A Certain Maritime Incident

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Abstract

This paper will examine the events that resulted in the report that Children were thrown overboard from the Olong.\(^1\) It will discuss the events as they happened and demonstrate how a veil of secrecy was put in place. It is important to identify the situation that was created because it was the ‘ownership’ of the information by the Department of Defence that allowed it to produce ‘evidence’ to elicit the public’s support for stronger Border Protection Policy.

Introduction

In mid-September 2001 the HMAS Adelaide was directed by the Commander of the Joint Task Force (CJTF), Brigadier Silverstone, to conduct a maritime surveillance and response patrol to deter unauthorised boat arrivals from entering Australian territorial waters.\(^2\) The HMAS Adelaide was directed to prevent potential illegal immigrants (PIIs) from gaining access to the Australian Migration Zone. The Australian Migration Zone is defined as “the land area of all the states and territories of Australia and the waters of proclaimed ports within those states and territories. The land area starts at the mean low water mark.”\(^3\) This Operation beginning on 7 September 2001 and concluding on 16 December 2001 was known as Operation Relex.\(^4\)

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A P3-C Orion aircraft, named Mariner 1, identified a vessel at 4.14pm which was 100 nautical miles from Christmas Island.\(^5\) There was every expectation that the vessel was a ‘suspected illegal entry vessel’ (SIEV).\(^6\)

The vessel, a 25 metre wooden hulled vessel named the Olong, was flying an Indonesian national flag. The vessel was originally assessed as seaworthy. There were no fuel drums or water provisions evident on upper deck.\(^7\) The Olong was the fourth vessel to arrive during Operation Relex and therefore became known as SIEV 4.

The HMAS Adelaide shadowed the SIEV 4 for approximately 3 hours before the launch of a

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\(^1\) Mares Peter (2002). Borderline. Sydney, University of New South Wales Press., p136
\(^2\) Silverstone held two named positions within the Defence Force – Commander of the Joint Task Force and Commander Northern Command. For consistency this paper in most instances will refer to him as Commander Joint Task Force.
\(^3\) Department of Immigration and Multicultural and Indigenous Affairs (2003). Australian Immigration Fact Sheet - Australia’s Excised Offshore Places, Public Affairs Section,
\(^4\) C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
\(^5\) Times reported by the Defence force in the field is known as Golf time. Australian Eastern Standard Time (AEST) is Golf time plus 3 hours.
\(^6\) C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
long-range rigid hull inflatable craft (RHIB) to assess the situation. The RHIB confirmed the vessel was a SIEV and estimated 208 suspected unlawful non-citizens (SUNCs\(^8\)) on board. It was noted that an estimated 80% of the SUNCs were wearing life jackets.\(^9\)

Before the SIEV 4 entered the Australian Migration Zone the HMAS *Adelaide* delivered a warning from the Department of Immigration and Multicultural Affairs (DIMA) to the SIEV 4.\(^10\) This message notified the master and crew of the SIEV 4 that it was an offence bring people to Australia that do not have authority granted by the Australian Government. They were warned of possible sanctions that could be incurred under the Migration Act if they proceeded.\(^11\) The SIEV 4 was instructed to turn back to Indonesia.

Between 6.17pm on October 6 and 4.32am on Sunday October 7 five DIMA warnings were issued. The warnings were given in both written and verbal form in English, Bahasa and Arabic but those aboard the SIEV 4 refused to accept the written warnings and ignored those delivered verbally.\(^12\)

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When the written and verbal warnings were ignored by the Master and Crew of the SIEV 4, Commander Banks of the HMAS *Adelaide* was directed by Brigadier Silverstone to “conduct a positive and assertive boarding”.\(^13\) Before conducting the boarding however, the HMAS *Adelaide*, with the approval of Brigadier Silverstone, commenced firing warning shots into the water ahead of the SIEV 4.

The first of these warning shots were conducted as per operational procedure. Four aimed 5.56mm warning shots were fired into the water fifty feet to seventy five feet in front of the boat. The warning shots did not halt or slow the SIEV 4 and a second round of fire followed.\(^14\) At this time the SIEV 4 was 7 nautical miles inside Australia's Contiguous Zone.\(^15\) The Contiguous Zone differs to the Migration Zone in that it is the section of sea that joins the International Waters with the Australian Migration Zone.

Following the second round of warning shots a boarding party was advised by Commander Banks that if the next round of fire did not invoke a response then the party was to aggressively board the vessel.\(^16\) It can be assumed that by ‘aggressively’ Commander Banks meant that the boarding party were to board the SIEV 4 whether or not they were given permission from the SIEVs crew.

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\(^8\) The term SUNCs has been adopted by both Governmental representatives and Defence Forces personnel and although I deem it to be a derogatory term it is employed throughout this paper for continuity purposes.

\(^9\) C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished

\(^10\) Throughout this paper DIMA represents the Department of Immigration and Multicultural Affairs as existed from 1996 to the 2001 Election. In other segments of the paper DIMIA will be used representing the Department of Immigration, Multicultural and Indigenous Affairs as the department was known post 2001 election.


