Chapter 1

Ministerial discretion – background issues and problems experienced during the inquiry

1.1 This inquiry into ministerial discretion in migration matters was established following allegations raised in parliament in May and June 2003 about the use of the discretionary powers by the then Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Philip Ruddock, stretching back to 1998.

1.2 During the course of parliamentary debates surrounding the allegations the then Shadow Minister for Immigration, Ms Julia Gillard MP, and Mr Laurie Ferguson MP, raised a number of specific allegations about the possible misuse by Mr Ruddock of his ministerial discretion powers under the Migration Act. The accusations related to instances where the minister was alleged to have granted visas to individuals in exchange for cash donations to the Liberal Party of up to $100,000 by the individuals concerned or by those acting on their behalf.[1]

1.3 The allegations were fuelled in part by media speculation that the immigration minister's strong connection with Australia's Lebanese community influenced his use of the discretionary powers on more than one occasion.[2] At the time the allegations were debated in parliament, they received an air of authenticity in the print media under two eye-catching headlines which soon became catch-all phrases to describe an unfolding political controversy for the Howard Government – the 'cash-for-visa' scandal and 'visagate'.[3]

1.4 This chapter provides a brief overview of allegations raised in parliament against the former Minister for Immigration, Mr Ruddock. The Committee believes that grasping the nature and gravity of the allegations is important because they gave rise to a range of issues relating to the minister's discretionary powers which, in turn, guided the Committee's efforts to investigate the allegations.

1.5 The chapter briefly considers the parliamentary debates on the allegations, in particular the censure motions moved against the immigration minister and the

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1 Allegations of visas being issued in exchange for cash donations to the Liberal Party were first raised in the House of Representatives by Mr Laurie Ferguson MP on 28 May 2003, *House Hansard*, p.15199

2 Andrew Clennell, 'Merciful Ruddock gives more rejected migrants a lifeline', *Sydney Morning Herald*, 31 January 2001 and Andrew Clennell, 'Outrage as Ruddock opens door to Lebanese outcasts', *Sydney Morning Herald*, 2 April 2001

3 See, for example, Mark Riley, 'Ruddock's cash-for-visa quagmire deepens', *Sydney Morning Herald*, 18 June 2003 and 'Visagate raffle ripples widen', editorial, *Australian*, 8 July 2003

government. It concludes by examining obstacles to the conduct of this inquiry created in the first instance by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and subsequently by the new minister, Senator Vanstone, and the wider implications of executive obstruction for parliamentary accountability.

Allegations of impropriety raised by the Opposition

1.6 Four separate cases involving alleged impropriety by the former immigration minister, Mr Ruddock, were raised by the Opposition and debated in the House of Representatives between 29 May and 26 June 2003.[4] The Opposition gradually pieced together details involving each case over a number of weeks, mainly in response to answers provided in the House by Mr Ruddock. The core allegations involved in each of the four cases are summarised below:

- Mr Bedweny Hbeiche applied for a protection visa in 1996 when he first arrived in Australia. His application was refused, and the matter was taken unsuccessfully to the Refugee Review Tribunal (RRT) and the Federal Court. Following two separate requests for the minister to exercise his discretion, which he declined, a third request by Bishop Darwish on 27 September 2001 was dealt with by the minister in January 2001. The minister stated that he dealt with this request because new information was supplied to him, namely, that Mr Hbeiche has three married sisters who are Australian citizens, and that it was this information that influenced his decision to intervene in the case.

  The Opposition alleged that Mr Hbeiche was granted permanent residence as a result of the minister's intervention after a $3,000 donation was made to the Liberal Party at a fund-raising dinner by Mr Karim Kisrwani acting on Mr Hbeiche's behalf. It was also alleged that Mr Hbeiche's original application mentioned that he had three sisters in Australia, whereas the minister claimed that the brief that came from DIMIA did not contain this information.

