**Senator JACINTA COLLINS**—There is just one issue. Dr Raby, there was one matter I wanted to go back to. Ordinarily, in a committee of this nature, we would have a submission from you and would ask questions on that, but I have just been reminded that we have little information about what may have occurred in Indonesia post the SIEVX incident. You indicated to Senator Cook that our post in Indonesia had been active in seeking to investigate that matter. If you cannot do it now, could you take it on notice to provide the committee with up-to-date information about how matters have progressed post that incident in Indonesia? By that I mean the pursuit of the people smugglers, the two people—according to Tony Kevin’s evidence—that were picked up by Indonesian authorities and whatever else may have occurred in relation to that incident in Indonesia.

**Dr Raby**—I am happy to do so, Senator. You ask a very big question. There has been a tremendous amount of activity, so to compile all of that will take a little while, I should imagine.

**Senator JACINTA COLLINS**—I wonder also if you could provide us with any information on those asylum seekers who were returned to Indonesia and their fate upon return.

**Dr Raby**—I will take that on notice. That is, I think, a DIMIA responsibility, not ours.

**Senator JACINTA COLLINS**—So the ships that were towed or escorted back to the Indonesian coast remain a DIMIA responsibility, do they?

**Dr Raby**—Sorry. There were no ships returned to the Indonesian coast; they were returned to just outside the Indonesian contiguous zone.

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**Senator JACINTA COLLINS**—No, there were four SIEVs returned to the Indonesian coast.

**Dr Raby**—Not into Indonesian territorial waters or the contiguous zone.

**Senator FERGUSON**—They were on their own after that.

**Senator JACINTA COLLINS**—Sorry?

**Senator FERGUSON**—They were only escorted so far, then they went on their own after that.

**Dr Raby**—Yes.

**Senator JACINTA COLLINS**—Well, it was the islands of Roti—

**Dr Raby**—No, we need to be clear: no Australian vessel entered Indonesian territorial waters.

**Senator FERGUSON**—They went on their own.

**Senator JACINTA COLLINS**—Okay then, they may well have been dropped.

**Dr Raby**—They went under their own steam into Indonesian territorial waters and arrived onshore.

**Senator JACINTA COLLINS**—Okay, let's get past the language issue. The intent of my question is the state of knowledge we have as to the fate of those people upon arriving in Indonesia. You indicated a moment ago that you thought that that was a DIMIA responsibility and I expressed surprise because I thought they had essentially been handed back to Indonesian authorities. I wonder whether, through our post in Indonesia or through other means, DFAT has information as to the fate of such people.

**Dr Raby**—I am happy to help; I will just have to check because the reports on that will come predominantly from IOM, the International Organization for Migration.

**Senator JACINTA COLLINS**—Okay.

**Dr Raby**—Let me see what we can do; we will be happy to do what we can.

**Senator FERGUSON**—In the absence of Senator Bartlett, who had requested that AusAID specifically be here, I want to ask two questions—I do not know whether they are for Mr Tapp or Ms O'Keeffe. One question is: did you have any involvement in the development of the so-called Pacific solution policy? Did AusAID itself have any involvement?

**Mr Tapp**—No.

**Senator FERGUSON**—The second question, which I think is more important, is: has there been or is there proposed to be a reduction in Australian financial assistance to other countries

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or a reduction in the resourcing of aid programs as a result of any financial commitments under the Pacific solution?

**Mr Tapp**—No.

**Senator FERGUSON**—Thank you. They are the only two questions I have, Chair.

**CHAIR**—Thank you very much, Dr Raby, Mr Wise, Mr Tapp and Ms O’Keeffe, for appearing before us. We will conclude your evidence at this point. There will be some questions on notice, however.

[9.41 p.m.]

**HARRIS, Ms Susan Gail, Member, National Refugee Team, Amnesty International Australia**

**PACE, Dr John, Expert, Amnesty International Australia**

**THOM, Dr Graham Stephen, Refugee Coordinator, Amnesty International Australia**

**CHAIR**—Do you have an opening statement to make?

**Ms Harris**—Yes, we do. Amnesty International welcomes this opportunity to address the Select Committee on A Certain Maritime Incident. We wish to focus on part (d) of the terms of reference, which concerns the nature of the agreements and operation of the arrangements known as the ‘Pacific solution’. The measures and the practices which combine to make up the Pacific solution represent an unprecedented and audacious assault on the purpose and the spirit of the 1951 Convention Relating to the Status of Refugees, an instrument clearly designed to give effect to the right to seek and enjoy asylum in state parties to it. It also represents a bald attempt to avoid judicial scrutiny of virtually all aspects of Australia’s implementation of its protection obligations to asylum seekers entering or seeking to enter Australia in an unauthorised way. Far from being a solution, as a matter both of policy and law the scheme raises more questions than it answers and creates more problems than it solves.

Amnesty International’s major concerns can be broken into two component parts, the first being threshold questions of whether and on what basis a scheme such as the Pacific solution might be permissible at international law, and the second being what the human rights implications are in the implementation of such a scheme. I will just briefly take the committee through the details of our submission, which I am sure you have already read and thumbed through at some leisure.

Under the threshold questions, Amnesty International is not satisfied that there is or that the Australian government has—and after 10 days you will be in a good position to help us judge this—a sound international legal basis for the range of measures which together make up the Pacific solution. In its decision of *Ruddock v. Vadaris* the full Federal Court did not address or analyse in any substantive way the international legal obligations of denying persons entry to Australia for the purposes of preventing them from making applications for asylum on its territory. In that sense, it cannot be said to offer any authoritative guidance on the applicable international law. Moreover, in the course of argument counsel for the Commonwealth dedicated almost no time to the question of international legal implications of the Commonwealth’s conduct. Subsequent legislation has impeded any further opportunity for legal scrutiny and analysis, at least in the Australian judicial system.

In view of the fact that the measures taken by Australia in this instance are both extraordinary and unprecedented, legal authority on this issue is necessarily unsettled. In such a situation, Amnesty International calls on the Australian government to present to us a clear and cohesive legal basis for the various elements of the Pacific solution. We are concerned that such radical steps have been taken unilaterally, in haste, in an ad hoc manner, without any adequate legal

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basis that we have been able to discern and without public consultation, and have placed a large number of already extremely vulnerable individuals into a more precarious situation.

Some of the more pressing questions which we would be asking the committee to address would be the legality or otherwise of preventing people seeking asylum, as we have stated. It seems to us that the basic premise of the agreements with PNG and Nauru is that Australia is legally entitled to send people seeking asylum to another country, and we would question that assumption. Amnesty International considers this premise is not well founded and the policy of preventing people from entering Australian territory and forcing them to land elsewhere violates Australia's international legal obligations. The reasons for this view are set out in three main phases. The first argument is that our actions breach non-rejection of asylum seekers at the frontier, which is EXCOM conclusion 22; the second is that it breaches article 31 of the refugee convention which says that a state shall not impose penalties for illegal entry; and the third is that Australia has inappropriately used the safe third country doctrine. Then, even though we have these basic threshold objections to the Pacific solution doctrine, and that is as far as we are willing to go, we also have some serious questions about the implementation of the scheme and the human rights questions that arise from the implementation of the scheme, on humanitarian grounds.

These are that the detention schemes that have been created violate international standards, that people might be detained indefinitely even if they have been found to have valid claims for protection, and also that the agreement does not ensure the respect for rights of people seeking asylum. The main areas we have looked at have been access to legal procedures, access to UNHCR—as you will know, UNHCR still has not been able to visit PNG—detention of children and all the issues that surround detention of children both here and overseas by Australians, communication with family and the outside world, and access to health care. We have also made some comments on the Australian government's approach to people smuggling and the issue of burden sharing.

We would say this is a key issue—the rhetoric of burden sharing. We would say a precedent for burden sharing would be Australia's approach to Indo-Chinese refugees in the late 1970s and 1980s, where we approached that problem as part of a truly international solution, a durable solution under the refugee convention, versus what we have taken which is basically an ill thought out, unilateral action.

**CHAIR**—Thank you. Do either of your colleagues have supplementary or additional statements to make?

**Dr Pace**—Amnesty International asked me to visit Nauru in November last year and I did so. In the course of my interviews with the various refugees—or potential refugees—there, after they started to give me a whole set of accounts of their experiences, I invited them to give me in writing in their own language their own statements. I would like, with your permission, to share with this committee those relevant statements that I received. Some are in Dari; some are in Arabic. I have some translations of them—in fact all of them except the Iraqi one which is rather long and has not been completed yet.

**Senator BRANDIS**—Mr Chairman—

**Senator FAULKNER**—I have got no problem with Dr Pace sharing anything with the committee but I just raise this issue as a point of order, Mr Chairman.

