

quite complex issues. My thanks therefore go to Committee Secretary, Kathleen Dermody and especially Bronwyn Meredith for their efforts, as well as to James Sampson from my own office.

**Senator CHAPMAN**—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

### **A Certain Maritime Incident Committee Report**

**Senator COOK (Western Australia)** (4.31 p.m.)—I present the report of the Select Committee on A Certain Maritime Incident, together with the *Hansard* record of proceedings, the report by S.J. Odgers SC—the independent assessor to the committee—and documents presented to the committee.

Ordered that the report be printed.

**Senator COOK**—I move:

That the Senate take note of the report.

Today as I present this report, Australia is grieving the senseless loss of life in Bali and bracing for the possibility that within weeks or months our troops may be at war in Iraq. When Australia as a nation is challenged, our values as a society are also challenged. When our military fights, they risk death and some make the ultimate sacrifice in the defence of our values. We may debate the wisdom of certain military conflicts, but we do not need to debate what it is we stand for. By our history and our practice as a democracy, a feature of our character as Australians is that we value honesty and truth. At election time, while voters may be cynical about political promises, they expect to honestly know the underlying facts. Mr Howard said this himself in 1995 on ABC radio:

We want to assert the very simple principle that truth is absolute—truth is supreme, that truth is never disposable in political life.

The values which we embrace as a nation and which define what it is to be Australian are not fulfilled by words. They are made real by deeds. This report seeks to uphold those values by telling the truth. That is what the Senate asked us to do and, within the limitations imposed by the government, that is what we have done. Significantly, every senator that sat on this inquiry, except those from the government, agree on these findings.

This inquiry came into being by resolution of the Senate on 13 February this year. The Senate expanded its reference on 13 March, which led us to an examination of the SIEVX tragedy. Our reporting date was extended four times because of the complexity we encountered and because of a desire to conscientiously discharge the responsibilities delegated to us by this chamber. In all, the committee sat on 15 days, often from early morning until late at night. It heard 60 witnesses—all in Canberra—and generated 2,181 pages of transcript. Now, eight months and 10 days later, we table our report. It contains 49 findings and 16 recommendations.

The report comes in four parts: first, the main report endorsed by Senators Bartlett, Murphy, Faulkner, Collins and me—all the non-government senators, who are united in our findings; second, additional comments by Senators Bartlett, Faulkner and Collins; third, a minority report from government Senators Brandis, Ferguson and Mason; and, fourth, the report from the assessor, Mr Stephen Odgers SC.

These are the basic facts of the inquiry, but the significance of the inquiry is, of course, in its subject. This was an inquiry into an act of public duplicity on the eve of a federal election. The Senate asked us to investigate. We asked: what actually happened? Were children thrown into the sea? How was it that this story came to be commented on by ministers and the Prime Minister and made front-page news throughout Australia? Why was there a failure to correct the record when the truth quickly became known? How were photographs of a courageous rescue by naval ratings falsely used to prove a lie? What were the facts behind the tragedy of the deaths at sea of 353 men, women and children when SIEVX sank? What were the policy underpinnings of the Pacific solution, its background and circumstances?

But the significance of these events goes to an even deeper issue, to the very heart of our democracy—the right of voters to know the truth before they vote. I believe the inquiry has delivered on all of its obligations but, regrettably, I cannot stand here today

and say, 'Mission accomplished.' I cannot say that because, manifestly, our mission is incomplete. We have not been able to accomplish it because our path has been blocked by the cabinet—that is, the executive wing of government has used its power to prevent the parliamentary scrutiny of itself.

What do they have to hide? The pertinent questions we want ministers, the Prime Minister and their staff to answer are: what did they know, when did they know it, and what did they do about it? Today, we have incomplete answers to these questions, but not so incomplete however that there is not enough evidence for us to find that the then defence minister, Peter Reith, deliberately deceived the nation and not so incomplete that there is not enough evidence to raise serious questions about the Prime Minister's probity.

It was always the case that we could not call serving members of the House of Representatives. That meant we could not call the Prime Minister and Mr Ruddock. We accept that, but there is ample precedent for calling their advisers and Mr Reith's advisers, some of whom were at the time, and remain, public servants subject to estimates scrutiny. We would have liked to have had the sworn testimony of Mr Miles Jordana, Mr Mike Scafton, Mr Ross Hampton and Mr Peter Hendy. The public interest would have been served if we had had that evidence. We were unable to call them because the Howard government put them beyond our reach—deliberately.

We also wanted to hear from Rear Admiral Gates and Ms Liesa Davies, but they were blocked from giving evidence by Minister Hill. It was not an iron curtain that fenced these witnesses off; it was a curtain of executive privilege that descended to thwart this Senate inquiry and deny the right of the parliament to thoroughly scrutinise the actions of the government at the time of a critical election, when border protection and asylum seekers were lively issues. Some may say that blocking our inquiry was smart politics. Some may even contend that we have no right to inquire into the actions of ministers. Whatever arguments are put, one thing

is for sure: this is not open, transparent government—the kind of government, it should be noted, that Mr Howard promised Australia. Surely those arguments do not count alongside the right of the public to know the truth, and the fact that Australia was lied to at election time when the nation was in caretaker mode.

The Senate Select Committee on A Certain Maritime Incident quickly became known, for commonsense reasons, as the 'children overboard' inquiry. For the same ease of reference, the document I table today should be known as the 'truth overboard' report, because that is what it finds happened to the truth. Our first finding is that no children were thrown overboard from SIEV4. Other findings are that photographs released to the media on 10 October as evidence of children thrown overboard on 7 October were actually pictures taken the following day, 8 October, whilst SIEV4 was sinking. We find that by 11 October 2001 the naval chain of command had concluded that no children had been thrown overboard from SIEV4. The Chief of Defence Force, Admiral Chris Barrie, was informed at the very least that there were serious doubts attaching to the report.

We find that on 11 October 2001 Minister Reith and his staff were separately informed that the photographs were not of the alleged children overboard events of 7 October; they were of the foundering of SIEV4 on 8 October. We find that, on or about 17 October 2001, Admiral Barrie informed Minister Reith that there were serious doubts about the veracity of the report that children had been thrown overboard from SIEV4. And we find that, on 7 November 2001, the then Acting Chief of Defence Force, Air Marshal Angus Houston, informed Minister Reith that children had not been thrown overboard from SIEV4. We find that on four other occasions the lack, or dubious nature, of evidence for the 'children overboard' report was drawn to the attention of the minister or his staff by officers from Defence. We find that, on 7 November 2001, Minister Reith informed the Prime Minister that at least there were doubts about whether the photographs represented the alleged children overboard

incident or events connected with SIEV4's sinking.

The findings go on to note that, despite all this advice, no correction or retraction was made by any member of the federal government before the election on 10 November 2001. The committee goes on to conclude this section of its findings by saying:

Minister Reith made a number of misleading statements implying published photographs and a video supported the original report that children had been thrown overboard well after he had received definitive advice to the contrary.

And:

The Committee finds that Mr Reith deceived the Australian people during the 2001 election campaign concerning the state of the evidence for the claim that children had been thrown overboard from SIEV 4.

Perhaps the most insidious issue that the inquiry highlights is that in August last year, when the government was gearing up to play the border protection card, Minister Reith quietly ordered that all important ADF press communications be centralised and coordinated through his office. This broke a century of tradition. It trespassed on the autonomy of the Australian military, an autonomy that has been exercised even in wartime. It meant that defence force issues could be manipulated for political purposes. This was a breathtaking intrusion into the independence of the military, and marked a new nadir in the politicisation of the Public Service. Countries that do this sort of thing typically are not democracies. I note Senator Hill has changed this instruction, but that is not enough. If only one reform flows from this report then it should be that set out in recommendation 9. If that recommendation is adopted it will go some way to preventing the manipulation of the armed forces of this country from ever occurring again.

It is salutary to remember that the truth in this case may never have surfaced if Commander Banks had not inadvertently spoken to a Channel 10 research assistant, and the *Australian* had not reported leaks from disgruntled *Adelaide* crew members on Christmas Island. These were accidents in breach of the Reith media mandate. If the order had

remained strictly enforced, we may have never learnt the truth of this case.

Senator Faulkner and Senator Collins will say a lot more about SIEVX, and I expect that Senator Bartlett will also speak about the Pacific solution part of our reference. SIEVX was a genuine tragedy. Many of the issues we are concerned about have not been fully resolved, but they need to be. We recommend that there be an independent inquiry into all the events surrounding SIEVX, including the extent of the so-called 'disruption activities'. Since our inquiry concluded, more information has come into the public domain through media reports. Senator Faulkner has spoken about this in the Senate. To do the job properly a full judicial inquiry is necessary.

I reject the findings of the minority report. It is long on name-calling and political rhetoric. It is wafer-thin on facts or analysis. Unfortunately, it seems to take its theme from efforts by the government to discredit the inquiry. Ironically, the greatest compliment the inquiry has received is from the government. Yesterday, Senator Hill released a statement announcing steps the government was taking to make sure the children overboard affair could not be repeated. He has not gone far enough, but that is not the point I make. He did not choose to make these changes earlier when the government's in-house reports came down. He did it yesterday, maybe in an effort to pre-empt our report, certainly to provide a fig leaf to cover the government's embarrassment and, obviously, because it was necessary. If there had been no inquiry it is very likely no changes would have been made.

As a nation, we are keen to distinguish ourselves from those types of countries that are not democratic. They do not have our good human rights records, our free media or our non-partisan defence forces. They have government owned media with totalitarian control of public information, and the military is used as a political arm of the state. What distinguishes us is that we like to believe that this could not happen here. The only thing we need to do to for it to happen here by stealth is to pretend that somehow the truth of what happened in the children

overboard affair is not really important. After all, they were only asylum seekers and, anyway, the government members say it is sour grapes by us.

But the truth matters—of course it matters. We all know it matters. This report says it matters. And if we pretend it does not matter or that the children overboard lies were just some smart political game, we do that at our own peril and the peril of our democracy, our political processes, and good government, whichever party is in power. I thank the secretariat for the work that they have done in supporting us in this inquiry. Their efficiency helped us considerably. They operated at a high level of competence and I thank them.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—Order! The honourable senator's time has expired.

**Senator Cook**—Mr Acting Deputy President, now that I have made my speech I rise on a point of order and seek your ruling on it. The minority report of the government senators on the committee refers to other members of the committee in terms which I believe are contrary to standing order 193. The terms to which I particularly refer are 'hypocrisy', 'insidious intellectual dishonesty' and 'selective and misleading reference to the evidence' used with application to the majority senators. Past rulings have indicated that it is not in order for senators to breach standing order 193 by quoting documents containing language contrary to the standing order. I ask that you rule that it is also not in order to use such language in a committee report or to repeat such language in a debate. Because the report has now been tabled it is automatically ordered to be published with parliamentary privilege. There is, therefore, no effective remedy to the initial breach of standing orders by the minority report. However, your ruling on the subject would provide guidance on this question for future reference and would also prevent the debate on the report from degenerating.

**Senator Kemp**—Mr Acting Deputy President, on the point of order—

**The ACTING DEPUTY PRESIDENT**—Senator Kemp, if I rule on the point

of order first it may be irrelevant for you to speak to the point of order.