\(^12\) Ibid., p32

\(^13\) Ibid., p33


\(^16\) Ibid.
The next round of fire, 23 rounds of 50 calibre ammunition, was also ignored by the SIEV 4. Twenty-five minutes after the 50 calibre rounds had been fired a boarding party of nine HMAS Adelaide personnel was in control of SIEV 4.  

The boarding party informed Commander Banks that there were an estimated 250 SUNCs on board of Middle Eastern/Iraqi origin. This count later decreased to 223 persons. On board were 54 children, 90 males, 42 females plus 37 male crew members.

The boarding party reported that the SUNCs were "irate, aggressive and to some extent hysterical" and that some had made threats to commit suicide. It was also reported that the SUNCs were gesturing with pieces of wood broken from the vessel and being very vocal. One SUNC jumped overboard but was promptly recovered by the personnel on board the RHIB.

After first light, at 5.06am, it was reported that 14 SUNCs "have jumped or have been thrown overboard", but all were recovered and returned to the vessel. Of those overboard one was identified as a 13-15 year old boy and the others as 'males'.

Various HMAS Adelaide personnel support the statement that the youth was the only child overboard and all stated that the youth jumped. Chief Petty Officer Naval, Jen Koller stated,

… Among these people I saw a young male, about 13-15 years of age, jump from the coach house roof of the SIEV into the water; he did this voluntarily and was not pushed or thrown in any way.

Leading Seaman, Tara Blennerhassett confirmed Koller’s observation and stated,

I had a set of binoculars and was watching the SIEV on our STBD bow/beam … 5 male SUNCs jumped from the upper decks into the water from the STBD side of the SIEV. No one was pushed, and I believe they jumped of their own volition. Once the SUNCs were in the water I realised that the last one to jump was actually a teenage boy or a small man, but he did jump of his own accord.

A statement by Leading Seaman, Darryll Heedes, contained new information regarding the possibility of a youth going overboard.

19 Ibid.
21 C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
23 C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
… I witnessed approx 12 personal jump from the SIEV in which HMAS *Adelaide* boarded. To the best of my knowledge none of these persons were under the age of 18. One younger person approx 14 years old was hanging from the std side with one hand indicating that he was going to jump into the water but was pulled back after approx 3 min by fellow SUNCs.\(^{26}\)

At 6am, HMAS *Adelaide* time\(^{27}\), Commander Banks observed the threat to throw a child overboard.

… I also watched a man take a child (who I later was informed was a girl in a pink jumper), in my estimation 5 years old, and dress her in a lifejacket. … He took her to the SIEV's starboard side railing on the superstructure and after some time held her up and over the guardrail. She remained outboard clinging to the man for a minute or so. I instructed the RHIB to intercede. An exchange took place with the other UBAs and the RHIB crew, and the man and the child were subsequently taken back inboard.\(^{28}\)

This incident was reported by a various crewmembers although recollections did vary. Naval Officer, Daniel Hynes recalled that

… a few minutes prior to 6am … he picked the child up and took him to the edge of the coach house and it was apparent that he was explaining to the child that he was going to have to go in the water. This was not well accepted by the child and naturally he/she started trying to get a tight grip on the adult. He then held the child out over the side of the SIEV and motioned to the RHIB to be ready to receive that child. … There was a lot of yelling on the SIEV and I do not believe that he properly heard what the crew were telling him although it was audible from the ship - "Don't" was being repeated.\(^{29}\)

Naval Officer, Racheal Walsh reported the same scenario although her estimation of the time was different.

At around 0500 … a man began putting a life jacket onto a small child roughly 3 years old. He appeared to be talking to the child as it was sitting on top of the wheelhouse and he then picked up the child and began to carry it to the edge of the vessel. The child appeared quite distraught … the man moved … to the side and motioned that he was about to throw the child over board. … My memory as to whether it was one of HMAS *Adelaide*'s Boarding Party or another male SUNC that finally took the child and man away from the edge and below decks out of my view is not clear, however I am certain that the child did not enter the water.\(^{30}\)

Petty Officer, Nathaniel Chapman recalled the incident but his recollection of timing and age of the child differ from other reports.

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\(^{27}\) Times reported from the HMAS Adelaide (24hr) are known by the Navy as Golf time. For example 0600G – on the Adelaide – would be 9am Australian Eastern Standard Time – Golf + 3 hours = AEST.

\(^{28}\) C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished


At around 0630-0700 I saw a man struggling with a child aged undetermined, 10 at a guess for the child’s size, on the upper most deck of the SIEV. ... I saw the man holding the child starboard side, very close to the ships side.  

Of 16 Service Police Statements tendered to the Powell Report by HMAS Adelaide personnel 9 specifically stated that they did not see any person or child thrown overboard by another SUNC. The remaining 7 statements did not mention any persons being thrown overboard. Variations did exist in the reports but those variations involved the age and gender of the child, the timing of the incident and who was responsible for resolving the situation and having the child remain safely on board the SIEV 4. No reports were received that SUNCs were threatening to throw children overboard unless they were taken to Australia, a claim that was later to become the focus of media representations of the event.

Commander Banks received radio reports about the man overboards from his personnel and stated that he "possibly" heard that there were children in the water. He did not state that anyone had told him that a child or children had been thrown overboard.