- Mr Karim Kisrwani is a Parramatta travel agent, a prominent member of the Lebanese community and long-time acquaintance of Mr Ruddock. Immigration department statistics show that between 1999-2003 Mr Kisrwani made 55 requests for the minister to exercise his discretion, of which 36 were finalised and 17 were successful.

  The Opposition raised a number of allegations about Mr Kisrwani, including that he was the central figure in the 'cash-for-visas' scandal, and that he received money for migration advice although he was not a registered migration agent. Specifically, the Opposition alleged that Mr Kisrwani:

4 The allegations were raised over the period 28-29 May, 2-5 June, 16-19 June, and 24-26 June

- made a donation of $3,000 to the minister's re-election campaign on Mr Hbeiche's behalf to influence the minister's decision;
- received $220,000 from Mr Dante Tan to use his influence with the minister to have his visa restored (see below);
- received $1,500 from Mr Roumanos Boutros Al Draibi to represent him in a migration matter; and
- received $2,000 a month from Mr Jim Foo's failed Pioneer Spirit Developments in Dubbo for an 'immigration consultancy'.

- The Opposition questioned the minister on a number of occasions about a donation of $100,000 that was made by the Maha Buddhist Monastery to the NSW Liberal Party and the number of visas for religious workers received by the monastery. The minister responded that he only became aware of the donation when it was reported in the media in February 2002, and that 23 nominations and 10 visas for religious workers were awarded to the monastery in the three years from 2000-01.

- Mr Dante Tan, a business migrant from the Philippines who was granted a visa on 11 September 1998, had his visa cancelled on 5 September 2001, when he could not be contacted following expiration of the three-year period that applies to all business migrants. In November of that year, one of Mr Tan's business associates, Mr Kisrwani, contacted the minister's office to inquire about the status of Mr Tan's visa. After Mr Tan lodged an appeal to the Administrative Appeals Tribunal (AAT), the immigration department withdrew from the case after consulting with the minister on the question of costs.[5] More importantly, the department vacated the decision to cancel Mr Tan's visa after he convinced the department (and the Australian Securities and Investment Commission) that he was engaged in business activities in Australia. Mr Tan subsequently became an Australian citizen in May 2002.

  The Opposition alleged that Mr Tan's visa was reinstated after he made a $10,000 donation to the minister's re-election campaign at a fund-raising dinner organised by Mr Kisrwani, probably on 14 October 2001. Of added interest to this case is that the Philippine authorities laid charges of fraud against Mr Tan in 2000. When Mr Tan was informed that the Philippine authorities were seeking his extradition, he left Australia in 2003.

1.7 The Committee points out that unlike the cases involving Mr Hbeiche and Mr Kisrwani, those involving the Maha Buddhist Monastery and Mr Dante Tan did *not* involve Mr Ruddock exercising his ministerial discretion. It became clear during

5 *House Hansard*, 3 June 2003, p.15756

parliamentary debate that ministerial intervention had not been exercised in the granting of visas to the monastery, and that ministerial intervention could not have been considered for Mr Tan under the Migration Act because there had not been a review tribunal decision in that case.

1.8 While the Maha Buddhist Monastery and Tan cases do not fall directly within this inquiry's terms of reference, the Committee notes that they nevertheless raise serious allegations of impropriety by Mr Ruddock similar to the allegations surrounding cases involving Mr Hbeiche and Mr Kisrwani.

Outcome of parliamentary debate

1.9 The parliamentary debate that followed airing of the 'cash-for-visa' allegations resulted in two censure motions being moved by the Shadow Minister for Immigration, Ms Julia Gillard, against Mr Ruddock on 5 June and 26 June, respectively. Not surprisingly, both motions were defeated on party lines. A third attempt by the Opposition to move a censure motion against Mr Ruddock on 18 June was prevented when the Deputy Speaker ruled the motion out of order (the motion was not consistent with a special ruling on government business that had been made for that sitting day).[6]