**Senator Kemp**—I thought you might like to hear two sides before you rule.

**The ACTING DEPUTY PRESIDENT**—I am happy to acquiesce to that. I will hear your response to the point of order, Senator Kemp.

**Senator Kemp**—Mr Acting Deputy President, I point out to you that Senator Cook has used very extreme and strong language in relation to his descriptions during his speech on Mr Peter Reith, a former distinguished minister. It is excessively precious for Senator Cook, who has spent 10 minutes defaming and vilifying a former distinguished minister of the Howard government, to worry about the comments that have been made by my colleagues about him.

**The ACTING DEPUTY PRESIDENT**—I will refer the complaint in Senator Cook's point of order to the President. In the interim I will follow assiduously those contributions that will no doubt be made during my time in the chair. I will ensure, as near as practicable, that there are no breaches of standing orders.

**Senator BRANDIS (Queensland)** (4.49 p.m.)—Before I address the issues which Senator Cook has addressed concerning the SIEV4 episode, it is very important that those who hear the broadcast today realise that in relation to SIEVX, which Senator Cook touched on at the end of his speech, there is no significant difference between government and opposition senators—I cannot speak for Senator Bartlett. Those who heard Senator Cook's remarks a few moments ago may have thought that the government and the opposition were of a different view on SIEVX. That is not so. SIEVX is dealt with in chapters 8 and 9 of the report. The government senators address it in paragraph 13 of the first chapter of our report. We say:

In regard to SIEVX, Government Senators support the general conclusions and findings in Chapters 8 and 9. In particular we agree with the finding in paragraph 9.142, which states "On the basis of the above, the Committee cannot find grounds for believing that negligence or dereliction

tion of duty was committed in relation to SIEV X.”

That is all I propose to say about that. The government senators’ report appears between page 477 and the conclusion of the volume. When I speak of ‘the report’ I speak of the majority report. The government senators’ report critiques the majority report. Paragraph 4 of the first chapter of the government senators’ report says that the majority report is a document which is corrupted by intellectual dishonesty—

**Senator Cook**—Mr Acting Deputy President, I rise on a point of order. The point of order goes to the one I raised earlier. These are exactly the terms I rejected. We never saw this report before it was tabled, as promised. This is unparliamentary language and you should rule it out of order. It is a liberty.

**Senator Ferguson**—You did. Yours wasn’t finished when it was adopted. Your report wasn’t even finished.

**Senator Cook**—That’s a lie and you’re a liar!

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—Senator Cook, that is unparliamentary. You will withdraw those remarks.

**Senator Cook**—I withdraw my remarks.

*Senator Kemp interjecting—*

*Senator Cook interjecting—*

**The ACTING DEPUTY PRESIDENT**—Order! I would like some quiet, please, Senator Cook and Senator Kemp. Senator Brandis, you know as well as anyone in this chamber that you cannot use that sort of language if it is directed towards any of the honourable senators here. Insofar as it may not be, then I ask you to proceed.

**Senator BRANDIS**—Mr Acting Deputy President, I abide by your ruling, of course. I do not speak of any individual senators and I do not speak of senators corporately. I speak of a document—that is, a report. The report is a document corrupted by intellectual dishonesty. It is based on findings, or what are described as findings, which are unsupported by the evidence.

**The ACTING DEPUTY PRESIDENT**—Senator Brandis, resume your seat again.

**Senator Cook**—Mr Acting Deputy President, on a point of order: the report that Senator Brandis refers to is a report signed by me and several other senators in this place. We are the authors of that report, and if there is an allegation of the character that the senator opposite knows is unfair and untrue—but it is also against standing orders—it is an allegation against us and he should be asked to withdraw it.

**The ACTING DEPUTY PRESIDENT**—There is no point of order because Senator Brandis, in my view, is not referring to individual senators. However, Senator Brandis, I ask you to continue but to desist from the ambiguity that is in this chamber this afternoon when you use such language like that.

**Senator BRANDIS**—I will be unambiguous, Mr Acting Deputy President. The majority of the report is based on findings, or what it is pleased to describe as findings, which are unsupported by evidence and, in particular, it makes loose and unsupported allegations of dishonesty against an individual, Mr Reith. It ignores vital evidence which explains the sequence in which events took place and then casts doubts on the motives of those involved which could not be cast if the evidence had not been ignored. It indulges in innuendo and allows doubts to linger in the air when none exist. It engages in conspiracy theories of the most Kafkaesque hue. It reflects upon the reputations of distinguished Australians, in particular the former Chief of the Defence Force, Admiral Chris Barrie, who at the time these events took place had one thing and only one thing on his mind and that was concern to protect the Australian people during the war against terror. Why? Because the entire ‘children overboard’ inquiry was nothing more and nothing less than an orgy of self-pity and misplaced outrage engaged in by the Australian Labor Party because they lost the federal election. For 15 hearing days, through 56 witnesses, for 138 hours, the Australian Labor Party engaged in an orgy of self-justification. And to what end? To no end, because the evi-

dence, unfortunately from the point of view of the Australian Labor Party, did not produce the conclusions that they were seeking.

I said at the start that the report was corrupted by intellectual dishonesty. There are two particular techniques that are used in the report about which I make that charge. The first of them is the use of open findings—language to the effect ‘the committee is unable to determine such and such a proposition’—where there is no evidence whatsoever to suggest that there is even a question, thus leaving doubt lingering in the air. The innuendo to be found in open findings leaving doubt lingering in the air is dishonest and disgraceful. The second technique in which the majority report indulges is to arrive at what it is pleased to call ‘findings’ of fact which are not findings at all—at least not findings having any bearing on the evidence; they are findings based on conjecture and surmise.

There are many people who are attacked in the majority report, but there are three in particular about whom I wish to speak. The first is the Prime Minister. The majority report alleges at paragraph 6.97:

The Committee is unable to conclude with any certainty whether the advice given to Minister Reith, which overturned the report of the incident itself—

and I interpolate that that itself is a misstatement; that is not what the evidence showed—

and the photographs as evidence of it, was communicated fully to the Prime Minister ...

At paragraph 6.101, it goes on to say:

The Committee is unable to determine whether on 7 November Mr Reith, in telephone conversations with him, informed the Prime Minister that there was no other evidence supporting the claim, and that he had been informed by the Acting CDF that the incident did not take place.

That is an example of that dishonest technique of open findings, thus leaving a question lingering in the air. But the fact is that there was no question in the first place. There was a telephone conversation on 7 November between Mr Howard and Mr Reith. Both of them are on the public record as to what was said during that telephone conversation and both offer the same evi-

dence as to what was said during that telephone conversation. The innuendo left lingering in the air against the Prime Minister is utterly dishonest. There is not a scintilla of evidence, whether direct, hearsay, circumstantial or otherwise, which could support the proposition that there was any question at all involving the Prime Minister. That is an example of the dishonesty in which the majority report has so freely engaged.

*Senator Mason interjecting—*

**Senator BRANDIS**—It is Orwellian, Senator Mason; you are quite right. Let me turn to the outrageous treatment of Mr Reith in this report. In what the majority pleases to call ‘findings’ at page xxiv of the report, this is what is said:

The Committee finds that Mr Reith deceived the Australian people during the 2001 Federal Election campaign concerning the state of the evidence for the claim that children had been thrown overboard from SIEV 4.

The majority also purports to find:

Mr Reith engaged in the deliberate misleading of the Australian public concerning a matter of intense political interest during an election period. Mr Reith failed to provide timely and accurate advice to the Prime Minister concerning the matters associated with the ‘children overboard’ controversy.

Then it goes on to find:

Mr Reith failed to cooperate with the Senate Select Committee established to inquire into the ‘children overboard’ controversy, thereby undermining the accountability of the executive to the parliament.

Those are the findings. The first point to be made about those findings is that they are entirely unsupported by the evidence. There are more than 2,000 pages of *Hansard* transcript of this inquiry, and one will not find anything in them to support the finding of deliberate dishonesty by Mr Reith. I will turn in a moment to what the evidence does show. But it is a bit rich, it must be said, for the Australian Labor Party to attack Mr Reith for failing to cooperate with the Senate inquiry, because for months on end Senator Faulkner, Senator Cook and other Labor Party politicians demanded that Mr Reith appear. There was no reason why the Senate’s subpoena powers could not have been used against Mr

Reith. If they had wanted to put him on the spot, they could have done so, they could have subpoenaed him, but for week after week and month after month the Labor Party senators delayed.

Eventually, on 22 May—I have the minutes with me—not the Labor Party but Senator Andrew Bartlett from the Democrats moved that Mr Reith be subpoenaed and, when Senator Bartlett moved that motion, Senator Ferguson, Senator Mason and I told the Labor senators that we would not stand in their way. Mr Reith was their witness and they wanted to put him on the spot, so we told them we would not stand in their way and we would abstain from voting on Senator Bartlett's motion.

Mr Acting Deputy President, do you know what happened? I will tell you what happened. The Labor senators voted not to subpoena Mr Reith. They voted against the motion that they had, in the public arena, demanded. On the airwaves, on the TV channels and in this chamber they demanded that Mr Reith appear. When Senator Bartlett moved a motion on 22 May that he be called, Senator Faulkner, Senator Collins, Senator Cook and Senator Murphy raised their hands to defeat the motion. The minutes show: those in favour, 1; those against, 4; and abstentions, 3.

*Senator Mackay interjecting—*

*Senator Jacinta Collins interjecting—*

**The ACTING DEPUTY PRESIDENT**—Order! Senator Mackay, you will come to order! Senator Collins, you will come to order!

**Senator BRANDIS**—Mr Reith's credibility has been attacked savagely in this report.

**Senator Faulkner**—He's a liar!

**The ACTING DEPUTY PRESIDENT**—Order! Senator Faulkner, you will come to order!

**Senator Ferguson**—That's unparliamentary!

**Senator Faulkner**—It is not unparliamentary. He is not a member of parliament.

**The ACTING DEPUTY PRESIDENT**—Order! You will come to order,

Senator Faulkner. It is not unparliamentary for someone in this chamber to speak of a person outside this chamber in those terms. It is, however, unseemly and it brings no credit to this chamber.

**Senator BRANDIS**—The gravamen of the charge against Mr Reith is that he was in possession of information which falsified a public report that asylum seekers on the vessel SIEV4 had behaved badly. The gravamen of the charge is that he concealed that information to attempt to gain a political advantage for the government. What the majority report does not mention—there is not so much as a reference to it in 550-odd pages—is the fact that the committee heard a range of evidence from several witnesses that Mr Reith was in possession of knowledge of much more severe and significant and disgraceful behaviour by asylum seekers which never reached the public arena. If that was Mr Reith's motive, why was that information not made a matter of public record?

In an article in the *Sydney Morning Herald* on 31 March 2002, the journalist Alan Ramsay wrote:

Like much of the media coverage, they were little interested in anything other than the one "certain maritime incident" on October 7. Yet imagine what Howard could have made of them during the election campaign had he known the detail of those six other boardings? The navy never told the Government. The October 7 disclosure was a communications cock-up. Just like [almost] everything else about this futile political pursuit.

Mr Acting Deputy President, that is what a journalist observed after two days of hearings. But do you know what? He was wrong, because the government did know. The government did know about the behaviour of asylum seekers on all of the other nine SIEV boats that were intercepted before the 10 November election—SIEV1 through to SIEV10. Admiral Barrie told Senator Mason in his evidence when this proposition was put to him—and this evidence is quoted in the minority report:

I think the minister was in possession of the knowledge. Certainly on a few occasions I can attest to that personally.

