CONTENTS

MONDAY, 13 MARCH

Business
  Consideration of Legislation .............................................................. 12575

Financial Sector Reform (Amendments Transitional Provisions) Bill (No. 2) 1999
Life Insurance Supervisory Levy Determination Validation Bill 1999
Authorised Non-Operating Holding Companies Supervisory Levy Determination Bill 1999
General Insurance Supervisory Levy Determination Validation Bill 1999
Retirement Savings Account Providers Supervisory Levy Determination Validation Bill 1999

Second Reading ................................................................................. 12575
In Committee .................................................................................. 12578
Third Reading ................................................................................ 12586

Youth Allowance Consolidation Bill 1999
In Committee .................................................................................. 12586

Ministerial Arrangements
Questions Without Notice
  Aboriginals: Reconciliation ............................................................. 12594
  Employment: Growth ...................................................................... 12595
  Nursing Homes: Alchera Park ......................................................... 12596
  Education: Youth Australians ......................................................... 12597
  Drugs: Court Evidence .................................................................. 12597
  Telstra: Job Cuts ........................................................................... 12598
  Goods and Services Tax: Australian Taxation Office Information Response Service ................................................. 12599
  Nursing Homes: Funding ............................................................... 12600

Distinguished Visitors .................................................................. 12602

Questions Without Notice
  Goods and Services Tax: Frequent Flyer Points ............................ 12602
  Work for the Dole: Rural and Regional Australia .......................... 12603
  Goods and Services Tax: Deposits ................................................. 12604
  Immigration: Mandatory Detention .............................................. 12605
  Goods and Services Tax: Information Booklet ............................... 12606

Answers To Questions Without Notice
  Goods and Services Tax ................................................................. 12607
  Telstra: Job Cuts ........................................................................... 12612

Petitions
  Forests ............................................................................................ 12613
  Goods and Services Tax: Health Products .................................... 12613
  Multilateral Agreement on Investment .......................................... 12614
  Homosexuality ............................................................................. 12614
  Food Labelling .............................................................................. 12614

Notices
  Presentation .................................................................................... 12614
  Leave Of Absence ......................................................................... 12616

Notices
  Postponement ............................................................................... 12616
Australian Women In Agriculture ......................................................... 12616
Parliaments: Female Representation .................................................... 12606
Women: Sterilisation ..................................................................... 12617
Cash: Hybrid Electric Drivetrain ......................................................... 12617
Mandatory Sentencing ..................................................................... 12617
Documents
Commonwealth Day ........................................................................ 12618
Privilege ......................................................................................... 12618
Committees
Economics References Committee ..................................................... 12618
Report ......................................................................................... 12618
Foreign Affairs, Defence and Trade Committee: Joint ................... 12620
Report ......................................................................................... 12620
Documents
Auditor-General’s Reports .............................................................. 12620
Report No. 33 of 1999-2000 ......................................................... 12620
Committees
Privileges Committee ...................................................................... 12620
86th Report ................................................................................ 12620
87th Report ................................................................................ 12620
Telecommunications (Interception) Legislation Amendment Bill 2000
First Reading .............................................................................. 12623
Second Reading ........................................................................... 12624
Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 1999
Timor Gap Treaty (Transitional Arrangements) Bill 2000
First Reading .............................................................................. 12626
Second Reading ........................................................................... 12626
Census Information Legislation Amendment Bill 2000
Customs Legislation Amendment (Criminal Sanctions and Other
Measures) Bill 1999
First Reading .............................................................................. 12628
Customs Tariff Amendment Bill (No. 1) 2000
Excise Tariff Amendment Bill (No. 1) 2000
First Reading .............................................................................. 12630
Second Reading ........................................................................... 12631
Bills Returned from the House of Representatives ............................ 12631
Assent to Laws ............................................................................... 12631
Committees
Legal and Constitutional References Committee ............................. 12632
Report ......................................................................................... 12632
Documents
Redistribution of Electoral Divisions ............................................... 12639
Personal Explanations ..................................................................... 12639
Business
Mandatory Sentencing Legislation .................................................. 12640
Suspension of Standing Orders ......................................................... 12640
Motion ......................................................................................... 12640
Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999
  Second Reading ........................................................................................................ 12643
Adjournment
  Na Bangardi .............................................................................................................. 12688
  Schools: Bullying ...................................................................................................... 12690
  Goods and Services Tax: Agricultural Show Societies .......................................... 12692
The President (Senator the Hon. Margaret Reid) took the chair at 12.30 p.m., and read prayers.

**BUSINESS**

Consideration of Legislation

Motion (by Senator Ian Campbell) agreed to:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Timor Gap Treaty (Transitional Arrangements) Bill 2000, allowing it to be considered during this period of sittings.

**FINANCIAL SECTOR REFORM (AMENDMENTS TRANSITIONAL PROVISIONS) BILL (No. 2) 1999**

**SUPERANNUATION SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999**

**LIFE INSURANCE SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999**

**AUTHORISED NON-OPERATING HOLDING COMPANIES SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999**

**GENERAL INSURANCE SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999**

**RETIREMENT SAVINGS ACCOUNT PROVIDERS SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999**

Second Reading

Debate resumed from 29 September 1999, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Senator Allison (Victoria) (12.31 p.m.)—The Financial Sector Reform (Amendments and Transitional Provisions) Bill (No. 2) 1999 and associated legislation represent the third stage in the government’s reforms to the regulatory framework of the Australian financial system. These amendments and transitional provisions are in response to a number of government inquiries, including most recently the financial system inquiry or Wallis report, as it has become known. The changes contained in this bill include: exempting the Australian Prudential Regulation Authority, or APRA, from paying sales tax; permitting the transfer of information collection functions from the Reserve Bank of Australia to APRA and the Australian Bureau of Statistics; enabling foreign banks to make use of certain taxation exemptions by extending the deadline for obtaining a banking licence; ensuring adequate disclosure prior to demutualisation of authorised deposit taking institutions; extending the range of material and information that may be submitted electronically by superannuation funds; and clarifying and restricting the availability of financial assistance to superannuation funds in the circumstances of fraud or theft.

The bulk of this bill and the associated levy bills is technical in nature and largely follows the general thrust of the Wallis report, and the Democrats will be supporting those measures. The Labor Party will be moving amendments to reduce the restrictions proposed by the government on the availability of financial assistance to superannuation funds in circumstances of fraud or theft. The government wants to restrict the availability of assistance only to funds where the fraud or theft is occasioned by people directly or indirectly involved in administering the funds. What this would mean is that, if a super fund had invested in Barings Bank and Nick Leeson’s fraud wiped out that investment, there would be no prospect of the government moving in to secure the employees’ savings. The government argues that this measure is necessary to remind super fund trustees that they are responsible for monitoring the performance of their investments. As a principle, I support that.

But the current law recognises that by creating an exception only in the case of funds being lost due to fraud or theft. Further, the provision of financial assistance is very much discretionary—the Treasurer can decide whether or not to do it. To reduce that discretion by denying bailouts in cases of fraud or theft by persons not directly or indirectly administering the fund strikes us as rather
harsh. I would prefer to see the discretionary power retained.

Labor is also moving amendments to require the Treasurer’s request to APRA for advice on financial assistance to funds to be tabled. There are arguments for and against this provision which is not really, in my view, a first order issue. I will be reserving my position on that until we get to committee. The Democrats will also be supporting the government’s amendments to extend the deadline for foreign banks restructuring to fit in with the business tax reform timetable.

Senator CONROY (Victoria) (12.34 p.m.)—The Financial Sector Reform (Amendments and Transitional Provisions) Bill (No. 2) 1999 represents the third stage in the series of the Wallis reforms, which Labor has broadly supported. Although Labor will move amendments to a number of sections of the bill, we nevertheless support this bill. In particular, we are supportive of: extending the deadline until 30 June 2000 for qualification for tax relief for foreign authorised deposit taking institutions transferring assets and liabilities between branches; reforms which will allow the electronic lodgment of information by superannuation funds in accordance with the government’s wider objective of establishing a business entry point; reforms which reduce compliance costs on businesses, increase flexibility and remove unused provisions of the Financial Corporations Act 1974; and reforms which provide a mechanism, in response to concerns raised by industry, to ensure adequate disclosure to members prior to an ADI affecting a demutualisation.

Before I comment in detail about our concerns about this bill, I will briefly comment on amendments that Labor has already successfully moved in the House of Representatives. In the original drafting of this bill, the Treasurer would have delegated his powers to the Reserve Bank under section 63 of the Banking Act. This would have included the power to consent to bank mergers. Given the Commonwealth Bank’s proposed merger with Colonial, the effect of the original drafting would have been to allow the Treasurer to delegate his power to the Reserve Bank on this type of merger. It was only because of the diligence of Labor in reviewing this bill that an amendment could be made on the floor of the House.

That is very important because, as we have said, in the last few days we have seen the Commonwealth Bank-Colonial merger. That is a merger that involves a lessening of competition, particularly in Tasmania, and the prospect of thousands of job losses in rural and regional Australia—something which this government has said it will do everything it can to prevent; it will, to use the Prime Minister’s words, put the red light on a further reduction in services provided to the bush. If the government had got its original way on this bill, that red light could not have been flagged. But that red light can be flagged now because of the original amendments to this bill. The Treasurer and the ACCC should ensure that they have a very, very good look at this, and the Treasurer should be seeking commitments on the impact on competition and job losses in regional and rural Australia.

Let me now examine in detail our concerns with this bill. Firstly, we object to provisions which attempt to water down the restoration of superannuation benefits in the event of theft or fraud. Secondly, we object to the proposed provisions giving the Reserve Bank the power to exempt a corporation from complying with an information provision standard it makes under the Financial Corporations Act 1974. We believe that these provisions should be subject to the scrutiny of parliament, and we will therefore be moving an amendment to make them a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

This bill proposes reforms to the Superannuation (Financial Assistance Funding) Levy Act 1993 that set out the circumstances in which superannuation funds which suffer losses due to theft or fraud will be eligible for grants of financial assistance. It was a Labor government that introduced this act. The Treasurer at the time, Mr John Dawkins MP, said in introducing substantial superannuation reforms:
The Government is concerned that there is some protection available to members in the event of fraud or theft. This will be achieved by giving the Government the power to impose a specific levy on the industry in the event a fund suffers losses arising from fraud or theft.

Labor's Superannuation Levy Act was about ensuring that the superannuation nest eggs of all Australians were kept safe. If employees lose their superannuation through no fault of their own, they should be entitled to expect that the government and the financial services industry will act collectively to ensure they do not suffer loss.

The Superannuation Levy Act puts responsibility on the whole of the superannuation industry to manage superannuation funds in a prudential way to minimise the risk of fraud or theft. Where a superannuation fund is able to identify problems with the practices of other superannuation funds that could create opportunities for fraud and theft, then it has a responsibility to raise these issues directly with the fund and the industry. The introduction of Labor’s Superannuation Levy Act has meant that all superannuation funds collectively bear the responsibility for ensuring good industry practice. Our understanding is that the government has never been required to levy superannuation funds to reinstate benefits lost as a result of theft or fraud. This is a strong indication that the system is working, that there are appropriate standards in place which ensure that the industry is diligent in removing any opportunities for fraud.

In examining provisions relating to the restitution of superannuation funds lost through theft and fraud, the Wallis inquiry concluded that there is an issue of ‘moral hazard’ in respect of superannuation funds. The argument offered by Wallis was that superannuation fund members would not have an adequate incentive to be diligent to protect their superannuation funds if they got all their money back in the event of theft or fraud. Wallis recommended that the total restitution available to members of a super fund which had suffered loss as a result of theft or fraud be capped at 80 per cent.

There are a number of issues in respect of the moral hazard argument. Whilst it is clear that the moral hazard argument applies to car insurance where a driver is in control of their own car, it is difficult to make the same argument that superannuation fund members have the same control over their funds. The moral hazard argument only applies when an individual has the direct ability to limit risk by their own behaviour. Given that the most that a superannuation fund member can generally do to control the administration of their fund is to elect a trustee, it is difficult to see how the fund member can exert direct influence.

The Treasurer tabled documentation in association with a statement to the House of Representatives on 2 September 1997 on the Wallis report in which the government accepted the recommendation to limit restitution to 80 per cent of the entitlement of beneficiaries. Whilst the government has not legislated to cap restitution at 80 per cent, it has introduced amendments in this bill which attempt to limit the restitution provisions by, firstly, restricting restitution to funds which have only suffered loss at the hands of ‘persons directly or indirectly responsible for their administration’; and, secondly, requiring the Treasurer to seek and consider the advice of the Australian Prudential Regulation Authority before making a decision to levy super funds for restitution.

There is potential that APRA could advise the Treasurer to put a cap on restitution—in so doing giving effect to Wallis’s original recommendations. I think some of the members of the Wallis committee might be on the board of APRA, and that would mean it is probably likely they would get that recommendation! This allows this parliament to say, ‘We don’t agree.’

We are seeking to make the Treasurer accountable for his written request to APRA for advice in relation to any application for assistance. We will also seek amendments which will remove the limitation on restitution to persons directly or indirectly responsible for administration of a super fund.

In respect of the second area of our concern—that is, proposals to exempt a corporation from complying with an information standard it makes under the Financial Corporations Act 1974—Labor will be moving an
amendment to make the exemption a disallowable instrument. This will allow parliament to scrutinise the exercise of the Reserve Bank’s powers. This is important in improving the openness and quality of information that is available to parliament.

Let me now turn attention to the levy bills which accompany this bill. Labor is supportive of the levy bills that are coupled with the financial sector reform bill. We support the principle of user pays—that is, the industry should contribute to the running costs of APRA, ASIC and the ATO. But let me make a couple of points in regard to these bills.

After some sections of the financial services industry expressed concern at the level at which levies were to be imposed, the Minister for Financial Services and Regulation, Mr Joe Hockey MP, announced the terms of reference of a review into financial sector levies on 3 August 1999. Announcing the review, the minister stated:

The review is required to evaluate the current levy arrangements’ ability to provide an effective funding mechanism for the supervision of prudentially regulated institutions... The timetable for the review will need to provide recommendations to me by early October 1999 in order to ensure any decisions to make changes can be reflected in legislation in time for the 2000-01 levies.

Despite the minister’s own tight time frame, to this date the minister has yet to announce the outcome of the review. Is this another example of the government asleep at the wheel?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.44 p.m.)—Firstly, I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. This memorandum was circulated in the chamber on 9 March. Secondly, I seek leave to move together the government amendments listed on the running sheet.

Leave granted.

Senator IAN CAMPBELL—I move government amendments Nos 1 to 8:

(1) Clause 2, page 2 (line 8), omit “and 6”, substitute “, 6, 8, 9, 10 and 11”.
(2) Schedule 4, item 2, page 15 (line 13), omit “2000”, substitute “2001”.
(3) Schedule 4, item 4, page 15 (line 21), omit “2000”, substitute “2001”.
(5) Schedule 4, item 8, page 15 (line 30), omit “7”, substitute “8”.
(6) Schedule 4, item 9, page 16 (line 2), omit “7”, substitute “8”.
(7) Schedule 4, item 10, page 16 (line 4), omit “7”, substitute “8”.
(8) Schedule 4, item 11, page 16 (line 6), omit “7”, substitute “8”.

I understand from the second reading speeches that these amendments are actually unanimously supported. I do not think there is much need to waste the chamber’s time on them, but they are the ones that extend the time limits on the international banks’ move from subsidiaries to branches.

Senator CONROY (Victoria) (12.47 p.m.)—This is the second extension of this kind. I was just wondering whether the parliamentary secretary could give us a reason as to why we have granted a further extension. What is the actual practical or other reason for this amendment?