**CHAIR**—I am intrigued to see whether both you and Senator Brandis have the same point of order, but go ahead.

**Senator FAULKNER**—Does Senator Brandis want to take a point of order?

**Senator BRANDIS**—No. I will hear what you say. I was just going to raise a problem.

**Senator FAULKNER**—The point of order I take is that Dr Pace and our witnesses are probably not aware—because I think only one of our communications from those on Manus Island has been made public—that we have received at least three communications from them and my understanding is that only one of those three has been made public. I think we need to be careful. This does not go to the spirit of what you are doing at all, Dr Pace, but I am trying to use deliberately very general language here. We have asked a number of those who are seeking refugee status in this country to formally give evidence to this committee today. For their own reasons, the group that represents those people have decided not to do so. My only concern—and the reason I am taking the point of order—is that I am sensitive, in this matter, to the wishes of those people. Dr Pace, I certainly do not want you to misinterpret what I am saying, and I am trying to be very careful in what I am saying. You would not be aware of this background. This is information that has come to the benefit of this committee at a private meeting, and I am a little concerned that there may be a view from some of those people, given the nature of their communications with us, that they may feel in some way disadvantaged if you were. Mr Chairman, I suggest that we have a cautious approach, and perhaps respectfully suggest to Dr Pace—understanding full well what his motivations are and understanding that they are undoubtedly very positive—it might be best for him to check with those people. If they are happy to provide those statements to us, I think we would be very happy to receive them under those circumstances.

**CHAIR**—He may have done so.

**Senator FAULKNER**—He may have done so but he did not indicate he had done so, and I wanted to say this before he started to read it into the record.

**Senator BRANDIS**—I support the point of order. I agree with what Senator Faulkner has said. I was going to raise a slightly different ground of concern, and it is this: we have proceeded in this committee to take evidence from witnesses; we have not proceeded to take evidence from witnesses who have gone out and gathered evidence of their own, as it were, secondarily from other witnesses. The only exception to that has been where documents have been prepared that have formed part of a contemporaneous account of events, but this is a little different, I think. If the people who have given statements to you, Dr Pace, want to make a submission to the committee in the form of those statements, then they should put them forward, as primary witnesses on their own account, rather than speak through you.

**Senator JACINTA COLLINS**—I am not going to buy that. I accept what Senator Faulkner has raised as concerns. I do not accept what Senator Brandis has raised as concerns. We have

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used countless examples of material of a secondary nature. In fact, I think I referred to this headline today, Senator Brandis, based on secondary reports. With all due respect at this hour of the day, you are talking a lot of—I will not say.

**Senator FAULKNER**—Can I speak further to the point of order?

**CHAIR**—Everyone has spoken at some length to the point of order. If there is additional material, please put it.

**Senator FAULKNER**—There is additional material because I am really responding to your aside to me, Mr Chairman, which I think was a reasonable and valid one. If the witness has been able to check this course of action with those who provided the statements, that is a very different situation. My concern, and the reason I took a point of order, was I was not aware of that and it is a bit late after you start to read these things into the record to worry about the technicalities then. I just wanted to acknowledge your aside to me, Mr Chairman, because I thought it was a proper and valid one.

**CHAIR**—Thank you. People have taken their points of order. I trust no one else is wanting to take—

**Senator FERGUSON**—On the point of order: if the statements that are to be read are in written form they could, in fact, be tabled by this committee and not become a part of the *Hansard*. We could have them as part of our record. They may coincide with the representations that we already have from the people on Manus Island. I do not know; I simply do not know. But if they are not read into the record and are simply tabled I think is a safer way of proceeding—if they are in written form.

**CHAIR**—I thought they were referring to Nauru. I did not catch the Manus Island thing.

**Senator FERGUSON**—I am sorry: Nauru. I apologise. I meant Nauru.

**CHAIR**—Points of order have been called. I think the simplest way is for me to ask you: are the statements that you are proposing to put into the evidence being put in with the approval and understanding of the people who have made them?

**Dr Pace**—When the statements were made to me I happened to be the first non-official person to meet with these people. They took the opportunity to communicate their own experiences the way they did. I asked them what they wanted to do with them and some said that they would like them to be shared. Others left it to my discretion. As I was an Amnesty delegate, I sent them to London as part of my report to Amnesty, where they remain.

When this opportunity arose, I was ignorant of the procedures that have since developed which are by far more effective from the evidentiary point of view than having something that was submitted to me—an intermediary, as I have been called. Perhaps the best procedure would be, as and when the committee has the opportunity to interview these people in Nauru, to mention to them whether they would have any objection to sharing those statements that they made in November. At that juncture, perhaps the committee may wish to avail itself of them. As far as I am concerned, there is no better source than the original.

On the relevance issue, my reference to relevance was with regard to the mandate of this committee because I have 76 or so pages of manuscript, some of which has manifestly already been addressed—like twins that were separated who wanted to be reunited and things like that. It was self-evident, so I do not wish to use it. And there are not only *Tampa* people; there are other people.

**CHAIR**—I am going to have to rule on this point of order in a minute.

**Senator BRANDIS**—I just wanted to make one point and it is the point that if the statements come from the people—this is your point, really, Senator Mason—who made them rather than through you they can be tested and these people can be asked questions about them. You cannot be asked questions about them because you may know the answers but you may not. We cannot receive untestable evidence. It is not the way any fact-finding body would ever proceed.

**Dr Pace**—I am agreeing with you.

**CHAIR**—We are in the position, it seems to me, of my having to make a ruling on this point.

**Senator FAULKNER**—What about the witness statements of the sailors on HMAS *Adelaide*?

**Senator BRANDIS**—I am just concerned as to what weight we can put on them.

**Senator JACINTA COLLINS**—You can put what weight on it that you want to. For goodness sake!

**CHAIR**—I think it is about time I ruled on this and we moved on.

**Senator FERGUSON**—You started this, Senator Faulkner.

**CHAIR**—The reason for the concern is that we sought evidence from people on Manus Island and, among a range of issues that they raised, one issue that they raised was whether we could guarantee that they would not be discriminated against if their names became known in assisting this proceeding. Because they are out of our jurisdiction, we cannot guarantee it. We would like to be in a position to do so, but we cannot. Based on that, their view on Manus was not to proceed other than by written communication because their fundamental concern is to achieve refugee status and be settled in Australia. That is the concern and we are bound to respect that. It is in that context that I think one part of the point of order has been raised.

The other part of the point of order goes to the efficacy of the statements, the ability to interrogate the people who have made them and the selection of the statements as to relevance, or whatever. But I understand that what you are saying now is that you are not proposing to enter them into evidence. It may well be that you should take our concerns on notice. I am not suggesting that I will rule this way—I want to simply announce a consideration and give some thought to it before I rule that way—but I foreshadow it now that it may be that we can take them in camera if that can guarantee the security of these statements. That is an option, but I am not ruling that way just now. However, I understand that you are not going to proceed to put them into evidence. Is that correct?

**Dr Pace**—I agree.

**CHAIR**—On the other question, I think it is fair for you to tell us what you understand to be in the minds of these people and be open to be examined on it. But I would simply add a caution that you not identify individuals. You could give us an idea of that. Dr Thom, do you have something additional to raise?

**Dr Thom**—In response to Senator Ferguson, they are in a written form and could be handed in as such, and if they could be taken in camera that would also be appreciated. In response to Senator Brandis, we have not edited them in any way, shape or form. These are the written statements from the individual. We believe that any committee that is looking at the Pacific solution should take on board the voices of those who are most affected by that solution, and if there are statements available the committee should avail themselves of those statements. I would respect any ruling you make as to whether in camera could protect those individuals. Otherwise, we are happy to take it on notice. I hope you would appreciate that, given the difficulties of contacting people on Nauru—which you are well aware of—actually getting their consent at this stage would be somewhat difficult. Therefore, if we are unable to do so, we would have to relay that back to the committee.

**CHAIR**—I understand that entirely.

**Senator BRANDIS**—It is only a process related question, Dr Thom. We have received a plenitude of evidence in this committee and I think every, single piece of evidence we have released—if my memory serves me correctly. It is not as if we want to avert our eyes from relevant facts; it is purely a question of process.

**Senator FAULKNER**—It is actually a question of rights.

**CHAIR**—We are now debating—

**Senator FAULKNER**—We are, but I am just responding.

**CHAIR**—All right, respond and move on.

**Senator FAULKNER**—It may be a question of process, but I am always concerned—and I want you to understand this—about committees covering up. I do not like in camera evidence. I think what you have to say ought to be recorded and heard by all those who have an interest in these matters. Frankly, your evidence is going to be significantly devalued if it is taken in camera, because only committee members will have the benefit of it. That would be very unfortunate, because it is something that we have not done for any of the other evidence we have adduced all the way through. The point is that we have got a lot of statements from a lot of people during this inquiry—from many sailors, for example, on board HMAS *Adelaide*—so it is not without precedent to have those sorts of statements provided.

My only concern is whether there might be a feeling after the event that the rights of some of these people who, as we know, are in a very sensitive position may be affected. I am sensitive to that and I hope you appreciate the point I make. I interrupted the witness at an early stage in his evidence because I did not want the witness to be placed in the same position as I felt the committee might be in. I must admit that my concerns have been allayed in part in relation to

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some of those witness statements. It is a matter of concern. Yes, there are always process issues, but there are also the rights of the individuals involved. We have had the very recent experience—literally as late as lunchtime today—of a group of people who decided not to provide evidence in any form to this committee at this stage because they felt that it might impinge on their rights.