1.10 On both occasions the minister rejected the allegations made against him, and brushed aside the censure motions as nothing more than planned and premeditated political stunts. He claimed that the motive behind the first censure motion was 'quite malevolent', and that it was 'a deliberate attempt to diminish me'.[7] On other occasions, the minister stated categorically that: 'I have never exercised my personal discretion in return for a donation'.[8]

1.11 The parliamentary debate surrounding the allegations reiterated long-standing criticisms of the discretionary powers. These included that the powers are open to real or perceived distortion, political influence and corruption at the highest levels of public office because they are too broad in scope and far removed from the established avenues of accountability that apply across all levels of executive decision-making.[9]

1.12 In short, because the minister's discretionary powers are non-compellable, non-reviewable and non-delegable – an issue examined in detail in this report – they are effectively beyond the reach of parliamentary scrutiny and leave a significant accountability 'black hole' in the administration of immigration policy.

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6 *House Hansard*, 18 June 2003, p.16810

7 *House Hansard*, 5 June 2003, p.16281

8 *House Hansard*, 29 May 2003, p.15465

9 *House Hansard*, 29 May 2003, p.15475

1.13 In the light of the unsatisfactory responses to the allegations by Mr Ruddock, the Opposition parties decided that the allegations and the government's response were serious enough for the issue of the minister's discretionary powers to be brought before a parliamentary committee of inquiry.[10]

1.14 The Select Committee on Ministerial Discretion in Migration Matters was subsequently appointed by the Senate on 19 June 2003. Although the allegations raised in parliament in 2003 provided a focus for the inquiry, the Committee was empowered under its terms of reference to examine broader issues, such as the appropriateness of the ministerial discretion powers under sections 351 and 417 of the Migration Act within the current migration system. The Committee was also empowered to consider the operation of the discretionary powers by immigration ministers, including the criteria that applied (and should apply) to the exercise of the powers.

1.15 The Committee decided during the inquiry process that it would seek access to case files, information and documents held by the immigration department and documents kept by departmental liaison officers in the immigration minister's Parliament House office. The Committee formed the view that having access to the case files and documents was necessary to enable it to properly examine allegations involving Mr Ruddock's use of the discretionary powers, and to address in full the inquiry's terms of reference.

1.16 The following section describes how during the course of its inquiry the Committee met a number of obstacles that prevented the inquiry moving forward. Specifically, in a period of nearly five months, from mid-September 2003 to March 2004, the Committee was impeded on a number of occasions in its efforts to gain access to certain documents it considered important to its inquiry.

Obstacles to the conduct of the inquiry

1.17 The Committee's efforts to test the allegations outlined above were hampered by the lack of cooperation received from both DIMIA and Senator Vanstone, as the new immigration minister. The Committee made numerous requests for information that might shed light on specific cases where allegations had been aired in parliament and the media. At various stages of the inquiry, Committee members requested, *inter alia*: case files and details of cases where Mr Karim Kisrwani had made representations on behalf of an applicant; details of cases where Mr Ruddock used the intervention powers in a case initially assessed by DIMIA officers as falling outside the ministerial guidelines; cases decided by Mr Ruddock during his last week in office; case files where the 'top ten' sponsors had made representations; and the case history of certain individuals who had received ministerial intervention and who became the subject of media interest, including Mr Bedweny Hbeiche. The Committee was also interested in

10 Meaghan Shaw and Russell Skelton, 'Ruddock may face inquiry on intervention', *Age*, 7 June 2003

how Senator Vanstone used the power after she became minister, and sought information about the well-publicised case of Mr Ibrahim Sammaki.