Government amendments Nos 1 to 8:

(1) Clause 2, page 2 (line 8), omit “and 6”, substitute “, 6, 8, 9, 10 and 11”.
(2) Schedule 4, item 2, page 15 (line 13), omit “2000”, substitute “2001”.
(3) Schedule 4, item 4, page 15 (line 21), omit “2000”, substitute “2001”.
(5) Schedule 4, item 8, page 15 (line 30), omit “7”, substitute “8”.
(6) Schedule 4, item 9, page 16 (line 2), omit “7”, substitute “8”.
(7) Schedule 4, item 10, page 16 (line 4), omit “7”, substitute “8”.
(8) Schedule 4, item 11, page 16 (line 6), omit “7”, substitute “8”.

I understand from the second reading speeches that these amendments are actually unanimously supported. I do not think there is much need to waste the chamber’s time on them, but they are the ones that extend the time limits on the international banks’ move from subsidiaries to branches.

Senator CONROY (Victoria) (12.47 p.m.)—This is the second extension of this kind. I was just wondering whether the parliamentary secretary could give us a reason as to why we have granted a further extension. What is the actual practical or other reason for this amendment?
all of them have indicated that this extension should facilitate their decision making process.

Senator CONROY (Victoria) (12.47 p.m.)—So you are saying a number of banks approached the government seeking an extension?

Senator Ian Campbell—I am told the industry broadly, not so much independent banks.

Senator CONROY—Could we get an indication from the government which institutions or organisations representing institutions actually approached the government?

Senator Ian Campbell—It was KPMG, on behalf of industry.

Senator IAN CAMPBELL—Many organisations—small businesses and large businesses—are being affected by Ralph and the GST and no-one else is getting an extension on the GST and Ralph under the current timetabling. Why are the banks being given favoured treatment in this set of circumstances? Small businesses are not getting extensions on the GST and Ralph.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.49 p.m.)—The measure that we are debating was brought in by the previous government, and I think both sides of politics agree that it is basically a measure that will significantly enhance the prudential qualities of the system. It will ensure that the full prudential underpinning of the banks in question is available for people doing business with them in Australia. If it is a special deal for anyone, it is a special deal for the Australian customers of those banks. It does not particularly create some special sort of favoured treatment for these organisations. But, if you do tend to think that it is some special deal for the big end of town, if Labor wants to play cheap political games with this, vote it down and make fools of yourselves.

Senator CONROY (Victoria) (12.50 p.m.)—Thank you for the invitation. If anyone is making cheap political points, it is the Prime Minister trying to cover his back with the customers of banks at the moment. I think that gratuitous sledging across the chamber is not really necessary at the moment. We are just seeking information as to what on the surface looks like a special deal for, as you described it so well, the big end of town when the small end of town are struggling to cope with all the changes that are being brought in by this government as well.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.50 p.m.)—If the honourable senator opposite wants to make cheap political points in a debate like this, the deal was done by Mr Keating and by his then Treasurer. This government is just trying to facilitate that deal that was done. So, if the deal was done by anybody, it was done by Labor. There is no special deal. It is basically a sensible transitional provision that we are trying to facilitate. Quite frankly, if you have to make cheap political points on this sort of issue, God help the Labor Party, because no-one else will.

Amendments agreed to.

Senator CONROY (Victoria) (12.51 p.m.)—I move opposition amendment No. 1:

(1) Schedule 3, item 9, page 11 (after line 6), at the end of section 12, add:

(4) An instrument granting an exemption or varying or revoking an exemption is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

As I have already indicated, we object to the proposed provisions giving the Reserve Bank the power to exempt a corporation from complying with an information provision standard it makes under the Financial Corporations Act 1974. We believe that these provisions should be subject to the scrutiny of parliament, and we are therefore moving an amendment to make them a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. This will allow parliament to scrutinise the exercise of the Reserve Bank’s powers, and this is important in improving the openness and information that is available to the parliament.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the
Minister for Communications, Information Technology and the Arts) (12.52 p.m.)—Although the government does not see the merit of this amendment—we do not see it as necessary—we will not be calling a division on it.

Amendment agreed to.

Senator CONROY (Victoria) (12.52 p.m.)—We oppose schedule 9, item 5, page 21 (lines 19 to 21). This would remove the words ‘persons directly or indirectly responsible for their administration’. As I have indicated, Labor believes that restitution in the event of theft or fraud should not be limited to ‘persons directly or indirectly responsible for the administration’ of a super fund. We believe that this would lead to some situations where members could potentially suffer losses as a result of fraud or theft from their superannuation fund, and by adding the words ‘persons directly or indirectly responsible for the administration’ of the fund the government is seeking to limit restitution of superannuation benefits in the event of fraud or theft.

We believe that the government is seeking to backdoor implement the recommendations of the Wallis inquiry that sought to place a cap of 80 per cent on restitution. We are not convinced by the moral hazard argument. We believe that there is sufficient distance between a fund member and the fund administration and the acts of the administration that you are not able to manage in the same way you are other forms of risk. Therefore, we would encourage all senators to oppose the government’s watering down of employee entitlements.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.54 p.m.)—This is an issue that the Democrats again have indicated they will support Labor on. With my long training in this business, I recognise that the opposition to this schedule is likely to succeed. Having said that, I think it is fair to say that the government can live with that.

There is a fair and sensible argument to put here. I heard what Senator Conroy’s view, on behalf of the ALP, was in relation to moral hazard. I think we should accept that the point that is made by the honourable senator and the analogy between car insurance and the person driving a car and being a member of a super fund on the surface looks compelling. The argument, as I recall reading it in the Wallis report—and it has been some time ago since I read that—was not so much moral hazard as it applies to the member of the super fund as it does to the trustee. I think Mr Wallis and his committee pointed out that, effectively, if the government underwrites all of the funds of all of the super funds and if there is going to be the potential for a calamity or fraud or investment failure, if you have this omnipresent, omni financially potent government that is going to pick up the pieces regardless of what causes the failure, then the trustees, in particular, will not be as vigilant. I think all of us would agree that you want the trustees to be vigilant.

I think the point that Senator Allison from the Australian Democrats made was actually more relevant: what happens in the case when you have, for example, a significant failure caused by fraud, and the Barings Bank and Nick Leeson example was a good one? What would happen if Australian investors had money invested in a Barings situation through their Australian based super fund? That is why the government has picked up the recommendations of Wallis. That is why we have sought to directly link the loss and the nature of the investment in these provisions.

The proposed expression can be interpreted widely and would include fraud or theft perpetrated by trustees, custodians, investment managers and, where those roles are conducted by bodies corporate, employees or officers of such corporations. What we are trying to do in a practical way is to focus and create a causal link between the source of the loss and the nature of the investment. Losses arising due to fraud or theft by persons outside these categories would be extremely rare and could not be said to relate to the nature of the investment or superannuation—that is, they would be too remote to justify payment of financial assistance in the public interest. To provide financial assistance in such cases would mean that superannuation fund mem-
bers are offered protection over and above what other investors receive. I think it is fair to instance that they would receive a higher level of public interest support than, for example, normal depositors in a bank. It may be fair to have a debate about whether or not we want to ensure that people with super funds have more protection than those who may have money on deposit in banks. You could put arguments for and against that, I am sure. That is why we have tried to make it very clear as to where the Commonwealth and the industry would step in to act.

I will go on because I think these points are important to make. Moreover, having some qualification on the sources from which losses must arise in order to qualify for financial assistance does reduce the risk of moral hazard. It imposes some discipline on those involved in the administration of superannuation to carry out their activities in a prudent manner. If the government were seen to be ready to support a fund that suffers loss due to fraud or theft from any source whatsoever, this may undermine the prudent management of superannuation and may, for example, encourage trustees or investment managers to make investments of dubious quality knowing that they can call on the government if the investments fail. In other words, by putting in place a fail-safe mechanism for the investors in the superannuation—those members who will rely on the super for their retirement incomes—the trustees would know that the white knight in the form of the federal government is there to pick up the tab if some potentially more risky investments are made and prove to fail.

We have to ask ourselves as a parliament: is that really the role the government wants to take on in superannuation going forward, particularly bearing in mind the significant increase in investment in superannuation, the increasing reliance that people place on superannuation? I think the right balance is to ensure that it is very clear as to where the Commonwealth and the industry have a role and where the trustees and other investment managers have a role in ensuring that they make prudent investments.

Finally, it should be remembered that any financial assistance paid by the Commonwealth may be recouped—and I guess in most cases would be recouped—by way of an industry levy, so the payment of assistance will impact on all superannuation funds, other than, of course, the small self-managed funds. Having said that, the government believes that the proposals in the bill, as they are currently cast, will favour the interests of all members of superannuation schemes. We ask the Democrats to reconsider their position on this. As I indicated earlier, we can see the numbers that are likely to occur. Having said all of that, we believe the government’s position to be superior to that of the amendment, but in the event that the amendment is carried, the government will have to consider its position.

**Senator CONROY** (Victoria) (1.01 p.m.)—I will make a brief response. The difference between banking deposits and superannuation fund deposits is fairly straightforward; it is fairly simple. The government compel people to save through the superannuation guarantee levy. If we are going to compel people to save for their retirement, so that they can reduce the burden in the future on taxpayers, then it is only fair and reasonable for there to be 100 per cent protection. It is not the same as bank deposits; it is not the same as investing in other forms of savings. This superannuation is compulsory. I believe that it is possible, as Senator Campbell has indicated, for there to be an argument mounted for the 100 per cent.

As I said, the Wallis report has recommended and argued the moral hazard line; in other words, quirks of faith. Professor Harper, who is an old lecturer of mine, was on the Wallis committee and is also now on APRA’s board. I have a great deal of respect for him, but on this one I do not believe that superannuation funds can be deemed to be the same in every sense as a banking deposit or other types of investment vehicles. Therefore, I believe that superannuation funds deserve to be protected 100 per cent. What will happen if someone does lose their funds—and let us hope this provision is never needed, as it has not been needed in the seven or eight years since the super guarantee levy was introduced—is that the 20 per cent difference will have to be made up at the end of the day by the taxpayer if workers are then
by the taxpayer if workers are then forced to access the social security system. This is a sensible suggestion to ensure prudence in the superannuation industry and a sensible provision to ensure that future taxpayers are not required to foot the bill. I believe the amendment should be supported on that basis.

The TEMPORARY CHAIRMAN—The question is that item 5 of schedule 9 stand as printed.

Question resolved in the negative.

Amendments (by Senator Conroy)—by leave—agreed to:

(3) Schedule 9, item 9, page 22 (lines 33 and 34), omit “by a person directly or indirectly responsible for the administration of the fund”.

(4) Schedule 9, item 9, page 23 (lines 3 and 4), omit “by a person directly or indirectly responsible for the administration of the fund.”.

Senator CONROY (Victoria) (1.04 p.m.)—I move:

(5) Schedule 9, item 12, page 23 (after line 26), at the end of section 230A, add:

(3) The Minister’s written request to APRA made under subsection 230A(1) for advice in relation to the application for assistance must be laid before each House of the Parliament as soon as practicable after the Minister has made a written determination under subsection 231(1).

The government’s bill requires the Treasurer to seek and consider the advice of the Australian Prudential Regulation Authority before making a decision to levy super funds for restitution. If the Treasurer writes to the industry regulator and asks, ‘Should we put a cap on restitution?’ the regulator who has the interests of the industry to consider and not just an individual fund may say yes. There is the potential that APRA could advise the Treasurer to put a cap on restitution, in doing so giving effect to Wallis’s original recommendations that restitution should be capped at 80 per cent. The government’s bill makes putting a cap on restitution possible.

As I have indicated, we believe that capping restitution represents a watering down of employee entitlements. Labor’s amendment will seek to make the Treasurer accountable for his written request to APRA for advice in relation to any application for assistance. It is right and proper for parliament to know what the intentions of the Treasurer are when he seeks advice from APRA. Labor’s amendment is about the openness and transparency of the Treasurer’s decisions.

Senator GEORGE CAMPBELL (New South Wales) (1.05 p.m.)—The bill proposes that the minister must seek the advice of APRA before deciding whether to grant financial assistance. As Senator Conroy said, the ALP wants to require the minister to table his request to APRA for advice in both houses as soon as practicable after he makes a decision on the application for financial assistance.

The government sees a number of problems with this proposal. Normally the government is not opposed to transparency in these sorts of matters, but I think it would be fair to say that people could see particular problems with this. Tabling of the minister’s request would be of no benefit and may even be detrimental to the funds seeking financial assistance. The publicity that could be generated from tabling may serve to further undermine the financial position of the fund in question; a fund that, by definition, has already suffered losses. Publicity that a fund has sought financial assistance could potentially alarm fund members who might seek to withdraw from the fund, making it more difficult for the fund to be returned to a healthy financial position. This would be of concern especially when the minister decides against granting assistance. Lastly, a contagion effect may also be possible; that is, funds that may be administered by the same trustee or use the same custodian or investment manager may be considered guilty by association with the fund that has sought financial assistance and might also experience a flight of funds.

For these reasons, we think that, although the intention behind the amendment is entirely admirable in creating transparency in these matters, on this occasion it may be detrimental to the members of superannuation funds and any other superannuation funds
that may be associated through the ways I mentioned in my fourth point. Therefore, we strongly urge the Committee to reject this amendment. At this stage, we suggest that the government maintains its strong opposition to the bill going forward with this amendment.

Senator ALLISON (Victoria) (1.07 p.m.)—I think this amendment is not likely to have the effect that the Labor Party would suggest—that is, to reveal something which might otherwise not be revealed. So I am still a little uncertain as to whether this is worth while to pursue. I wonder if the minister could just explore a little further the detrimental effect he says this will have. In terms of the timing, presumably the publicity he refers to will come in any event. Can he just indicate why this particular document which I gather we are asking for tabling of comes at the same time as there would be other publicity, other notification, other means of understanding what has been gone through? If the minister cannot do that, we will support the amendment but, again, I do not believe it will necessarily do what the proponent of the amendment is suggesting it will.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (1.08 p.m.)—I think I have been fairly thorough in the government’s assessment of the problems that could be created. These financial assistance provisions have not been used in the past, so it is impossible to draw on past experience. Remember that we are talking about a request here that may or not be granted. The minister would potentially get a request from a superannuation fund for whatever reasons and would then seek advice from the prudential regulatory authority, who may well advise that it is either in the interests or not in the national interests to provide assistance in this situation. I think the risks are, however, that if there is a particular time requirement on the minister to table information about a request, that request would then need to be made public under this requirement of the law if it went forward. I think one only needs to contemplate the potential for people making judgments not only about the fund in question but also about associated funds who may share a trustee or investment manager with that super fund in question as to what could happen if that were required to be tabled in parliament.

Senator CONROY (Victoria) (1.10 p.m.)—I am a little surprised at the ‘sky is falling’ or the Basil Fawlty ‘don’t mention the war’ defence. If the fund is in trouble, I would have thought that one of the things that are required at a time like that is for information and transparency and for particularly the members to be aware that the fund is in trouble. But this is simply about the Treasurer having to disclose that an approach has been made. I cannot see how the fact that the government has been approached could lead to a run on a superannuation fund. Again, this is a mandatory section of the contributions. You might be able to switch your personal voluntary contributions but it is far more important that the confidence and stability of the market operate in this field, and that means we need the maximum amount of transparency; we need to know as soon as possible. As I think Senator Allison has indicated, publicity will presumably be flowing from the institution, otherwise it would be in breach of a number of its SII(S) regulations. I would have thought there was nothing wrong with the Treasurer having to be as transparent as hopefully the fund is.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (1.11 p.m.)—I think Senator Conroy has made the case in relation to normal disclosures that have to be made under the legislation, which I think Senator Allison would be well aware of. It is a very disclosure based regime where the trustees have to make a number of mandatory disclosures. So we are not imposing upon that; what we are asking to have done is for correspondence flowing between the regulatory authority and the responsible minister to be disclosed, regardless of the outcome. There would clearly be potential negative effects—as I have outlined in some detail—on the position of a fund that went through this process. I think it should be said that the potential publicity may even discourage funds
from seeking that financial assistance in the first place if they knew that this sort of disclosure was to take place. I do not think any of us would want a fund that was in a position where it had the potential to avail itself of these provisions to be discouraged from so doing by this sort of disclosure of correspondence between the minister and the regulatory authority. This does not undermine any of the already very strong public disclosure requirements under the existing regulatory and legislative framework for the superannuation industry in Australia, which I think all of us would agree is considered one of the world’s best regimes.