In the official records the only other mention of a child being in the water came from Able Seaman CSO, Wade Gerrits who stated

... I was on the Bridge manning EOTS (Electronic Optical Tracking System). During that time I witnessed and recorded (video tape) SUNKS (sic) jumping off the siev (sic) by their own choice and I believe one child also went overboard. One male SUNK (sic) was also threatening to throw a small female child over board by hanging her over the edge but he was persuaded not to by the boats crew.

Following the 'man overboard' situation an additional boarding party of 9 was instated on the SIEV 4 to prevent a suspected mass exodus. It was a deep concern of Commander Banks that a safety of life at sea (SOLAS) situation may develop.

Once on board the second boarding party provided medical assistance as required. The situation on SIEV 4 was precarious. There were 223 irate personnel on board, plus a Navy boarding team of 18, operating on a small unfamiliar vessel.

A short time after the boarding of the SIEV 4 Commander Banks reported the 'man' overboard situation and his concerns about the safety of those on board the SIEV 4 to Brigadier Silverstone by phone call and ships signal. Brigadier Silverstone then forwarded a

33 C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
35 C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
36 Ibid.
transcript of parts of this conversation to the Commander of the Australian Theatre (COMAST), Rear Admiral Ritchie. In this communication Brigadier Silverstone expressed his opinion that there seemed to have been "significant confusion with the SUNCs agitated and potentially hysterical".\(^{37}\) He went on to say that a mass exodus from the SIEV 4 was expected and that a large number of witnesses saw a male prepare to "one way or another, to dispose of a young child over the side".\(^{38}\) Brigadier Silverstone also relayed Able Seaman Gerrits’s belief that a child went overboard to Rear Admiral Ritchie.\(^{39}\)

Brigadier Silverstone suggests that during the manoverboard situation the report was made that "children were being put in the water".\(^{40}\) He submitted a transcript of part of his conversation with Commander Banks to the Powell Report.

COADE: the vessel has disabled steering it is dead in the water 7-8 nm south. the PIIs are threatening a mass exodus. There are men in the water and child thrown overside.

COMNORCOM: How old?

COADE: 5, 6 or 7 I cannot tell properly

COMNORCOM: are they wearing life jackets

COADE: yes, though some men have discarded theirs.

COMNORCOM: Have you recovered them the PIIs

COADE: To the best of my knowledge we’ve got everyone.\(^{41}\)

Commander Banks disputed this recollection of the conversation stating that at no time did he state that children were thrown overboard. To support his version of events he offered the evidence of other Navy personnel who witnessed the conversation.\(^{42}\)

Brigadier Silverstone relayed his recollection of the conversation with Commander Banks to Air Vice Marshall Titheridge, Head of Strategic Command for the Department of Defence (HSC), at 8am in a telephone conversation. Air Vice-Marshall Titheridge, by his own, admission did not record the content of this call.

\(^{37}\) M. Silverstone, Brigadier, Commander Joint Task Force 639 (2001). Statement by CJTF 639 222701 Brigadier M.J.W. Silverstone Claims that a Child was thrown overboard, Statement made to Powell Report., Unpublished  
Also see: C. A. Ritchie, Rear Admiral, RAN, Commander Australian Theatre (2001). Scoping questions in the routine inquiry into Op Relex: The Interception and Boarding of SIEV IV by HMAS ADELAIDE, Response by COMAST - RADM C. A. Ritchie, AO RAN, Statement made to Powell Report, Unpublished  
\(^{38}\) M. Silverstone, Brigadier, Commander Joint Task Force 639 (2001). Statement by CJTF 639 222701 Brigadier M.J.W. Silverstone Claims that a Child was thrown overboard, Statement made to Powell Report., Unpublished  
\(^{39}\) Ibid.  
\(^{40}\) Ibid. Information here in italics from recollection of Silverstone – not from notes. The abbreviation 'COADE' stands for the ‘Commander of the HMAS Adelaide (Banks) and COMNORCOM stands for the Commander of the Northern Command (Silverstone).  
\(^{41}\) C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished  
\(^{42}\) Ibid.
At the time, I was also dealing with the deployment of our forces to the Middle East, the basing issues facing that deployment, and a range of other issues including whole of government activities to counter terrorism, assistance arising out of the Ansett demise, and the security situation in several locations in our nearer region. Consequently, apart from what is on the written record, I can add little of detail from my memory. 43

Shortly after Air Vice Marshall Titheridge was notified, Brigadier Silverstone relayed the information to Rear Admiral Smith, the Naval Component Commander responsible to the Maritime Commander Australia. 44 Once again no personal records or notes of actual events relating to Operation Relex were kept by Rear Admiral Smith although he does state that "I recall very clearly my telephone conversations with COMAST and CN when I appraised both of the unfolding circumstances". 45

To summarise at this point the SIEV 4 was identified at 4.14pm on Saturday 06 October 2001 by a P3-C Orion and at 8.41pm the same day a RHIB pulled alongside the SIEV to give the first warning to the master of the vessel.

The following day after a series of warnings including volleys being fired in front of the ship, a boarding crew from the HMAS Adelaide boarded the vessel. Shortly after this a number of SUNCs jumped into the water, including a 13-15 year old boy. A male SUNC threatened to throw a young child (his daughter) overboard. Various reports were made to Commander Banks that included the notion that a child or children were in the water. It was never suggested by any Naval personnel that a child had been thrown overboard, only that some one had threatened to throw a child overboard.