1.18 The Committee also requested the notebooks kept by a departmental liaison officer (DLO) serving in Mr Ruddock's office during the period in question. The departmental liaison officer told the Committee that he kept notebooks to keep track of the content and any outcome of phone calls,[11] some of which could be relevant to ministerial intervention cases of interest to the Committee.[12]

1.19 All of the Committee's requests for detailed case file information were met with resistance, initially from DIMIA and ultimately from Senator Vanstone. Their responses to these requests are summarised below:

- At a public hearing on 23 September 2003, the Committee asked DIMIA to provide case files where Mr Kisrwani and Ms Marion Le had made representations. On 31 October 2003, DIMIA wrote to the Committee advising that the request raised significant workload implications for the department, in that it would take an estimated 120 person days to prepare the files for the Committee's perusal. The letter also indicated that the department had broader concerns about the provision of files, as the files 'relate to individuals who are not themselves the subject of the inquiry' and the persons concerned were assured that their personal details would not be disclosed by the department except for certain purposes.

- In correspondence dated 29 October 2003, the Committee asked DIMIA to provide information about 17 cases in respect of which Mr Kisrwani had made representations. DIMIA evidently commenced work on compiling this information, as at a public hearing on 17 November 2003 Ms Philippa Godwin, a deputy secretary in DIMIA, informed the Committee that the department was on the point of providing it.[13] On 18 November Ms Godwin again stated that she had reviewed a significant portion of the work, and that answers should be provided by the next week.[14] These answers never eventuated, due to events outlined below.

- At the public hearing on 18 November 2003, the issue of DIMIA providing information about individual cases was discussed at some length.[15] DIMIA

11 Mr Knobel, DIMIA, *Committee Hansard*, 5 September 2003, p.72

12 A summary of case file related information requested by the Committee and related correspondence is at Appendix 4

13 Ms Godwin, DIMIA, *Committee Hansard*, 17 November 2003, p.3

14 Ms Godwin, DIMIA, *Committee Hansard*, 18 November 2003, p.60

15 *Committee Hansard,* 18 November 2003, pp.59-70

witnesses indicated that the Committee's requests for information involved some 250 individual cases, and that to provide the information requested by the Committee would require around 250 person days. In light of the workload and timing considerations, the Committee agreed to prioritise its information requests, and suggested holding a private meeting with DIMIA officials to work though some of those issues.

- On 27 November 2003, the Committee Chair and Deputy Chair met with DIMIA officials to discuss the provision of case file related information. At that meeting, the Committee endeavoured to reduce the workload implications for the department by scaling back the information requests.

- In correspondence dated 12 December 2003, DIMIA indicated that, despite refinement of the information requested, there remained some 130 cases about which further information was requested, which would still require a substantial amount of work. DIMIA also noted that the nature of the information requested raised privacy concerns, and could 'have implications going well beyond this inquiry'. DIMIA advised that: 'We have therefore consulted with the Minister's office. In view of the considerable workload implications and unprecedented nature of the request, the Minister, Senator Vanstone has not authorised the Department to provide such a broad ranging and significant amount of personal material'. This letter did not mention the 17 Kisrwani cases on which, as outlined above, most of the work had already been done.

- On 14 January 2004 DIMIA notified the Committee that it had received advice from its Special Counsel (Australian Government Solicitor) that in order to provide detailed information on Mr Hbeiche and Mr Sammaki as requested by the Committee, it would need to seek their permission. This letter stated that DIMIA was in the process of contacting those two individuals and it would forward the information once permission was received. On 10 March 2004 DIMIA advised that it had written to Mr Hbeiche and Mr Sammaki on 16 January but had not received a response from either.

- The Committee's request to view the notebooks kept by DLOs serving in the minister's office was referred to the minister, and was eventually refused by Senator Vanstone in a letter dated 23 January 2004. Senator Vanstone's letter expressed concern at the 'broad' and 'unprecedented' nature of the request. Her stated grounds for withholding the notebooks were, broadly speaking: the notebooks contain records of phone calls from a range of people on topics across the whole portfolio, only some of which related to ministerial intervention; without contextual information, the notebooks could give misleading impressions to the Committee; it would be inappropriate to pass to the Committee information related to people whose affairs are outside the scope of the inquiry, and; even in matters that may touch on ministerial intervention, normal privacy principles would

require the approval of specific individuals before passing on information about them.