**Senator ALLISON (Victoria) (1.14 p.m.)—** I make the point that the amendment says that this should be laid before each house of parliament as soon as practicable after the minister has made a written determination.

**Senator Conroy—** After.

**Senator ALLISON—** Yes. My question to the minister earlier was in relation to the timing. It seems to me that if the minister has made a written determination, then the matter has become public and this is really asking for the advice after the event. That seems to me to be the point. I do not want to argue about this all day—it is hardly worth it—but it is not a case of the information coming out prior to the determination and, as I understand it, the determination is the public aspect of the announcement.

**Senator CONROY (Victoria) (1.14 p.m.)—** I was about to make those exact points. What we are seeking to do is make the Treasurer accountable after the fact. We are seeking to find out what—to use the language of the act—particular matters APRA is to provide advice about. What we are seeking after the fact from the Treasurer is about particular matters, including for instance the 80 per cent cap. In terms of the arguments that Senator Campbell has put up. Senator Allison has made the very point that I would seek to make, that this only reveals information after a determination is made. It could not possibly lead to some of the consequences that are being suggested by the parliamentary secretary. I probably even agree with Senator Allison that it may not have the desired effect that we would like, but we do not believe that it can lead to any of the consequences that Senator Campbell has indicated.

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (1.15 p.m.)—** I will just give one example from last week’s financial press that actually proves my case. If you want to believe that because it is being published after the event it will not have some effect on people’s confidence in the institution, look at what happened to AMP last week when they said that they had had NAB knocking on the door and had knocked it back. If you find out one week, two weeks, three weeks or four weeks after the event that an organisation has approached the government for financial assistance, it will have an effect on people’s confidence in it. If I read in the paper tomorrow that the super fund that I have my life savings with—and this is not a direct analogy—had made an approach to the Treasurer three months ago for financial assistance, that would affect my view of that organisation.

It does not matter whether you get the advice before it happens, during it happening or three months later; there is no doubt it will have an effect on people’s perceptions of it. People should be properly informed—as they are mandatorily under the legislation—about the financial affairs of their super fund, and they will get all of those disclosures under the existing legislation. What we are talking about here is something that is outside that. We are talking about a discussion initiated by the super fund or correspondence initiated by the minister to the regulatory authority being tabled in the parliament. You have to ask yourself the question: let’s not worry about the managers and trustees of the investment organisation; let’s worry about the members of the super fund—is this sort of disclosure in their interests? It is highly unusual, to say the least, to say that this sort of disclosure after the event would not have some impact on people’s perceptions of the fund. It does not matter when it takes place: it will have an impact on their perceptions.
Senator ALLISON (Victoria) (1.18 p.m.)—On that point, can the minister indicate whether the super fund members will be informed about the ministerial determination? Would they not know that there had a determination which said yes or no to the request? If there is no tabling of the advice or the request, is that the last that anybody outside the two parties would know about it? I am unsure myself about what a written ministerial determination would do in terms of its exposure.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (1.19 p.m.)—That question is right to the point. The fact is that under existing requirements the members would, of course, be informed by their organisation. What we are looking at is public speculation and beat-ups in the media over something that could be handled—and would have to be under the law—between the fund and their members. We are not withholding information from the members. We are saying, what is the most appropriate way of communicating that information to the members of the fund? We are saying that to invite the sort of media beat-up and speculation about the financial credibility or viability of an organisation through this mechanism is not desirable. It does not help the members. It might help the press gallery or the financial press to create more material for the Australian Financial Review to stick in between the advertisements on any given page on any given day, but it does not particularly help the members of the organisation who will, of course, under the regulatory regime receive this information and receive it as required by law.

Senator CONROY (Victoria) (1.20 p.m.)—Can I just clarify that we are talking about two very specific instances, theft and fraud. I am not quite sure. I have not yet seen a run on a company or a bank that has been subjected to theft and fraud. These provisions pertain particularly to theft and fraud and—to borrow Senator Campbell’s own example—AMP is struggling with its share price at the moment. I am one of the people who thinks it is undervalued. I am not a shareholder, I should declare, but AMP has been struggling with its share price. It also recently had a $600,000 fraud perpetrated on it. This has been revealed and the market has not judged AMP harshly on the basis of the theft and fraud that it has endured. It may be suffering harshly in judgment on other issues. It may be to do with NAB, the turnover, the payout or a whole range of things, but it has not been judged in the marketplace on the question of the fraud.

If anyone is involved in a beat-up today, it is the government which is attempting to hide its own actions behind the thinly veiled disguise of, ‘We have to protect the funds of the member.’ The member has a right to know. The member also has a right to know what the government has said to APRA. All we are seeking to find out here is what the government has said to APRA. This is in the circumstances of theft and fraud only. This is not about the long running poor performance of the fund. There are two specific instances, theft and fraud. If there is a beat-up here it is the government attempting to say that companies that are subjected to theft and fraud can suddenly have a run on them because of the theft and fraud.

Senator ALLISON (Victoria) (1.22 p.m.)—I just indicate that I have listened to the arguments and I am not persuaded by the government’s list of problems that might arise from this. It seems to me that this is a small matter, and members would anyway know what the determination was. I do not expect anyone will in the case of theft and fraud be expecting that this information would stay in the confines of the membership of a fund. So it seems to me to be in the interests of accountability for us to support this amendment, and we will be doing so.

Amendment agreed to.

Bill, as amended, agreed to.

SUPERANNUATION SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999
LIFE INSURANCE SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999
AUTHORISED NON-OPERATING HOLDING COMPANIES SUPERVISORY
LEVY DETERMINATION VALIDATION BILL 1999
GENERAL INSURANCE SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999
RETIRED SAVINGS ACCOUNT PROVIDERS SUPERVISORY LEVY DETERMINATION VALIDATION BILL 1999

Bills agreed to.


Third Reading

Bills (on motion by Senator Ian Campbell) read a third time.

YOUTH ALLOWANCE CONSOLIDATION BILL 1999

In Committee

Consideration resumed from 6 March 2000.

The bill.

Senator CHRIS EVANS (Western Australia) (1.25 p.m.)—I am conscious that the minister is not yet in the chamber. I do not wish to proceed too far without her involvement, obviously, but I do want indicate on behalf of the opposition that we have decided to withdraw a number of our amendments and are seeking to proceed only with schedule 4, item 22, amendment (8).

The TEMPORARY CHAIRMAN (Senator Knowles)—So amendments (1) to (10), except (8), are not going to be moved.

Senator CHRIS EVANS—Yes, the only one we want to proceed with is amendment No. 8, which relates to schedule 4, item 22, and the family allowance income test. I am just trying to catch up with which amendments are which. I indicated when we last dealt with this bill that we were prepared to have discussions with the government about the amendments which we had proposed so that we could sort out whether we were able to resolve some of our differences. We have been able to be convinced by the government that it is not necessary that we proceed with those other amendments we proposed. I will not go at any length into why, but we have had undertakings and discussions with the government and the departmental officers. So the only one we wish to proceed with is amendment No. 8, which relates to schedule 4, item 22, and the family allowance income test. I thought it might be a good starting point just to advise the chamber of that. So the opposition will oppose schedule 4, item 22, page 134 (lines 8 and 9).

The TEMPORARY CHAIRMAN—The question is that item 22 of schedule 4 stand as printed. Minister, maybe I could just clarify for you what has happened.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.28 p.m.)—I came in a bit of a rush and did not hear what Senator Evans was actually saying.

The TEMPORARY CHAIRMAN—Senator Evans has withdrawn amendments other than amendment (8) on the running sheet. So all other opposition amendments and requests are now withdrawn. I am now putting the question that item 22 of schedule 4 stand as printed.

Senator CHRIS EVANS—Yes, the only one we want to proceed with is amendment No. 8, which relates to schedule 4, item 22, and the family allowance income test. I am just trying to catch up with which amendments are which. I indicated when we last dealt with this bill that we were prepared to have discussions with the government about the amendments which we had proposed so that we could sort out whether we were able to resolve some of our differences. We have been able to be convinced by the government that it is not necessary that we proceed with those other amendments we proposed. I will not go at any length into why, but we have had undertakings and discussions with the government and the departmental officers. So the only one we wish to proceed with is amendment No. 8, which relates to schedule 4, item 22, and the family allowance income test. I thought it might be a good starting point just to advise the chamber of that. So the opposition will oppose schedule 4, item 22, page 134 (lines 8 and 9).

The TEMPORARY CHAIRMAN—The question is that item 22 of schedule 4 stand as printed. Minister, maybe I could just clarify for you what has happened.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.28 p.m.)—I came in a bit of a rush and did not hear what Senator Evans was actually saying.

The TEMPORARY CHAIRMAN—Senator Evans has withdrawn amendments other than amendment (8) on the running sheet. So all other opposition amendments and requests are now withdrawn. I am now putting the question that item 22 of schedule 4 stand as printed.

Senator CHRIS EVANS (Western Australia) (1.28 p.m.)—Perhaps I ought to speak to that question. People now are clear about what is happening. I just thought as a starting point I ought to indicate that three sets of amendments have been withdrawn. We wish to proceed with the amendment to the family allowance income test. Item 22 clarifies for the family allowance income test that only a youth allowance recipient child aged under 18 may be a family allowance child for the income free area. Under current provisions, the rate of family allowance is reduced where income exceeds $23,550 per annum plus $624 for each additional family allowance.
child. Among other things, a family allowance child can be a child receiving youth allowance. The schedule seeks to amend this so that a child receiving youth allowance is a family allowance child only if they are under 18 years of age. This may be consistent with the treatment of young people receiving education allowances other than the youth allowance—for example, Abstudy. However, it does not take into account the fact that young unemployed people are now regarded as dependent until they are 21 years of age and may therefore receive a lower rate as a result of youth allowance legislation.

Our amendment seeks to provide that a person aged over 18 would still be regarded as a dependant for the purposes of the family allowance income test if they are receiving a reduced rate of youth allowance because of the parental means test. While we recognise that this amendment will have an effective shelf life of only three months due to the advent of the family tax benefit on 1 July, we are concerned to make sure that nobody is left worse off in the meantime. I accept that this is not a major order issue but the opposition feel, on balance, that we ought to proceed with that amendment.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.30 p.m.)—The Australian Democrats will be supporting the amendment moved by the opposition, affecting youth allowance recipients only until 1 July this year when, as Senator Evans pointed out, the family tax benefit is introduced. We support the intent of the Labor Party amendment to ensure that—even if it is for an interim period—the definition of a ‘family allowance child’ only if they are under 18 years of age does not adversely affect those young people assessed as dependent upon their parents until the age of 21. So in an attempt to alleviate any hardship, it is a good amendment. The need for this amendment, we believe, once again highlights the way in which this government sets the age of independence at various levels. There is no real clear rationale for why ages of independence are set in the way that they are. I think I was accused by the minister in the debate on this during the second reading stage of being hung up on the age of independence. Indeed the Democrats are hung up on this issue and have been for a long time, because there are incredible anomalies in the way this government determines at what age you are independent for certain benefits or certain assistance. Certainly this amendment, once again, highlights the discrepancies in this legislation with regard to students over the age of 18 who are considered dependent up to the age of 25. The Democrats support the age of independence being set at the community recognised norm of 18. In supporting this amendment we hope that the Labor Party, the opposition, will look towards alleviating some of the vast array of discrepancies that currently exist for young people and their families in relation to taxation, financial assistance and the age of independence in the welfare reform processes that are currently under way.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.32 p.m.)—I have listened to Senator Stott Despoja and Senator Evans and, as no doubt they would realise, the government is not prepared to support this ALP amendment. I do not intend to delay the Senate further on the matter.

The TEMPORARY CHAIRMAN—The question is that item 22 of schedule 4 stand as printed.

Question resolved in the negative.
(1) A person has a special academic circumstances exemption if the person meets the requirements of subsection (2) and either subsection (3) or (4) applies.

(2) The person:
(a) is enrolled in respect of, or (if subparagraph 541B(1)(a)(ii) or (iii) applies) intends to enrol in respect of; and
(b) is undertaking, or (if subparagraphs 541B(1)(a)(ii) or (iii) applies) intends to undertake;
 at least two-thirds of the normal amount of full-time study in respect of the course in question (see subsections 541B(2) to (4)); and
(c) the course in question is an approved course of education or study (see subsection 541B(5)); and
(d) in the Secretary’s opinion the person is making satisfactory progress towards completing the course.

(3) The person cannot undertake the normal amount of full-time study because of:
(a) the educational institution’s usual requirements for the course that the student is undertaking; or
(b) a specific direction in writing to the student from the academic registrar or an equivalent officer.

(4) The person cannot undertake the normal amount of full-time study if the academic registrar (or an equivalent officer) of the educational institution recommends in writing that the person undertakes less than the normal amount of full-time study for specified academic or vocational reasons.

(5) Subsection (4) cannot apply for more than half of the academic year.

This amendment broadens the definition of ‘full-time student’ with regard to concessions to a full-time workload by inserting a section 542G ‘Special academic circumstances exemption’. The reason the Democrats are moving this request for amendment is that it has been drawn to our attention and, we believe, to the attention of the government through the current welfare review processes that concessions to full-time students provided under the previous Austudy scheme have not been transferred to the youth allowance. For a variety of reasons, as I mentioned in my speech in the second reading debate, students may need to undertake less than a full-time study load. These reasons can include personal circumstances, disability, illness or academic requirements. Under the previous and current Austudy scheme, two concessions—66 per cent and 25 per cent—were provided so that students who met certain requirements continued to be seen as full-time students. Under the youth allowance, these students are no longer regarded as full-time students. As part-time students they may retain eligibility for youth allowance and may even receive exemption from completing other activities. However, they lose the additional benefits of full-time students—for example, these students have lost access to the higher income free area, the income bank and the supplement loan. In particular, the Democrats are concerned to ensure that students who are restricted by course structure are not disadvantaged with the loss of the income bank.

Students may continue part-time work, but their income is reduced because of the reduction of the income free area and the loss of the income bank—for example, a student may require only two-thirds of a workload to complete their degree. The student may have time for part-time work but does not necessarily have the incentive to work through the loss of the higher income free area and the income bank, once again. The situation is made more complex by the youth allowance maximum age limit of 25 for a full-time student and 21 for a non-full-time student. Again, the lack of recognition of concessional students means that those students aged 21 or over not only lose the full-time student benefits but also may lose an entitlement to youth allowance altogether, necessitating an application for different payments such as Newstart or disability support payments. The Democrats supported the intent of the government to streamline benefits—I made that clear in my speech not only in the second reading debate on this bill but also on the previous bill that actually introduced the Common Youth Allowance. We also supported the transfer of the administration of benefits for young people and students from the former DEETYA to the former DSS or, as it is now called under this government, Centrelink. This amendment follows the spirit of that move to ensure that students and young people are able to receive assistance with a
minimum of disruption to their studies and lives and without the need to apply for several different payments in the course of their studies.

