

appropriate and reasonable to do so and that they indicate in writing the grounds for having such an opinion.

Agree.

The Bill will be amended to expressly provide that before an Examiner exercise coercive powers under section 28 (Summons to attend) or section 29 (Notices to produce) the examiner must decide that the exercise of the power is reasonable in all the circumstances. It is also agreed to insert provisions requiring the Examiner to indicate in writing the grounds for making the decision.

Recommendation 15

The Committee recommends that the Bill be amended to provide for a comprehensive public review of the ACC Act to take place after three years have elapsed from the date of Commencement of the ACC Act.

Agree.

The Bill will be amended to provide that there is to be a review of the operation of the ACC as soon as practicable after 1 January 2006.

Additional recommendations by certain members

Additional Recommendations 1 to 3.

1. The Board should be responsible for general references.

2. In circumstances of urgency the Board should be entitled to issue a reference authorising the use of coercive powers but such a reference would lapse after 45 days unless ratified by the Inter-Governmental Committee within that period.

3. In non-urgent circumstances the Inter-Governmental Committee would be required to approve any reference authorising the ACC to use coercive powers.

These recommendations arose out of certain members concerns that the power to authorise the use of coercive powers should not reside with the proposed Board of the ACC but should remain with the Inter Governmental Committee. However, this change was unanimously agreed to by all governments of Australia, Federal, State and Territory and was only taken after serious consideration and debate. It is fundamental to the agreements reached by Leaders at the Summit and by police and justice ministers in August and it is the type of decision that it is appropriate for governments to make. It is not proposed to agree to those recommendations.

DOCUMENTS

Tabling

The ACTING DEPUTY PRESIDENT (Senator Lightfoot) (4.04 p.m.)—On behalf of the President, I table the documents listed at item 16(a) on today's *Order of Business*.

Supplement to the 10th edition of Odgers' Australian Senate Practice—Updates to 31 December 2002

Business of the Senate: 1 January to 31 December 2002

Work of Committees: 1 January to 31 December 2002

Questions on Notice summary: 12 February to 31 December 2002

Supplement to the register of Senate committee reports: 1 January to 31 December 2002

Responses to resolutions of the Senate:

Response from the Manager of the NSW Health Department, Tobacco and Health Branch (Dr Sanders) to a resolution of the Senate of 2 December 2002 concerning tobacco control

Response from the Deputy Chief Minister of the ACT (Ted Quinlan, MLA) to a resolution of the Senate of 9 December 2002 concerning photovoltaic energy

Response from the Acting Parliamentary Secretary to the Prime Minister (the Hon Peter Slipper) to a resolution of the Senate of 10 December 2002 concerning findings of the report of the Select Committee on a Certain Maritime Incident

Senator McGAURAN (Victoria) (4.05 p.m.)—I move:

That the *Business of the Senate* and *Work of Committees* for the year 2002 be printed.

Question agreed to.

Senator COOK (Western Australia) (4.05 p.m.)—I understand that among those documents that have just been tabled are the responses to resolutions of the Senate. If I am correct in that understanding, I would like to seek leave to respond to the response by the Acting Parliamentary Secretary to the Prime Minister.

Leave granted.

Senator COOK—I note that the Acting Parliamentary Secretary to the Prime Minister, the Hon. Peter Slipper, has written to honourable senators, through the agency of

Senator Hogg—I assume as Deputy President of the Senate—advising them that the Prime Minister has asked his department to coordinate, within his department and other cabinet officers, a response to the resolution of the Senate carried last year following Senator Faulkner's motion concerning the findings of A Certain Maritime Incident Select Committee.

By way of introductory comment, the resolution that the Senate carried last year went specifically to the findings of the Select Committee on A Certain Maritime Incident and called on the Commonwealth government to implement immediately the recommendations contained in that report. Without reading the resolution, it made a number of quite important—I do not diminish their significance—observations, as well, but then turned to the serious concern of apparent inconsistencies. I will be quoting from the resolution of the Senate provided to the committee and to the estimates committee by Commonwealth agencies in relation to the people-smuggling disruption program and in relation to suspected illegal entry vessels—SIEVs—including the boat known as SIEVX.

I thank the parliamentary secretary for saying that there is now in process, under the Prime Minister's guidance, a response to this resolution of the Senate. That is quite important. I remind the Senate that the Select Committee into A Certain Maritime Incident reported in October last year. In tabling that report, I, as the chairman, drew the Senate's attention to the fact that we were not able to complete the remit that the Senate had handed us, because the Prime Minister had made himself and other ministers unavailable to give evidence to the committee, and the federal cabinet had decided to instruct all public servants on ministerial staff, and ministerial staffers, not to be available to give evidence either. As a consequence, our ability to probe this issue to its logical conclusion was inhibited significantly and the findings we returned were findings on the evidence available to us and not on all of the evidence that could have been available had that embargo not been applied.