- On 11 February 2004, the Committee Chair wrote directly to Senator Vanstone, noting the Committee's power, delegated by the Senate, to order the production of any documents it deems relevant to its inquiry, and pointing out that the Senate and its committees are not bound by privacy legislation or privacy principles. This letter requested that Senator Vanstone meet the Committee's outstanding information requests by 19 March 2004.

- On 2 March 2004 Senator Vanstone replied to the Committee Chair refusing to provide the information requested. Her letter stated that: '…I am not intent on refusing to provide the Committee with information, but I do not believe that it is appropriate to provide it in the way that it has been sought'. Notwithstanding the Chair's explanation of the Senate's powers to require the production of documents and to request any information it considers relevant to its inquiries, Senator Vanstone reiterated her concern about the Committee seeking 'a broad ranging and significant amount of personal information in relation to individuals who are not themselves the subject of [this] inquiry'.

1.20 Without access to case files, documents and other contextual information on specific cases where Mr Ruddock used the intervention powers, the Committee has been unable to resolve the suspicion and doubt that has arisen following the airing of allegations last year. This has led to a situation where the Committee has been unable to fully address one of the inquiry's key terms of reference on the operation of the discretionary powers by ministers and the criteria that applied when ministers exercised their discretion (term of reference (c)). The Committee can only conclude that the present minister's unwillingness to provide the detailed information necessary to conduct a full and thorough investigation of relevant cases suggests a reluctance to expose the decision making process to close scrutiny.

1.21 Through the course of this inquiry, the Committee has discovered investigations by the Australian Federal Police and Australian Electoral Commission into matters which may be relevant to the subject of the inquiry. However, operational constraints have prevented the Committee from obtaining further details about the nature of those investigations and what, if any, relevant information is held by those organisations. The Committee accepts the reasons given by the AFP and AEC for not disclosing information pertinent to current investigations. The Committee has not been advised of the results of these investigations and is therefore unable to determine whether they would have had any bearing on the findings of this inquiry.

1.22 The Committee was unsuccessful in efforts to obtain direct comment from Senator Vanstone on her views on the ministerial discretion powers. On 27 October 2003, the Chair wrote to Senator Vanstone inviting her to express her views on the use and operation of the ministerial discretion powers for the record. Senator Vanstone did

not respond until shortly before this report was due to be printed, when she said a response was 'overlooked' last year and expressed the view that 'it was not appropriate' for her to comment on the issues before this inquiry.

1.23 Despite these constraints, this inquiry has put on the public record a substantial volume of information about an area of public administration not generally known for its transparency and accountability. The information provided by DIMIA, while limited in its usefulness for examining specific uses of the intervention powers subject to the allegations outlined above, has partially enabled the Committee to address its terms of reference in a general way.

1.24 The Committee's examination of the evidence available to it from the department and non-government witnesses suggests that a systematic investigation of the operation of the ministerial discretion powers under the Migration Act is indeed warranted. The *Migration Act 1958* vests the minister for immigration with an extraordinarily free discretion to intervene on behalf of unsuccessful visa applicants where the minister considers it 'in the public interest' to do so. However, the minister's exercise of this discretion is subject to no external review. The only accountability mechanism is the requirement to table statements in parliament every six months. Under the Howard Government, the statements have outlined in the broadest terms cases where the minister has intervened.

1.25 A key area of concern for the Committee through the course of this inquiry has been to assess whether the systems currently in place are adequate to ensure that the operation of this unusual power is transparent and open to scrutiny. One area of interest is the department's processes for supporting the operation of the ministerial intervention powers. The Committee noted with some concern that DIMIA officials did not view the department's role as including any 'decision making', despite clear evidence that ministerial intervention requests are vetted by departmental officials in the first instance to determine whether the minister would be briefed in any detail on that case. Furthermore, the Committee has found that departmental processes surrounding the ministerial intervention powers do not involve generating adequate records or statistical data to enable effective external scrutiny of the way the powers are operating. The Committee has also heard of aspects of the administration of the powers that appear to create hardship for individual visa applicants.