I have a couple of case studies that illustrate the need for the Democrat request for amendment. I understand that my office made these available to the minister and also to the shadow minister’s office, as well as to the three Independent senators. Case study number one is of a student aged 21 with a recognised disability. It is one of two case studies that we have provided, and I use it as an illustration of some of the difficulties. A Flinders University student aged 21 has a psychiatric disability. Previously, he was granted a 25 per cent concession for Austudy. The nature of his disability is that he has studied, at periods, full-time but at other periods he can study only for lesser amounts. In the first semester of this year, he studied two-thirds of a full-time workload—that is 12 units at Flinders University. He apparently incorrectly continued to be seen as a full-time student by Centrelink and received fortnightly payments of youth allowance and supplement loan. In the second semester, his medical condition worsened. This necessitated a drop to nine units of study. He was advised that he was not able to obtain a concession under the youth allowance, even though he had been previously granted the 25 per cent concession under Austudy. He was advised that his options were to apply for Newstart incapacitated payment or the disability support payment. However, when he spoke to Centrelink regarding Newstart, he was advised that his part-time studies would preclude him from payment. That is one quite clear illustration.

Case study number two is of a student required to undertake only 61 per cent to complete a degree. Two students have approached the Flinders University Union, which is the welfare service that is located on campus. Both students were in the same program of study and both were enrolled in 11 units of study—that is 61 per cent for the semester. This weighting was due to the structure of the course. Clearly, it was beyond the control of the students. One student was aged 20; the other was aged 21. The first student benefited from the more flexible approach under the youth allowance. She was able to negotiate an activity agreement that continued her fortnightly payments and exempted her from undertaking other activities. She was not working or receiving the supplement loan.

The second student was deemed not to be a full-time student and had reached the maximum youth allowance age. She was required to apply for Newstart payments and therefore look for full-time work, and she lost access to the income bank, high personal income test and the supplement loan scheme. These are two students comparable in terms of the position of their study requirements and a course structure which is out of their control and which means they are not in a position to determine the loading of that particular course. Coincidentally, that course required 11 units of study, which is only 61 per cent for the semester, yet because of the differing rules those students were obviously treated quite differently, although the rationale for that requires explaining. They are two case studies that I think demonstrate the need for a transfer of the 66 per cent concession rate to youth allowance as well as Austudy. I look forward to the minister’s response to the request for amendment that has been moved by the Democrats and hope that the opposition will support it.

Senator CHRIS EVANS (Western Australia) (1.40 p.m.)—I indicate on behalf of the opposition that we will be supporting the request for amendment. I do not think there is a need for me to add anything. I think Senator Stott Despoja has put the case.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.40 p.m.)—I indicate that the government is not prepared to support this request for amendment. I do not think there is a need for me to add anything. I think Senator Stott Despoja has put the case.
stances. That issue is being looked at in the youth allowance evaluation. Therefore, I think that measures such as those Senator Stott Despoja is putting forward are premature. There will be an opportunity and a time later for that to be considered.

The amendment, as put forward by Senator Stott Despoja, does not meet its objective. It will exempt a student undertaking two-thirds of a full-time load only from the activity test. It will not give them full-time student status, and therefore these students will not be eligible for the student financial supplement loan. They will not be eligible for the income bank or the $230 income free area and, upon reaching 21, will still not qualify for youth allowance under the maximum age provisions. In addition, exemption from the activity test will mean that the penalties that can be applied to unemployed young people and full-time students who have failed to meet their activity test obligations cannot be applied to this group of students. I cannot imagine that Senator Stott Despoja was intending that. For those reasons, the government is not prepared to support the amendment.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.42 p.m.)—I would like to put a quick question to the minister. What is her response to the notion that there are some courses where the course structure is less than two-thirds, less than 66 per cent? An example is case study number two in relation to Flinders University, where the full load of 11 units was only 61 per cent. That is something that is beyond the student’s flexibility or control. In cases like that, do you really think that the current regulations are appropriate when it is beyond the student’s control and yet they are treated radically differently depending on their age?

Senator Newman (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.43 p.m.)—Senator Stott Despoja, I just said that these are all matters which are to be considered in the evaluation of youth allowance. I think that is the appropriate place for recommendations to come forward for any changes that are necessary.
master’s studies, regardless of their entry pathway, be it through an honours year or a postgraduate diploma.

In moving this amendment, the Democrats recognise that many master’s qualifications are required as a minimum qualification to enter into a specific profession, that employer expectations are rising and that students are typically reporting that they require these qualifications just to be competitive in the market, even if a master’s level is not a direct prerequisite for a particular position, yet those students who are undertaking master’s course work studies are ineligible for scholarships.

In moving this request, we note that currently under the youth allowance it is possible for some studies towards a master’s or a doctorate to be incorporated into an activity agreement. So while we acknowledge that this government has allowed a greater flexibility for students under 21 who must complete master’s level studies in order to gain entry into their chosen profession, this request does address the current predicament faced by many mature age students who may have gained qualifications some time ago and who are faced with having to reskill or update their skills to remain competitive yet who are not able to reskill without some form of assistance. That is essentially the aim of this creation of a level E category, and I elaborated on that intention in my second reading contribution.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.47 p.m.)—Briefly, I would like the Minister for Family and Community Services to take on notice a couple of questions, and I will understand if she does not have the information today in the chamber. They relate to how many scholarships are provided for master’s students and how many students have undertaken master’s courses as part of their activity agreements. I also recognise that does intrude on another portfolio. When that information could be made available, that would be appreciated.

In a quick response to comments made by both the minister and Senator Evans, I recognise there is a need for evaluation—and, perhaps in some cases, overhaul—of income support, be it for young people generally or for students. But I do take issue with the notion that this is an inappropriate place in which to move some of those changes. What better place is there than the parliamentary chamber while debating the Youth Allowance Consolidation Bill 1999?

I look forward to the outcome of the evaluation of the Common Youth Allowance. Most people recognised that there were going to be some teething problems with the new scheme—especially one as broad as this, one that aimed to streamline so many other payments—but faults have been clearly identified. There are no secrets about some of the faults and no secrets about some of the changes that are needed. That is not simply because people have a certain ideological position—and I acknowledge that it is the Democrat position, and has been for a long
time, to have realistic ages of independence, and that will be contained in our next set of requests. But what better place to fix up some of those errors, when we know about them, than in this bill? I do shrug off the notion that you can simply dismiss this bill as some kind of technical, housekeeping bill. There are opportunities to make requests for amendments to this bill that would make the youth allowance fairer and work better. Why don’t we take this opportunity?

The TEMPORARY CHAIRMAN (Senator George Campbell)—The question is that request No. 2 on sheet 1720 be agreed to.

Question resolved in the negative.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.49 p.m.)—I move Democrat request No. 3 on sheet 1720:

That the House of Representatives be requested to make the following amendment:

(3) Schedule 4, page 131 (after line 8), after item 10, insert:

10A Subsection 1067A(4)
Repeal the subsection, substitute:
(4) A person is independent if the person is at least 18 years old.

This is the one that we are hung up on. The Australian Democrats feel very strongly that the government’s at times anomalous definitions of what constitutes an independent student or young person are inappropriate. We do not support the government’s view that students can or should be dependent upon their parents until the age of 25. In one respect, our requests seek to reduce that age to 21 and, in another, to 18. I have moved request No. 3 first. If that is unsuccessful, I will then move request No. 4, which proposes to change the age to 21. I have spoken on this many times in this chamber, as indeed have my colleagues. The government’s rationale has worn thin, especially when you have different ages for students and young people in relation to income support. Having the ages of both 25 and 21 is indefensible, and the government and the opposition know that. For once and for all, I hope the government will take this opportunity. I urge Senator Evans, if he is wavering on this one—

Senator Chris Evans—My instructions are clear.

Senator STOTT DESPOJA—I hope they are clear in the right direction. I am not going to ask any more. People know our rationale on this one, and it is very clear. Many young people, families of young people and students will be wondering about this debate and watching with interest what various parties do. I have moved this request on behalf of the Democrats in an attempt to get realistic ages of independence for both students and young unemployed Australians.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.51 p.m.)—I think getting ‘realistic’ should be the key to the response to this request. I draw to the committee’s attention the fact that a previous costing on changing the age of independence for students to 21 years and for the unemployed to 18 years was around $313 million per annum. This request would add to this cost, because it is proposed that both students and unemployed young people be regarded as independent at 18 years. One of the problems for Senator Stott Despoja is that she fails to acknowledge the difference between independence and financial independence. If you are relying on anybody else—including the taxpayer—to support you, you are not financially independent. Clearly, the cost of accepting this amendment is prohibitive. Savings would be required in other areas in order to meet it. I wonder which areas of social security Senator Stott Despoja would like to nominate.

The parental income test under the youth allowance is more generous than that which applied under the former Austudy scheme. I do not think that is widely acknowledged but it is a fact. In addition, the availability of rent assistance and the abolition of the $1,000 per annum minimum amount of income support has meant that the cut-out points are much higher. More families are eligible for assistance under the youth allowance than was the case under the Austudy scheme. In addition, gaining recognition for financial independence under the youth allowance is more achievable than it was under Austudy. The
work force criteria are more lenient, and de facto relationships are recognised after 12 months.

The government has also kept its promise to Senator Harradine by extending, from October last year, family allowance to eligible families with dependent children aged 18 to 20 and students aged 21 to 24 not in receipt of youth allowance or whose payment is less than $50 per fortnight. Family allowance is paid at the rate of $50 per fortnight for each dependent young person, and the income limit for a family with one dependant is $67,134. As part of our tax reform measures to come into place on 1 July, family allowance will be replaced by family tax benefit, FTBA, and the changes to family allowance will also apply to FTBB.

Senator CHRIS EVANS (Western Australia) (1.54 p.m.)—As much as I hate disappointing Senator Stott Despoja, my instructions are to oppose these two requests. I think it is on the record that Labor took to the last election a policy for the staged reduction in the age of independence for youth allowance recipients. We have already supported a change in the age of independence. However, the costs of such a measure would require this to occur, in our view, in a staged fashion. We accept the constraints put on an alternative government of supporting these measures. While I understand the intentions and the merit, we have to balance that against the point the minister makes which is the cost in doing so. We believe changes here should be consistent with the reforms we pursue in the social security, education and employment areas. We will look to do that in a holistic approach to those policies and announce our relevant policy before the next election. But, in terms of this debate today in balancing the costs argument against the desirable outcome, we are disinclined to support the requests on this occasion.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.55 p.m.)—I move Democrat request No. 4:

That the House of Representatives be requested to make the following amendment:

10A Subsection 1067A(4)

Repeal the subsection, substitute:

(4) A person is independent if the person is at least 21 years old.

I will move swiftly on this one because the same arguments apply. This is to reduce the age to 21 years. To take up Senator Evans’s point, if the Labor Party does not want to reduce to 18 years immediately but wants to take a phased reduction of the age of independence, this probably represents a first and constructive step. So I hope on those grounds Labor might support this request. We are aiming for 21, and I do intend to divide on this issue.

Question put:

That the request (Senator Stott Despoja’s) be agreed to.

The committee divided. [2.00 p.m.]

The Chairman—Senator S.M. West

AYES

Allison, L.
Bartlett, A.
Bourne, V.W.*
Greig, B.
Lees, M.H.
Murray, A.
Ridgeway, A.
Stott Despoja, N.
Woodley, J.

NOES

Abetz, E.
Alston, R.K.R.
Bishop, M.
Bolkus, N.
Calvert, P.H.
Campbell, G.
Campbell, I.G.
Carr, K.
Collins, J.M.A.
Conroy, S.M.
Coonan, H.
Crane, A.W.
Crossin, P.M.
Crowley, R.A.
Denman, KJ.*
Eggleston, A.
Elliott, C.M.
Evans, C.V.
Faulkner, J.P.
Ferguson, A.B.
Ferris, J.
Forshaw, M.G.
Gibbs, B.
Herron, J.
Hill, R.
Hogg, J.
Hutchins, S.
Kemp, C.R.
Senator HILL (South Australia—Minister for the Environment and Heritage) (2.05 p.m.)—by leave—I inform the Senate that, on 10 March 2000, the current 12 parliamentary secretaries were appointed by the Governor-General under section 64 of the Constitution to administer their respective departments. In accordance with the Ministers of State Act 1952, as amended recently by the parliament, each has been designated by the Governor-General as parliamentary secretary and directed to hold the office of parliamentary secretary to the relevant portfolio minister. These appointments replace their appointments under the Parliamentary Secretaries Act 1980, which was repealed upon commencement on 10 March 2000 of the Ministers of State and Other Legislation Amendment Act 2000.

There is no change in the allocation to portfolios or in the title of the parliamentary secretaries’ offices, so no change is required to the ministry list which I tabled on 16 February 2000. As indicated during debate of the Ministers of State and Other Legislation Amendment Bill 1999, the appointment of the parliamentary secretaries under the Constitution does not signal any intention to change the role or broad range of portfolio functions that have been performed by parliamentary secretaries under successive governments—except I hope that they might now be able to represent ministers at estimates.

QUESTIONS WITHOUT NOTICE

Aboriginals: Reconciliation

Senator BOLKUS (2.06 p.m.)—My question is directed to Senator Herron, the minister for Aboriginal affairs. I ask the minister: if the Pope on behalf of the Catholic Church can say sorry for 2,000 years of Catholic Church oppression against indigenous peoples, Jews, ethnic minorities and the victims of the Crusades in which no-one has accused this Pope of being personally involved, why can’t the Howard government on behalf of all Australians say sorry for 200 years of mistreatment of this nation’s first people, including the victims of the stolen generation?

Senator HERRON—Senator Bolkus shows his ignorance yet again. Senator Bolkus is not aware that I am the Minister for Aboriginal and Torres Strait Islander Affairs.

Senator BOLKUS—So what!

Senator Herron—‘So what,’ I hear from the other side. I am sure the Torres Strait Islanders would love to know that. The Torres Strait Islanders would love to know that the Labor Party disregards them totally. The Torres Strait Islanders are a very proud race of people. They are our indigenous people who are completely ignored by Senator Bolkus and the Labor Party.

Having made that point, my understanding is that the Pope apologised for all actions over the last 2,000 years. That is his right and, as a practising Catholic, I welcomed it. Obviously, he has been responded to, Senator Bolkus would be aware, by a number of people saying that it is inadequate. That is the first part of Senator Bolkus’s question.

In relation to the so-called apology that Senator Bolkus has requested of the government, the government has made its position quite clear. The apology was put to the government as part of the recommendations of the Bringing them home report. It is often confused with a generalised apology for all actions taken by people coming to this country in relation to the Aboriginal people. In fact, that is not so. It is often confused, as obviously Senator Bolkus has confused it once again in his question. He is totally confused in relation to the question, first of all.

In relation to the Bringing them home report, the government has made its position perfectly clear. The situation is that one cannot apologise for actions that were taken by
previous generations in relation to this aspect of things.

Senator Bolkus—What has the Pope done?

The President—Order! Senator Bolkus, you may ask a supplementary question at the appropriate time.

Senator Herron—I would suggest that Senator Bolkus ask that supplementary question because he is going nowhere in relation to this. The government has made its position perfectly clear, and we stand by it.

Employment: Growth

Senator Ferguson (2.10 p.m.)—My question is to the Leader of the Government in the Senate, Senator Hill. Minister, can you inform the Senate of independent indicators that confirm that jobs growth will continue under the responsible economic management of the Howard government? How will the new tax system further assist in employment growth?