**Senator BRANDIS**—Further to that question of rights, it occurs to me—

**CHAIR**—We are beginning to debate the issue now, to an excruciating degree of detail, and I want go get on.

**Senator BRANDIS**—I want to make the point that parliamentary privilege would not protect the makers of the statements; it would only protect Dr Pace.

**CHAIR**—That is one of the fundamental points here.

**Senator FERGUSON**—I support Senator Faulkner: we should use in camera evidence only as a very last resort. If you have a written statement, it can be tabled and everybody can see it. It is public; it is not in camera.

**CHAIR**—I have not ruled on in camera evidence.

**Senator FERGUSON**—I do not like in camera evidence.

**CHAIR**—I foreshadowed that as a possible way of getting the documents before us. It is for the witnesses to decide whether they wish to take that course if we rule it in. I am also very interested in hearing what these people have to say in their own voice, and I think that is fundamental. If we did not, it would be like having an inquiry by listening to only one half of the argument. The obligation the Senate has imposed on us is to fearlessly listen to the entire argument. But there is the consideration of the rights of the individuals and their applications, and that is what we are sensitive to. I think we have covered this field well enough and I think we are all in heated understanding of what the issues are and we do not need to trawl through them any further. I repeat: if you feel that you can tell us what you believe them to be, from your discussions with these people, in general terms or specific terms, without identifying their views, I think that is relevant. You have the call. We are not going to go to the individual statements.

**Dr Pace**—When I entered the camps, there was initial curiosity and timidity among the 795 people in Nauru, made up of the *Tampa* group, who are part of the *Manoora* group and the *Tobruk* group. As I have some familiarity with Arabic, the Iraqi group gradually started to become more easy, as it were. I asked them to describe to me as a group, if they wanted to, in their own language and by hand what their experience was from the time they were picked up at sea to the time they were put in Nauru. I received four statements: one from the Iraqi group on the *Manoora*, one from the Iraqi group on the *Tobruk*, one from Afghan group on the *Manoora*, and one from the Afghan group on the *Tobruk*. In addition, a group of Afghan ladies from the *Tobruk* gave me a short statement, which I also have. I asked them to make sure that they did not colour their statements and that they described events in purely factual terms, knowing their tendency to sometimes get carried away with descriptive tendencies, as it were. So they gave me these statements in which they described their experiences in the two transits on the

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*Manoora* and the *Tobruk*. They spoke about their health and their treatment. They described in a very categorical way what they went through.

When I asked them whether they wanted these statements to be shared with regard to my report, the Afghan *Manoora* group—the males said that I could use them publicly. The others said that they would rather I used my own discretion. For that reason, I relayed that to Amnesty. The committee has put me in a very difficult position, because if the committee is going to speak with these people directly, that is far more preferable for me. Because these were done in November, two days before and two days after the election, they may have some relevance. That is up to the group's discretion. I cannot help but conclude by saying that this is certainly a question of rights.

**CHAIR**—As I have said, at the beginning of each day I read out a list of things—I read them out in my sleep these days. One of them is that we protect witnesses, and it is a possible contempt of the Senate if a witness would be damaged in any way by someone because of the evidence they gave before a Senate committee. That is put on the record daily. But these people are beyond our jurisdiction, and we therefore have no power to do that. What has caused us pause is that DIMIA will not guarantee that if things are adduced in these proceedings, from people who are offshore outside our jurisdiction, they will not take them into consideration. In those circumstances, we are on a warning that these things may be taken into consideration and it is just a question of balancing that. We are in a difficult position too. We are not trying to obstruct you, but we are trying to balance out, as we work our way through this. That does not mean that today is the only day that you have a chance to say something. I, for one, would like to work my way through this problem. There may be a solution to it. It may be that those people can give authority to clear their statements and we can receive them on the public record. It may be that, being aware of the circumstances, some of them will change their minds. That is all I have to say. Dr Thom, do you have anything to supplement Ms Harris's opening statement?

**Dr Thom**—No.

**CHAIR**—Senator Brandis has some questions.

**Senator BRANDIS**—Ms Harris, has Amnesty International taken any legal advice in this matter from any competent or reputable lawyer skilled in international law?

**Ms Harris**—Apart from us, do you mean?

**Senator BRANDIS**—I am sorry. Let me not be unfair to you, Ms Harris. Are you a lawyer skilled in international law?

**Ms Harris**—Yes.

**Senator BRANDIS**—So the legal observations that you made at the start of your oral presentation are your professional legal judgment?

**Ms Harris**—Amnesty submissions are based on the expertise of both staff members and the national refugee team. There is a lot of legal expertise based in that team and in the staff, plus we have the advantage of the international secretariat advice.

**Dr Thom**—Which included advice from Eve Lester, who is part of the refugee team in our international secretariat. She is a lawyer well versed in international law.

**Senator BRANDIS**—Would you be prepared to table that legal advice?

**Dr Thom**—The advice was tabled as the submission. It was not tabled separately. She had input it into the submission. There was also input by me and by the national refugee team.

**Senator BRANDIS**—I just have a little bit of difficulty coming to grips with the admixture of legal advice, which is usually unemphatic and clinical, and the advocacy position that you have adopted.

**Ms Harris**—I think perhaps you are making a distinction between advice provided by commercial legal firms and advice provided for international legal issues. They are quite different.

**Senator BRANDIS**—I am aware of that, but I think legal advice is more credible if it is dispassionate rather than impassioned, that is all. In any event, it is not for this committee to arrive at legal conclusions because that is not our role. It is our role to arrive at findings of fact and judgments about policy, to which I may perhaps then turn. Amnesty International is not an aid agency, is it? It does not run any relief programs in the Third World?

**Dr Thom**—No.

**Senator BRANDIS**—It does not run any refugees programs?

**Dr Thom**—No.

**Senator BRANDIS**—What would you define, in just a couple of sentences, as Amnesty International's specific role and expertise?

**Dr Thom**—We are a human rights organisation that looks at human rights instruments and the way governments and non-state actors maintain their adherence or non-adherence to international agreements that they have entered into.

**Senator BRANDIS**—So you scrutinise from a legal point of view the rights and obligations of states, and the breach of those rights and obligations by states, and, as you say, non-state actors of international agreements. You also assess and offer critiques of public policy. Is that right?

**Dr Thom**—Yes.

**Senator BRANDIS**—That is your particular expertise. I want to put a hypothetical question to you—to all of you; you too, Dr Pace—which probably falls within the broad framework of that expertise.

**Senator FAULKNER**—It is okay for you to ask a hypothetical question?

**Senator BRANDIS**—That is why I was so careful, you see, Senator Faulkner, to establish what is—

**Senator FAULKNER**—I am all in favour of them. I am looking forward to it.

**CHAIR**—Let us not at this hour debate amongst ourselves.

**Senator BRANDIS**—These are not witnesses of fact.

**CHAIR**—Order! Let us not debate amongst ourselves. We have witnesses here answering questions. Please proceed, Senator Brandis.

**Senator BRANDIS**—I want to put a proposition to you.

**Senator JACINTA COLLINS**—A hypothetical proposition.

**Senator BRANDIS**—A hypothetical proposition, yes. Senator Collins, I do not walk away from that at all. In complying with humanitarian obligations when there is a limit to the resources of the state actor—in this case, Australia—which is far exceeded by the demands on those resources by the claimants, would you agree that the first criterion above all others ought to be need?

**Dr Thom**—I can respond initially by saying that you are talking about humanitarian responses. We are not a humanitarian organisation; we are a human rights organisation. Need may play a part in decisions by those making humanitarian responses. In terms of human rights responses, there are instruments which set out how states or non-state actors should respond in particular situations. We would suggest that any state that does not meet those obligations is in breach of international law.

**Senator BRANDIS**—Do you agree with what Dr Thom has just said, Ms Harris?

**Ms Harris**—Absolutely. I have the benefit of your questions to Oxfam Community Aid Abroad.

**Senator BRANDIS**—I was going to ask you questions along those lines, as you have anticipated. But if you both tell me that you do not come before this committee professing any particular expertise as an advocate of humanitarian issues as opposed to human rights issues—and I perfectly understand the distinction, and I thank you for making it, Dr Thom—then I do not think that there is anything more I can usefully ask you.

**Ms Harris**—Often human rights involve a question of balance and competing rights. So in that sense, Amnesty often has to deal with competing rights, in terms of economic, social and cultural rights as opposed to civil political rights. There are many issues.

**Senator BRANDIS**—I remember that Professor Dworkin always used to teach me that rights are trumps and that rights are not to be balanced against considerations of interest.

**Ms Harris**—No. Rights can be balanced against other rights; rights can compete against each other in terms of striking the right balance. Some of the questions you were asking Oxfam led me towards issues to do with—what you were really talking about was the interplay between poverty and refugee status.