Information regarding the possibility that children were in the water on 7th October was forwarded to Brigadier Silverstone who in turn forwarded it to Air Vice Marshall, Titheridge. Brigadier Silverstone also relayed the information that he received to Rear Admiral Smith, Admiral Barrie (NCC AST), Chief of the Defence Force, Minister of Defence (MINDEF), Mr Reith and the Chair of the People Smuggling Task Force Interdepartmental Committee (IDC), Ms Jane Halton.

Public Dissemination of Information

The IDC was the conduit through which information regarding children being thrown overboard was disseminated to the public.

The Task Force and its committee was established partly in response to the Tampa issues by Mr Max Moore-Wilton, Secretary, Department of Prime Minister and Cabinet (PM & C). As Moore-Wilton stated

I certainly thought that in DIMIA, in order to bring together the whole-of-government effort, you needed a mechanism which would do that on a ongoing basis rather than on an ad hoc basis – that is, on the basis of working level contacts.

44 R. A. Smith G F, AO, RAN, Maritime Commander Australia (2001). Response by Rear Admiral G.F. Smith AO, RAN, Maritime Commander of Australia, to the scoping questions in the routine inquiry in to Operation Relex: The interception and boarding of SIEV IV by HMAS ADELAIDE, Statement made to Powell Report, Unpublished
and then occasionally phone calls and so on at senior level.46

Eight departmental representatives attended the meeting held between 9am and 11am on the morning of 7th October 2001. Those representatives were:

Ms Jane Halton, Department of Prime Minister and Cabinet (Chair).

Mr Bill Farmer, the Secretary of Department of Immigration, Multicultural and Indigenous Affairs.

Group Captain Walker the Director of Joint Operations, Strategic Command, Department of Defence.

Ms Katrina Edwards, Department of Prime Minister and Cabinet.

Mr Vince McMahon, Department of Immigration, Multicultural and Indigenous Affairs.

Ms Philippa Godwin, Department of Immigration, Multicultural and Indigenous Affairs.

Mr Mike Mrdak, Department of Transport and Regional Services.

Mr Peter Doyle, Department of Foreign Affairs and Trade.47

During the meeting Ms Halton passed on the information given to her by Brigadier Silverstone. She told the meeting that 14 SUNCs had gone overboard from the SIEV 4 and had been retrieved. She also announced that children had been thrown overboard.

At the same time the meeting was being held Minister for Immigration, Multicultural and Indigenous Affairs (DIMIA) Mr Ruddock arrived in Sydney to address a public meeting on the subject of border protection. The media covering the public meeting had already learnt of the interception of the SIEV 4 through an ABC broadcast and anticipating their questions Minister Ruddock rang Mr Farmer, Secretary of DIMIA at 9.51am for an update on the situation. Mr Farmer was at the IDC meeting when he took Mr Ruddock’s phone call. Mr Farmer advised Mr Ruddock that passengers on the SIEV 4 were throwing their children overboard.

At 11.15am, within an hour of hearing the report for the first time, Mr Ruddock released the information to the media. His press release was based on the verbal report given to him by Mr Farmer.48 Shortly after releasing the information to the media, Mr Ruddock rang Mr Reith and the Prime Minister Mr Howard, at 12-30pm, from a car on the way to the airport, advising them of the report that children had been thrown overboard from the SIEV 4.49

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47 J. Bryant (2002). Bryant Report: Investigation into Advice Provided to Ministers on “SIEV 4”: Report prepared on behalf of the People Smuggling Task Force. Canberra, Department of Prime Minister and Cabinet
48 Senate Select Committee (2002). Select committee on A Certain Maritime Incident. Canberra, Australian Government, p52
49 Ibid., p52
All media reports circulated during on 7 October 2001 by Mr Ruddock and Prime Minister Howard were based verbal reports handed down originally from Commander Banks to Brigadier Silverstone, from Brigadier Silverstone to Ms Halton and finally from Ms Halton through Mr Farmer to Mr Ruddock.  

At 3pm on October 7th a further IDC meeting was convened this time including Air Vice Marshall Titheridge. At this meeting Group Captain Walker reported that no documentary evidence was available to indicate that any children had been thrown from SIEV 4. 

The only official written evidence regarding the incident, recorded on 7 October, was a document entitled 'Options for handling Unauthorised Arrivals; Christmas Island Boat' which was prepared by Ms Halton on behalf of the IDC. The document was immediately forwarded to the Prime Minister and Mr Reith. The report stated that while attempting to return SIEV 4 to international waters the HMAS Adelaide crew 'met with attempts to disable the vessel, passengers jumping into the sea and passengers throwing their children into the sea'. The document did not include Group Captain Walker’s warning that there was no evidence to substantiate the claims that children had been thrown into the sea.

On the evening of October 7th Rear Admiral Smith, during a reception on board HMAS Kanimbla, told the Parliamentary Secretary for Defence, Dr Brendan Nelson, "that the task had been made very difficult by the most recent boatload jumping and or pushing people into the water including children". The information in the original verbal reports had gained momentum and had become the 'truth'.

**SIEV 4 in distress**

While the initial information was being disseminated there were developments at the location of SIEV 4.