Senator Hill—It is interesting that that question follows on from that of Senator Bolkus because Senator Bolkus calls for an apology. Reading ‘The world by Paul Keating’ at the weekend, I was looking for the apology. I was looking for the apology for the adoption of policies that put one million Australians out of work—the record of the last Labor government as led by Mr Paul Keating. But it was not Paul Keating alone, because alongside him was Mr Beazley, Senator Cook, Senator Ray, and so it goes on. Apart from Mr Keating, the others are all here today, and they adopted policies which resulted in a million Australians being put out of work. How did they do it? By pushing up interest rates, pushing up taxation and crushing small business. By doing that, you end up with a million Australians out of work.

Yes, the stark contrast is something about which we are proud. As I said last week, unemployment in this country had dropped from 6.9 per cent to 6.7 per cent, the lowest level in the last 10 years. It is a tremendous achievement, but this government believes there is still more that can be done.

It was pleasing therefore to see, following on from the much improved figures of last month, that the ANZ survey of job advertisements showed the number of job ads in February this year was up 13.5 per cent on February last year. So there was a substantial improvement in job vacancies through the advertisements over the last 12 months. This in turn followed the latest survey of the Australian Chamber of Commerce and Industry, which predicted continuing employment growth and said that the outlook for the labour market remains encouraging.

It is therefore possible to continue to improve the labour figures in this country. Yes, the unemployment level is now the lowest it has been in the last 10 years, but with adoption of the right policies, it can improve still further. That is why this government, the Howard government, is so committed to low interest rates and a low inflation environment, one that will encourage Australians in business to employ more and more of their fellow Australians.

We got there not through good luck but through hard and fair decisions, such as tackling the budget deficit that we inherited from the last Labor government. We inherited $10 billion of deficit, and we were able to get that back into surplus and it has been in surplus for the last three years. So through taking those decisions, we were able to lay the base for strong economic growth, which in turn has contributed to these good employment figures in this country.

What is the contrast of Labor for the future if they came to government? We now know that they have adopted the GST, but that they are going to roll it back. So if they are going to roll it back, what is going to suffer? Are they going to take money out of health, or education, or housing, or other essential services? ‘Of course not,’ they say. What are they going to do? The alternative presumably is that they will put up income tax. Remember that Mr Beazley refused to indicate that income tax increases were not on the agenda. That is not surprising because that has been the record of Labor.

Senator Cook—You are running scared, aren’t you?

Senator Hill—Their record has been high income taxes, and furthermore the alter-
native is—yes, Senator Cook, you know—run up the deficit and run up debt.

Senator Cook—Not so.

Senator HILL—Who remembers Senator Cook before the last election when he said, ‘Our budget will be balanced and in surplus. Our budget will continue to move into greater surpluses’? But at least Senator Cook was not alone, because Mr Beazley said, ‘We’re operating in surplus and our projections are for surpluses in the future.’ This is when they were $10 billion in deficit. It is the sort of economic understanding that leads to an outcome of one million Australians being unemployed. The alternatives are clear: you take the strong economic management that delivers jobs or you go back into the past with high unemployment. (Time expired)

Nursing Homes: Alchera Park

Senator CHRIS EVANS (2.15 p.m.)—My question is directed to Senator Herron, the Minister representing the Minister for Aged Care. Can the minister confirm that Alchera Park Nursing Home in Queensland was finally subjected to a surprise inspection last Wednesday, the day after complaints about it were raised in parliament? Did the minister direct the Standards and Accreditation Agency to conduct this inspection? Was this inspection prompted by allegations raised by the opposition in parliament the day before? Can the minister confirm that no spot inspections were carried out at Alchera Park into the deaths of residents dating from November last year following complaints from family members and nursing staff.

Senator HERRON—I thank Senator Evans for the question, and I can confirm that there was a spot check—at least it was visited by assessors from the aged care Standards and Accreditation Agency—on 8 March. I would like to make the point that there is no immediate risk to residents. The assessors have seen no serious deficiencies in care, and I took the trouble of speaking to a doctor who had patients in that nursing home and he assured me that the highest standards were observed by Alchera Park Nursing Home. That was quite incidental. I know that Alchera home had been checked prior to the opposition raising that question, as is my understanding. The accreditation agency has done two reviews and a spot check of Alchera, the last in February and November last year.

Senator Evans has a very heightened sense of his own importance, but the reality is that there were two checks on it before Senator Evans even heard the name ‘Alchera’. It is great to have that feeling, and I know he is trying to make a name for himself.

Senator Conroy—When?

Senator George Campbell—Tell us when.

Senator HERRON—They do not listen to the answer. I say to Senator George Campbell, as I have already said, that it was in February and November last year, before Senator Evans had ever heard of Alchera. The accreditation agency is supervising a second plan of improvement with the service, and two assessors remained at the home until 10 March to provide support. So I can assure Senator Evans that it was checked previously on two occasions and that there was a spot check on 8 March.

Senator CHRIS EVANS—Madam President, I ask a supplementary question. Minister, apart from the gratuitous advice, you did not answer the key question: was there a spot check, an unannounced check, on Alchera, or were these regular audit reviews of which the proprietor is given notice? What checks were carried out following the complaints by family members and nursing staff of poor treatment of people suffering from gangrene and the deaths of those three individuals?

Senator HERRON—Senator Evans did not listen to my answer. I said previously that I understood a spot check occurred on 8 March. He is trying to beat up this issue. It is obvious this issue is being beaten up. There is a high standard of care being provided there. That is the assurance that I have had from a doctor who looks after patients there, and they have been transferred, where necessary, to the hospital.

Education: Youth Australians

Senator PAYNE (2.18 p.m.)—My question without notice is to the Minister representing the Minister for Education, Training and Youth Affairs, Senator Ellison. Will the minister advise the Senate of efforts the
Howard government is undertaking to increase education and training opportunities for young Australians? Is the minister aware of any impediments to the government’s initiatives in this regard?

Senator ELLISON—This is a very good question from Senator Payne. This government has been a government of education since it came to office, and this can be seen by the figures. Already just under 83 per cent of 19-year-olds have a year 12 equivalent qualification, have a post-school qualification or are attending a tertiary institution. This is fantastic news. This is up from the figure of about 77 per cent when this government came into office.

Unlike the Labor government which was in office prior to us, we have installed proper literacy standards in the primary schools. We have seen retention rates in schools rise. We have overhauled the apprenticeship system to see great strides forward in relation to the training and apprentice areas for young people. Of course, university revenues and places are now at record levels. There are some 160,000 more places in TAFE today than when the Howard government came to office. As I said, there are a great many more opportunities in relation to apprenticeships, and we have seen a doubling of apprentice and traineeship opportunities since 1995.

With that record, it is very disappointing to see that in New South Wales the teachers union has been blocking reforms over the last five years. In fact, the Daily Telegraph today has as its headline ‘Block vote: how teachers’ union has obstructed school reform’. It goes on to outline that the teachers union in New South Wales has put a ban on school reviews and annual school reports, a ban on the government’s computers in schools policy, a ban on year 7 literacy testing, a ban on the implementation of care and supervision of students, a ban on the HSC marking and a ban on English language and literacy assessment. What is this teachers union on about? These are the things that Australian parents want to see done in their schools for their children.

The vast majority of teachers in Australia want to get on with the job of teaching Australian students and getting results. But, of course, we have this teachers union in New South Wales which is blocking reform. In fact, just today, the Industrial Relations Commission in New South Wales ruled that the Teachers Federation breached orders when it imposed bans last month on literacy testing in schools.

This is an absolute disgrace and it is incumbent on the opposition to come out and say something about it. It is up to them to put it into actions, not just words, because their colleagues in New South Wales are disgusted by this. You have New South Wales Labor MPs saying that this is disgraceful, but we have a deafening silence from the opposition here, and we had the Leader of the Opposition saying that they will be a government of education if ever they return. It was at the 1998 ALP conference that the member for Werriwa welcomed working with the teachers union and thanked them for their input in relation to the schools policy. This is a case of Labor being in bed with a union that does not care about educational reforms—in fact, a teachers union which is blocking those educational reforms which Australian parents want. The opposition know that it is a disgrace, and they should do something about it.

Drugs: Court Evidence

Senator SCHACHT (2.22 p.m.)—My question is to Senator Vanstone, the Minister for Justice and Customs. Can the minister rule out the possibility that her publicity stunt last week in which an alleged $120 million of cocaine was destroyed in front of television cameras may weaken the case against those accused of importing the drugs? By denying the repeated requests from defence lawyers for an opportunity to obtain a sample in order to undertake independent analysis of material evidence before it was destroyed, has the minister’s involvement compromised the prosecution as well as the defence case in the $120 million drug haul?

Senator VANSTONE—I thank Senator Schacht for the question. As he well knows, it is inappropriate for a minister to comment on—

Senator Bolkus—Ha!

Senator VANSTONE—Just before you have a giggle, Senator Bolkus—any specific case before the courts. But let me make some
general comments that should indicate for Senator Schacht the trap he has fallen into, a trap created by his colleague Mr Kerr in the lower place.

In destroying illicit drugs, the Federal Police has acted and will act in accordance with the provisions of the national guidelines on drugs, including guidelines on drug destruction. The timetable for the destruction of drugs is set by the Federal Police, having regard to the processes that are required for analysis and certification by the independent analyst and vital security considerations. The minister has no involvement in that process.

For large destructions, because this sort of thing is happening all the time, the minister is invited to attend. Any accused of course has the right to test all evidence against them in a court. You may not understand, Senator Schacht, but the drug guidelines for the Australian Federal Police require them to be destroyed as soon as is practicable. As I am advised, they are regularly destroyed not before trial but before committal. Appropriate procedures are followed. Samples are taken, including samples for independent testing should that be required. And what Senator Schacht ought to remember, which even Senator Bolkus with his limited understanding of the law would know, is that every accused person has every opportunity to test evidence that is led against them in a court, and that is the appropriate place for that to be done. (Time expired)

Telstra: Job Cuts

Senator SCHACHT—Madam President, I ask a supplementary question. Minister, were the defence lawyers correct in claiming that they were not allowed to view the drugs nor conduct an independent analysis? Therefore, will the minister table a full statement setting out the chronology of her involvement in the decision for her to participate in the destruction of the alleged 500 kilograms of cocaine and all representations made to her in relation to this matter, together with any advice she sought and obtained in relation to the propriety of the destruction and her involvement in this matter? Why did the minister get involved in what, as most ministers for Customs would know, is clearly an operational matter and should not be treated as a publicity stunt?

Senator VANSTONE—I understand Labor’s concern at the publicity given to the enormous success the Federal Police and Customs have had in seizing drugs—a record they were not able to achieve when they were in government. This particular burn—last week, I think it was—destroyed in one morning twice the amount of that particular drug that was seized by Labor in the last four years of their drug policy. So I understand their embarrassment. I want to assure Senator Schacht that everything that was done was done in accordance with the guidelines. These drugs are regularly destroyed not before trial but before committal. Appropriate procedures are followed. Samples are taken, including samples for independent testing should that be required. And what Senator Schacht ought to remember, which even Senator Bolkus with his limited understanding of the law would know, is that every accused person has every opportunity to test evidence that is led against them in a court, and that is the appropriate place for that to be done. (Time expired)

Telstra: Job Cuts

Senator LEES (2.26 p.m.)—My question is to the Minister representing the Prime Minister, Senator Hill. I refer to the recent announcement by Telstra, the majority publicly owned Telstra Corporation, that it proposes to cut 10,000 jobs. Will the Prime Minister be seeking from Telstra the precise breakdown by region of these job losses? Will he then inform the parliament of what regions are going to be affected? Will the Prime Minister be ensuring that there will be no negative social impact in rural and regional Australia if in fact rural jobs are being cut?

Senator HILL—In that the question asked specifically whether the Prime Minister will do various things, I will refer that to the Prime Minister. I think there is perhaps some misunderstanding on the part of Senator Lees, and perhaps some others within the Australian community, that lower employment numbers necessarily means less service, which, with the adoption of new technologies in the telecommunications area, is not necessarily the case at all. We are all aware that with new technologies it is able to achieve the same service outcome with less labour and, as Telstra seeks to be competitive in terms of its business responsibilities, it can
do so whilst maintaining service levels that are satisfactory.

We are on record—in particular, my colleague Senator Alston has been on the record for some time—as saying that those levels of service have not necessarily been satisfactory and that this government is expecting Telstra to achieve better outcomes in that regard. In fact, from the government’s perspective, it has been pleasing to see that Telstra is prepared to commit itself to year-on-year improvements in current service levels. As Senator Alston has said, the government will hold Telstra to that commitment. The Australian Communications Authority will continue to monitor Telstra’s quality of service performance. Where it is found wanting, the ACA has the power to direct Telstra to take remedial action. We would expect the ACA to use all the powers available to it under the telecommunications legislation.

Furthermore, while in the past Telstra has admitted to taking its eye off the ball in relation to customer service, there is, as I understand it, evidence of improvements in recent times. Figures for recent years show the percentage of connections and faults cleared being met within customer service guarantee time frames are improving whilst, at the same time, there has been a decline in employment levels. Through mechanisms such as the customer service guarantee, which I remind honourable senators was an initiative of this government and which was strengthened only last year, and the powers available to the Australian Communications Authority, a further initiative of the coalition, we believe Australian consumers can expect to experience continued improvements in levels of service. It is possible, as I said, to improve upon service with lower job numbers, and therefore for Telstra to remain competitive in a very competitive environment, where the demands upon it are going to be even greater in the future, while at the same time delivering a level of service, particularly in the bush, that the Australian community have the right to expect.

Senator LEES—I thank the minister, and obviously virtually everyone except Telstra agrees that their service levels are not adequate, despite some recent improvements. Minister, you mentioned that the government would use all powers. I ask specifically: as the government has the power to direct Telstra under the Telstra Corporation Act to take action in the public interest, will the Prime Minister ensure that this power is actually used not only to guarantee that there is no further loss of service in the bush but actually to get service levels up to what the rest of us enjoy? What exactly would it take for this government to use the powers that it has to direct Telstra in the public interest?

Senator Mackay—You will never do it.

Senator HILL—The Labor Party, from across the chamber, calls out, ‘You will never do it.’ This government has done more about delivering better services in the bush, particularly in telecommunications, than its predecessor who had no interest in the subject whatsoever. The Prime Minister has said that government services must be maintained in the bush. Nobody has a greater interest in that issue than the Prime Minister. I am suggesting to Senator Lees that it is possible to maintain services within some industries at a lower employment level, and I would have thought that was obvious. Yes, the government remains committed to a good telecommunications outcome in the bush and, as I said, that is the commitment of not only the government as a whole but the Prime Minister personally.

Goods and Services Tax: Australian Taxation Office Information Response Service

Senator COOK (2.32 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware of a report in the Financial Review of 21 February, which detailed the tax office’s plans to establish a new five-day information response service, an IRS, to deal with GST inquiries? Can the minister confirm that the IRS is being established from existing resources in the tax office—that is, without additional funding from the government? Will the minister indicate from which sections of the Australian Taxation Office the 800 staff required to operate the IRS will come? In light of the Tax Commissioner’s concerns about the added strain this will place on the Australian Taxation Office, what specific measures will the government undertake to ensure that the normal opera-
tions of the tax office are not interrupted by the bungled implementation of the government’s GST?

Senator KEMP—The underlying comment at the end of course is totally dead wrong. This government is proceeding on course. This government has put in place very comprehensive plans to make sure that the implementation of the GST is successful. We have set in place a wide range of procedures to make sure that this is carried through in a very successful fashion. People will be aware that we have established call centres, which are of great assistance to those that want some information on GST questions. We have field visits, and I think many people in business will take advantage of that procedure. Where they need to, they can seek information and have a field visit from the tax office to assist in the compliance arrangements. There is also a great deal of information on the Internet, which is available to people who wish to use that facility. Equally, the tax office has been very productive in producing a range of material—pamphlets, etcetera—which people can use to deal with particular issues.