Ms Halton, the Deputy Secretary of the Department of the Prime Minister and Cabinet,

gave evidence to the same effect; so did Rear Admiral Ritchie, so did Brigadier Silverstone, so did Rear Admiral Smith, so did the Chief of Navy, Vice Admiral Shackleton, and so did Air Vice Marshal Titheridge.

So if that is the Labor Party case against Mr Reith, that he forbore from interfering to correct to the public record in order to maintain a political advantage for the government, the case falls at the first hurdle. He was in possession, he had been told by his military officers, of other information of a much more prejudicial character and not a word of it came into the public arena.

The third piece of evidence in relation to Mr Reith's conduct is the question of what has been called 'the video', a video taken from the bridge of the *Adelaide* that showed asylum seekers on the bridge of SIEV4 but did not show any children being thrown overboard. That video evidence is both spatially and temporally limited. It is limited to a part of the incident and it is limited to one side of the ship. But, nevertheless, as far as it goes, that video did not support the view that the government had expressed publicly. Mr Reith was told of that on 7 November by Air Marshal Houston. Mr Reith rang the Prime Minister and mentioned the video to him. What was the reaction of Mr Reith when he was told there was a piece of evidence that did not assist the government's case? If Mr Reith were motivated by the malign conduct alleged against him by Labor senators, he would have suppressed it—of course he would have. What did he do about this piece of unhelpful evidence that told against his own case? He ordered that it be released immediately. Air Marshal Houston's evidence was that, when he told Mr Reith about the video, Mr Reith said, 'Well, we'd better release it then.' It did not help the government's position, yet the immediate reaction was to put it out there into the public arena.

This has been an argument, essentially, about a sequence of events. It has been politicised by the Labor Party and all sorts of extravagant innuendoes have been made, but it has been an argument about a sequence of events. Let me quickly summarise them, because this is what the evidence in truth shows. You did not hear Senator Cook talk

about the evidence and you will not hear Senator Faulkner do so either, and Senator Collins would not be able to understand it if she tried. The evidence shows in the first place that there was a report to the joint task force commander from the bridge of the *Adelaide* that a child or children were thrown overboard. The evidence shows that three days later, on 10 October, the Commander, Australian Theatre, Rear Admiral Ritchie, who in the command structure was the officer immediately below the Chief of the Defence Force, told Mr Scrafton from Mr Reith's office at 12.42 that he still believed the accuracy of that report. He still believed it to be true; that is the evidence.

The evidence is that doubts were growing in the mind of Admiral Ritchie and others and that at 10 o'clock on the morning of 11 October Admiral Ritchie had a conversation with the Chief of the Defence Force, Admiral Barrie. He told him that there were doubts about the accuracy of the report. Admiral Barrie said to Admiral Ritchie, and I will paraphrase his words, 'I am not sufficiently persuaded by what you have told me to change my initial reliance on the report of the commanding officer.' All of this evidence is set out chapter and verse in the government senators' report. Admiral Barrie went away from that conversation, as he put it, 'inviting Admiral Ritchie to fight a re-pechage'. He said to him, 'If you have any further evidence to put before me, you should come to me and give it to me, but until you do I am not sufficiently persuaded to abandon the view of Commander Banks, the commanding officer.'

That was at 10 a.m. on 11 October. Three-and-a-quarter hours later a signal came in, received by Admiral Ritchie, which was the evidence that Admiral Barrie had asked for. That was never brought to Admiral Barrie's attention. Admiral Barrie briefed Mr Reith on 17 October and he told him two things: 'Minister, there are doubts among the chain of command about the accuracy of this report; however, my advice to you as your chief defence adviser is that there is not sufficient evidence available to persuade me that the original report was wrong and I adhere to it.' It is as simple as that. That was

the advice to Minister Reith from the Chief of the Defence Force, Admiral Barrie: that although doubts had been expressed along the chain of command he, Admiral Barrie, was not persuaded that the first report was wrong and his professional advice to his minister was that the report should be supported. When you get into the evidence it tells a different story from the rhetoric we have heard from the Australian Labor Party. The case is closed.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (5.12 p.m.)—We are debating today the report of the Senate Select Committee on a Certain Maritime Incident, better known now as the CMI or ‘children overboard’ select committee, and the opposition welcomes the report. We would like to recognise the efforts of the committee secretariat for their hard work and diligence on this difficult and complex reference. I want to begin my contribution by being generous. I would like to thank Senators Mason and Brandis for their helpful suggestion to extend the terms of reference of the committee—one of the greatest own goals in Australian politics. Without this extension we could not have explored the knowledge that Australian authorities had about the vessel SIEVX and we could not have explored the government’s people-smuggling disruption program.

Through many hundreds of hours of hearings and hundreds of pages of documents that were brought before the committee, we now have a greater understanding of the lies and the misinformation that the Howard government dished out to the Australian people during the 2001 federal election campaign. Despite the ban on ministerial staffers attending committee hearings, despite the cabinet ban on submissions from departments and agencies, the committee has still managed to find mountains of material indicating that the government either lied or deliberately ignored and covered up the truth that children were never thrown overboard on 7 October 2001. Earlier this year, the Prime Minister, Mr Howard, told Neil Mitchell on 3AW:

... as far as I’m concerned I have nothing to fear in relation to the truth on this matter. I don’t have anything to hide.

That is what Mr Howard said. But of course he did have something to hide. If he did not, he would not have banned the key witnesses Hampton, Hendy, Scrafton and Jordana from coming to the committee and giving evidence.

Let me outline for the Senate what was uncovered at the CMI committee. From 7 October 2001, the Prime Minister, his office and senior members of PM&C received on at least 13 occasions written or oral reports that there were serious doubts that children had ever been thrown overboard. From 7 October, Mr Reith, the then Minister for Defence, and his office received on at least 14 occasions written or oral reports that either indicated serious doubts that children were thrown overboard or contained categorical advice that no children had been thrown overboard.

From 7 October, Mr Ruddock’s department never received any advice from defence indicating that children were thrown overboard. Furthermore, Mr Ruddock’s office received at least two reports based on defence advice that did not mention that children were thrown overboard from SIEV4. We now know that not only did this event never occur but the original information was based on fifth-hand verbal advice—it is a sort of Chinese whisper. Commander Banks from the HMAS *Adelaide* told the CMI committee that he believed he never said a child was thrown overboard. If the Prime Minister had simply picked up the phone and spoken to Commander Banks, of course he would have learned the truth very quickly—but it did not suit the election campaign.

The allegation that asylum seekers threw children overboard suited Mr Howard’s divisive approach in his election campaign tactics at the time. It was not an allegation that the government would have wanted to correct in a hurry in the campaign; it suited the political purposes of Mr Howard and the government. They shamefully used and abused the defence forces, and they abused and used the asylum seekers, to progress

their campaign strategy. You just have to listen to what Mr Howard and Mr Ruddock said about the asylum seekers on SIEV4, once they had made the allegation that children were thrown overboard. They could not get in quick in enough. Mr Ruddock said:

I regard these as some of the most disturbing practices I've come across in the time that I have been involved in public life.

And Mr Howard said:

Quite frankly, Alan, I don't want in this country people who are prepared ... to throw their own children overboard.

They could not get in there quickly enough to condemn them. Commander Banks told the CMI committee of his frustration during the election campaign. He said:

I then felt, in the ensuing period, that the issue of children being thrown overboard was now a media and political stunt and that if anybody wanted to verify the veracity of the information perhaps I should have been questioned ...

Precisely. Commander Banks described HMAS *Adelaide's* efforts during the rescue of people on SIEV4 when their boat began to sink as 'superb'. The justifiable pride that Commander Banks felt for his crew members was evident in the many photos he sent back to the Department of Defence. To their great shame, the government chose to use two of those photos for political gain, to misrepresent the facts and to cover up again. The political cover-up continued until the first parliamentary sitting day this year, when the Prime Minister tabled the PM&C report into the 'children overboard' matter. It was clear from the PM&C and defence reports that not only were the claims wrong but the behaviour of certain ministerial advisers and ministers in covering up the claims was outrageous.

But the opposition said that there was more to the story, there was a web of deceit, it was time to unravel the truth. In the week of the estimates committees of the Senate in February, with no assistance from the government at all, we began to get to the truth of this matter. Very important questions were asked of Air Marshal Angus Houston about categorical advice to Reith on the fact that children were not thrown overboard. We also learned that the Prime Minister's interna-

tional adviser, Miles Jordana, received on 7 October two reports—DFAT sit rep 59 and Defence Headquarters Operation Gaberdine/Op Relex 8 October—which did not mention children being thrown overboard.

The other crucial piece of evidence found at the Senate estimates committee was that Miles Jordana rang Mr Jones from ONA, asking if there were any reports indicating that children had been thrown overboard on 7 October. Mr Jones sent Jordana ONA report 226-2001 dated 9 October but warned the Prime Minister it should not be used as definitive advice, given that it had been based on ministerial statements. The ONA report had been based on press reports. But did it stop Prime Minister Howard? Of course not. He went straight in to the National Press Club, using this highly classified ONA report based on media reports as justification and false proof that children had been thrown overboard. That is what the Prime Minister of Australia is like.

I will now tell the Senate of some of the key pieces of information that this very effective select committee found out. We know that on 7 October defence told Peter Reith's media adviser, Ross Hampton, that there was no information of children being thrown overboard. He was also sent a fax summary with no mention of children. On 7 October, the evening of the People Smuggling Task Force meeting, Group Captain Walker told the meeting that he could find no documentary evidence to prove children were thrown overboard, and that was verified by the task force note-taker, Katrina Edwards.

On 8 October, two written reports that did not mention that children had been thrown overboard on SIEV4 were sent to ministers and senior officials. One of those reports, DFAT's sit rep 59, was sent to the Prime Minister, the Minister for Immigration and Multicultural Affairs, the Minister for Foreign Affairs and to the office of the Minister for Defence. DFAT sit rep 59 concerned Katrina Edwards from PM&C so much that it triggered her to make 'vigorous inquiries' with defence. Over the next few days, as Katrina Edwards told the CMI committee:

Strategic Command had been telling us a very similar message for the previous couple of days,

which was that they had no evidence within their holdings ...

By 10 October, defence sent a chronology to PM&C and Reith's office based on HMAS *Adelaide's* signals; it did not mention kids being thrown overboard. Katrina Edwards confirmed she showed the chronology to Jane Halton, the head of the task force. PM&C drafted talking points based on the chronology. Halton requested they be emailed to Minister Ruddock, Minister Reith and Minister Downer. Katrina Edwards says that Miles Jordana also received a copy—once again, no mention of children being thrown overboard.

But the evidence does not stop there: from 10 October, Peter Reith and his office mis-used photographs to reinforce the original great lie. We now know as a result of the CMI committee that Peter Reith and his staff were told on at least three occasions that the photographs were not taken on 7 October. Peter Reith continued to propagate this downright lie, despite the testy conversation he had with the then CDF, Admiral Barrie, on 11 October, when Reith was told by Admiral Barrie that the photographs proved nothing. Peter Reith also told the media that there was a video that could prove the claim made by the government. We know now that Reith's office knew that that video was inconclusive and, according to one defence official, Reith's response to this was, 'Well, we had better not see the video, then.' That is what he said. What a disgrace.

