

# **COALITION SENATORS' DISSENTING REPORT**

1.1 On 21 June 2012, the Senate jointly referred the provisions of the Maritime Powers Bill 2012 and the provisions of the Maritime Powers (Consequential Amendments) Bill 2012 to the Senate Legal and Constitutional Affairs Legislation Committee (Committee), for inquiry and report by 20 August 2012.

1.2 Coalition Senators of the Committee dissent from the Committee majority recommendation that these bills be passed. Coalition Senators believe this legislation may represent a surreptitious attempt to remove the Commonwealth's power to turn back unauthorised boats as part of an effective national border control policy. We say 'surreptitious' because the Government, in evidence before the Committee, was unable to say categorically whether this power, used by past Federal governments as an important tool in maritime policy, is preserved in the present legislation.

1.3 We note that the power to turn back boats has been exercised on several occasions by Commonwealth agencies, in particular by the Royal Australian Navy. Former Prime Minister Kevin Rudd committed his government to 'turning back the boats' shortly before the 2007 election, and the Coalition has committed to use such a power in appropriate circumstances under an alternative government.

1.4 Coalition Senators observe that the Maritime Powers Bill 2012 purports to set out comprehensively the powers of authorised officers in a maritime setting. However, officers of the Attorney-General's Department were unable to tell the Committee how, if at all, the power to turn back boats was replicated in this bill.

1.5 It was suggested that the bill, in clause 5, preserves the prerogative powers of the Commonwealth, including the power to repel unauthorised boats.<sup>1</sup> However, it seems to Coalition Senators that this bill evinces a clear intention to describe and regulate Commonwealth maritime powers, so that any prerogative powers must be read down by the constraining provisions of the bill, including clauses 32, 54 and 69. It is very doubtful that the present power to turn back boats is preserved by these provisions.

1.6 Coalition Senators cannot support these bills while they operate to repeal or remove this crucial tool in Commonwealth maritime and border protection policy.

**Senator Gary Humphries**  
**Deputy Chair**

**Senator Sue Boyce**

---

1 Committee Hansard, 10 September 2012, p. 3.