The interception of the SIEV 4 had prevented the vessel making its way to Christmas Island. After personnel of the HMAS Adelaide supplied medical assistance and helped with repairs to the SIEV 4 Commander Banks directed the vessel back to Indonesia. At 10.29am the SIEV 4 had exited Australian Jurisdiction and was heading North. Commander Banks took the prudent step of monitoring the progress of the SIEV as he was concerned about the deteriorating weather conditions and the seaworthiness of the vessel.

At 12.19pm the SIEV 4 was observed in distress and by 2pm a boarding party and security...
team of personnel from the HMAS Adelaide boarded the vessel. The vessel was deemed to be unrepairable and the HMAS Adelaide took it under tow with the objective of taking it to Christmas Island.\(^{56}\) This boarding and tow proceeded without incident for approximately 24 hours until the afternoon of October 8\(^{th}\).

**Monday 8 October 2001**

As the SIEV 4 was being towed to Christmas Island the Australian public woke to front page headlines which highlighted the ‘throwing’ of children overboard. Headlines such as ‘SINK OR SWIM – Asylum seekers throw children overboard’,\(^ {57}\) ‘Children overboard: Latest twist on the refugee frontline’,\(^ {58}\) and ‘Boat people ‘threw children overboard’’\(^ {59}\) among others were based on the verbal report given to Mr Ruddock about the events that happened during the boarding of SIEV 4 on 7 October 2001.

While these stories were being written, during the early hours of October 8, the SIEV 4 began taking on water. Between 2.04 am and 4.30pm the boarding party from the HMAS Adelaide used various methods to attempt to halt the intake of water.\(^ {60}\) During this period the SUNCs and HMAS Adelaide personnel remained on board the SIEV 4.

Just before 5pm the SIEV 4 ‘largely without warning’ began to sink. According to the situational report from the HMAS Adelaide the SIEV 4 was 16 nautical miles from Christmas Island when the “bow was down and sinking”.\(^ {61}\) The report stated that the children aboard SIEV 4 were embarked into RHIBs and that the remaining SUNCs were abandoning the SIEV. The next situational report stated that the SIEV 4 had sunk and that 6 life rafts had been deployed in a SOLAS situation. It also reported that the ships dive team and other personnel from the HMAS Adelaide were in the water assisting the SUNCs to life rafts.\(^ {62}\)

The rescue of all SUNCs was confirmed at 7.08pm and directions were given to Commander Banks by Brigadier Silverstone for the HMAS Adelaide to remain at sea overnight then deliver the SUNCs to Christmas Island the following day. These orders were altered and the HMAS Adelaide was ultimately ordered to deliver the SUNCs to Christmas Island by 5pm on October 10\(^{th}\).\(^ {63}\)

During the HMAS Adelaide’s engagement with the SIEV 4, 420 digital photographs were taken by personnel aboard the HMAS Adelaide at the direction of Commander Banks.\(^ {64}\) All photos taken of SUNCs in the water with Royal Australian Navy personnel depicted the sinking of the SIEV 4 on October 8\(^{th}\) but were publicised as the rescue of children being thrown into the water on October 7\(^{th}\). Two photos in particular were to become ‘evidence’ of proof that the SUNCs had thrown children overboard.

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\(^{60}\) Senate Select Committee (2002). Select committee on A Certain Maritime Incident. Canberra, Australian Government, p36


\(^{63}\) Senate Select Committee (2002). Select committee on A Certain Maritime Incident. Canberra, Australian Government, p39

\(^{64}\) Ibid., p66
**Tuesday 9 October 2001**

In the early hours of October 9th photographs depicting the SIEV 4 sinking and the rescue of SUNCs were sent to numerous recipients by Commander Banks. The subject of Commander Banks’s email was ‘Op Relex for the Media – ‘Courage’ rescue photos’. He suggested that the attached photos could be disseminated as considered appropriate.

Two of the photos released by Commander Banks were saved as Laura_the_hero (fig1) and dogs_and_his_family (fig2). The Navy personnel referred to in these photos were Able Seaman Laura Whittle and Leading Seaman Jason ‘Dogs’ Barker.

The photo of Able Seaman Laura Whittle was accompanied by explanatory text by Commander Banks:

ABBM Laura Whittle was recently photographed as the Navy Value ‘COURAGE’. During the 08 Oct rescue of 223 SUNCs from a sinking Indonesian fishing vessel, Able Seaman Laura Whittle again typified this true quality through her immense courage in leaping 12 metres from ship’s 02 deck into the water to drag women and children to the safety of a liferaft. Selflessly she entered the water without a

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lifejacket and without regard for her own safety to help others in need.\textsuperscript{67}

The photo depicting Leading Seaman Jason ‘Dogs’ Barker was also accompanied by explanatory text from Commander Banks.

\begin{quote}
LSCK Jason ‘Dogs’ Barker shows dogged determination as he helped rescue women and children by dragging them to safety during the rescue of 223 SUNCs from a sinking Indonesian fishing vessel. This big hearted Leading Seaman also demonstrated Navy’s core value of COURAGE.\textsuperscript{68}
\end{quote}

Both photos were taken by Navy personnel and distributed by Commander Banks to acknowledge the 'courage' and 'determination' exhibited by the crew members in difficult circumstances.