**Senator BRANDIS**—In a sense, I was.

**Ms Harris**—I suppose the issue really is that, when a state is making resource allocations and policy based on resource allocations, it can be influenced by many different considerations, some of which would be humanitarian need. But the idea is that, if you sign on to international human rights obligations, you try to manage those resource allocation issues within that framework. That is what is at issue here. You cannot merely fling away the framework if your short-term policy or your allocations of resources dictate. You do not have to sign human rights conventions.

**Senator BRANDIS**—I understand what you are saying and I agree with you, but your point is that you are not here to speak about resource allocation issues; you are here to speak on, essentially, legal issues.

**Dr Thom**—In large part; I think one of the things we put in our submission is the idea of burden sharing, which I think is partly what you are alluding to. Quite clearly there are both convention articles and EXCOM conclusions which deal with burden sharing with regard to the refugee convention. Our argument in our submission is that what the Australian government is doing is not burden sharing in any way, shape or form. It has not answered questions as to how it is dealing with those EXCOM conclusions if in fact it is making a burden-sharing argument. If you are talking about resource, I think that Amnesty International, for one, would like to see how it is making that argument.

**Senator MASON**—Dr Thom, do you think Australia is fulfilling its share of the burden of the refugee problem?

**Dr Thom**—It is difficult to give a definitive answer on that—

**Senator MASON**—But you just raised the issue, and it is the obvious question.

**Dr Pace**—Not in the spirit of the refugee convention.

**Senator MASON**—That is actually a different question.

**Dr Pace**—It is the same story, isn't it?

**Senator MASON**—Yes, but it is not the right—

**Dr Thom**—If you were comparing the number of asylum seekers that Australia takes in relation to Iran or Pakistan, the answer to your question would be no. If you are going to take the line that is often taken by the minister that we have an offshore program that is one of only nine in the world, then the answer would be yes. But, from Amnesty's point of view, the question of burden sharing is more to do with how you respond to situations of mass influx. So

how would Australia respond to the millions of Afghans who have fled over the last 20 years? I think that, if you look at the number of people we have resettled from Afghanistan, Pakistan or Iran, the answer to your question would be no. If you look at how we responded in 1979, 1980, 1981 and 1982 with regard to what happened in Indochina, I think we did play a very positive role in dealing with that situation. So it is not a cut and dried yes/no answer.

**Senator MASON**—It depends on its application.

**Ms Harris**—If you are asking us whether Australia could do more with its aid program or its general use of official development assistance to combat the root cause of refugee flows, the answer would also have to be no. I would be happy to provide data on how Australia's ODA is not at all focused towards root cause or people flows at present. Our aid program is very much focused on the South-East Asian region, so in the case of the Solomon Islands or East Timor, perhaps you have some sort of argument, but not in relation to Afghanistan or Africa.

**Senator BRANDIS**—But Australia provides very extensive aid in Africa—

**Ms Harris**—The aid program in Africa has been reduced markedly over the last six years.

**Senator BRANDIS**—directly and through NGOs.

**Ms Harris**—Through the NGOs, yes, but comparatively through the aid program, no.

**Senator BRANDIS**—Most of the funding of NGOs comes through AusAID.

**Ms Harris**—Most of the funding from NGOs for Africa comes through community fundraising.

**Senator MASON**—Ms Harris, just with that very answer you have opened up a whole host of questions—and I have heard this debate. Mr Ruddock has spoken often about the distinction between, as you say, offshore assessment of refugees and then, as you mention, examples such as Pakistan and Iran and so forth. He argues that those countries are nearly forced to take those refugees by virtue of their geographic location—in other words, it is contextual. I heard your answer. I do not want to go down that line.

I just ask a couple of questions relating to your submission because we are just going to run out of time. In your conclusion in your submission, you make a couple of points. You say:

Amnesty International believes the so-called 'Pacific solution' is inherently flawed, because (a) it punishes the victims exploited by people smugglers in order to combat the crime ...

What precisely do you mean by that? Let me ask the next question. In a sense, it follows from what Senator Brandis asked before. Many of these people had the ability to pay thousands of dollars to people smugglers to get often to Australian territorial waters or just outside Australian territorial waters. If they did not have that money, it is unlikely that they would be in a refugee camp in Pakistan, for example. They would not have an immediate and high chance and certainty of ending up in Australia. As it is, they may well do so from Manus Island or Nauru. You are talking about these victims being exploited by people smugglers. To my mind—and I cannot speak for Senator Brandis, but I suspect to his mind as well—these are the lucky

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refugees that had the money to pay to people smugglers to put themselves into positions where they are likely finally to end up in a Western country.

**Ms Harris**—A lucky refugee is someone who gets to go home for a start.

**Senator MASON**—Come on, Ms Harris! I do not think that is quite good enough.

**Ms Harris**—No, I think that is a rather key point. A person who gets to go home to a viable state is a lucky refugee.

**Senator MASON**—So you do not think that, looking at part (b), a durable solution to this people plight can be found in Iran or Pakistan or Malaysia or Indonesia? A durable solution for these people can only be found in Australia?

**Dr Thom**—Are you asking whether an Iraqi can only find a durable solution in Australia as compared to Malaysia?

**Senator MASON**—Dr Thom, these people are moving around the world on this people-smuggling pipeline—and these are the victims. All of a sudden it seems that the only place a durable solution can be found is, funnily enough, in Australia or another Western country.

**Ms Harris**—To signatories of the refugee convention.

**Senator MASON**—In a sense, they are forum shopping. Ms Harris, do you see the point?

**Dr Thom**—I hear the point you are making. I do not see the point.

**Ms Harris**—I see the implication.

**Senator MASON**—You say it is flawed because the Pacific solution ‘punishes the victims exploited by people smugglers’. These are the victims exploited by people smugglers. These are the people lucky enough to have thousands of dollars to get to the territorial waters of this country and they are in Nauru or Manus Island at this moment. All the others are in Pakistan or somewhere else. They are the unlucky ones. They are not getting into this country because they do not have the money. You are saying that these poor people are exploited by people smugglers? That is your argument, is it?

**Dr Thom**—No, the argument we are making—

**Senator MASON**—Really.

**Dr Thom**—Am I allowed to answer this question?

**CHAIR**—Yes, you are.

**Senator MASON**—If you can.

**Dr Thom**—The answer is that refugees are entitled to durable solutions. If you reach a country that has signed the refugee convention to seek asylum, that country is obliged to provide you with a durable solution. What has happened in the Pacific solution has not provided any durable solutions. We have not seen any statement from the government about where these people are going or when they will be going. What we have at the moment are a number of people who have been recognised as refugees who are still being detained. This is not a durable solution. If you have been recognised as a refugee, you are entitled to some form of protection.

**Senator MASON**—So will these people who have a strong sense of fear of persecution in Iran and Pakistan also have that strong fear of persecution in Malaysia and Indonesia? Is the only place where they are not going to have that—

**Dr Thom**—That is not what a durable solution is.

**Senator MASON**—What is it?

**Dr Thom**—A durable solution is effective protection. Effective protection is not wasting away in Malaysia. Just because somebody is not going to kill you, that is not a durable solution.

**Senator MASON**—So you are saying ‘wasting away in Malaysia’. What is wrong with living in Malaysia, Dr Thom?

**Ms Harris**—They have not signed the refugee convention.

**Dr Thom**—They have no right to be there.

**Senator BRANDIS**—There is a little bit of racism—

**CHAIR**—Order! A question was put; we are at least entitled to hear the answer. I ask Dr Thom to complete his answer and then we will have another question.

**Dr Thom**—I am not quite sure what more I can say about a durable solution. I would ask Senator Mason to have a look at the refugee convention. Maybe he could start with the UNHCR web site and a number of the recent statements by the High Commissioner for Refugees, Ruud Lubbers, as to what durable and effective protection is, because I do not think he quite understands what it is.

**Senator MASON**—It seems to me that the only solution in the world with a durable and effective solution, Dr Thom, is a Western country with a high standard of living. Is that right?

**Dr Thom**—Ms Harris has made it quite clear what an effective solution is. If they are able to return to their country, that is the first solution that UNHCR looks at. If you were to look at the UNHCR web site, you would know this fact. The second option they look at is settlement in their first country. If they can do that, that is a durable solution. If they cannot do that, the third and final option is resettlement, and resettlement means that they get some form of permanency and some form of life with regard to that protection. Keeping people in limbo, especially detained in limbo, on an island such as Nauru or Manus, which they were taken to against their will, is not effective protection or durable protection anywhere.

**Senator MASON**—So the only solution for these people is that they come to Australia?

**Ms Harris**—The effective protection for these people—

**Senator MASON**—Dr Thom, that is the sum of what you are saying.

**Ms Harris**—Senator, if you could convince Indonesia and Malaysia—

**CHAIR**—Order!

**Senator JACINTA COLLINS**—I would like to hear Ms Harris answer the question before she gets rolled over by an hysterical Senator Mason one more time. Ms Harris, can you please answer the question?

**CHAIR**—No, I will call the witnesses when it is appropriate to call them. There is a point of order. It is half past 10; we have to give some thought very soon to when we pack up for the night. If there is some indication that we will be finished with these witnesses by 11 o'clock, we can do so. Otherwise, we might have to give some thought to finding another time on our program to have them back. Let us proceed with some order.