1.26 The Committee has heard significant concerns from non-government stakeholders that a lack of authoritative, publicly available information on the operation of the powers leads to a perception in the community that it is not 'what you know but who you know' that will determine whether a ministerial intervention request is successful. Through this inquiry, the Committee has sought to ascertain whether this perception is justified, by looking at the available information on the role of representatives, be they lawyers, community leaders or parliamentarians, in accessing the minister to support cases seeking ministerial intervention. The lack of conclusive evidence in this area has led the Committee to the view that the current structure of the system invites the perception of corruption, and opens the way for unscrupulous behaviour at all levels.

1.27 The most concerning aspect of the inquiry has been the lack of information the Committee has been able to access about the decision making process once a case reaches the minister's office. The Committee's difficulty obtaining evidence to investigate serious allegations relating to the use of these powers highlights how easy it would be for a minister to use them for party political ends. The intention of parliament when these powers were inserted in the Act was that parliament would be able to scrutinise a minister's use of the powers. If, however, as has been seen through this inquiry, a parliamentary committee charged with investigating the use of these powers can be frustrated by a lack of cooperation by the government, the ability of parliament to scrutinise the operation of the powers is impaired.

Powers of Senate committees: ministers, officials and departments

1.28 Parliamentary accountability is the cornerstone of modern democracy. The Committee notes the assessment made in the report of the 'children overboard' inquiry that, within the context of the public service:

> …there is a continuum of accountability relationships, both vertical and horizontal, between the public service, the government, the parliament and Australia's citizens. Nevertheless, there are some fundamental tenets and practices of accountability that are well established in public administration, even though these received notions of accountability are increasingly being stretched.[16]

1.29 Against this background, the Committee would like to stress that the difficulty it has had in gaining access to material central to its inquiry and in obtaining full and accurate information in a timely way, is an issue of overriding importance. As discussed in the previous section, the Committee was unable to obtain access to all the documents relevant to its inquiry for reasons provided by the department that the Committee does not accept. Much like the experience of the 'children overboard' inquiry, the Committee is of the view that actions taken by Senator Vanstone and her department during this inquiry do not promote transparency, accountability and good governance.[17]

1.30 The Committee is left in no doubt that it was obstructed in carrying out the full task requested of it by the Senate, as provided in the inquiry's terms of reference. The obstacles to the conduct of this inquiry created by Senator Vanstone and her department raise a number of broader issues relating to parliamentary accountability, the powers of Senate committees and the ability of Senate committees to fulfil their reporting obligations to parliament.

1.31 While the Committee does not wish to dwell on the complex issue of accountability in modern governance arrangements, it believes it is necessary to

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16 Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.149

17 Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.193

summarise at the outset four established tenets of parliamentary accountability that underpin the operation of Senate committees:

- Senate committees empowered by the Senate have a clear authority to require the attendance of witnesses, the answering of questions, and the production of any document relevant to their inquiries;
- The power to call for persons and documents is a necessary adjunct of the Senate's authority to conduct inquiries. The undoubted source of this authority is section 49 of the Constitution.[18] There are no known limitations in law to this power. The power is delegated to the Senate's committees in the operating rules of the Senate known as *Standing Orders and other Orders of the Senate*;
- While a minister may offer reasons for the non-attendance of persons at a public hearing or the non-production of documents – for example, commercial-in-confidence, public interest, or privacy – it is the committee in the first instance, and ultimately the Senate, that determines whether or not to accept the reasons; and
- The Senate and its committees are not bound by privacy legislation or privacy principles, but may choose to respect them in practice.[19]

1.32 The Committee notes that other Senate committees have had similar experiences of ministers, departments and agencies failing to provide documents, and invariably it has been commercial-in-confidence, public interest and, in the case of this inquiry, privacy issues that were provided by the minister as reasons for not complying with committee requests. It is no wonder that the consideration of accountability, especially the accountability of the executive as a whole, featured prominently in their published reports.[20]

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18 Section 49 states: 'The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth'.