What has now come to light is the so-called tearroom gossip—another thing not mentioned by the Liberals—that the photos were not of the incident that they purported to be. That was original advice from the DLO in PM&C, Commander King. He passed that advice on to the PM&C senior officer Harinder Sidhu and then to the branch head, Brendon Hammer, on 11 October. Dr Hammer says he told no-one else, but in early November when Harinder Sidhu passed on the same advice about the photos, the advice was seen as so significant it was relayed to Miles Jordana in the Prime Minister's office.

Finally, you have got to ask yourself: what did the Prime Minister know? We know that

the briefing material the Prime Minister and his office received indicated very serious doubts about the original claims. We know that Peter Reith told the Prime Minister on 7 November that the photographs were probably not taken on 7 October but when the boat sank on 8 October. The Prime Minister has also suggested in his own interview with the *Four Corners* program that one of Reith's staffers told him about these doubts regarding the photographs. Despite this, the Prime Minister deliberately avoided answering the question—avoided and evaded the truth—when asked the next day at the National Press Club by *7.30 Report* journalist Fran Kelly:

Defence sources are saying today that the photos released by the Defence Minister's office some weeks ago of the people in the water from that sinking boat were captioned when they were handed to the Government and that those captions clearly showed that the people were in the water because the boat was sinking, not because ... children had been thrown overboard. Will you now ask the Minister of Defence to release those photos with captions as originally provided by the Navy?

But that is how he operates. In February this year Mr Howard told the *Insiders* program:

What I'm saying is that if I had done something deliberately misleading I would owe people an apology, I haven't.

Isn't the failure of the Prime Minister to tell the National Press Club, in the last major event of an election campaign, that the photographs were wrong downright misleading and, I would say, downright dishonest? What else? What about—

**Senator Brandis**—I raise a point of order, Madam Acting Deputy President. I direct your attention to standing order 193(3).

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—Senator Faulkner, I request you to withdraw those words.

**Senator FAULKNER**—I will withdraw them. But what else? What about Scafton and the Prime Minister? The Prime Minister admitted in a press conference that Mike Scafton might have a different recollection of their conversation on 7 November but, as a result of the gag on ministerial staffers, we could never get to the bottom of that.

It is hard to believe that no-one in the government is willing to stand up and be accountable for the lies and the misinformation that were perpetrated during the election campaign. Australians were grossly deceived by this government. No-one has been shown the door for the breach of trust in the election campaign—no politicians, no political staffers, no public servants. It appears, of course, that ministerial advisers have gone beyond their traditional role; they have exercised executive authority for which they are accountable to no-one. We believe that absence of accountability is unacceptable and needs to change.

We have heard astonishing evidence right through this, from the then Chief of the Defence Force, Admiral Barrie, and the then Secretary of the Department of Defence, Dr Hawke, offering resignations. We heard about the comfortable conversations held at the Hotel Kurrajong between certain witnesses. We heard the Prime Minister's office instructing defence that no humanising images should be shown of asylum seekers, the defence instructions requiring that all defence information go through defence minister Reith's office, enabling him to control all the information that the media received on this.

The committee also spent a considerable amount of time on the issue of the vessel now known as SIEVX. During the election campaign, the Prime Minister told the Australian people that nothing could have been done by Australia to save the people who drowned when that vessel sank, because it sank in Indonesian waters. We now know that the advice the government received did not support that claim. The People Smuggling Task Force notes on 23 October state that the vessel was likely to have been in international waters south of Java. The DIMA intelligence notes on 23 October noted that SIEVX sank in international waters and well within Australia's air surveillance zone, at approximately 60 nautical miles south of the Sunda Strait. Have we ever had a correction or an apology from the Prime Minister on that matter? Of course we have not. We have looked into the intelligence side of SIEVX and at how much Aus-

tralian authorities knew about its departure and its condition.

But there are broader concerns that go beyond just those issues, go to the whole heart of the people-smuggling disruption program in Indonesia. Who exactly was involved? What accountability was there? Who funded this? How much was provided? Who was responsible for ensuring that this program was operated within reasonable constraints? What sorts of activities were involved in stopping those particular vessels from departing? I am pleased that the CMI committee recommends that a full and independent inquiry be held into those matters.

I hope the government does that; I hope the government takes up that recommendation and acts upon it. But if they do not, I can promise senators and the Senate that the Labor Party senators, at those forums available to us, will progress those issues. We will ask the questions. We will attempt to get to the truth of those particular matters and also find out why the MOU between the AFP and the Indonesian police collapsed. I have still been unable to establish that, but I will work on it; we will keep going.

In relation to the other terms of reference about the Pacific solution, we examined that issue. What is clear about the Pacific solution now, as a result of the efforts of this committee, is that half an hour before the caretaker conventions were in place, on 8 October, a \$54 million deal was struck between the Australian government and the former PNG government over the Manus detention centre arrangement. That is not good enough, and that is another area where more transparency is required.

I believe that the CMI committee is a very good example of the Senate committee system working at its best—getting to the facts, exposing the lies and deceit of the Howard government, maintaining the spotlight on the accountability of government, demanding higher standards from the Howard government and from future governments. This affair has served to highlight the political lengths that the Liberal Party and Mr Howard and his team of ministers will go to in order to spread disinformation at the most sensitive time of the electoral cycle—during

an election campaign. It is crystal clear that Mr Howard and his ministers and his government were prepared to lie and deceive and cover up to save their political hides. This is a most contemptible action from a contemptible government.

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (5.32 p.m.)—The report of the Senate Select Committee on a Certain Maritime Incident is important, despite a lot of the political heat and bunfights surrounding it which have led some to dismiss it as just political. There is a lot of important information contained in the report. Even more important information came through the hearings and the evidence tabled in this inquiry which would never otherwise have become public. That is why I believe this to be an important inquiry which provides a valuable resource for people that are interested in this policy area.

The report basically has three key components. There is the ‘children overboard’ incident which initiated it and is a source of a lot of the political heat. My view and the Democrats’ view in relation to that is that, clearly, former Minister Reith knew the reports were false, knew the photographs did not depict what he said they did, and chose not to correct the record. It is not the first time that a minister has chosen to not correct the record or to allow a mistaken picture to go out to the Australian community, and unfortunately it will not be the last; it should be condemned nonetheless. But the much bigger issues for the Democrats are the broader information about the operation of the Pacific solution and also the inquiry into the sinking of the SIEVX.

I was instrumental in ensuring, when this proposal was first put forward, that the inquiry would expand its focus beyond just the ‘children overboard’ incident. Whilst that is important, the Democrats believe it pales into insignificance beside the policy ramifications and the human ramifications of the broader Pacific solution. In that area I think the inquiry has been most valuable. It got more information out about the amount of money that is spent on that solution, more information out about the extent of military resources that are devoted to it and about

intelligence resources and the human impact, the human reality of how that works.

With the SIEV4—that is, the ‘children overboard’ boat—incident, what I found most valuable was the information that came to light about what happened there, what the reality was, what it actually means and what the boat people are going through. The most absolutely scandalous thing about that incident, in my view, was not about the confusion and then the misleading about whether a child was thrown overboard but that the Australian Navy personnel were forced to intercept a boat and then leave it out there in the middle of the ocean despite their commander’s own assessment—and this was from the valuable documents that the committee got—that the boat was marginally seaworthy and significantly overcrowded. That would never have happened in the past, before the government changed its policy in relation to the arrival of asylum seekers by boat. That scandal, which was repeated time and time again with all the boats that were intercepted, is what I find most disgraceful about that incident.

This comes into stark relief when you look at the SIEVX incident, where 353 people tragically drowned just over a year ago. The Navy were not able to find that boat; they were not able to intercept it. I accept that they were not aware that it was where it was. But the key thing is that undoubtedly, on the evidence that was provided of everything that had been done in the past, if the Navy had found that boat before it sank and intercepted it, they would not have taken off the women and children and tried to look after their safety; they would have tried to turn it around and make it sail back to Indonesia.

Safety of life at sea obligations only kick in—and we had evidence confirming this—once a boat is sinking. Until then, the paramount priority that our Navy are forced to operate under, under direction from the government’s policy, is to deter and deny entry and to try and turn the vessel around. We did have vessels that were intercepted, turned around and sailed back to Indonesia, including one that was so overcrowded that, for defence personnel to get on the boat to take

control of it and turn it around, they actually had to take people off so the defence personnel could fit on. That is a disgrace, and our defence personnel should not be put in that situation.

I support the recommendations and general findings of the committee. I have made some additional comments.

**Senator Ferguson**—Have you read it all?

**Senator BARTLETT**—I have read it. It took a long time. I have not read your stuff yet—I cannot wait for that. It is clear that Defence should not be held to blame. It is government policy and the actions in deceiving the Australian public were government actions. The defence personnel were very cooperative with the inquiry and should not be held to blame. The Democrats agree with the concerns expressed by Senator Cook about the many unanswered questions surrounding the SIEVX. Some of those questions could not be answered because of deliberate decisions by Minister Hill to prevent the committee from having access to key witnesses. There needs to be a further independent inquiry into some of those questions, and they are particularly crucial. This report is not only important but also timely because, as I detail in my own comments on page 448, some of the key things about SIEVX go to failings in our intelligence system and mirror concerns that are being expressed now about what may or may not have gone wrong in intelligence operations leading up to the tragic bombings in Bali—another tragedy in which hundreds of lives were lost. The Australian National Audit Office detailed manifold significant problems in the management framework for the inter-agency intelligence systems that are in place.

In the Democrats' view, the extra absurdity and outrage is that the whole Pacific solution policy has meant that all of those intelligence resources and military resources supposedly provided in the context of security for Australians have been diverted towards detecting refugees. All of those hundreds of millions of dollars and all of those defence personnel are being used to detect refugees who are no threat to the security of the Australian public when they could be

diverted towards detecting terrorists and assessing terrorist threats—which, tragically, we now know are a very real threat to the security of Australians. The Treasurer talked today about possibly needing to increase defence spending and even increase the tax burden on Australians as a consequence, yet the government is continually willing to throw away hundreds of millions of dollars on something with no security implications whatsoever, purely because it is electorally beneficial. That is a disgrace.

In our comments in this report the Democrats call for the immediate abolition of the Pacific solution. The reason why so many women and children were on that SIEVX boat—hundreds of women and children who drowned—is that the temporary protection visa, which is a significant component of the government's Pacific solution policy, denies family reunion. The only way now for women and children to reunite with husbands and fathers who are already in Australia is to take that option of the boat. That is why so many of them lost their lives. The policy should be scrapped straightaway, and there needs to be an immediate independent investigation into the ongoing questions surrounding our intelligence operations in Indonesia and leading up to the SIEVX sinking.

I would like to pay tribute to Mr Tony Kevin, who has come in for a fair bit of flak—including in this chamber—for his persistence in bringing these concerns to the committee inquiry. I do not agree with some of the allegations he made. I do not believe there is any substance to the suggestion that Australian authorities knew precisely where the boat was but decided to let it sink to make an example; I think that is clearly wrong and that Defence should not be hit with such an allegation. But many issues were raised that clearly would not have been examined—and this issue would not have been examined—without Mr Kevin. There is no doubt about that. I have to say with regard to the government's response that each time we got a little bit further they had to correct their evidence from before. I would have thought that it was in the government's interest to clear up the questions about this, yet the committee had to drag it out piece by

piece, correction by correction, and we still had huge numbers of pages provided to us with acres of black lines through them. So I think Mr Kevin's actions need to be acknowledged.