**Senator BRANDIS**—I want to tie this point down a bit. As I understand it, the definition in international law of a refugee is somebody who has a well-justified fear of persecution. 'Persecution' is a defined term under the relevant international instrument, and there has been accreted to it a body of law and practice so that we know what persecution is. Am I generally right in my understanding?

**Ms Harris**—It is an evolving definition but, yes, that is right.

**Senator BRANDIS**—You do not say, do you, that the refugees on Manus Island or Nauru have a justified fear of persecution at those localities?

**Dr Thom**—No.

**Ms Harris**—No.

**Senator BRANDIS**—So, unless you were to say that the refugees have a right of nomination of their country of ultimate asylum, I cannot see why you say they have a complaint with the outcome which the Pacific solution has produced for them. I do not say that it is bad policy from Australia's point of view, but you, Dr Thom, were at pains to point out that Amnesty is a human rights body. These people are refugees; they have a right to asylum in a country where they are relieved of that justified fear of persecution.

*Senator Jacinta Collins interjecting—*

**Senator BRANDIS**—Let me finish. You tell us that they do not have that fear of persecution in Nauru or on Manus Island, so from their point of view what right of theirs do you say is being violated by the Pacific solution?

**Senator MASON**—We are obviously very unintelligent, Dr Thom. We are perplexed about this and I think you will find that most Australians are as well.

**CHAIR**—Order!

**Ms Harris**—Here is the chain of events—

**Dr Thom**—They have not read our submission; I had hoped that you would have.

**Ms Harris**—I will just go through a dispassionate chain of events. Afghanistan is a failed state and there has been a mass influx of people over 20 years into Pakistan and its surrounding borders. The first issue for UNHCR is: can they find effective protection within Pakistan? If protection in Pakistan fails, which it has in terms of legal issues, housing and the right to food, that person has the right to try and find another durable solution in a state which is a signatory to the refugee convention. Indonesia and Malaysia are not signatories to the refugee convention, so if a person is trying to reach a signatory state to the refugee convention—and it does not have to be a Western state or a rich state—they have the right to do so. If we then forcibly displace them to Nauru and Manus Island—

**Senator BRANDIS**—We have denied them entry into Australia.

**Ms Harris**—they may not have at that time a well-founded fear of persecution while they are in Nauru and PNG, but they also do not have a durable solution to their plight. They have not found effective protection. Effective protection means basically that you gain citizenship of a state which will offer you access to courts, food, shelter, freedom and a viable life.

**Senator BRANDIS**—But you say—

**Dr Thom**—I point you to EXCOM conclusions 15 and 58 which state that refugees or asylum seekers do have some choice in where they are going to go. If they have family connections, that entitles them to have some say in where they are going to go. I would like to see how the Australian government with the Pacific solution have taken into account those two EXCOM conclusions. We do not believe they have.

**Senator BRANDIS**—Dr Thom, when you rightly point me to those propositions, they are exceptions to a general rule, are they not? The general rule is that there is not a right in putative refugees to nominate their country of ultimate asylum, but there are certain circumstances in which international law does give them some say. However, the general rule is that they do not have a right to nominate their place of ultimate asylum. Isn't that right?

**Ms Harris**—A person has the right to seek—

**Dr Thom**—No, there is not a general rule that says they can't.

**Ms Harris**—Exactly.

**Dr Thom**—You find somewhere in the convention it says an asylum seeker cannot go anywhere they like to seek asylum—

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**Senator BRANDIS**—We are talking about vested rights here. You are saying that these people have rights, but you have not suggested that they have a right, as a general principle in international law, to nominate their country of ultimate asylum and, with respect, it is no answer to say, ‘Well, you show me that they don’t have such a right.’ You are the one who is propounding the existence of a right.

**Ms Harris**—It exists in article 14(1) of the Universal Declaration of Human Rights. Asylum seekers have the right to seek asylum and enjoy asylum from persecution. The issue is: where are these people safe? That is the issue. It is not where we think they are safe or even where UNHCR thinks they are safe.

**Senator BRANDIS**—I would like to get back to the fairly safe territory of rights and, in particular, rights in international law. I want to change the example a little. Let us say that Australia had a land border with another state. Rather, let us take the case of a country which has a land border with another state. Those two states are divided by a wall or some sort of policed, physical barrier. Asylum seekers from state A queue up at the wall and state B, which is a party to the convention, declines to allow them through the physical land barrier. Are the rights of those asylum seekers to enter state B necessarily being violated merely because they express a preference to enter state B?

**Dr Thom**—They are being violated in the sense that non-rejection at the frontier has been accepted through EXCOM conclusions as being part of the refugee convention. So state B would be in breach. It is not a question of whether those individuals can choose to go across into state B. If state B has said it will protect them, then it cannot reject them at the frontier. That is the spirit—

**Senator BRANDIS**—What if state B has not said that? Do you say that, by merely signing the convention, state B must always be taken to have said that?

**Dr Thom**—Yes.

**Senator BRANDIS**—Does it then not follow from that proposition that an asylum seeker making application to a state party to the convention will always, on your view of international law, have a right of nomination of the state of ultimate asylum?

**Ms Harris**—It has a right to be processed by the state by which it makes that application—that the person physically presents itself to. It has a right to be processed. It does not have a right to be taken; it has a right to be processed to see whether its claim for refugee status is accepted by that state. That is actually quite a different spin.

**Senator BRANDIS**—Let us change the model just once more. Let us say that there is a third state, state C, which has a contiguous land boundary with both state A and state B. The asylum seekers seeking asylum from state A and expressing a preference for asylum in state B nevertheless find themselves in state C, and in state C they do not have a well-justified fear of persecution; they are safe. Do you still say that state A violates their rights or violates its obligations under the convention by not enabling the asylum seekers to leave state C, that is, the place where they are free of a justified fear of persecution?

**Dr Thom**—This gets back to the question of the use of safe third countries, and it is highly disputed. It has been used by most Western countries; Australia would not be unique in claiming that if you pass through a safe third country you can be returned to that country.

**Senator BRANDIS**—Did you say that it is highly disputed?

**Dr Thom**—It is still disputed, yes.

**Senator BRANDIS**—Is it a controversial legal issue?

**Dr Thom**—Yes.

**Senator BRANDIS**—If it is a controversial legal issue, how can you possibly come before this committee and say, ‘Australia is violating its legal obligations’?

**Dr Thom**—Because once it has gone through state C and reached state B and said, ‘I want asylum—

**Senator BRANDIS**—At best for your proposition, Dr Thom, Australia may or may not be in violation of an obligation because the character and the extent of the obligation is, as you concede, controversial.

**CHAIR**—Now we will hear from Dr Thom, and he can answer the question.

**Ms Harris**—What has happened is that the government has kind of misappropriated the doctrine of a safe third country. Normally what would happen, if you were really using the safe third country the way western Europe does, would be: if these people have come through Indonesia and Australia accepts that Indonesia is a safe third country and Indonesia accepts that it is a safe third country, we would have just sent them back to Indonesia. We did not do that; we sent them to Nauru and PNG and we are processing them—and the Nauru government does not have responsibility for processing those asylum seekers. We cannot have it both ways.

**Senator BRANDIS**—Would Australia be on stronger legal grounds if we were not processing them?

**CHAIR**—Order, Senator Brandis! I am going to call on you the point of order you called earlier. Can we hear the complete answer. It will help these proceedings if we hear the complete answer, because I am pretty sure that, if we do not hear it now, someone over here will ask a question and we will hear it then. We may as well hear it now.

**Dr Thom**—To answer your question, safe third country means, as it has been used in western Europe, that a person goes from state A to state C to state B and state B says, ‘You were safe in state C,’ and sends them back to state C. That is still disputed. But that is not what has happened in Australia. What has happened is that they have gone from state A to state B and B has decided—

**Senator BRANDIS**—They have not gone—

**Dr Thom**—Hang on a minute—‘You would be safe in C; we are going to send you to C where you will be safe—

**Ms Harris**—‘You would be safe in Z’.

**Dr Thom**—Yes, X, Y or Z—‘but we are going to detain you and we are going to process you. So we are still going to accept responsibility for you, but we are going to invent a third safe country and send you there.’ That is a totally new and unprecedented action by any state. It is unilateral. Of course it has not been tested in international law, but given the conventions and guidelines and conclusions we have outlined in our submission we believe it is quite clearly a move away from the obligations we set down when we signed the refugee convention.

**Senator BRANDIS**—Dr Thom, can I put it to you that if the A through C to B, and then back to C scenario is controversial, and the A to B and then on to the C scenario—which is the Pacific solution in this schema—is unprecedented and untested. How can any competent lawyer possibly conclude that the matter is conclusive. You say yourself that the nearest metaphor is inconclusive and uncontroversial and that the actual situation here is unprecedented and untested in international law. Given that is your evidence, how can you possibly come before the committee and say Australia is violating its obligations in international law?