Recipients of the photographs included Brigadier Silverstone and his staff, Rear Admiral Smith, Lieutenant Commander Bruce Wilson, S02 Maritime Operations in Strategic Command Division and a number of officers in the Maritime Headquarters. The photos were further disseminated to others throughout the chain of command including Media Liaison, Department of Defence, Mr Bloomfield.

One significant action in the dissemination of this material was the removal of the captions and explanatory text. The Senate Committee Report explained that the absence of explanatory text and captions was a result of technical difficulties with the Defence Department’s computer and email system.\textsuperscript{69} By the time the Department of Defence's chief media adviser, Mr Hampton, received the photographs there were no descriptors to indicate the context in which the photographs were taken.

At midday on October 9\textsuperscript{th} Commander Banks received a satellite phone call from Channel 10 reporter, Ms Emma Bowdler. Commander Banks informed Ms Bowdler of his pride in the actions of his crew in rescuing the SUNCs during the sinking of the SIEV 4.\textsuperscript{70} He advised Ms Bowdler that he had sent photos to the Royal Australian Navy Headquarters and that she should contact them for copies.\textsuperscript{71} Both the dissemination of the photographs and the interview given by Commander Banks were a significant break in operational protocol. Brigadier Silverstone ‘counselling’ Commander Banks regarding sending the photographs to numerous addresses outside the chain of command and for disregarding a direction by Brigadier Silverstone not to make any comments directly to the press.\textsuperscript{72}

On the suggestion of Commander Banks Channel 10 contacted Mr Bloomfield to request copies of the photographs that Commander Banks had referred to during the earlier interview.\textsuperscript{73}

\textsuperscript{67} Senate Select Committee (2002). Select committee on A Certain Maritime Incident. Canberra, Australian Government, p67
\textsuperscript{68} Ibid.p67:68
\textsuperscript{69} Ibid., p69
\textsuperscript{70} E. Bowdler (2001). Television News Item. Channel 10 News, Sydney., 10/10/01 6pm
\textsuperscript{71} C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
\textsuperscript{73} Bloomfield T (2001). Letter to the Head of Public Affairs and Corporate Communications Division,
Mr Bloomfield, contacted Mr Hampton with regard to the Channel 10 request about the release of the photos and Mr Hampton obtained permission from the Mr Reith to release photos pertaining to the rescue. Minister Reith had already asked Admiral Barrie if the 'two still photos of children in the water after being thrown overboard could be released to the media'. Minister Reith's conviction at this point was that children had been thrown overboard. Admiral Barrie agreed to the release of the photographs providing the identities of Naval personnel were obscured.

Following the repeated requests for the photos Rear Admiral Ritchie, directed that a brief be prepared for Mr Reith's office in regard to the interview between Commander Banks and Channel Ten. Mr Bloomfield forwarded the brief to Mr Hampton using the information available to him. A note recorded by Mr Reith, for his personal use, records that "We had the UBAs in tow with RAN onboard. The UBAs had thrown overboard themselves, their children, their navigation equipment, and they disabled the steering pumps".

Once the photographs were released Commander Banks became aware of how the Australian media were relating the photographs to the initial boarding on the 7th October and accusations that children were thrown overboard and not to the sinking of the SIEV 4 on the 8th October. He was concerned about the misinformation but took no personal action to remedy this as he was advised not to by Rear Admiral Smith. Commander Banks stated that Rear Admiral Smith had told him that "he had effectively been ‘gagged’ so I should think nothing of staying quiet."

Paying no heed to Admiral Smith’s advice, Commander Banks notified Mr Mike Scrafton, Military Adviser, Department of Defence on 11th October and then Mr Ross Hampton on Wednesday 12th October of the discrepancy and noted in his chronology of events presented to the Senate Committee, that there was no action undertaken by either person.

After Commander Bank’s break in protocol and the subsequent unauthorised release of information, Minister Reith’s office made specific instructions regarding the release of any further information in relation to the SIEV 4. Mr Reith had already established an expectation secrecy regarding defence operations.

Mr Reith had begun his term as Minister for Defence by warning Senior Leaders within the Defence department that

"Defence is a unique organisation but it is not a government within the government. It is responsible to the government … Defence cannot effectively deliver the Governments outcomes unless it has credibility with the rest of the Government. My Cabinet colleagues quite justifiably become concerned when classified or sensitive material appears in the media."

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Department of Defence., Unpublished
74 R. Hampton (2001). Letter to Peter Hendy, Chief of Staff Minister for Defence., Unpublished
75 Ibid.
77 C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
78 Ibid.
79 Ibid.
80 G. Dobel (2002). Ministers, Media and the Military: Tampa to Children Overboard. ADSC LUNCH-TIME SEMINAR PROGRAM, Australian Defence Studies Centre
This statement had the effect of enforcing censorship to the point where even academic papers that were to be published had to be submitted for publishing approval. By October 2001 all enquiries with regard to information to be released to the media from the Defence department were to be vetted by the Minister’s office. It can be argued that control of this information was used to maximum political effect rather than for ‘operational reasons’.  

Mr Bloomfield’s evidence to the Senate Committee stated

We were given absolute direction that all matters in relation to Operation Relex were a matter for the Minister’s office, and as such Mr Hampton was their nominated spokesman for the operation.  