I say that by way of introduction. The fact that the Prime Minister is now proceeding to coordinate a response to the Senate resolution is significant. One hopes that, in doing so, some of the evidence that the committee might have sought directly from him, his ministers, ministerial staff, public servants working in ministerial offices, and others, will now be included and the Senate will be able to be informed in full detail, albeit without being able to probe and examine the evidence, of the full views of those persons.

There is another issue that needs to be mentioned here, which is profoundly important and probably overshadows my previous remarks. There have become available to me, in my capacity—although it no longer exists; it is my former capacity—as Chairman of the Senate Select Committee on A Certain Maritime Incident, answers to questions that were sought by honourable senators in those proceedings. This information has just become available. I received in the mail just recently a document dated 4 February, which came to me by virtue of the Senate Committee on Finance and Public Administration. The covering letter says it was an answer to a question posed by Senator Faulkner in supplementary estimates on 20 November:

... to follow up an earlier QON from the Inquiry into a Certain Maritime Incident ...

In other words, this question was asked in the certain maritime incident inquiry and no answer was received. It was asked again by Senator Faulkner in the estimates. On 4 February, some four months after the certain maritime incident inquiry reported, the document sought by Senator Faulkner, as a member of that inquiry, has now been made available. That raises questions about why it has taken so long, but I simply note the time gap at this juncture. The answer was in relation to this question by Senator Faulkner. This document says that he asked:

... 1 outstanding issue from the Select Committee on a Certain Maritime Incident relates to a DFAT cable on SIEVX. Can a copy of the cable be provided to the committee?

The answer is:

... the declassified DFAT cable is attached.

The declassified DFAT cable has now been provided to us. The date on this DFAT cable,

which is quite significant, is 23 October 2001. I refer to that date because the certain maritime incident inquiry occurred over the major part of last year. In other words, this DFAT cable had been circulated in October of the year before, and some six or so months before the certain maritime incident inquiry convened to probe the issues that this cable has as its subject matter.

The next significant thing about this cable that I wish to draw the Senate's attention to is the distribution list of this cable. This is a DFAT cable, but the distribution list is quite extensive. For action, it went to Dr Calvert at DFAT, to Dr Hawke, the secretary of Defence, to Admiral Barrie, the commander of the defence forces, to Mr Farmer at DIMIA, and to Mr Max Moore-Wilton in the Department of the Prime Minister and Cabinet. It also went to the Prime Minister and all the relevant ministers, including the Minister for Foreign Affairs and the minister for immigration. It also went to the Commissioner of the Australian Federal Police, Mr Mick Keelty. There is quite an extensive distribution list for this cable.

What I think is more important than all of that is what this cable says, because we may now be in a situation in which this cable, which was before all of those officers who appeared before our inquiry before they fronted to give evidence—and they gave evidence to our inquiry after swearing an oath before the inquiry to tell the truth, the whole truth and nothing else but the truth—reveals information which is not entirely consistent with the evidence that was given by some public servants and with the evidence that was adduced by the inquiry. Specifically, the point of concern was: where was SIEVX when it sank? The Prime Minister said that SIEVX was in Indonesian territorial waters. The evidence by some, and I suspect by all—but until I can exhaustively pursue it I cannot make that statement categorically—is that SIEVX is believed to have been sunk in Indonesian territorial waters.

This declassified cable, dated October the year before that evidence was adduced by us, says, in the start of the summary:

THE SIEV—

referring to SIEVX—

IS BELIEVED TO HAVE FOUNDERED IN ROUGH SEAS TO THE SOUTH OF SUNDA ST WITHIN THE INDONESIAN MARITIME SEARCH AND RESCUE AREA OF RESPONSIBILITY.

That is not Indonesian territorial waters. Indonesian territorial waters are close to the borders of Indonesia. The Indonesian maritime search and rescue area of responsibility extends deep into the Timor Sea and abuts Australia. It covers what would, in layman's terms, be called international waters. A key issue in our inquiry was to try and establish what Australia knew about where SIEVX went down. The consistent refrain to that question was, 'In Indonesian territorial waters'. We now know that it went down in international waters. This is a significant piece information because it goes to whether Australian search and rescue capability could have intruded into the area concerned to rescue people who were on that ill-fated ship. I remind the Senate that some 353 men, women and children drowned as result of this vessel sinking. Obviously, we are not competent to intrude into Indonesian territorial waters, but, obviously, given the deployment of vessels for border protection purposes, we are competent to rescue people from the ocean and are bound to rescue people from the ocean in international waters under the protocols of the International Convention for the Safety of Life at Sea. (*Time expired*)

SCIENCE: FUNDING

Return to Order

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.17 p.m.)—by leave—I wish to make a short statement in response to a Senate order to produce documents, moved by Senator Brown, about the Chief Scientist. I am advised that, in relation to items (a)(i) and (ii), neither the Chief Scientist nor his office has provided any direct advice to the government regarding funding or allocation of money or benefits to the Rio Tinto Foundation for a Sustainable Minerals Industry, nor with respect to any other Commonwealth funding to Rio Tinto. Attached are letters from the Chief Scientist to me and to the Minister for Industry, Tourism and Resources, the Hon.