**Dr Thom**—Because we are outlining where we think it is.

**Senator BRANDIS**—No, because you are being an advocate, not a lawyer, Dr Thom. That is the problem.

**Dr Thom**—No, we are not an advocate. We are a human rights organisation and we are putting up why we think this government is in breach of its human rights obligations.

**Senator BRANDIS**—You do not think it is, because you have just told us that the human rights obligations are at worst for the government uncontroversial but, in the very circumstances of the Pacific solution, unprecedented and untested.

**Ms Harris**—Unprecedented, because no state has ever done this kind of ridiculous action before. Unprecedented, because no other state has been willing to go to the extremes the Australian government has in the last few months. If you are talking about precedents, what would happen if Germany—

**CHAIR**—Please do not ask questions back to the committee. We will be here all night if you pose hypotheticals to us. Dr Pace has an explanation he wants to make. Are you waving it off?

**Dr Pace**—Yes.

**Senator MASON**—One thing I hope this has illustrated tonight, Ms Harris, Dr Thom, Dr Pace, is this: what you say are legal issues and simply human rights issues so often become political issues, and for a very prestigious organisation like Amnesty International, you must understand that these issues become highly political and politicised. I have said this before. I have said this in the Senate. I just hope and wish that Amnesty International in future, for example, criticise North Korea more than it does South Korea. I just wish the day would come

again when Amnesty focused rather more on totalitarian countries and authoritarian countries than it does—

**Senator JACINTA COLLINS**—Is this a lecture or a question?

**Senator MASON**—It is a bit of a lecture but I do not mind doing it. I do not mind doing it Senator Collins because—

**Senator JACINTA COLLINS**—Don't get hysterical with me.

**Senator MASON**—Many people on the Centre or the Centre Right—which let us face it won the intellectual arguments last century—are very very tired—

**Senator JACINTA COLLINS**—You are lacking in intellectual arguments.

**Senator MASON**—of being lectured to by Amnesty International, particularly when you criticise—

**CHAIR**—Point of order.

**Senator JACINTA COLLINS**—Point of order, Chair.

**Senator MASON**—countries like South Korea, and hardly ever North Korea.

**CHAIR**—Point of order.

**Senator JACINTA COLLINS**—If Senator Mason could ask a question.

**CHAIR**—Order! Look, I will close this hearing down and call these witnesses another time, if we cannot have some order in this process. Maybe it is the lateness of the hour that is causing the argumentative mood. I have a point of order called and I am going to insist on hearing it. I hope it can be dealt with quickly and then I am going to ask at what point do you think your questioning can be referred to the opposition because it is now nearly 10 minutes to 11. The point of order please.

**Senator JACINTA COLLINS**—The point of order is simply, could you please ask Senator Mason to contain himself to questions. At this hour with the amount of time he is taking—

*Senator Mason interjecting—*

**CHAIR**—No, I am not asking you to debate Senator Collins. You have made a statement. I let the statement be made. I have let other statements be made from other speakers. The point of order that has been called on you has been called on me and it has been called on others on the other side. Are we in a position now to move on?

**Senator BRANDIS**—I just wanted to make a little statement.

**CHAIR**—No.

**Senator BRANDIS**—I will put the proposition to you: don't you realise—

**CHAIR**—No. Order!

**Senator BRANDIS**—Don't you realise that this sort of selective morality that—

**Dr Thom**—In what way is it selective? Sorry, I do not understand.

**Senator BRANDIS**—The sort of thing you are suggesting Senator Mason has just exposed is the very thing that created Pauline Hanson. You are damaging—

**CHAIR**—Order! We are well out of the terms of reference. I will close this hearing down. Come on—this a is ridiculous performance!

**Dr Thom**—I am glad you said it instead of me, Mr Chairman. Thank you.

**CHAIR**—Please, let's not get into this debate. Pauline Hanson at this hour of the night for God's sake! People are engaged in debating the witnesses rather than questioning the witnesses. I do not think anyone has further questions so I will ask: has Senator Collins or Senator Faulkner got any questions?

**Senator FAULKNER**—I think I should ask some questions but I think this will be a change of pace for the witnesses. They will not be rabid questions; they will be asked in my normal courteous and civil way. I have no idea what has been put in the peppermint tea tonight, but I do hope the House Committee has a look at it. I am going to be brief because of the lateness of the hour, but I would like to understand, if I could, your view of how Australia is regarded internationally, both amongst human rights organisations and the milieu in which Amnesty moves, for implementing the Pacific solution. In your view, what has happened, if anything, to Australia's standing in the international community?

**Ms Harris**—I think our UN expert can help with that one.

**Dr Pace**—I was secretary of the United Nations Commission on Human Rights for 16 years between 1978 and 1994, and let me share with this committee with pride the record of Australia during those years, which were critical years in the evolution of international human rights law, particularly when the polarisation between East and West as a result of the Cold War was having such a disastrous effect on the evolution of international human rights law. I am sad to say that when I left in 1999 I was not able to retain the same opinions that I had received. Sitting at the commission, I must confess that I heard delegations make certain statements very similar to what I have heard tonight—I will not mention which delegations they were but they were not from the West—when certain accusations were made with regard to Amnesty International. I have never been a member of Amnesty International and it was my duty as secretary of the commission to put Amnesty in its place with regard to its alleged 'selectivity'. So, with all due respect, in answer to your question, it is a matter of regret that the international human rights legal regime has suffered considerably, in my view, in its application, particularly in regard to the International Covenant on Civil and Political Rights, which affords basic protection to individuals.

**Senator FAULKNER**—Thanks for that. I am not sure which witness to direct this question to, so whoever you deem appropriate can respond. I am interested in Amnesty's view about the use of the Australian Navy—the Australian Defence Force in the broad but particularly the Royal Australian Navy—to prevent boats with asylum seeker passengers from reaching Australian shores. I am interested in your view about the use of our defence forces in that area.

**Dr Thom**—I think my answer would go back to the point that we believe that quite clearly rejection at the frontier of any country is in breach of a country's international obligations with regard to a commitment to protect those fleeing prosecution, and I think the use of the Navy in order to do that must be considered part of that breach. I think it would be the same if they used the coastguard, the Army or any private firm to do the same role. When you sign up to the refugee convention it is a clear signal that people are entitled to come and seek protection if they are legitimately fleeing prosecution. In this sense Amnesty has very serious concerns about the use of the Navy and the fact that the Navy, as has been reported, has fired across the bows of people exercising their international human right to seek asylum.

This, again, is what the whole issue was about in the late 1970s and the early 1980s with the Indochinese, and why Australia was such a part of finding a solution to those countries who were using their military to force boats back out to sea. I think Australia can take some credit for what it did at that time. I think it is an amazing situation that we are now the ones who are employing those methods.

**Senator FAULKNER**—In your view, is the Pacific solution a defensibly humanitarian approach to dealing with asylum seekers?

**Dr Thom**—No. It is not about dealing with asylum seekers, as the minister has often pointed out. It is about people-smuggling. It has nothing to do with affording a protection to people who are fleeing persecution.

**Ms Harris**—Could I just add to your question about the use of the military? I think that perhaps it is not obvious to the Australian public yet, but it will be, that, when people, particularly women and children, are processed and come out the other side as genuine refugees—and there have already been quite a few cases that have been processed—we will have to consider very strongly that we used our defence forces against already traumatised children. I just do not think that that is something most Australians will feel very comfortable with when they have really thought that through. We have used kids that have come from places like Iraq and Afghanistan; we have added to the danger of the journey and everything else they have been put through by then launching Navy boats against them with firing shots, and have dragged them to another country. The psychological trauma that we have added to those children's experiences is something that we are fully and wholly responsible for.

**Senator FAULKNER**—I do not know if you appreciate this, but I ask this from the point of view of your opinion about the principle here. I do not want you to misunderstand that there is any implicit criticism, on my part, of the fact that anyone in the Australian Defence Force is undertaking actions that they are required to do as a result of government policy, government decisions. I assume you appreciate the distinction there.

**Ms Harris**—Yes, I do. Again, I would say that we have created a military threat out of asylum seeker situations where none existed. That was a very deliberate government policy—to

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create a military threat and a question of national security and all of those kinds of things; to give a security framework to what is essentially a human rights and humanitarian issue.

**Senator BRANDIS**—Don't you think that border protection is an issue of national security?

**CHAIR**—Order! There is so little time left.

**Dr Thom**—Border protection is a phrase used by the current government in its bills. It has got nothing to do with people exercising their right to seek asylum.

**Senator BRANDIS**—No, it is actually used by Mr Chris Sidoti and it is one of his first principles of good refugee policy.

**CHAIR**—Order! We will not debate the issue.

**Senator FAULKNER**—Nauru has not signed the 1951 refugee convention, has it?

**Dr Thom**—No.

**Senator FAULKNER**—In relation to PNG, I think they have signed. My understanding is that they have placed caveats—or significant reservations, perhaps—on their signature of that convention, but I would like you to confirm that. That is my understanding; is that your appreciation of it?