In relation to the specifics of Senator Cook’s question, there were some key figures he wanted and I will get those from the tax office. I assure Senator Cook that this government is determined that the implementation of the GST will be carried through very successfully. We have devoted very substantial resources to ensuring that this is the case. I urge the Labor Party—and I recognise that this would be a total change of policy—to adopt a more constructive attitude to the GST. We have in the last two weeks seen what is arguably the greatest backflip since Federation, in which the Labor Party signed on to the GST. Regrettably, Madam President, they have not signed on to the tax cuts that we are delivering. I would hope that, as the debate proceeds this week and in the following weeks, the Labor Party will adopt a more constructive attitude. I think in the wider community there is concern that the Labor Party seem to be posing a threat to the major tax cuts which the government will be bringing in. In fact, their failure to give that sort of assurance is frankly causing great concern in the wider community.

Senator COOK—Of course we have not signed on to the GST. But I note—

Government senators interjecting—

Senator COOK—We are opposed to it, and we have made that very clear over a long period of time. Madam President, I ask a supplementary question. Can the minister confirm reports that staff and resources transferred by the Howard government from Customs to the tax office, and intended to continue scrutiny of fuel excise, amongst other things, have been hived off to GST-related work?

Senator KEMP—I must say I am astonished that this particular question has come up, because this question was answered quite recently.

Senator Schacht—What date? Tell us what date.

Senator KEMP—I cannot tell you what date but I can tell you exactly what I said, if that is any help to you, Senator. This issue was raised by Kelvin Thomson, who has made many mistakes in this area. Let me make it clear—this is from the Commissioner of Taxation—that ‘claims there has been a wholesale movement of staff from excise operations to administer the GST are also incorrect. The only staff to move to GST from excise operations are those who have chosen to do so on promotion as part of their personal career choices. We have replaced the staff and in fact advertised in several major newspapers for increased staff numbers to conduct excise investigations and enforcement. We have received several hundred expressions of interest.’ That was a statement from the Commissioner of Taxation. If my memory serves me correctly, Senator Cook, that was answered properly last week, and I am surprised that the question was raised again today—which only makes the point I often make, which is that I wish opposition senators would listen to answers. (Time expired)

Nursing Homes: Funding

Senator HARRADINE (2.38 p.m.)—My question is to Senator Herron representing the aged care minister. Will the government
conducted an inquiry to determine to what extent the commercialisation of aged care contributes to a decline in standards and indeed in voluntarism? As to the effects of staff cuts caused by the government funding cuts in real terms for homes generally—including those run by charitable organisations—has the minister read a letter by Lorraine Heron in the *Mercury* of Saturday which said, inter alia:

The staff in nursing homes are under pressure; they run faster, they work unpaid extra hours and they become increasingly frustrated and stressed because they cannot do what they think they ought towards the care of those dependent upon them.

Will the minister review government funding indexation rates to ensure that those rates reflect current costs?

**Senator Herron**—It is very rare for me to criticise Senator Harradine. In fact, I am sort of one of his supporters, I would say. But he is obviously quoting from a newspaper report, and one should be very wary of quoting from newspapers, even when it concerns someone with a similar surname to me. The reality is that there are no funding cuts. To answer Senator Harradine’s question about commercialisation, when we came to government we found that Labor had left frail older Australians an appalling legacy. There was a 10,000-place shortfall in the number of nursing home beds available for frail older Australians; a nursing home sector that was starved of much needed capital funding and an inflexible and overregulated care system that failed to recognise the individual needs of each resident and to reward innovation. In its last term in office Labor—Senator Harradine—slashed capital funding for nursing homes by almost 70 per cent. Under Labor, 10 per cent of hostel residents needed a high level of care. They did not even require hostels to have any nursing staff whatsoever. That was under the Labor Party. We are the ones who are actually fixing the problem. The opposition is in fact campaigning now for us to stop what we are trying to do to fix up the problem.

Regarding certification and building quality, since we came to government every single facility has been visited to check the quality of the buildings in which older Australians are living. That is the first point. More than $1.3 million has been spent on certification visits. The Labor Party did not do that at all. Over $870 million in upgrades, rebuilds and new facilities are estimated to have been in progress or completed across the industry in 1998-99. The accommodation payment arrangements are generating a substantial income stream for this much needed capital improvement. Accommodation bonds are expected to generate at least $1.6 billion in capital funding for services providing hostel level care over the same period. I am sure Senator Harradine would be pleased to know that in the four years since the government came to office in 1996 we have actually increased the funding provided for aged care by 42 per cent. Commonwealth expenditure on residential aged care has increased by that amount, up from $2.5 billion in 1995-96 to a projected $3.5 billion in 1999-2000.

On the other hand, the second assertion that Senator Harradine read from that newspaper report is true: there is a desperate shortage of registered nurses in aged care. It is a very complex situation. I can understand the complaint made by registered nurses, because it is very difficult to attract nurses to aged care, and it does not rest on the wage rates alone. Indexation ensures that funding rates are increased in line with any safety net adjustments made by the Australian Industrial Relations Commission. But those current indexation arrangements were put in place by none other than Labor. They brought in those indexation arrangements, and Labor applied the arrangements to all programs with substantial wage costs. A major factor is the need to attract registered nurses to this industry right across Australia. So if the number of nurses in the market can be increased, then both hospitals and aged care facilities will be better placed to attract nurses to provide care. The government has set up a high-level residential aged care work force review committee and committed $1 million over the next two years to investigate how to alleviate this problem. *(Time expired)*

**Senator Harradine**—Madam President, I ask a supplementary question. I recommend that the minister have a look at this letter in the newspaper. It is obviously from
someone within the aged care industry—and I have a family member who is a carer—and it reflects what is going on in aged care. Could the minister consider my previous question, even from a philosophical view about what commercialisation of aged care is doing to voluntarism and also to services? Secondly, on that question of indexation, would the minister give the Senate a copy of how the government justifies the current funding and its failure to meet current costs? Finally, could the minister have a look at whether funding for specific care is actually spent on that specific care?

Senator HERRON—Senator Harradine will be pleased to know that I also have a family member who works in the industry and I have visited many nursing homes and hostels both in the past and presently. So I am in touch, I can assure him, with the industry itself. I would be happy to take those further supplementary questions to the minister and see if there is anything further to add. As I mentioned previously, I have not read that newspaper article, but one must always be wary of industry positions put by people working within that industry promoting a particular view in relation to wages and conditions.

Senator Conroy—Like doctors would.

Senator HERRON—As union members would and unions themselves; those who are represented by all those on the other side. We can understand their position when the Labor Party and the opposition are run totally by the union movement. We can understand their position and if there is anything further the minister has to say, I will report to the Senate.

(Time expired)

DISTINGUISHED VISITORS

The PRESIDENT (2.45 p.m.)—Order! I draw the attention of honourable senators to the presence in the President’s Gallery of former Queensland senator, the Hon. Margaret Reynolds. I welcome her on her return visit to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Frequent Flyer Points

Senator CONROY (2.46 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Can the minister inform the Senate of the extent of the government’s consultation with banks, airlines and retailers prior to the recent decision to exempt frequent flyer points and rewards from the Howard-Lees GST? Just why have banks, airlines and other big business groups in society got such successful access to Howard government decisions on exemptions to the GST, but the now 11,000 Australians who signed the petition seeking GST exemption for tampons still cannot be heard by this government?

Senator KEMP—I thank Senator Conroy for the question. The first point I would make is that it is not the Howard-Lees GST now; it is the Howard-Lees-Beazley GST. I make the point that the Labor Party in this chamber seem to be in a state of denial. There seems to be an unwillingness to accept that their leader has transacted the greatest backflip in Australian history in policy terms and has now decided to adopt the GST. The Labor Party—having indicated over the most tedious debate in Senate history how much they were opposed to the GST—have now signed on.

Let me take the second part of the question. This is a consultative government. This is a government which consults. We make no apology at all for consulting with people. In fact, this tax reform will be so successful because there has been very extensive consultation with all groups—big business and small business. In relation to tampons, the specific issue raised by Senator Conroy, the government has made its position very clear. If you cast your mind back, at the start of this process there was very extensive consultation with all groups—medical groups and others—and the policy that we stated is one which we will be delivering.

Senator Conroy—No, it’s not; it’s a supply, and you know it.

Senator KEMP—I want to make it very clear that this government does consult. This government believes that the success of the
tax reform program will be in large part because of the very extensive consultations that we have carried out with the wider community.

Senator Conroy—It’s the provision of a supply, and it’s GST free.

The President—Order! The questioner ought to at least listen to the answer.

Senator Kemp—The final point I would make is that Senator Conroy should be aware that there were newspaper reports which indicated that the additional added cost to the cost of a tampon as a result of the GST amounts to some $4 a year, whereas many families will be receiving tax cuts in the order of $40 to $50 a week. That gets to the nub of the issue. Those tax cuts are a critical part of the tax package that we are delivering. Those tax cuts are a critical part of this tax package, and that is what makes this tax package fair. What is causing very widespread concern is that, whereas the Labor Party has signed on to the GST, it has not signed on to the very extensive tax cuts. It is quite clear that the prices of some goods will rise and some goods will fall. We have never argued the toss on that. We are saying that we are delivering the most substantial tax cuts in Australian history and as a result Australian families and taxpayers will be substantially better off. It is of great concern—and I stress of great concern—that the Labor Party refuses to guarantee the very substantial income tax cuts that we are proposing to deliver.

Work for the Dole: Rural and Regional Australia

Senator Mason (2.52 p.m.)—My question is to the Minister for Regional Services, Territories and Local Government, Senator Macdonald. The minister would be aware of the success of the government’s Work for the Dole scheme. Would he outline to the Senate the contribution of the scheme to the development of rural and regional Australia? In particular, has local government embraced this program?

Senator Ian Macdonald—Senator Mason has asked this question about Work for the Dole no doubt prompted by his wide contact with people around Queensland who are involved in the Work for the Dole program, people who have no doubt told him how valuable the program has been. Already some 57,000 young Australians have participated in Work for the Dole projects. There have been over 1,500 projects throughout Australia, and I am pleased to say more than half of them have been in rural and regional Australia. Thirty-four per cent of the participants in Work for the Dole programs have gone on to paid employment following their time with Work for the Dole. Work for the Dole provides for unemployed people hope, experience and the opportunity for employment. It also provides dignity and skills and a sense of belonging that some unemployed people do not have. A recent survey found that nearly 85 per cent of participants in the Work for the Dole pilot program believed that the program had increased their desire to find a job, and nearly 80 per cent of the participants believed that Work for the Dole programs had increased their self-esteem.

As local government minister I am very pleased to say that local government has been
a significant provider of Work for the Dole projects across Australia and particularly in my own state of Queensland. Around 90 councils in Australia have so far become Work for the Dole project sponsors. Thirty of these 90 councils have been in Queensland, and they include councils like Maryborough, Gladstone, Rockhampton, Emerald and Thuringowa. But I have to say, with some regret, that the biggest council in Queensland—in fact, the biggest council in Australia—the Labor-controlled Brisbane City Council, has refused to become involved in this very worthwhile scheme. In fact, the Labor Lord Mayor, Councillor Jim Soorley, described the Work for the Dole program as ‘a disgraceful, miserable scheme that we will not support’. I know the federal Labor Party opposite originally opposed it, but now Mr Martin Ferguson has come around, and even Martin Ferguson now says this:

Reciprocal obligation, mutual obligation, work for the dole, is good ...

But Councillor Soorley, your Labor colleague in Queensland, calls it a disgraceful, miserable scheme that he will not support. This is strange, full of hypocrisy from the Brisbane City Council, when you see that between 1992 and 1996 the Labor Brisbane City Council was contracted to manage 19 Job-skills, Landcare and Environment Action Programs and New Work Opportunities projects in Brisbane. It was involved in training in those times over 3,000 people. The double standards from Councillor Soorley—he is happy to accept the money when it is coming from a Labor federal government, but when it is a Liberal federal government he is not interested—clearly show that the Labor council in Brisbane and its mayor do not care about the unemployed. All they care about is playing party politics. What sort of a show is this in Brisbane that carries on like that? Just the other day they actually gave preferences in their election campaign to a One Nation candidate. That was done by Councillor John Campbell, the former President of the Australian Local Government Association. That is the sort of show that is being run in Brisbane. (Time expired)

Goods and Services Tax: Deposits

Senator GEORGE CAMPBELL (2.56 p.m.)—Can the minister confirm that the mere payment of a deposit on a good or service triggers the full GST liability becoming payable by the supplier of that good or service? If, for example, a $100 deposit is placed on a $2,200 holiday package, then the supplier of that package is liable to pay the full $200 GST, regardless of the fact that they have not yet collected the GST from the purchaser? What impact will this have on the many thousands of small businesses for which the purchase of goods and services on deposit is a regular occurrence? How is this bungle possibly beneficial to the cash flow of small businesses?

Senator KEMP—Let me make a couple of points in relation to Senator George Campbell’s remarks. The first point I would make is that small business will benefit hugely from the GST. It will become apparent not only that the costs of many people in business will fall as a result of the GST through the input tax credit system but that at the same time we are delivering major—let me make it very clear—tax cuts, which I believe again will be of major benefit not only to taxpayers but to business and consumers. The problem that we have is that the Labor Party simply has signed on to the GST but has not signed on to the tax cuts. It has given Mr Beazley was bullied by the Labor premiers and gave an absolute assurance that he was prepared to guarantee the income to the consumers. The problem that we have is that the Labor Party simply has signed on to the GST but has not signed on to the tax cuts. It has signed on to giving money to the states—given Mr Beazley was bullied by the Labor premiers and gave an absolute assurance that he was prepared to guarantee the income to the consumers.

I make the point that one of the major dangers that we have at present is the uncertainty being created by the Labor Party and their absolute refusal—to me it very clear—to give any guarantee. Thirty times Mr Beazley has been asked whether he will give that assurance, and each time the answer has been no. What I would wish to do is to look closely at the detail of the question which has been asked by Senator Campbell and get back to him and provide an answer.

Senator GEORGE CAMPBELL—It took the minister a long time to get around to telling us he was not in a position to answer
the question. My supplementary question is: is the minister aware that only last year the tax commissioner promised that information contained in the Howard-Lees GST information booklets was binding? If so, how does the minister explain that its GST tourism information booklet stated that GST was payable on hotel booking deposits only when full payments for the room were received but subsequent advice is that this was an error and can no longer be relied upon, with the ATO’s explanation being that it is binding ‘only until it is changed’? Does this mean we now have binding and non-binding GST information booklets that can be changed at the whim of the government via the commissioner? Is this just another bungle, Minister?  

Senator KEMP—No, it was not just another bungle. Let me make it clear that the GST will be to the benefit of business, consumers and the Australian economy. The tax commissioner is within his powers—he is quite entitled to withdraw a ruling. This happens from time to time, and the tax commissioner, as far as I am aware, has always had that right and he continues to have that right.

**Immigration: Mandatory Detention**

Senator BARTLETT (3.00 p.m.)—My question is to the Minister representing the Minister for Immigration and Multicultural Affairs and it relates to Australia’s policy of mandatory detention of people who arrive in Australia without authorisation. The minister would be aware that this practice has already attracted criticism from Australia’s Human Rights and Equal Opportunity Commission and the United Nations Human Rights Committee. Given the fact that few other countries have mandatory detention and that there are already human rights concerns about incarcerating—often for long periods of time—people who have not committed any crime, what is the government’s response to broader allegations of mistreatment of asylum seekers being held in detention, including being subjected to verbal abuse and inadequate care and being forcibly and repeatedly injected with sedatives? Will the government re-examine the treatment of asylum seekers who are being detained?