19 For an authoritative discussion of the powers of Senate committees, see Harry Evans (ed.) *Odgers' Australian Senate Practice*, 10th edn, Department of the Senate, 2001, Chapter 16 'Committees', Chapter 17 'Witnesses', and Chapter 19 'Relations with the Executive Government'

20 Most notably, two interim reports of the Senate Finance and Public Administration Committee Inquiry into the Government's Information Technology Outsourcing Initiative, *Accountability in a Commercial Environment—Emerging Issues*, April 2001, *Accountability Issues: Two Case Studies*, June 2001; and the report of the Select Committee on a Certain Maritime Incident, October 2002, especially Chapter 7, 'Accountability'

1.33 The Committee takes the issue of executive obstruction of a Senate committee inquiry very seriously. In this context, the Committee's dealings with the immigration minister, Senator Vanstone, reinforce the main findings of the first interim report of the Senate Finance and Public Administration Reference Committee's inquiry into the government's information technology outsourcing initiative. That report highlighted:

- the apparent disregard or ignorance in the Australian Public Service about parliamentary accountability;
- the lack of timeliness and quality of answers in response to the Committee's request; and
- the continuing need to facilitate an improved awareness of the powers of Senate committees and the framework of accountability in which ministers are accountable to the parliament for the policies and actions of their departments and ultimately, through parliament, to the public.[21]

1.34 The Committee is aware that executive departments have been advised on numerous occasions by the Auditor-General, the Administrative Review Council and by Senate committees about the rules of parliamentary accountability and the powers of Senate committees to call for persons, papers and documents.[22] It is for this reason that the Committee regrets having to repeat the fundamental principles of parliamentary accountability and to remind the immigration minister and her department that they are bound by these clear accountability requirements.

1.35 The minister's disregard for the Committee's power to obtain the departmental case files and ministerial notebooks necessary to fully explore the minister's discretionary powers is a dominant theme that runs through this inquiry. As previously noted, the Committee acknowledges that internal departmental procedures may have been a legitimate factor behind some of the delays experienced by DIMIA in providing the Committee with information. The Committee nevertheless finds that the history of executive obstruction of Senate committees has been magnified during the course of this inquiry, given Minister Vanstone's unacceptable responses to the Committee's repeated requests for information.

1.36 In the light of this obstruction, the Committee decided that the best course of action was to report its findings and recommendations to the Senate and place on the public record information about the operation of the minister's discretionary power that is otherwise not available. The Committee formed the view that further requests

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21 Senate Finance and Public Administration Committee, *Accountability in a Commercial Environment—Emerging Issues*, April 2001, p.2

22 Australian National Audit Office, *The Use of Confidentiality Provisions in Commonwealth Contracts*, Audit Report No. 38 2000-01, May 2001; Administrative Review Council, *The Contracting Out of Government Services*, Report No. 42, 1998. See also the Senate committee reports listed in footnote 20

to the minister for case files and documents would most likely be refused, which would needlessly prolong the inquiry process. However, the evidence before the Committee was sufficient to enable it to formulate conclusions on the exercise and administration of the discretionary power. The Committee's conclusions are reflected in the recommendations to this report.

1.37 The Committee decided not to attempt to exercise its power to call for persons, documents and witnesses. It concluded that this course of action would have led to considerable and unacceptable delays in bringing the inquiry to a satisfactory conclusion and would probably have embroiled the Committee, and ultimately the Senate, in a protracted dispute with the government. In reaching this decision, the Committee was mindful of the view of the majority report of the 'children overboard' inquiry that a stand-off between a Senate committee and the executive over the powers of Senate committees could be challenged in the courts at considerable cost to taxpayers, causing further delays until the issue was settled.[23]

23 Select Committee on a Certain Maritime Incident, *Report*, October 2002, Chair's forward