Whilst I am acknowledging people, another group that really needs acknowledgment and thanks is the committee secretariat, because this was a fairly heated inquiry and a lot of demands were placed on them. As we can all see, this is a very large report that they had to put together under very tight time frames. All of them—Brenton Holmes, Alistair Sands, Sarah Bachelard, Judith Wuest and Kerry Olsson—need to be thanked for their efforts. As I say, it is a valuable report and their efforts have contributed to this useful document that will, I think, be significant in assisting further policy development. The Democrats believe that we are clearly breaching our human rights obligations. This inquiry has demonstrated beyond doubt that the government's policy means that people cannot access their fundamental legal rights. Its downgrading of the basic values of human life and human rights clearly demonstrates why we need a change in policy. I should quickly note that there was a submission from the press gallery calling on governments to correct their mistakes. I agree with that, and I have noted in my additional report that it would be handy if the media corrected their mistakes when they make them as well. (*Time expired*)

**Senator FERGUSON (South Australia)** (5.42 p.m.)—I would like to say at the outset that I am pleased for Senator Cook in at least one regard tonight: at least he did not suffer the humiliation of not being able to table his own report as chairman. When I saw the first speakers list it had Senator Faulkner, 20 minutes; Senator Brandis, 20 minutes; and Senator Cook coming on at some later stage. So, Senator Cook, I am very pleased for you that you were able to table your own report. Because, in fact, it is your report. It is your report and yours alone, because this is not a committee report; it is a Labor senators' report.

**Senator Jacinta Collins**—On a point of order, Madam Acting Deputy President: Senator Ferguson is deliberately misleading

the Senate. This is a majority report and he knows it, despite having tried to organise otherwise.

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—There is no point of order, Senator Collins. I request you to withdraw that comment.

**Senator Jacinta Collins**—Withdraw what?

**The ACTING DEPUTY PRESIDENT**—Saying that Senator Ferguson was deliberately misleading.

**Senator Jacinta Collins**—Madam Acting Deputy President, if you are suggesting that I called Senator Ferguson a liar, I withdraw.

**Senator FERGUSON**—This is a Labor senators' report, because there was no contribution from anybody other than Labor senators, except in the smallest way. It is one of the worst abuses of the Senate processes for adopting committee reports that I have seen in my 10 years in the Senate. It took 2½ months for the chairman to present a draft and it was presented incomplete—there were still changes to be made—at approximately 11.30 last Monday morning for formal adoption some three-quarters of an hour later. That is not too bad. I suppose we should be expected to peruse 380-odd pages and consider the changes that were made, some of which we were unaware of at the time because they had been slipped in during the last week. So 2½ months of preparation passed, with no discussion whatsoever, before the report was complete and the chairman was asking for an adoption. Senator Cook says that all the other senators agreed. Maybe Senator Murphy agrees—I do not know—but he scarcely attended one meeting of the committee. I would be surprised if he has read the whole 383 pages; he may have. But the only evidence he could base his support for this report on was the evidence that was supplied in this report by Senator Cook and the Labor Party. The sins of omission in the Labor Party report are certainly more than those things which were included from evidence.

So we have 2½ months of preparation of the chairman's draft. Some three months ago, this committee was asked to spend \$38,500

to get expert opinion because the Labor Party members were not capable of dissecting the information themselves, or so they thought. But then, of course, the Odgers report came much later. They did not wait for that and they went ahead and wrote a report anyway. Why on earth that money was ever spent in getting a report from somebody outside of the committee I will never know. I opposed it at the time. I think it was an abuse of the committee process and it should never have been done in the first place. Then we have the matter of additional comments by Senator Faulkner and Senator Collins. It must be Senator Cook's report because, they being Labor senators, Senator Cook obviously did not want their comments included in the main body of the report. For some reason or other, he did not want Senator Faulkner's or Senator Collins's additional comments included. I can only assume that it was Senator Cook who did not want those included. Otherwise, why wouldn't the Labor Party senators' comments be included in the main body of the report? That I cannot understand.

No doubt, the senators opposite are well acquainted with the show trials of Stalinist Russia. They seem to be because in all of those show trials you firstly determine the verdict that is required and you then set up a trial using as many witnesses as necessary to obtain tenuous evidence which is subsequently used to ratify the predetermined verdict. Senator Cook, you have done it to perfection—this is a Stalinist show trial if ever I have seen one. Comrades, you have learnt very well. In the course of the whole event, never at any time did we object to any of the witnesses you called. We said you could call anybody you liked—and so you did. And you wheeled in some rippers. I remember you had academics and armchair analysts operating with the benefit of hindsight and free of the pressures of decision making in a highly mobile environment. They are the sorts of people that you brought in, and I think their judgments need to be questioned.

Indeed, as it says in our report, the only person with senior military experience that the Labor Party could wheel out to criticise the handling of the issue was Sir Richard Peek—a gentleman who may have had a

distinguished military career; I do not know. It was so long ago, nobody would remember—because Sir Richard Peek began his career in the Royal Australian Navy in 1928 during the prime ministership of Stanley Melbourne Bruce. It was just a few years after the sinking of the *Titanic*. He retired some 30 years ago and he could hardly be regarded as an authoritative commentator on contemporary military decisions or systems. This is the only person from the military—an armchair academic—that the Labor Party could wheel out to give evidence before this inquiry.

**Senator Cook**—Madam Acting Deputy President, I rise on a point of order. I think that is a reflection on a distinguished Australian. I invite the senator to go outside and say it. Go outside and say that about Sir Richard Peek.

**The ACTING DEPUTY PRESIDENT**—Senator Cook, there is no point of order.

**Senator Brandis**—You were happy to cast reflections on a distinguished Australian: Admiral Barrie.

*Senator Cook interjecting—*

**Senator FERGUSON**—You cast your reflections on Admiral Barrie, who is a contemporary military officer. Comrades, you learnt well in your Stalinist show trial.

**The ACTING DEPUTY PRESIDENT**—Senator Ferguson, I request you to direct your remarks through the chair.

**Senator FERGUSON**—Madam Acting Deputy President, the comrades over on the opposite side learnt their talents well in Stalinist show trials, because if you know what verdict you require and then get the evidence afterwards, that is what it is: a Stalinist show trial. On 14 February, six weeks before we took one item of evidence, Mr Crean, your leader, said:

Yours is a government that has lied to the Australian people ... It rushed out within four hours to make the allegation, to tell the lie ...

**Senator Forshaw**—Madam Acting Deputy President, I rise on a point of order. We can take the usual abuse from Senator Ferguson but is it in order to describe a Senate committee as being a Stalinist show trial?

I would say that is a breach of the standing orders because it is a reflection upon a committee of this parliament.

**The ACTING DEPUTY PRESIDENT**—Thank you, Senator Forshaw. I suggest that Senator Ferguson selects his words wisely.

**Senator FERGUSON**—I will select them as wisely as I can, Madam Acting Deputy President. On 14 February, Mr Crean made that statement. On 13 February, as *Hansard* records, Senator Faulkner said:

There is no doubt that the Howard government deceived the Australian people on this issue ...

That was on 13 February, more than six weeks before we had taken a single word of evidence. If there was no doubt, why the need for this political farce and political witch-hunt? The verdict was predetermined by the Labor Party and they decided that they would have to have some sort of inquiry in order to gather some evidence so that they could justify their predetermined verdict. I can understand what a state the ALP must have been in when they set up this inquiry. In 1996 they were slaughtered at the election. In 1998, with no forward vision—and they have shown no forward vision since 1996, because they have scarcely had a policy; they do nothing but look backwards—they were defeated in spite of their negative, fraudulent campaign against the GST.

**Senator Crossin**—We got the majority of the vote in 1998.

**Senator FERGUSON**—You lost again in 1998. In the year 2001, what did we have? More negativity. Roll back the GST—that is the negative side. Those senators opposite know that they were deserted by the Australian people, who after 5½ years knew and trusted Prime Minister John Howard. They cannot stand it that, after 5½ years, their negativity, their backward looking, would get them nowhere.

It has now got even worse. Last Saturday the Australian voters deserted you in Cunningham. Even your own supporters are now deserting you. You find yourself in a situation where you simply have to use red herrings to try and somehow divert attention away from the wonderful progress that is

being made in this country. You try to look backwards; you never look forwards. Even after two days of hearings, respected journalists were starting to realise that this was blowing up in the Labor Party's face. I quote from an article that appeared on Monday, 1 April in the *Australian*—

**Senator Forshaw**—Who is it by?

**Senator FERGUSON**—It is by Glenn Milne, chief political correspondent for the Seven network—a great journalist. The article says:

Unless federal Labor can come up with the smoking gun that directly implicates John Howard in deliberate deception over the children-overboard affair, the Senate inquiry into the matter is halfway to blowing up in the Opposition's face.

This was after two days. It is a lot more than halfway now. After four days, it had totally blown up. The article goes on:

With two days of hearings already complete in the so-called Senate Inquiry Into a Certain Maritime Incident, it's Labor that's taking political water, not the Government.

That is a fair assessment of exactly what happened to you throughout the whole 15 days of hearings. You continued to get witnesses to come along and not one of them supported what you said, because in fact you could never—

*Senator Cook interjecting—*

**Senator FERGUSON**—You said in your initial remarks that truth is absolute. Why doesn't your report tell the truth? Why doesn't the Labor Party's report tell the truth?

**Senator Cook**—I rise on a point of order, Madam Acting Deputy President. I am not going to have someone say in this place that we do not tell the truth, because we do. That remark should be withdrawn. You know better.

**Senator FERGUSON**—The report does not tell the truth.

**Senator Cook**—It is my report—

**The ACTING DEPUTY PRESIDENT**—There is no point of order.

**Senator FERGUSON**—It is your report. I am glad you said so, Senator Cook. I am pleased you said it is your report.

*Senator Cook interjecting—*

**Senator FERGUSON**—You said it was your report.

**The ACTING DEPUTY PRESIDENT**—Order!

**Senator FERGUSON**—You are intellectually dishonest.

**Senator Cook**—I rise on a point of order, Madam Acting Deputy President. I was just accused in an unparliamentary way. That should be withdrawn.

**Senator FERGUSON**—I withdraw it.

**Senator Cook**—The earlier remark that this report does not tell the truth should be withdrawn. It is my report and the report—

**Senator FERGUSON**—It is his report!

**Senator Cook**—of the other senators in this chamber, and that is a reflection on me and all of them about honesty. That remark should be withdrawn.

**The ACTING DEPUTY PRESIDENT**—Senator Ferguson, I understand you have withdrawn those unparliamentary comments.

**Senator FERGUSON**—If your report contains so much truth, why is there no mention in your report of the pattern of conduct that took place over the whole of the period of the election campaign?

**The ACTING DEPUTY PRESIDENT**—Senator Ferguson, I request again that you address your remarks through the chair.

**Senator FERGUSON**—I apologise. Why is it not included in the report simply because it does not suit your purposes? If the Australian government wanted to use the treatment of asylum seekers in order to win an election, it would have put out to the public the treatment of people on SIEV5, SIEV6, SIEV7, SIEV8, SIEV9, SIEV10, SIEV11 and SIEV12. That is what would have happened. It would have put all of those things into the public arena. But Mr Reith chose not to.