Senator VANSTONE—I thank the senator for his question. I have looked at the briefs provided by Minister Ruddock today and there is not one that specifically addresses the range of points that you raise. I simply point out that those people in detention have come here unlawfully and their status is at that point being ascertained—they are either granted asylum or refugee status or otherwise. I think it is appropriate if I take all of your questions on notice and ask Minister Ruddock to comment as he thinks appropriate. That way I think you will get a better answer than me referring to a piece from each of these briefs.

Senator BARTLETT—Madam President, I ask a supplementary question which the minister may need to follow up as well. The minister would, I expect, be aware of media reports of a shipwrecked Indonesian fisherman who had been lost at sea for over three weeks and who, when he was washed up on Australian shores, was not given appropriate assistance but was, instead, thrown in jail for four days as a non-authorised arrival, following a decision taken by federal immigration authorities. Are these reports correct? Would the Australian government have treated this person differently if they had been a wealthy Westerner who had been shipwrecked from their yacht?

Senator VANSTONE—I will pass on your last florid little assumption. Since I now know—you have wasted your question—that you wanted to ask about the shipwrecked Indonesian fisherman, if you had been a bit more specific at the beginning you would have got this answer. I will do the best I can to answer your question in the time—to the extent that I do not get through it, I will send the information to you after question time. A distressed Indonesian fisherman was washed up on the shores of Cobourg Peninsula earlier this week. He has been recovering under medical supervision at the Darwin correctional centre. His account of how he came to be in Australia was accepted by immigration officials. However, in contrast to other distressed seafarers reaching Australia in recent times, he had no evidence of identity with him and no way of establishing his identity. Given this, by law it was necessary to place him in an immigration detention centre. He required time to recover from his ordeal and
was placed under medical supervision where his health could be monitored. The Darwin correctional centre has nearly 100 other Indonesian fishermen who can provide common language and support to this person who had never been in a large town, let alone in a city. I will send you the rest of this information later, Senator. 

Goods and Services Tax: Information Booklet

Senator HOGG (3.04 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Can the minister explain how many errors have crept into the 31 separate ATO GST information booklets? Does this mean that the information booklets can no longer be relied upon by business and that the information contained in them is no longer binding, as promised by the tax commissioner only last year?

Senator KEMP—The government is very proud of the range of material which has been produced. A very wide range of pamphlets and booklets have been produced and they will be of great assistance to business. I think these have been widely welcomed. I do not know whether the senator has had a chance to read them, but they are comprehensive and written in straightforward language. I think the feedback that we have received has been very positive indeed. As I mentioned earlier, the tax commissioner always has the right to withdraw a ruling and where he does it is very widely publicised. I can assure people that the booklets we have produced are certainly worth obtaining in the particular sectors which people are involved in and, as I said, I think they are an important source of information. They are not the only source—there is a great deal of other information which is available. I mentioned earlier on in question time the info lines and the Internet arrangements that we have. So let me assure you that we believe the material we have produced is of great use to people but, as I said, the tax commissioner always has the right to withdraw a ruling.

Senator HOGG—Madam President, I ask a supplementary question. How many information booklets have been found to be in error? What action has the government taken to inform users of these erroneous booklets and the fact that they cannot rely upon the information contained in them despite a promise from the commissioner that the information contained in them was binding on the commissioner? Isn’t this just another bungle in the Howard-Lees GST?

Senator KEMP—I think the greatest bungle that I have seen is the refusal of the Labor Party to give a guarantee on the tax cuts. I think the community would think that was probably the greatest bungle they have seen. They would also be amazed that the Labor Party, having fought so hard against the GST, have now signed on. We have mentioned the Howard-Lees GST. Let me make it clear that, thanks to Mr Beazley’s comment a couple of weeks ago—and I will repeat it—it is the Howard-Lees-Beazley GST. The Labor Party are getting themselves progressively into deeper and deeper water on this particular issue.

Senator Hogg—Madam President, I rise on a point of order. My point of order is on relevance. The minister was asked about how many errors there were in the books. He has failed to address that in the answer to either my question or the supplementary. Would you direct him to do so?

The PRESIDENT—I would draw your attention to that aspect of the question, Minister.

Senator KEMP—Thank you, Madam President. The senator mentioned the bungles, and that opened up a discussion on bungles. I gave him a comment that one of the greatest bungles that we have seen is of course Mr Beazley on the income tax cuts. (Time expired)

Senator Hill—Madam President, I ask that further questions be placed on the Notice Paper.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.08 p.m.)—I move:

That the Senate take note of the answers given by the Minister for the Environment and Heritage (Senator Hill) and the Assistant Treasurer (Senator Kemp) to questions without notice asked by
The Australian people do not believe the government on the GST. Even many of those who voted for the government at the last election and thought the GST was ‘a major tax reform’ now find that their illusions about what the government is proposing have been shattered and their faith in the government’s honesty and integrity undermined. No longer do they believe in this tax or this government. There are four reasons for this. The Prime Minister has now reached infamy on his old undertaking that he would ‘never ever’ introduce this tax. The second reason is that the more people have come to understand what the GST entails—increasingly and specifically on services and not just on goods—the more people have become disenchanted and realised how much their savings and household budgets will be eroded. The third reason is that the tax cuts which are the lifeline that the government clings to to try to defend itself against mounting public confusion over the GST stand revealed now as a sham. The words of the Prime Minister, ‘no-one will be worse off’, are now publicly vilified by ordinary Australians as a joke, and well they might be. They rank with the ‘never ever’ undertaking. When Australians look at their pay packets after the tax cuts have clicked in and after the new tax is payable, and when they see the prices they have to pay and see their savings, they will realise the loss they have incurred, particularly for families. It is no wonder that the GST is seen as being anti-family. Finally, there is a fourth reason, and that is quite clearly the botched implementation by the government of this tax. It describes it as a tax revolution. What it has forgotten to tell us is that this is a revolution of confusion and misleadings, with the officials responsible unable to clear up misunderstandings and the tax office undermanned and unable to give sufficient rulings.

This tax is now a public and national disgrace. The bungles that we have started to see go to the confusion of industry, which has to implement it. It is the sort of confusion that is up there with the single greatest fear that Australians have about the GST. The single greatest fear is the realistic belief fostered by an examination of what has happened in other countries—what occurred in Canada, New Zealand and everywhere else—that, when you introduce a 10 per cent GST, the one thing you can count on is that it will go up. Most Australians believe that. All they have to do is look at other countries to see why that is so. Most Australians believe the GST is no good for their family. Most Australians believe it will push up inflation. Most Australians in small business know it will not work for the credibility of their businesses.

Let us go to some of the bungles, like the GST on rounding up. In January, Minister Hockey could not define how you round up the GST when you are applying a 10 per cent charge or whatever the GST surcharge is. He could not say whether you go to the higher figure if the difference is 0.5 of a cent or whether you go to the lower figure. He could not tell anyone. He referred it to the ACCC. Guidelines released in July say that no rounding up could result in prices of more than 10 per cent. Immediately we saw examples around Australia of where the prices had already gone up in opposition to the guidelines—people are price takers out there—and by more than 10 per cent. We were told that there would be no GST on cars. It is no longer a government commitment that prices would fall by eight per cent under the GST. That is what they said in the election, but the minister said just the other day, ‘No, that will not be the case.’

On GST and stamp duty, we know that the state governments are imposing stamp duty with the GST on top. That is a tax on a tax, and the level of GST is higher than it would otherwise be. There was also the GST and the business activity statement. There is a three- to four-page form to fill out but a 120-page explanation of how to fill out the form, and many of the explanations are wrong and confusing to small businesses, which cannot pay high priced accountants to guide them through the maze of new regulation. On the GST and the diesel fuel rebate, businesses still do not know where the boundaries for
the so-called commutations are because the government has not yet defined them. *(Time expired)*

**Senator CHAPMAN** *(South Australia)*

(3.13 p.m.)—The Labor Party really never give up. They continue this furphy and scare campaign against what is essential tax reform, and it has been recognised as such by the Australian people at an election. At the outset of his remarks, Senator Cook claimed that Prime Minister Howard said that he would ‘never ever’ introduce a GST. What he in fact said was that, in his view, there never would be a GST. What the Prime Minister was referring to at the time was the fact that, in his assessment, the political and public climate of the time would not allow the introduction of a GST by a future government. But, to his great credit, as Prime Minister he set about courageously arguing for and achieving a change in that public attitude.

In fact, the Prime Minister set about changing that climate of public opinion by successfully arguing the case for tax reform. He was so successful that he is now the only political leader in the Western world to have successfully won an election arguing the case for tax reform. So let us hear none of this nonsense about there being no support for tax reform in the community. At the outset there was not, but the Prime Minister went out and argued the case and won the case for tax reform, and that is now recognised. This contrasts absolutely with the attitude adopted by the Labor Party and, in particular, by its leader, Mr Beazley. We all know Mr Beazley really supports the goods and services tax. It was one of the few issues on which he raised his voice in cabinet when Labor was in government—in support of the proposals of the then Treasurer, Mr Keating, for a broad based indirect tax, a goods and services tax—as former Senator Richardson has attested. The support of Mr Beazley for the goods and services tax is very clear.

The problem with Mr Beazley is that he wants to be all things to all people. While he supports a goods and services tax, he says that he is going to roll it back. He wants to remove what he perceives as some of the unpopular elements to increase his public popularity in a desperate attempt to win an election the next time around. That is understandable. The problem with Mr Beazley and the Labor Party is that they have no policies. They have no policies across a range of issues, and they certainly have no policies that are consistent in the area of taxation. All they are able to do is oppose by scaremongering and false allegation the reform policies and the initiatives of the present Liberal Party-National Party government.

Mr Beazley set out to say that he is going to roll back the goods and services tax, but the problem with that is that the goods and services tax provides revenue to the states. It does not provide revenue to the federal government. All of the revenue from the goods and services tax will go directly to state governments, who were starved of revenue by the previous Labor government over the years they were in office, with their constant cutbacks of grants to the states and also with the provision of grants by way of tied grants rather than untied grants. Naturally, when the proposal for rolling back the GST came to light, the Labor state premiers and Labor state leaders of the opposition were aghast at the prospect of losing revenue which had been guaranteed to them by the present Howard government. So then Mr Beazley had to guarantee that the state revenue would not be affected by his proposed roll-back. The only option that he is now left with, as a consequence of those two commitments, is to either resort to deficit budgeting, which would be an absolute disaster for Australia—

**Senator Hill**—They’ve done it before!

**Senator CHAPMAN**—And what a disaster it was. It ruined the Australian economy and would ruin the Australian economy again. Labor does not understand that we now have an international economy. Deficit budgeting places enormous pressure on Australian interest rates. To fund the shortfall in revenue which would result from Mr Beazley’s GST roll-back, he has to either resort to deficit budgeting or—as will undoubtedly occur—resort to massive increases in income taxes. So that is Labor’s tax policy, hidden though it might be at this stage—a massive increase in income taxes, the very thing that will deter Australia from becoming a more competitive player in the international
economy and, in particular, in the development of information technology. Higher tax rates on middle to high income earners are a strong deterrent to people who have skills in the area of information technology residing in Australia and earning their incomes in Australia. (Time expired)

Senator GEORGE CAMPBELL (New South Wales) (3.18 p.m.)—I also seek to take note of the answers relating to the GST given during question time. I agree with the comments made by my colleague Senator Cook. At this time, the reality is that the Australian public do not believe one word that the government says in respect of the GST. They have good reason to not believe one word that the government says about the GST, from the Prime Minister's promise in 1995 of 'never ever' to some of the promises that have been made subsequently, over the past three years, in respect of various aspects of the GST. One example of the latter is the promise that was made by Mark Vaile, the now Minister for Trade, prior to the 1998 election to people who are permanent residents of caravan parks. The minister said:

... residents who occupy accommodation in a caravan park or a holiday village on a permanent basis ... will not have to pay GST on their site fees.

The federal Minister for Community Services, Larry Anthony, has tried to deal with this issue over the past few months. All he has done is confuse more and more residents of caravan parks in his electorate as to the real set of circumstances. I have been up in Richmond over the past couple of weeks, and some of those residents—who, I might add, have been long-time National Party supporters—have said to me, ‘Get your leaflets into these caravan parks, because you’ll get every vote in them against the government in respect of its position on GST on those residents.’

Also, look at what Joanna Gash, the member for Gilmore, has said. She has said the tax is a ‘discriminatory tax on where you are living’ and ‘a stuff-up’. She has said, ‘There’s no other explanation.’ But we have heard the Assistant Treasurer in question time in this chamber saying that this is a consultative government and that this government consulted with the community in respect of decisions about the GST and the application of the GST. Let us look at the consultation there was in respect of the issue of tax on caravan park owners. The Treasurer, without any consultation with members of the National Party, said that the GST would remain on long-term caravan park residents and that National Party members and other members of the government would just have to cop it.

Did Mr Anthony, Mr Vaile, Mr Anderson or Ms Gash make a song and dance about the Treasurer’s pronouncements? Not at all. We never heard one peep out of them. Yet they will go back into their electorates—back into Richmond and into Gilmore—and they will say to the residents in those caravans parks, ‘We’re trying to do everything in our power to fix this problem for you. We’re talking to the government, we’re having discussions with this minister, we’re talking to that minister, we’re talking to the Treasurer,’ but at the end of the day they will deliver nothing.

Let us also look at what happened with the sale of automotives. The Prime Minister in the election campaign promised that the price of cars would fall by eight per cent—unequivocal, without qualification, eight per cent. Do you all remember the television pictures of the Prime Minister sitting on the front of the four-wheel drive? Mind you, he did not get the price of the four-wheel drive right at the time. He could not get that right, nor could he get right how the GST was going to apply to the sale of automotives because he said they would fall by eight per cent.

Then we had the spectacle of the minister responsible at Senate estimates two weeks ago saying that, yes, there would be a fall in the tax on automotives, but the price of automotives might actually rise as a result of the GST. We then had the Assistant Treasurer in here last week going back to the Prime Minister’s original promise that it would fall by eight per cent. Who do you believe? You cannot believe any of them. You had the Minister for Industry, Science and Resources saying that there was no buyers strike in terms of automotives, yet a week ago you had car shops on Parramatta Road selling used cars for $99 because they could not get rid of...
them—no-one was coming to purchase cars. (Time expired)

Senator LIGHTFOOT (Western Australia) (3.24 p.m.)—I am surprised that we are speaking this afternoon on the GST still. Not just the public that listen to this debate in decreasing numbers but also members of this chamber believe that the Labor Party should be shifting on to something that may not be as important as the GST nationally but something that would manifest a little more interest from our constituents. Now that this is a Howard-Lees-Beazley GST or an HLB—if I could say that, because they are quite long names—GST and we know it is going to work, we also know there is not one credible organisation in Australia that does not embrace it. Perhaps some do not embrace it fully, but we are listening to those people. Some of those organisations are the major retailers which the GST was purported to affect most of all. The Australian Food and Grocery Council agrees with it; the Australian Retailers Association agrees with it; the motor vehicle manufacturers agree with it; the motor industries association; the Mining Council of Australia—the peak body of all mining companies in Australia—and the Chamber of Minerals and Energy, part of the MCA, also agree with it; the chambers of commerce and industry agree with it; and their confederation, the umbrella organisation, agree with it as well.

Not only that, even the Prime Minister of New Zealand—a cohort, if you like, of those opposite in the Labor Party—Mrs Helen Clark agrees with it, too. There is no more damaging statement that has been made in recent times directed towards the Leader of the Opposition in the other place than when Mrs Clark said this:

> It is a very well accepted tax in New Zealand at the moment and no-one seriously thinks it would ever be changed.