Mr Bloomfield also stated that he believed that these directions could be described as a campaign of censorship.

Under the meaning of what censorship is then yes, it would be a form of censorship. ... Had Defence been responsible for making the comment through to the media, most definitely the misinformation would have been terminated immediately.

**Wednesday 10 October 2001 – Correcting the Record**

Commander Banks was not the only person to attempt to correct the misrepresentation regarding the photographs.

Both Mr Hampton and Mr Srafton received a call from Brigadier Bornholt, Military Adviser Public Affairs and Corporate Communication (MAPACC), advising that there may have been a ‘mix up’ and that the photos may be of the wrong event (emphasis added). Hampton however was confident that a mistake had not been made.

Brigadier Bornholt called Mr Hampton a second time on October 10th and left a message to state that the error regarding the connection of the photographs to the intercept, and not the sinking of SIEV 4, had been confirmed. Hampton did not return Brigadier Bornholt’s call to acknowledge this advice.

On the evening of October 10 the Australian Broadcasting Commission’s 7-30 report broadcasted an item on the SIEV 4 incident and used the photographs released by Mr Bloomfield to infer proof that children had been thrown into water.

At the conclusion of the 7-30 report Vice Admiral Shackleton, Chief of the Navy and Admiral Barrie were notified that the photographs had been improperly identified in the media. 

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81 Ibid.
83 Bloomfield T (2001). Letter to the Head of Public Affairs and Corporate Communications Division, Department of Defence. Unpublished
85 Ibid.
87 R. A. Smith G F, AO, RAN, Maritime Commander Australia (2001). Response by Rear Admiral G.F. Smith
Admiral Shackleton had been aware two days prior to the 10th of October that the photo's were being misrepresented and raised the issue with Brigadier Bornholt and Ms McKenry, Head of Public Affairs and Corporate Communication. He was advised that the Minister's office was aware of the incorrect linkage and was led to believe that Mr Hampton and Mr Scrafton knew of the actual relationship between the photographs and associated events. Brigadier Bornholt had verbally advised both Mr Scrafton and Mr Hampton about the misrepresentation of the photographs but up until the screening of the 7-30 Report Brigadier Bornholt had not provided any written advice.

Thursday 11 October 2001

Brigadier Bornholt and Ms McKenry met to discuss the situation regarding the photographs and what advice should officially be provided to the Ministers office.

During this meeting Mr Scrafton called Ms McKenry and she and Brigadier Bornholt then provided a detailed brief on the situation that included advice on the misinterpretation of the photographs. Brigadier Bornholt in his submission to the Senate Committee notes that there was no subsequent public retraction or clarification of the error.

This was not the only advice given to Mr Reith's office. Admiral Barrie advised Mr Reith personally that the published photographs were not from the child throwing incident and that they were originally captioned with explanatory text that indicated this. He suggested that the situation should be corrected immediately.

While it seemed that the situation regarding the photographs had finally been clarified by Ms McKendry and Brigadier Bornholt, issues regarding a video taken aboard the HMAS Adelaide began to surface.

Ms Halton was notified by Mr Reith that he had publicly declared that a video, that showed footage of the SIEV 4 interception, boarding, man overboard incidents, tow, sinking and rescue was in existence. Mr Hendy, Chief of Staff, Defence Department, and Mr Scrafton verified that the tape was available, in fact, Mr Scrafton told Ms Halton that he was aware early of the tape that 'confirmed' the children overboard incident but that it was of poor quality. Rear Admiral Ritchie was also aware that the video but, in contrast, stated that it.
did not support the supposition that a child or children were thrown overboard.\textsuperscript{95}

Rear Admiral Ritchie’s recollection of the video was that there was no evidence of children being thrown overboard. Although he noted that the video did not show children being thrown overboard he suggested that he was told that sailors on the camera’s disengaged side were picking up children.\textsuperscript{96} This information had not been confirmed by any other statements submitted to the Senate Committee.

Mr Reith when releasing the photographs and stated

\begin{quote}
I have subsequently been told that they also got film. … I have not seen it myself
and apparently the quality of it is not very good, and it’s infrared or something but I
am told that someone has looked at it and it is an absolute fact, children were
thrown into the water”.\textsuperscript{97}
\end{quote}

Mr Reith had obtained this information from Mr Scranton who told him that there was a film of a child being pushed into the water and that children were in the water on their own, separated from adults. Mr Reith did not deem it necessary to release the video to the public and stated that to do so may cause operational and security problems.\textsuperscript{98}

**Late October 2001**

The children overboard debate gave way to the War on Terrorism and a hotly contested election campaign until issues surrounding the veracity of the claims that children had been thrown overboard re-surfaced late October.