**Senator Cook**—There is no hard evidence.

**Senator FERGUSON**—There is hard evidence, because a child was dropped overboard on SIEV7 and Senator Cook knows it.

**Senator Cook**—There is no proof.

**Senator FERGUSON**—It is in the evidence.

*Senator Cook interjecting—*

**Senator FERGUSON**—It is in the evidence and the report simply does not tell the whole truth. It is Senator Cook's report, as he said. Senator Cook said, 'It is my report,' and it is your report, Senator Cook, because nobody else had the opportunity to put anything into it, because you did not finalise it in time for the rest of the committee to consider it in ways that reports are always considered whenever they are brought to this committee. (*Time expired*)

**Senator JACINTA COLLINS (Victoria)** (5.57 p.m.)—I will not grace the contribution made by Senator Ferguson just now in relation to the process of this inquiry with further comments in the small amount of time that I have. Anyone who has followed this inquiry is able to see the manner in which it was conducted quite fairly and openly by the chair, Senator Cook. But let me go to the one reference from the media that Senator Ferguson referred to, because it is my opportunity to correct for the record the inaccuracy of the garbage that this government has been feeding the media. In that same article, Glenn Milne accused me of vainly seeking to do something that simply was not the case. There is no substance for his claim. There is nothing on the record that can sustain it and he must have been misled by government senators feeding him tripe. Let me go further, though, to the issue of the pattern of behaviour, because it will be relevant—if I get the time—to a theme that I have explored in my additional comments.

The pattern of behaviour record that this government refers to was provided to the government on request by the government in a fashion designed by the government to suit the government. When in our hearings we were able to prove that one of the perceptions reported in that report had not in fact

occurred, the poor hapless defence officer involved could not even see the distinction between perception and fact. He basically indicated that what he had put to this committee was a table of perceptions. Senator Brandis knows, on the evidence, that the purported strangulation incident that he trotted out to the *Australian* to demonise asylum seekers—and that was front page news—did not occur.

**Senator Brandis**—I rise on a point of order, Madam Acting Deputy President. That is unparliamentary. I have been accused of attempting to demonise asylum seekers. I have attempted to do no such thing. I have simply, in a clinical way, called attention to the facts. I ask you to insist that it be withdrawn.

**Senator Cook**—Madam Acting Deputy President, I rise on the point of order. The remark made is not unparliamentary. Senator Brandis knows full well that it is not unparliamentary. The point of his point of order was to interrupt Senator Collins.

**Senator Ferguson**—Hang on: how many times did you interrupt us with points of order?

**Senator Cook**—But I was justified; you're not! I have made my point of order.

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—There is no point of order.

**Senator JACINTA COLLINS**—In relation to Senator Brandis's claim, his report—and he is joined by the other government senators—purports to represent the facts. Let us just take pause for the moment and see precisely what it does. Senator Ferguson has already said that he did not look at the Odgers report. The Odgers report, which I did refer to in my report, is quite clear on the matter. On page 39, it says:

In my opinion, it was misleading of Mr Reith not to refer in the interview on 14 October to the doubt he knew existed in relation to the attribution of the photographs.

I am not surprised that this component and other references in the Odgers report do not appear in the report of the government senators because, as Senator Brandis has already gloated, rather than providing a forensic and balanced approach to the evidence, he really

has been—as he has gloated in the media—defence counsel to Howard and Reith. He cannot pretend to be both defence counsel and judge at the same time, and he knows that well. Rather than a forensic and balanced position, he has presented a selective representation of the evidence aimed at a target. This target I am referring to now is the one I find most offensive. For him to have targeted Commander Banks in his selective representation of the evidence is outrageous. For him to then be here claiming this tactic about open findings is absolutely outrageous. There is no other conclusion in relation to Commander Banks and Brigadier Silverstone—

**Senator Brandis**—Mr Acting Deputy President, I rise on a point of order. I have been accused of something which is false. I have been accused of targeting Commander Banks. I have not done so.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—What is your point of order, Senator Brandis?

**Senator Brandis**—My point of order is that the allegation is false. I believe Commander Banks told the truth to the committee at all times, and there is nothing in the minority report that suggests to the contrary.

**The ACTING DEPUTY PRESIDENT**—There is no point of order.

**Senator JACINTA COLLINS**—I have not suggested that Senator Brandis has suggested that Commander Banks lied. We all know that he did not. We all know that both Commander Banks and Brigadier Silverstone demonstrated the finest of our Defence Force integrity, as did many others. However, Commander Banks has been set up by the government as the target for blame. He has been scapegoated in this report, but any reasonable person who looks at the evidence fully—and I stress fully—set out in the majority report would conclude that there is no way we can ever conclude what occurred, unless, as the witnesses said, the incident had been taped, and it had not. We found that both officers have the highest of integrity but, again, as they said to us, that is not the point. The point is that, when that misunderstanding occurred, what happened? It is that

that the government is culpable for. Let me go to that particular point: why did John Howard on 18 February on the John Faine program say:

... I never received any written contradiction of that, nor did I receive any verbal contradiction of that.

When asked in his office, the answer was no. The facts are that on 13 occasions it did occur. I am not bothering to go to the detail of the 14 occasions when it did with respect to Peter Reith and his office; I think you are just in absolute denial there.

**The ACTING DEPUTY PRESIDENT**—Senator Collins, are you saying that I am in denial?

**Senator JACINTA COLLINS**—No, I am sorry.

**The ACTING DEPUTY PRESIDENT**—I would appreciate it if you would address your remarks through the chair.

**Senator JACINTA COLLINS**—I will refer my remarks through the chair. However, Mr Acting Deputy President, you may be, in part, if you accept the government senators' response on this issue.

**Senator Ferguson**—Mr Acting Deputy President, I rise on a point of order. That is a reflection on the chair and I ask that it be withdrawn.

**The ACTING DEPUTY PRESIDENT**—There is no point of order.

**Senator JACINTA COLLINS**—I have not bothered going to the detail of the case against Peter Reith because our independent assessor has done that quite well. It is just interesting that the government did not refer to that. In my remarks, I have looked at the detail of what John Howard, his office and the Department of the Prime Minister and Cabinet did do. That is where the principal concern is. As I reflected in my comments, a couple of months before the election—

**Senator Ferguson**—Why didn't you put them in the main report?

**Senator JACINTA COLLINS**—Because they are my personal reflection of some issues.

**The ACTING DEPUTY PRESIDENT**—Senator Ferguson, I feel obliged to hear Senator Collins.

**Senator JACINTA COLLINS**—Some senior defence officers privately raised concerns with the culture and agenda which was developing in PM&C. I will comment on this later tonight in relation to the conduct of the Prime Minister's task force and Jane Halton, but the blame in this very circumstantial case goes directly back to John Howard.

**The ACTING DEPUTY PRESIDENT**—The Prime Minister or Mr Howard.

**Senator JACINTA COLLINS**—The Prime Minister. Some excerpts from the ship's logs had not been made fully public, but there are some excerpts of those logs in my comments. Who, for instance, was intruding between a request from the boarding party at 0751 zulu that women and children be moved off the SIEV, a request, at 1009 zulu, that people be put in the water on the double and then, at 1036 zulu, the comment 'contacting parliament on the crisis'? Why on earth would you be contacting parliament between people being put in the water and being put somewhere safely? The time gap between those poor people being put in the water at 1009 and the final instruction that they could go onto the *Adelaide* was at 1100 zulu. Why did it take 51 minutes for the Prime Minister's office to intrude in this situation rather than just let the Navy get on with their job and the principal imperative relating to safety of life at sea?

I encourage people to look at these logs with this in mind, because there are countless incidents where the Prime Minister's office needed to be consulted, or the Prime Minister responded, when the principal objective—on which the Navy should have been allowed to do their job—was to treat these people with dignity and safety. But this did not occur, because of the much broader agenda of the Howard government and its border protection plan—one that it did not consult the public on and that it implemented during an election period. During a caretaker period, it made a fundamental change in policy. (*Time expired*)

**Senator MASON (Queensland)** (6.09 p.m.)—On behalf of the government senators I would like to thank the secretariat for all their work on the preparation of the report, in particular over the last couple days where they went above and beyond the call of duty. I agree with what Senator Cook and Senator Bartlett said: this report will stand the test of time. But not for the reasons they gave. This report is perhaps the longest—and certainly the weightiest—testament to sour grapes in Australian political history. This committee inquiry was supposed to be the vehicle for revenge for the Labor Party's crushing defeat in November 2001. This was the vehicle for their vendetta. If you want to know about Labor Party motivation for this report, Mr Acting Deputy President, the motivation can quickly be calculated from having a look at what Senator Faulkner said to Admiral Barrie. This was Senator Faulkner in intimate mode, sounding positively Clintonesque. He said to Admiral Barrie:

... I know what you feel ... But I hope you understand the way that some of us on our side of the parliament feel when we see some of our colleagues who are not returned in a federal election.

The motivation, as I say, was defeat at the general election. There was no search for truth. This was simply a vehicle for a vendetta. Ms Macklin, now Deputy Leader of the Opposition, said to Young Labor in Queensland on 24 February:

In Parliament over the past two weeks, day after day we have seen further damning evidence that this Government will sacrifice all pretence of truth and honesty to achieve its political ends.

The children overboard affair has revealed the magnitude of their deceit.

And so it went on. Make no mistake: when this inquiry was called together and the Senate commenced its inquiry, the Labor Party thought they were on a winner. They thought they would gain some political mileage out of this. But, oh dear, in the end this inquiry was not about children going overboard; it was about Labor going over the top. It was not about lost accountability; it was about a lost election. It was never about finding the truth; it was simply about finding a hammer or a vehicle to belt the government. That is what this inquiry was about. It was a political

vendetta of the highest order, a payback, indeed, a witch-hunt or a show trial. The truth is—this is the hardest thing for the hardheads of the Labor Party, and this is what they do not like—that Labor misjudged it. They misjudged public sentiment before the election. They did not realise that the Australian public would back the Howard government's strong border protection policy. After the Labor Party were so crushingly defeated, the bourgeois left that run the Labor Party these days thought, 'We will run the issue again.' Really clever! The bourgeois left said, 'We will run the issue again in the inquiry, but this time we will win.' What has happened six months later? An ignominious and absolutely pathetic backdown and defeat. They set up this inquiry to embarrass the government, and in the end they embarrassed themselves.

The inquiry has totally backfired on the Labor Party for two reasons. Firstly, as Senator Brandis said, Labor were not able to find evidence to smear the government, public servants, the military or senior ministers. They tried hard. They tried hard but they failed. Secondly, instead the inquiry unearthed more and more evidence about the behaviour of illegal boat people and the people smugglers. This stream of information, which was adduced by Senator Brandis, in fact convinced the people of Australia that the Howard government had the right policies. And every time a new bit of information came out, the Labor Party just hated it.