**Ms Harris**—That is correct. UNHCR has not yet been allowed to visit PNG. It is my understanding that the regional representative has not yet been able to present his credentials to Papua New Guinea.

**Dr Thom**—To Manus Island.

**Ms Harris**—No, to PNG itself.

**Dr Thom**—Yes, sorry, you were correct.

**Senator FAULKNER**—Given that background can I just ask you whether, in Amnesty's view, there are possible implications for asylum seekers who are in Nauru and PNG as a result of the approach that those two countries have to the convention?

**Dr Pace**—The asylum seekers in Nauru are not, for all or any purpose, in Nauru territory. Nauru is taking care of them under contract from Australia. It is very clearly stated in the Statement of Principles and reiterated by Nauru in its exchange of notes with the IOM and the UNHCR. So whether they are on Ashmore Reef, Villawood or Nauru, those asylum seekers are still the responsibility of Australia in regard to the processing. With regard to Manus, I cannot talk because I am not—

**CHAIR**—How much longer do you think this will go?

**Senator FAULKNER**—I will ask the last question. I do hope you appreciate, Mr Chairman, that the rather extraordinary exhibition that we have heard from Senator Brandis and Senator Mason particularly meant that the sensible questions really cannot be asked of the witnesses at the table. How long have we got, Mr Chair?

**CHAIR**—I rather hoped that we could sign off at 11 o'clock. It is just a minute or two after now.

**Senator FAULKNER**—I will ask a final question and pass the call to Senator Collins. I am sorry about this because obviously it is not the position I would have liked to have been in.

**CHAIR**—We will try and find a time at which we can invite these people back to complete their evidence.

**Senator FAULKNER**—I would hope not. Frankly, I would not want to expose these witnesses to—

**CHAIR**—I am mindful of the fact that Hansard and other people have been here all night.

**Senator FAULKNER**—Senator Collins and I are saying we can wrap this up certainly by 10 past 11, as long as they are not very long answers.

**CHAIR**—Senator Ferguson has a question.

**Senator FAULKNER**—I think we can complete it quickly.

**CHAIR**—How long do you think you will take, Alan?

**Senator FERGUSON**—No more than five minutes.

**CHAIR**—We will sign off and close the hearing at quarter past.

**Senator FAULKNER**—I would not want to ask the witnesses to come back and expose them to the tirade that they heard from certain senators. I ask the witnesses at the table: in your view, has the Australian government observed the basic rights of asylum seekers in Nauru and on Manus Island in accordance with either Australian law or international standards? If you do not believe so, could I ask you why you do not believe so?

**Ms Harris**—We have outlined in our submission under international law—and we are not just talking about the refugee convention; we are talking about civil and political rights, economic, social and cultural rights—our specific concerns about mandatory detention. Nauru has the same objections as those in the Australian context: right of access to legal counsel; right to communicate with UNHCR; right to notify their family of the fact and place of detention; right to be visited by, and to correspond with, members of their family; right to communicate with the outside world; right to medical care; and right to humane conditions of detention which take into account their special status as asylum seekers—things like counselling, mental health—and the special issues that pertain to the rights of children who should never be detained, except for the shortest possible period of time as a last resort.

So if you are asking which of those breach Australian law, they are the same issues that are questionable under Australian law, given our accession to the UN Rights of the Child Convention on mandatory detention of children—and there are several cases proceeding on this basis at present and there is the Human Rights and Equal Opportunity inquiry into children in detention presently. I would not pre-empt the outcome of that report, but I think that will answer your question. If Sev Ozdowski, the Human Rights Commissioner, finds that the conditions for children in detention here in Australia breach Australian laws, as well as international laws, then there would be no effective difference between those children on Manus and Nauru. And even on the basis of statements he has made up to that point, and his recent visits, I think that will be the case.

You have also got the report of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, who visited the immigration centres of Australia, and they had a long list of human rights concerns—both international and domestic legal issues—and that again would be a guide. But one of the issues here is, apart from Dr Pace, we do not know. None of us have been to Nauru or PNG.

**Senator BRANDIS**—Then why are you stating conclusions if you do not know?

**CHAIR**—Order!

**Ms Harris**—Because we cannot get visas.

**Senator BRANDIS**—Well, why are you stating conclusions then, if you don't know?

**Ms Harris**—And why can't we get visas? Why can't we get to visit these people? Because of Australian government policy. That is why we don't know.

**Dr Pace**—With regard to the incarceration in Nauru, if you look at the collective visa granted by Nauru to the asylum seekers, you will see, as I am sure you have, that there is reference to Nauru law. It is doubtful whether their incarceration in Nauru is consistent with Nauru law, given the fact that these people were shipped to Nauru against their will, and apart from the fact that there is a fundamental breach of international standards, if not law, in the refoulement that has taken place in regard to all of these asylum seekers who were taken out of Australian territory or waters and pushed to territories outside. If you look at the range of international obligations—and I believe we should be careful to address ourselves not to rights but to international obligations entered into by states in order to maintain international legal order—you will see that the measures that have been taken to ship these people away from Australia are against international legal obligations, in regard to both the Refugee Convention and the statute of the office of the High Commissioner for Refugees and its interpretation by the EXCOM, and also under the ICCPR, as Ms Harris has said.

**Senator BRANDIS**—But Dr Pace, you—

**CHAIR**—No, you are out of order.

**Senator BRANDIS**—Ms Harris and Dr Thom have said the matter is—

**CHAIR**—Take this question on notice, Dr Pace. Senator Faulkner, you may—

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**Senator BRANDIS**—Do you disagree with that?

**Ms Harris**—No, you are misquoting us.

**CHAIR**—Don't answer those questions. Answer as I directed. Those questions will be put on notice, if you wish to ask them. Senator Collins?

**Senator JACINTA COLLINS**—Dr Pace, you are listed today for this appearance as the author of Amnesty International's Nauru field report. Is that a public report?

**Dr Thom**—Not yet. It is part of an ongoing investigation.

**Senator JACINTA COLLINS**—Does Amnesty International have plans to make that report public?

**Dr Thom**—Yes.

**Senator JACINTA COLLINS**—How soon?

**Dr Thom**—It is a good question. We are hoping that it will occur in the next two months. We want also to look at the situation on Manus and at those people who are in Indonesia as well. So once we have a broader understanding of those in the region who are fleeing persecution, then we will release a broader report, and John Pace's evidence will be part of that.

**Senator JACINTA COLLINS**—Can I ask, once you establish the components of Dr Pace's material that you will include in a public report, that you consider providing us with preliminary material that you had originally planned to refer to today. You may want to reappraise exactly what that material will be, on the basis of that earlier discussion. But I am assuming that eventually you will decide on some material which you think is appropriate to be made public. When you reach that decision, if it is within our timeframe, can you forward that to us as well?

**Dr Thom**—Definitely. I wanted to add to the answer to Senator Faulkner's question: the convention against torture also needs to be taken into account, because that also has non-refoulement obligations. As yet, the Australian government has not made clear how it will deal with any case that may not fall within the Refugee Convention but may still raise Australia's obligations under the convention against torture. Until the Australian government answers how it will deal with those specific individuals, Amnesty will still have concerns about the overall approach of the Pacific solution.

**Senator JACINTA COLLINS**—In relation to these conventions and obligations of a state, can I go back to the Manus Island situation. I am not sure where I gathered this impression from, but my understanding of the arrangement between Papua New Guinea and Australia is that it was an attempt by Papua New Guinea to negate any obligations that they may have in the future with respect to the asylum seekers on Manus Island. Is that your understanding?

**Ms Harris**—Do you mean the MOU with Manus Island?

**Senator JACINTA COLLINS**—Yes.

**Ms Harris**—Do we have the text of that, John?

**Dr Pace**—I have Nauru.

**Dr Thom**—If it is similar to Nauru—

**Ms Harris**—Then, yes.

**Dr Thom**—We have to go on record that we have not seen that memorandum of understanding. But if it is similar, then, yes, that would be what they are trying to do: that they have entered into an agreement that the Australian government will remove these people from PNG territory in a certain time frame and that, beyond that, they will not be responsible for those people.

**Senator JACINTA COLLINS**—Okay. But a key distinction between the Manus Island situation and the Nauru one is that Papua New Guinea is a signatory to the convention.

**Ms Harris**—Yes.

**Senator JACINTA COLLINS**—Do you have any understanding of the legal status of a signatory to the convention seeking to avoid themselves of their responsibility to the convention in an agreement with another state?

**Ms Harris**—There is a group of Papua New Guinean lawyers raising the constitutional issue of detention, because detention without trial is against both the Nauruan constitution and the PNG constitution. That group of constitutional lawyers is also addressing the issue of PNG's accession to the refugee convention. PNG's ratification of the convention is very limited, mostly because it has a huge issue with what they call 'border crossers' from West Papua which they are very careful about. So I would think that Papua New Guinea would not be said under international law to have the same obligations as Australia with regard to asylum seekers.

**Dr Thom**—That is with regard to offering durable protection—

**Ms Harris**—Yes.

**Dr Thom**—But in terms of non-refoulement obligations, that is a customary norm and so they would still have the same obligations there—they could not send somebody back from PNG to a country where they face torture or death.