Increased media pressure prompted Minister Reith to request a copy of the video from the Navy.\textsuperscript{99} A transcript of the video was supplied to Brigadier Silverstone from the HMAS Adelaide\textsuperscript{100} and a copy of the video was forwarded by express post to Rear Admiral Smith on October 14\textsuperscript{th} 2001, it was not forwarded to Mr Reith’s office.\textsuperscript{101}

A spokesperson for Mr Reith (probably Mr Scranton) stated regarding the video

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\textsuperscript{95} C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished

\textsuperscript{96} C. A. Ritchie, Rear Admiral, RAN, Commander Australian Theatre (2001). Scoping questions in the routine inquiry into Op Relex: The Interception and Boarding of SIEV IV by HMAS ADELAIDE, Response by COMAST - RADM C. A. Ritchie, AO RAN, Statement made to Powell Report, Unpublished


\textsuperscript{98} C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE, Unpublished


\textsuperscript{100} J. Bryant (2002). Bryant Report: Investigation into Advice Provided to Ministers on "SIEV 4": Report prepared on behalf of the People Smuggling Task Force. Canberra, Department of Prime Minister and Cabinet, p24

\textsuperscript{101} C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
The Minister hasn't seen it yet. I expect it will arrive in the office eventually and no decision has been made to release it. There are other priorities at the moment consuming a lot of people's time.102

A week later Brigadier Silverstone found that Mr Reith still believed that the video would supply conclusive proof the children were thrown overboard. He stated

"in the course of the discussion it became apparent to me that Minister Reith believed that the EOTS video record of the HMAS Adelaide might still support claims that a child was thrown overboard from SIEV 4. He asked me whether I had seen a copy of the video. I replied that I had not seen the video, and that I believed the video did not provide a very clear picture of the events of that morning. I then stated words to the effect that "Minister, the video does not show a child being thrown in the water".103

In response to this disclosure Mr Reith replied "well, we'd better not see the video then".104

November 2001

Increased media and public interest in the video prompted the Prime Minister to undertake a consultation with Mr Reith regarding the release of the video.105 Mr Reith requested that Mr Scrafton view the video and the Prime Minister contacted Mr Scrafton once the video had been viewed. Mr Scrafton notified the Prime Minister that the video was inconclusive.106

In response to this information Mr Reith acknowledged

I confess my sort of attitude to it has been, look, they (the Navy) had told me this is what happened. I haven't asked them for statements, for videos, for photos or anything else.107

On the 8th November 2001 Ms McKendry was notified that the Prime Minister had decided to release the video. The release of the video was aimed at correcting public misinformation.108 The video was released by the Public Affairs and Corporate Communication, Department of Defence in Sydney in time for the midday news bulletins.

At the same time Commander Banks was contacted and asked to make the video available for viewing on board the HMAS Adelaide by Vice Admiral Shackleton and Mr Reith on the November 9th.109 Vice Admiral Shackleton viewed the video at the arranged time but

102 Ibid.
104 Ibid.
106 J. Bryant (2002). Bryant Report: Investigation into Advice Provided to Ministers on "SIEV 4": Report prepared on behalf of the People Smuggling Task Force. Canberra, Deparment of Prime Minister and Cabinet, p26
107 C. Banks N S, RAN, Commanding Officer, HMAS ADELAIDE (2001). Routine Inquiry into Operation Relex - The Interception and Boarding of SIEV 4 by HMAS ADELAIDE. Unpublished
108 Ibid.
109 Ibid.
according to Commander Bank’s records Mr Reith declined to attend at the last minute.\textsuperscript{110} It is quite possible the Mr Reith declined to attend the special screening as he had already seen the footage in television news programs. November 9\textsuperscript{th} was also the day before the Federal Election so it could be assumed that Mr Reith attention was firmly focussed on polling results and viewing the video would not alter what was going to happen on November 10\textsuperscript{th}.

In Mr Reith’s response after the release of the video he attempted to distance himself from the fact that the video was inconclusive.

The advice I had at the time, and the statement that I made, was that I had received advice which said that the video confirmed the advice that I had. That’s what I said.\textsuperscript{111}

It is true, of course, that the events surrounding the initial reporting of the ‘children overboard’ claim are multifaceted. From the initial sighting of the Olong to the tow, sinking and rescue, all information originated from the HMAS Adelaide and Commander Banks. In fact, all information used in the initial report of children overboard were based on a verbal reports made during an ‘aggressive’ boarding of the Olong while its passengers were ‘irate, aggressive and to some extent hysterical’ – a very tense time.

Admittedly, border protection is an important issue and does require a certain amount of sensitive handling with regard to operational procedure. Nevertheless, it can be argued that the secrecy surrounding the Children Overboard incident was more that the protection of operational protocol. In fact, it could be suggested that the secrecy was an effective way of manipulating a conveniently high profile incident for political gain.

Furthermore, between 10 October 2001 and 8 November 2001 Minister for Defence, Mr Reith or his office were notified by Defence personnel including Vice Admiral Shackleton, Chief of Navy, on at least 5 occasions that children had not been thrown overboard. Moreover, in the same period Mr Reith and his office were notified on 3 occasions that the situation surrounding the photographs had been misrepresented and that the video taken on board the HMAS Adelaide did not show children being thrown overboard.

And even though Mr Reith and his department had credible information that the children overboard incident in fact did not happen he prolonged the correction of the misrepresentation in the media until very close to election day.

It can only be concluded that it was not considered politically expedient for Mr Reith to correct the information. The situation provided ‘evidence’ to validate the importance of Border Protection Policy and thus gain the public’s support.

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\textsuperscript{110} Ibid.

\textsuperscript{111} R. Garran (2001). Reith R-rates navy video, The Australian


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