The pattern of conduct that was exposed during the inquiry makes for startling reading. Most of the dozen interceptions by the Royal Australian Navy involved behaviour on the part of boat people and people smugglers that most Australians found really disturbing and also quite appalling. It included, amongst many other things, the destruction of navigational equipment and threats of violence against Navy personnel and other illegal immigrants, particularly women and children. The pattern of conduct also included threats of suicide or self-harm, hunger strikes, the lighting of fires, sabotaging the vessels and, finally, scuttling the boats so that the Royal Australian Navy would have to succumb to moral blackmail, pick up the

refugees and take them back for onshore processing here in Australia. That was the aim of that pattern of conduct.

We put the facts out to the Australian people, and more heartily than ever they endorsed government policy. And didn't the Labor Party hate that! Establishing the pattern of conduct did three things. First, it vindicated Australia's tougher border protection policy, including the Pacific solution. Scuttling your boat in Australian territorial waters no longer pays dividends and no longer means you will be taken to Australia. The first thing the pattern of conduct did was justify that policy. Second, it established the context in which this entire event occurred. When the call came from Commander Banks through to Brigadier Silverstone and right up through military high command to public servants and senior ministers people were concerned about the report that a child had been thrown overboard. They were concerned, but no-one was particularly surprised. That is the point. The atmosphere at the time lent itself to the distinct possibility that a child may have been thrown overboard. That is why government senators went to so much trouble to adduce all this evidence before the inquiry. It established the atmosphere and the context in which the military was operating at that time. Third, and more importantly, it explodes the entire Labor case that the children overboard affair was motivated by the government's determination to use the affair for sordid political purposes.

Mr Reith knew about the other illegal entry vessels. He knew about SIEV1 right through to SIEV12. He knew all about the pattern of conduct—the sabotaging of the navigation equipment, the lighting of the fires, the pouring of petrol on the vessels, the threats of violence against Royal Australian Navy staff and so forth. He knew about that. He knew that a child had been dropped overboard from SIEV7—he knew that as well. But did he use any of that information for political purposes in the lead-up to the election? Did he? No, he did not. And that explodes the entire Labor Party case. They say this entire matter was manicured for political purposes. In fact, what happened was that Mr

Reith did not use the information he knew about. That, more than anything, explodes the Labor Party case. He did not need to make anything up because he knew of far more significant and far, far more serious events.

In the end, Senator Brandis is right. This was a waste of taxpayers' money—thousands of pages, hundreds of hours of testimony, thousands of taxpayers' dollars spent on this inquiry. After weeks of hearing scores of witnesses there is still no smoking gun despite the very, very best efforts of the Labor Party to find one. I found it quite interesting that the Labor Party started off going after the Prime Minister to skewer his credibility. Before long, they moved off the Prime Minister. They thought, 'No—a bit hard. We'll go after Mr Reith.'

**Senator Brandis**—No evidence there either.

**Senator MASON**—There was no evidence there either. 'We'll go after Admiral Barrie instead,' they said. And then of course Air Vice Marshall Titheridge, Rear Admiral Smith and Rear Admiral Ritchie—no evidence against them. What did the Labor Party do then? They lowered their sights again and went after public servants like Ms Halton—no evidence against her either. And in the end the best shot they had was in this context quite a junior public servant. Poor old Dr Hammer allegedly inappropriately interfered with a witness over a cup of coffee at the Kurrajong Hotel. Of course that is the site of the death of the Labor Party's dreams in contexts other than just this one.

The Labor Party had their sights set on the Prime Minister at first but in the end the guns were sighted on Dr Hammer. Dr Hammer was examined up hill and down dale for hours about his conduct, how he had inappropriately dealt with Commander King and tried to influence him. So what happened? He went to the Senate Privileges Committee. And what did the Senate Privileges Committee find? What it found was that there was no evidence to support any allegation against Dr Hammer. That was the Labor Party's big hit. They couldn't get the PM, they couldn't get Minister Reith, they couldn't get the military, they couldn't get

the senior public servants so they thought, 'We'll go after a middle-level public servant.' They couldn't even get him! There simply was not the evidence they thought there was.

This example is far from exceptional. The whole inquiry is littered with similar failed attempts to implicate the government, the Public Service and the military in this pathetically imagined grand conspiracy. Senator Ferguson and Senator Brandis are right that they had conclusions they wanted to reach and they did everything they could to contort and distort the evidence to reach those conclusions. Guesswork, speculation, misinterpretation—in fact, a grand theory that would have made Oliver Stone very proud. Admiral Barrie, Ms Halton, Dr Hammer and the Prime Minister all came under the gun in a really pathetic attempt to discredit the government. It is no wonder that in the end this inquiry embarrassed the Labor Party. The only smoking gun in this case was the one they held to their own heads.

As I mentioned before, not only did the inquiry not embarrass the government but quite the opposite. It uncovered a pattern of conduct on the part of the illegal boat people and the people-smugglers, a pattern of conduct that until recently was unknown to the public. Mr Reith and the government never used the information they had available to them for political purposes. Labor said they wanted to find the truth. They have claimed that from the word go. In the famous words of Jack Nicholson in the film *A Few Good Men*, 'You want the truth? You can't handle the truth.' The truth is—sadly for the Labor Party—that people in all the circumstances acted reasonably and conscientiously. There was a failure to correct information in the military chain of command, but there was no grand conspiracy—no material for Oliver Stone at all. Case closed.

Question agreed to.

#### DOCUMENTS

##### Auditor-General's Reports

##### Report No. 13 of 2002-03

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—In accordance with the provisions of the Auditor-General's Act

1997, I present the following report of the Auditor-General: Report No. 13 of 2002-03—*Information Support Services—Benchmarking the Internal Audit Function: Follow-on report: Benchmarking Study.*

#### Joint House Department

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—I present the annual report of the Joint House Department for 2001-02.

#### COMMITTEES

##### Membership

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—The President has received letters from party leaders seeking to vary the membership of various committees.

**Senator IAN MACDONALD** (Queensland—Minister for Forestry and Conservation) (6.23 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

##### Economics Legislation and References Committee.

Appointed—Participating member:  
Senator Buckland

##### Environment, Communications, Information Technology and the Arts Legislation Committee

Appointed—Substitute member: Senator Barnett to replace Senator Tierney for the committee's inquiry into the provisions of the Renewable Energy (Electricity) Amendment Bill 2002.

Question agreed to.

#### ASSENT

A message from His Excellency the Administrator of the Commonwealth of Australia was reported informing the Senate that he had assented to the following law:

Higher Education Funding Amendment Act 2002 (Act No. 87, 2002).

#### BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002

##### First Reading

Bill received from the House of Representatives.

abilities had again blown out to \$533 million or a deficit of 10 per cent, notwithstanding an increase in the rate of the premium to 2.22 per cent. In 1998-99 there were 31,242 reported claims and in 2000-01 there were 32,539 reported claims—a small increase. The number of staff increased from 709 to 828 during this period. But, Senator Marshall, the return to work rate has decreased by eight per cent.

Let me conclude by once again quoting Kenneth Davidson's comment on the Bracks government:

... what we have got is pre-election spiel that attempts to hide three wasted years of government with more spin.

#### **A Certain Maritime Incident Committee Report**

**Senator COOK (Western Australia)** (7.38 p.m.)—Earlier today the report of the Senate Select Committee on a Certain Maritime Incident was tabled. That inquiry, of course, is colloquially known as the 'children overboard' inquiry. I had the opportunity to make some remarks then about the report of the committee that I had the pleasure of chairing, and I now want to add to some of those remarks because I have had the benefit of the debate contributions by other committee members. Their contributions open up the need to ensure that the record is kept straight on this inquiry.

The government members on the inquiry told the rest of us that we would see their minority report in time for us to digest it, so that all of us would come into this chamber without any unfair surprise and be able to debate the issues based on a full knowledge of each other's case. Unfortunately, the rest of the committee did not see the government members' report until after the report was printed. You may recall, Mr President, that I raised a point of order about some unparliamentary language in the report that, if it were ruled unparliamentary, would have been given parliamentary privilege—and I still think that is a matter for the Senate. If language is included in a report that other senators have not seen but which is objectionable in parliamentary terms, there ought to be a device to prevent that language from being given privilege and thus being able to

be broadcast, because it reflects unfairly and improperly on senators under the standing orders. But I do not wish to labour that point; that is not the main one.

The main argument that the government senators made is, in my view—and I expressed this forthrightly in my remarks earlier—long on the criticism or abuse of senators and long on political rhetoric. One would even say it is windy. But it is very thin, in fact wafer thin, on the evidence. The evidence purported to be adduced by government senators is best exemplified by the attachment to their report of documents that were put before the committee as exhibits. They purported to show what happened in all of the other SIEVs and purported to make the case that there was somehow a pattern of behaviour. In other words, the defence being promoted here was: 'Okay, you did not get us on SIEV4; you did not catch us that children were thrown overboard there; the evidence is conclusive that they weren't. But look at all of these other events where equal or worse things—they allege—'did occur. Isn't that justification for the misleading and outright lying by Minister Reith that went on within the election context?'

Of course, it is a classical fallacy to argue in that way, and I am sure someone with a classical education, such as Senator Brandis, would be fully aware of the fallacy of that argument. The truth is, too, that the document they have relied on is not evidence. I said that by way of interjection, and Senator Collins referred in her remarks to this document at some length as well, but it does to reiterate some of these points. The document they have published in the report as part of the evidentiary foundation upon which they rely is a document that was obtained at the request of the government through Admiral Smith. He had made a broad request to all naval officers on all naval vessels that had intercepted SIEVs at the relevant time to report anything in a series of categories he had set, which was designed at the request of the government to try and establish whether any 'improper behaviour' had occurred at all.

That document came forward. It was never fully tested in the inquiry, and I am sure the government senators will admit that

fact. But, to the extent that it was, there was a reference in it that a suspected asylum seeker was seen on the deck of a vessel attempting to strangle a child. That question was tested and, when it was put under scrutiny in the committee, it was admitted that that may not at all have been true, and that the more likely explanation was that a parent was trying to pacify a child by shaking them or by rubbing their shoulders, and containing a child who, in the face of a catastrophe at sea, was frightened of the imminent possibility of being in the water and at risk of their life. Any parent in a similar circumstance would have taken parental responsibility and would have done just what that parent did. For that now to be adduced as some sort of proof of a 'pattern of misbehaviour' is quite scandalous, and shows the depths to which the argument has sunk in trying to defend this whole imbroglio concerning asylum seekers in Australia.

The other point I want to make, which is quite extraordinary in my experience—which regrettably next March will be 20 years in this place—is that, for the first time—

**Senator McGauran**—Why regret it?

**Senator COOK**—Because it is a hell of a long time, Senator, and it just seems like yesterday that I arrived.

**Senator Boswell**—You and I came in together.

**Senator COOK**—We did indeed, Senator. In all of that 20 years I have sat on many Senate committees and I have never sat on a committee on which a senator has said, for example, as Senator Brandis did to the *Canberra Times* just recently, that he interpreted his task on that committee to be defence counsel for the government—he prided himself in it. I would have thought that from time to time senators do take on the roles of advocates for their party and that that is unexceptional, but I do not think any senator regards it as their sole role. In this place there is, if you like, a tradition that ought to be preserved that when we are on committees we try and do the work of the committees and conduct inquiries as senators dealing with the facts to try and arrive at a con-

clusion. We do not set out to argue against the facts on the basis—self-admitted in this case by Senator Brandis—that they are defence counsel. He was not, and he should not have conducted himself in such a manner.