**Senator BRANDIS**—So it would make all the difference to your criticism—

**Senator JACINTA COLLINS**—Senator Brandis, you have had your opportunity, thank you.

**Senator BRANDIS**—if PNG were a party to the convention. Is that right?

**Senator JACINTA COLLINS**—Please ignore that question and deal with on notice, as the chair requested.

**Senator BRANDIS**—I have asked the question.

**CHAIR**—Senator Collins has the call. You may put that question on notice, Senator Brandis. I am going to close this down in three minutes, so let us get on with it.

**Senator JACINTA COLLINS**—The next issue I want a deal with is the earlier discussion about whether these asylum seekers on Manus Island and on Nauru are essentially in—I forget the correct terminology—a protected environment or an appropriate environment. Given the nature of the agreement between Australia and these countries, it is a bit irrelevant, isn't it? The nature of the Australian agreement with these countries is that they will be removed, so how can it be relevant whether it is an appropriate outcome for these people to be in that place?

**Dr Thom**—That is our argument about effective and durable protection, and the fact they have been taken there against their will. To say that they have some sort of outcome at present, even when the Australian government is still refusing to say who is going to be going where, is a bit of a long bow by the Australian government. Just because they are not being shot at or their life is not in immediate danger does not mean that they have effective and durable protection. Added to that is the fact that they are being arbitrarily detained. I think both those points need to be taken into consideration.

**Senator JACINTA COLLINS**—The point I am making is that further ammunition, in a sense, for that argument is that the government itself has this arrangement that that solution will not continue.

**Ms Harris**—I think what you are talking about too is whether the asylum seekers on Manus Island have a legitimate recourse to the PNG government as well as the Australian government for the situation they are in. I think that is quite right. To some extent that is an issue for PNG lawyers and lawyers on Nauru to be pursuing with their governments, and as far as I am aware they are pursuing those avenues. It is a complete legal minefield. As we said, it is unprecedented, and in some ways we might not know the legal tangles that are going to come out of this arrangement for quite some time.

**Senator JACINTA COLLINS**—We are running out of time, but I did note Dr Thom's comments at the time. He was not claiming that this was a definitive principle at law. What he was actually saying is that what we have done, this unprecedented action, has taken us further away from what was controversial.

**Ms Harris**—Exactly.

**Dr Thom**—It has taken us further away from the spirit of the refugee convention.

**Senator JACINTA COLLINS**—Yes.

**CHAIR**—How are you going there, Senator Collins?

**Senator FAULKNER**—She is going very well in the limited amount of time she has had available to her because of the tirade that these witnesses have been subject to from the manikin on the other side.

**Senator JACINTA COLLINS**—There are two other issues that I wanted to cover. Firstly, Ms Harris—

**CHAIR**—How much longer do you think you will be?

**Senator JACINTA COLLINS**—Two minutes.

**CHAIR**—Let us keep it to two minutes, then.

**Senator JACINTA COLLINS**—Yes. You mentioned that you had observed the Oxfam discussion earlier today. I would also like to direct you to the discussion that occurred before DIMIA on the same points. The DIMIA officials said to us:

However it was that these people got into the situation now, albeit they had resources back in their country of origin, they do not now.

So we are still punishing the victims, in that sense. Unfortunately, senators from the government seem to have forgotten that component of the testimony. My final question was to ask if you would like to indicate, on record, given all the media commentary—

**CHAIR**—I would not raise the question of making statements on that side, if I were you.

**Senator JACINTA COLLINS**—No. Would you like to put onto the record, given the media comment about the minister's Amnesty membership, precisely what the situation is?

**Dr Thom**—No.

**Ms Harris**—No.

**Senator FERGUSON**—I understand that, when you were invited to put in a submission when we called for submissions at the commencement of this inquiry, you declined to put a submission in and then put one in at a later stage. Is that right?

**Dr Thom**—No, not to my knowledge.

**Senator FERGUSON**—You have never declined?

**Dr Thom**—No.

**Senator FERGUSON**—I will have to correct the information that I got. Ms Harris, you talked about the visits by the Human Rights Subcommittee to the detention centres, and said that there was a long list of human rights issues that were raised. In fact, as chair of that subcommittee, I can say that there was not a long list. There were 20-odd recommendations but they did not all relate to human rights matters. I would not want the record to show that there was a long list. There were some issues raised—I agree with that—but not a lot.

**Ms Harris**—It was an excellent report, Senator.

**Senator FERGUSON**—Yes. Having spent some four months at the United Nations, nearly every problem that was created and attempted to be solved was because each of the 189 member states regarded their sovereign boundaries and their national sovereignty as inviolable. In other words, no country could invade the sovereignty of another nation. Does that national sovereignty then not apply when it comes to an individual, or anybody who seeks asylum from outside? Does the country have no control over who might enter its borders? National sovereignty is the issue that is always raised whenever these matters of outside intervention by other countries come up, yet you seem to suggest to us that, if a person wants to seek asylum in Australia, they have a right to be here.

**Dr Pace**—The basis of international human rights law is precisely the surrender of sovereignty with regard to certain aspects. Whenever a state ratifies an international human rights treaty, especially one of the six main ones, it is surrendering a portion of its sovereignty with regard to certain aspects. The presumption is that the state has primary responsibility for the protection of human rights of individuals within its jurisdiction. So long as that holds good, there is no problem. International human rights law exists for the purpose of ensuring that, when a state does not honour its international obligations, the international community has a duty to intervene. This is stated repeatedly in international human rights law, and it is an accepted principle. Having said that, from time to time, states react to this idea that they have surrendered bits of their sovereignty by ratifying international human rights law.

**Senator FERGUSON**—If you took that to its extreme conclusion that people who are seeking asylum—I took you to say this earlier—have a right to enter this country to be processed, if all the 23 million refugees in the world decided that Australia was the place that they should be processed, Australia could not stop them from coming.

**Dr Thom**—Again, I point you to EXCOM conclusions 15 and 58, which look at situations of mass influx, and that is where you start talking about burden sharing. In the same way that there are hundreds of thousands of people in Pakistan and Iran who have fled from Afghanistan, if they had put guns and tanks to stop those people—

**Senator FERGUSON**—Can I stop you there? What do you call ‘mass influx’? That is what I would like to know. What number constitutes a mass influx?

**Dr Pace**—Two million.

**Senator FERGUSON**—So if fewer than two million people decided to come to Australia, that would not be a mass influx?

**Dr Pace**—That would be like Pakistan had.

**Ms Harris**—Like Rwanda, Tanzania, West Timor—hundreds and hundreds of thousands. The refugee convention was designed for individual cases of persecution, but primarily from Cold War countries—defections of belly dancers, scientists and so on.

**CHAIR**—Most other questions can be put on notice at this hour, can they not?

**Senator FERGUSON**—I accept your ruling, Mr Chairman. According to public opinion, some 80 per cent of Australians approve of the government’s current policy on border

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protection. If you were to suggest that 1½ million people should enter this country, where do you think public opinion would be then?

**Dr Thom**—Fortunately, human rights are not about public opinion.

**Ms Harris**—Yes, fortunately, human rights are not about public opinion.

**Senator MASON**—That is exactly the point.

**Senator BRANDIS**—That is exactly the point.

**CHAIR**—I think Senator Brandis wants the call. If there is any more disruption he will not get it. You can have one last question, Senator Brandis.

**Senator BRANDIS**—I want to give you an opportunity to answer the question that I put in an interruption, I must concede, to Senator Collins a few minutes ago. Through the miasma of rhetoric, you are trying to make a legal point which is getting lost in the political rhetoric. Can we come to the narrow legal point?

**CHAIR**—I wonder whose fault that is.

**Senator BRANDIS**—I am not larding legal propositions in political propaganda here. Is your legal point this: what makes the difference here, and on your view takes Australia outside its obligations under the convention, is the fact that the nations to which the refugees or asylum seekers have been diverted—that is, New Guinea and Nauru—are not parties to the convention?

**Ms Harris**—No.

**Dr Thom**—No, that is only a small part of what we are saying. We are saying that the fact that we are rejecting people at the frontier is part of the problem and that if people do make it to territories legislation has been passed that excludes those territories from the Migration Act.

**Senator BRANDIS**—I wanted to understand how important that proposition was to your argument. For example, if, instead of being diverted to New Guinea or Nauru, these people had been diverted to New Zealand, a state party to the convention, would you still say that Australia, in doing that, is violating its obligations?

**Dr Thom**—The answer is yes, and we would also have very serious problems with New Zealand in that circumstance, too.

**CHAIR**—Any further questions can be put on notice. Everyone has to agree that we have had a fair shot, although I might say—

**Senator FAULKNER**—I do not agree with that at all, but that does not matter.

**Senator JACINTA COLLINS**—I do not think that is true.

**CHAIR**—In which case, we will leave open the question of whether we find another time in our program to call you back. At this hour we will close the proceedings. Thank you very much for your attendance.

**Committee adjourned at 11.23 p.m.**