The other point I want to make is about the forgotten people in this whole affair, the asylum seekers themselves. I always think it is odd that in Australia when we talk about asylum seekers we are talking about people fleeing persecution in Afghanistan, in Iraq, in Iran and in some cases in parts of Pakistan and that somehow we regard those people as questionable individuals because they seek safe haven in a stable democracy like Australia. I do not know of too many Australians who, if they lived under the dictates of the reprehensible regimes in those countries, would want to remain in those countries and not leave. I certainly admit there is a big question about how you gain access to Australia, but the motives of trying to escape persecution and tyranny are motives that all Australians can identify with and empathise with. It is partly the reason why we are now talking about military action in that part of the world and why Australian military personnel have already conducted military action in Afghanistan. These were the people trying to make it across the Timor Sea in boats. Whatever view you take, you have to say that what they were escaping from was reprehensible and deserving of our greatest condemnation. Even if you do not approve of them, at least their motives are understandable.

They are innocent of the charge that was made. People will remember that the Prime Minister in the election campaign said words to this effect: no Australian would like people that do these things coming to Australia. The truth is that they did not—they never did those things—and there is no evidence anywhere in this inquiry to suggest that they were other than caring and responsible parents. Somebody has got to say that these people have been defamed or misrepresented or subject to an electoral scam for political purposes in which their reputation is in tatters. They have not had an opportunity—because they are out of our jurisdiction and we cannot afford them protection—to speak for

themselves in this inquiry. I think it is a shame that that is not on the record, because they were there too and they were witnesses to these events. I conclude on the point that 14 different sources of information went to Minister Reith and 13 to Prime Minister Howard about this event that indicated that the—(*Time expired*)

#### **Foreign Affairs, Defence and Trade Committee Report**

**Senator PAYNE** (*New South Wales*) (7.48 p.m.)—I rise this evening to make some reference to a report—another report—which was also tabled this week, on this occasion by the Joint Standing Committee on Foreign Affairs, Defence and Trade on the visit to Australian forces deployed to the International Coalition Against Terrorism in July and August of this year. That visit included Kuwait, the Gulf, Kyrgyzstan, Afghanistan and Dubai. The report was tabled in the Senate by the chair of the joint committee and in fact the leader of the delegation, my colleague Senator Alan Ferguson. I want to thank Senator Ferguson particularly for noting at the time of the tabling that I was absent from the chamber because I was chairing a session of the Women and Policing Globally 2002 conference, that session being on peacekeeping, the timeliness of which in many ways was interesting.

Other speakers both in this chamber and in the other place have indicated that this visit was extraordinarily valuable to all members of the delegation to enable us to appreciate—and in some cases that appreciation was felt quite acutely—the extreme conditions in which our defence personnel are serving in the region. The committee is undertaking a range of activities as part of our watching brief, as it is described, on the war on terrorism. This visit was particularly important to that in terms of monitoring, considering and reporting on Australia's ongoing commitment to this effort. Its particular purposes were to give the committee a comprehensive understanding of the nature and effectiveness of our commitment, an understanding that then enables us to report that to the Australian community. This report, its tabling and members' responses to it in this place and in the other place are very

fundamental to that process, most particularly to demonstrate the parliament's bipartisan support for the Australian defence forces currently deployed in the area.

It is particularly important to acknowledge the extraordinary work of the Army, Navy and Air Force personnel deployed in the region. They work under very onerous physical and climatic conditions, never more so than at the height of summer when this visit took place. Australians, as we all know, are normally used to extremes of temperature, but temperatures in excess of 50 degrees Celsius in Kuwait and in the Gulf test even the hardest soul. Our soldiers and sailors in those two instances carry out their roles without complaint, notwithstanding those conditions.

This particular delegation gave senators and members a chance to see our troops on active deployment. It is an opportunity that is not often available to members and senators of this place, so I regard it as both an honour and a privilege to have participated. It is particularly not easily available in a key region such as this, such an enormous distance from our own nation, and particularly not at a time of such heated debate on Australia's role in any future involvement in the area. On a personal basis, I really feel that this is an opportunity that enabled me to see with much greater clarity the aspects of this debate. I have used this experience in discussions with the many experts, academics and defence personnel that one talks to on these issues.

As the report notes, and as I am sure my colleagues did not miss the opportunity to also note, the delegation travelled as our forces do: from Perth to Kuwait in an Ilyushin 76 Defence resupply aircraft, between Kuwait and Kyrgyzstan, Kyrgyzstan and Afghanistan and Afghanistan and Dubai on a Hercules C130 and on Seahawk helicopters. We also had the occasional very real-life experience of climbing ladders up and down the sides of the USS *Hopper* and the Australian frigates the *Melbourne* and the *Arunta*. The delegation made the effort to travel as our troops do, rather than choosing the alternative of first-class commercial flights—something for which parliamentarians are often derided—and I think those decisions were well received by the troops that we vis-

from the *Melbourne* to the *Arunta* by RHIB gave us another equally valuable experience on the *Arunta*, and I want to thank the captains on both of those ships.

In Kyrgyzstan we met relatively briefly with the RAAF 84 Wing Detachment—in fact, from Richmond RAAF Base in my own constituency—at Manus International Airport near Bishkek in Kyrgyzstan. Those valuable briefings that we had there on air operations were ones which I will certainly never forget. The support of the air operations from the RAAF 707s were absolutely extraordinary. I will not have time to finish my remarks this evening, so I will continue them on another occasion.

#### **A Certain Maritime Incident Committee Report**

**Senator JACINTA COLLINS (Victoria)** (7.58 p.m.)—It is a pleasure, in returning to the report of the Senate Select Committee on A Certain Maritime Incident, which was tabled earlier today, to follow Senator Payne with her references to the admirable behaviour of our Defence Force personnel. She has relayed her experience akin to the experience that I had in the previous year of our new parliamentary program on the HMAS *Adelaide*.

I want to return briefly to the additional comments that I added to our report, where I highlighted that one of the very clear findings of this report, one of the very clear things proven in this report, is the absolute integrity of our Defence Force personnel. The many sad reflections that have been made in a number of other areas can be dealt with another time. However, I want to extend the comments that I made on the culture that had been reported to me from some defence personnel which had been developed in the Department of the Prime Minister and Cabinet and focus tonight on just one small element of how that culture developed. Looking at the government's People Smuggling Task Force, which was headed by Ms Jane Halton, I would like to go to the findings that the committee made in relation to that task force. We found:

The Taskforce failed to observe certain key principles of best practice in the conduct of its operations, thereby exposing itself to inappropriate

levels of risk in the management of information. The Taskforce failed to establish at the outset a control structure appropriate to the nature of the activities upon which it was embarked. Overall, it lacked a clear governance framework defining accountability and reporting arrangements and the roles and responsibilities of the various participants. In particular:

Copies of advices to the government prepared by the Taskforce and other outcomes of Taskforce deliberations, were not distributed to the participating agencies that contributed to those deliberations, thereby denying agencies the opportunity to correct errors or to clarify misleading information.

The Taskforce's proceedings and decisions were not sufficiently well minuted, thereby preventing a reasonable record of the Taskforce's activities from being available to its many participants, and rendering the activities of the Taskforce largely inaccessible to subsequent scrutiny.

There was considerable variation in the manner of 'reporting back' by participants to their home agencies. In many instances it was insufficient to ensure a coherent engagement of the agencies with the Taskforce and inhibited the adequate 'hand over' of advice between the various representatives from the same agency who attended Taskforce meetings on different occasions.

Within the Taskforce and between the Taskforce and agencies and/or ministers, information flows were often poorly managed with inadequate attention being paid to risk mitigation and the detection and correction of errors in information.

The Committee is not questioning the integrity of the individual participants on the Taskforce, but finds substantial weaknesses in its basic administrative operations, including record keeping, risk management and reporting back.

Beyond that statement, tonight I would like to reflect on the management of the People Smuggling Task Force and of course its manager, Ms Jane Halton. Ms Halton was involved in a policy that was playing chicken with people's lives. One might question the full role of her behaviour in this, but it is clear from examples such as the one I highlight when I show excerpts from the log of the HMAS *Adelaide* that this is what in fact transpired.

I take the Senate again to the log references that are part of the additional comments that I made to the report. In respect of SIEV4, at 7.51 zulu time the boarding party

'request to move children and women off'. But at 10.09 zulu they are still on the ship, and we have the recommendation to 'put people in the water' on the double. At 10.36, the ship is 'contacting parliament on the crisis'. We have people in the water and we are contacting parliament on the crisis, according to this log. Finally, at 11.00 zulu—which is 51 minutes after these people were put in the water—HMAS *Adelaide*'s RHIBs were instructed to bring children on board the *Adelaide*.

How can it be that the discussions that were going through the task force and through PM&C in relation to how to manage these asylum seekers allowed people to be put in the water for 50 minutes? Compare that with Ms Halton's statements that she was concerned about women and the garb that they were wearing—I think she referred to it as the Hajib, although it is probably better described as the Burqua—and how they might survive in the water in such garb. People were in the water for 51 minutes.

If we go to SIEV10, we know two women died. We still do not know the full details about how or why they died, but we know that they died and they were in the water. Yet, if you look at this log reference from the HMAS *Adelaide*, you can see that the servicemen involved—the people who were in the boarding party—were saying at 7.51, almost three hours earlier, 'Take these women and children off.' And we need to know who stopped them. Who was playing chicken with these people's lives? A concern expressed by Ms Halton that she was concerned about women in this sort of garb being in the water beggars belief when you read things such as these logs and see what happened to people.

But that is not the only problem with Ms Halton's evidence. If you look at her evidence, you will see 53 occasions when she just cannot recall. There are another 10 occasions when she cannot remember. There is a strange element to her evidence. When she is explaining something that works in the favour of the position that she is trying to maintain for the government, her memory is crystal clear, but when she is being questioned on conflicting or damaging evidence

you observe memory loss, lack of recall, fidgetiness and like behaviour.

If we look today at what the reward has been for what I would describe as a very convenient memory, Ms Halton has been well rewarded. She is now the secretary of one of the biggest Commonwealth departments. But what I think is worse, and what I think has been a slap in the face for these asylum seekers whom she played chicken with to some degree, is that she received the Public Service medal for policy reform on illegal immigration. I say tonight that she should hand that medal back! What this committee report states about the behaviour of the task force and the culture in PM&C indicates quite clearly that she has no right to claim that medal. She has been involved in some degree in playing chicken with people's lives and she should return that medal to the Australian public.

**Senate adjourned at 8.07 p.m.**

## **DOCUMENTS**

### **Tabling**

The following government documents were tabled:

- Aboriginal Hostels Limited—Report for the period 24 June 2001 to 23 June 2002.
- Administrative Appeals Tribunal—Report for 2001-02.
- Aged Care Standards and Accreditation Agency Limited—Report for 2001-02.
- Albury-Wodonga Development Corporation—Report for 2001-02.
- Australian Broadcasting Authority—Report for 2001-02.
- Australian Broadcasting Corporation (ABC)—Report for 2001-02.
- Australian Communications Authority—Report for 2001-02.
- Australian Competition and Consumer Commission—Report for 2001-02.
- Australian Hearing Service (Australian Hearing)—Report for 2001-02.
- Australian Institute of Criminology and Criminology Research Council—Reports for 2001-02.
- Australian Institute of Family Studies—Report for 2001-02.