That is not a conservative Prime Minister of a conservative country; that is the Labour Prime Minister of a—deeply entrenched at times—Labour country. She went on to give some advice for Mr Beazley and his roll-back theory. You will remember that Mr Beazley has accepted the GST, even though his colleagues on the other side here in the Senate are still arguing that it should go back. The logic of arguing that it should go back when their leader has said that he agrees with it is very unusual—it escapes me. This was Mrs Clark’s advice for Mr Beazley:

> Once you start differentiating between classes of goods, you get into anomalies that can be a bit hard to explain.

If Mr Beazley is going to roll this GST back, what part is he going to roll back? Is he going to increase the prices on some goods in respect of the GST—you are not going to do without it—or is he going to decrease prices on some and, if he is, where are they going to be? We need to know this; we need to know where the Labor Party is going. We need to know whether the Labor Party, as the alternative government under Mr Beazley, is going to leave us with a $10 billion black hole again, as he did in 1996 after saying that there was a balanced budget there. Senator Cook was also part of saying that there was a balanced budget.

I think that the New Zealand Prime Minister really hit the nail on the head. What Mr Beazley cannot explain at the moment is how he is going to pay for the roll-back. You will remember he is going to roll back the GST taxes; he is going to keep up the payments to the states. He has not said though that he is not going to raise personal or company income tax. You will recall that we are going to reduce company tax in two levels, from 36 per cent down to 34 per cent and then to 30 per cent, and we are going to reduce capital gains tax in most areas by 50 per cent—further tax cuts. We are going to eliminate nine other taxes. We are going to give the people that normally vote in large numbers for the Labor opposition $12 billion in tax cuts. Where is Mr Beazley going to save the money when he rolls back the only source of revenue that he could raise money from—that is, the GST? My advice to Mr Beazley, and I have never given him advice before, is: join the civilised world with us, Mr Beazley; come and join us. You have said you are going to accept the GST. Do the right thing now and support it unequivocally. (Time expired)

Senator HOGG (Queensland) (3.29 p.m.)—It does not surprise me that coalition
members are concerned about the GST. With only 117 days to go before the GST comes fully into operation, I can understand their anxiety—their real anxiety. Just look at the argument that Senator Chapman put here this afternoon—that the Prime Minister went out and argued tax reform at the time of the last election. If the truth of the matter be known, the fact is that a giant snow campaign was carried out under the CEIP, the Community Education Information Program, at taxpayers’ expense to convince Australian taxpayers that tax reform was good for them, without their even knowing what tax reform was about and what the effects of the GST ultimately would mean for many Australians.

The result at the end of the day at that last election was that, in spite of not winning a majority of seats in the parliament—which I admit is the key issue—there were a majority of people who spoke against the GST. There was fear of the GST—a fear caused not totally by Labor but by people knowing about what its effects had been in other parts of the world. This is what brought people to the realisation that the GST was not for them.

So we have facing Australia today the reality that in 117 days we will have this GST, which the majority of Australians, and more Australians day by day, want nothing to do with. Australians are coming to the realisation that it was a thimble-and-pea trick. This is what the coalition pulled upon them at the last election, and this is what they have to confront today.

But it is good to hear Senator Chapman talk about the Prime Minister arguing for tax reform and, of course, the Democrats wearing the odium as well of being partners in delivering the GST to the Australian people—for they surely will reap the havoc of it at the next election. If you look at what has happened to governments that have introduced the GST, traditionally in the first election post the GST they have been thrown out of office unceremoniously—completely unceremoniously. With the confusion that is reigning out there amongst businesses and consumers, no wonder this fate awaits the government.

Look at the simple question I put to the minister today. I asked the minister how many errors there were in the 31 publications or the information booklets that the ATO has put out. The minister could not even address that question; he does not know. That is symptomatic of what is happening with this government. The books, of course, in many instances can no longer be relied upon. When this simple question was put to the minister today, one would have expected him to respond—respond to allay the fears that the public at large might have about information that is being put out by the Australian Taxation Office. But I did not give the minister one go; I gave him two shots at it. But all that this minister can refer to are bungles, and this minister is very capable of bungles. He was given the opportunity again to answer the question.

The DEPUTY PRESIDENT—Do not reflect upon a minister, please. I just urge the question.

Senator HOGG—I will withdraw that.

The minister was given two opportunities to respond to the issue of the errors in the publications but was unable to respond. So what do you think the public think out there? Of course, they think they have incompetence coming out of those areas when faced with the fact that the government cannot answer simple questions, cannot redress simple issues and cannot come clean with the public about the problems that are confronting the public as a result of the introduction of this GST.

There is one thing that should be said loud and clear: the GST is not family friendly at all and it is not low income friendly. It works against the interests of the family; it works against low-income earners. It always has and always will. The promised tax cuts will in no way compensate ordinary Australians for the imposition of a GST. All you need do is consult anyone who has a family and you will find out the facts of life. If you have a family, as I have, you will suffer under the GST—particularly low income earners and those who have a number of children in their care. (Time expired)

Question resolved in the affirmative.
Telstra: Job Cuts

Senator Allison (Victoria) (3.34 p.m.)—I move:

That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Hill) to a question asked by Senator Lees today, relating to proposed Telstra job cuts.

Senator Hill repeats what Senator Alston said on Tuesday of last week by saying that this is a misunderstanding on the part of the Democrats—10,000 job losses does not, he says, mean less service. Of course, Senator Alston went a bit further than that. He said that we had tragically misunderstood Telstra’s obligations, that Telstra was not owned by the public, and that the fact is that that company is ‘obliged to put its shareholders’ interests first’—and I think this is the crux of the matter.

Senator Hill keeps making the point that Telstra’s services have improved not declined, even though we know that with 27,000 jobs lost this was the evidence given by the Australian Communications Authority. The ACA said, ‘There are a number of systemic factors contributing to poor performance by Telstra: inadequate infrastructure partly attributable to ageing and underprovisioning of the customer access network; deficient records of cable distribution pairs; some poor work practices and procedures.’ The ACA also said in its most recent report:

Performance in the provision of new connections within the CSG time frames improved for most areas during the September 1999 quarter. In particular, substantial improvements were recorded in service responsiveness in urban and major rural areas without infrastructure, but these improved results can be attributed in part to more favourable weather conditions throughout the quarter and reflect expected seasonal changes.

So much for the improvement in services—and, for one, I would prefer to listen to what the ACA has to say about this matter rather than Telstra.

Senator Hill goes on to say that it is all about technology, that we can do with fewer workers because we have technology improvements. Senator Hill, tell that to country Australia, which is still looking at enormous differences in the prices it pays for STD calls. We now know that technology means that it does not cost Telstra any more to put a line from Ballarat to Broome than it does from Box Hill to Burwood in Melbourne; and that, because of technology, there is no longer a connection between distance and price. Yet country Australians have suffered because their telephone costs have been enormous compared with the telephone costs of those who live in the city by virtue of the very high STD costs. So technology has not brought down costs, particularly for country areas.

Senator Hill says that the government will hold to its commitment that the ACA has the power to direct remedial action. So far we have not seen too much of that, yet the shortfall in Telstra’s services continues to come up. Senator Hill says there is a very competitive environment, meaning Telstra needs to reduce costs. Let me remind the Senate that Telstra is still largely a monopoly, with 80 per cent of telephone services across Australia still being delivered by Telstra—and it is 100 per cent in the bush. So we really have seen very little penetration of competition in rural Australia.

Today in question time the Prime Minister apparently said that Telstra was not part of his rural guarantee. It is hard to imagine what sorts of decisions, other than telecommunications decisions, might be made by this government which would affect services and employment in rural areas if it is not about Telstra. Hardly had those words been uttered by the Prime Minister than we had the announcement that 10,000 jobs would be lost.

It is also hard to imagine that as majority shareholder the government was not informed about this. There will be 10,000 jobs lost, and we still do not know where they will come from and which regions they will be in. That was the subject of Senator Lees’s question today: what regions will these jobs come from? We have got vague assurances from Telstra that most of the jobs will come from middle management. Does that mean we will lose skills? Are they going to walk out the door? Are these people going to go to other corporations and take their knowledge and experience with them?

Or are these jobs going to come from rural areas? Are there going to be call centres, like the one in Bendigo, closing down? Is it going
to be Morwell which will close down? We heard about restructuring of call centres. Restructuring, as everybody in this place knows, means one thing: job losses and bigger rather than smaller and decentralised. (Time expired)

Question resolved in the affirmative.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:

Forests

To the Honourable the President and Members of the Senate in Parliament assembled:

This petition from the undersigned respectfully points out that there is an increasing and urgent demand from the people, to protect all remaining high conservation value forests which support flora and fauna unique to Australia, thus complying with the United Nations Biodiversity Convention to which Australia is a signatory. We have a responsibility to future and present generations, and the necessary reasons, knowledge and technology to act now on the following achievable solutions.

Your petitioners therefore request that the Senate legislate to:

- immediately stop all logging and woodchipping activities in high conservation value native forests;
- ensure intergenerational equity by planning for the rights of future generations, and protecting in perpetuity all biologically diverse old-growth forests, wilderness, rainforests and critical habitats of endangered species;
- facilitate rapid transition of the timber industry from harvesting high conservation value native forests to establishing mixed species farm forestry on existing cleared and degraded lands, using non-toxic methods to protect ecological sustainability;
- maximise use of readily-available plantation timber for industry needs, using appropriate forestry techniques and progressive minimal-waste processing methods, such as radial sawing, and wherever possible, reuse and recycle wood and paper products;
- support incentives for nationwide employment in composting, soil remineralisation programs, and the planting of trees and annual fibre crops, intergrown with appropriate fruit and nut trees and medicinal plants;
- encourage sensitively-managed, environmental education tourism in appropriate forest areas, with full respect for natural ecosystems, Aboriginal cultural heritage, sacred sites and other sites of significance;
- progressively utilise technological expertise and resources transferred from the military sector, to help implement these tree planting solutions; and to motivate the international community to follow this example.

And your petitioners as in duty bound will ever pray.

by The President (from 178 citizens).

Goods and Services Tax: Health Products

To the Honourable the President and Members of the Senate assembled in Parliament:

The petition of certain citizens of Australia draws to the attention of the Senate, decisions by the Howard Government to apply a 10% goods and services tax to vitamin, mineral and herbal remedies which are listed, along with pharmaceutical medicines, on the Australian Register of Therapeutic goods.

This decision will disadvantage all Australians who use or provide alternative and complementary Health Care products to maintain and improve their health and wellbeing, to prevent disease and to manage chronic illness. This is a new tax on those who, by taking care of their health with products and services which are not subsidised, reduce the burden on the health budget.

A tax on health is a bad tax. Your petitioners therefore pray that the Senate recognises that imposition of the HGST on therapeutic goods which are listed on the Australian Register of Therapeutic Goods is contrary to the maintenance of our good health and well-being. Our petition requests the Senate to call on the Government to zero-rate these products.

by The President (from 23 citizens).

Multilateral Agreement on Investment

To the Honourable the President and members of the Senate in the Parliament assembled:

The Petition of the undersigned draws to the attention of the Senate, the deleterious effects of the Multilateral Agreement on Investment.

Your petitioners ask the Senate to call on the Australian Government to:

1. Make available the draft text of the Agreement.
2. Make a public statement about its intentions with regard to the signing of the MAI, detailing the beneficiaries of the Agreement, and accountability measures for all corporations.
3. Not sign the MAI unless substantial amendment is made, including the observance of
international agreements including environment, labour, health and safety and human rights standards.

(4) Extend the deadline for signing the MAI to enable full and proper public consultations to be held.

by Senator Bourne (from 40 citizens).

Homosexuality

To the Honourable the Speaker and Members of the Senate in the Parliament of Australia.

The humble petition of the undersigned citizens of the Commonwealth of Australia requests that the Members of the Senate act to make it illegal for those who are openly homosexual to teach our children.

Children are great imitators, with parents and teachers becoming role models. All normal children go through a latency period when they have no interest at all in the opposite sex. The presence of a teacher who is openly homosexual would cause a child in this stage to think he was also a homosexual, even if the teacher was not actively trying to influence the child.

Homosexuality should never be presented to children as ‘normal’. If it was normal the human race could not have survived.

Your petitioners therefore request that the Senate act to protect our children.

And your petitioners, as in duty bound, will ever pray.

by Senator Chapman (from 19 citizens).

Food Labelling

We, the undersigned citizens and residents of Australia, call on all Senators to support implementation of the following:

- a requirement to label with the production process, all foods from genetic engineering technologies or containing their products;
- real public participation in decisions on whether to allow commercialisation of foods, additives and processing agents produced by gene technologies;
- premarket human trials and strict safety rules on these foods, to assess production processes as well as the end products.

Precedents which support our petition include several examples of foods already labelled with the processes of production; irradiated foods (internationally); certified organic foods; and many conventional foods (pasteurised; salt-reduced; free-range; vitamin-enriched; to name only a few).

We ask you all to accord a high priority to supporting and implementing our petition.

by Senator Stott Despoja (from 125 citizens).

Petitions received.

NOTICES Presentation

Senator Robert Ray to move, on the next day of sitting:

That the Senate—

(a) notes the need for the Minister for Communications, Information Technology and the Arts (Senator Alston) to justify his public statement that the Member for Kennedy (Mr Katter) is ‘a national disgrace, who has no respect in this Parliament and very little credibility outside it’; and

(b) calls on the Minister, if he fails to justify his statement, to apologise to the Member for Kennedy.

Senator Brownhill to move, on the next day of sitting:

That the Foreign Affairs, Defence and Trade Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 16 March 2000, from 9.30 am till 12.30 pm, to take evidence for the committee’s inquiry into the provisions of the Broadcasting Services Amendment Bill (No. 4) 1999.

Senator Crane to move, on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 14 March 2000, from 6 pm till 8 pm, to take evidence for the committee’s inquiry into the provisions of the Dairy Industry Adjustment Bill 2000 and 3 related bills.

Senator Chapman to move, on the next day of sitting:

That the Parliamentary Joint Committee on Corporations and Securities be authorised to hold a public meeting during the sitting of the Senate on 15 March 2000, from 5.30 pm, to take evidence for the committee’s inquiry into the mandatory bid rule.

Senator Tierney to move, on the next day of sitting:

That the Senate—

(a) notes that:

(i) under the tax laws of the New South Wales Labor Government poker machines are going to be
installed in shopping centres in New South Wales, despite the ongoing stories in the media highlighting parental neglect by problem gamblers, and (ii) even though development applications have been refused by local councils, 30 approvals have already been given in Marrickville, Blacktown and Liverpool by the Land and Environment Court, in an area of Sydney that is already suffering social problems from unemployment and gambling addictions; 

(b) condemns the offering of gambling facilities in family-oriented areas such as shopping centres; and 

(c) urges the Carr Government, as a matter of urgency, to legislate to overturn the approvals given to more poker machines in shopping centres, which poses the threat of feeding into gambling addition.

Senator Hogg to move, on the next day of sitting:

That the Senate notes that:

(a) it is 33 days since former Senator Parer resigned as a senator for the State of Queensland; 

(b) the Queensland Liberal Party has said that it will not select a replacement for Senator Parer until 30 April 2000, another 48 days (a total of 81 days since Senator Parer’s resignation); 

(c) at the Queensland Liberal Party’s request, the Queensland State Parliament will not be asked to appoint a successor to Senator Parer until 16 May 2000 (a total of 97 days since Senator Parer’s resignation); 

(d) the day of swearing-in of the successor to Senator Parer would be 5 June 2000 at the earliest (a total of 117 days since Senator Parer’s resignation); and

(e) the people of the State of Queensland have been denied their full Senate representation by the lethargy of the Queensland Liberal Party in appointing a successor to Senator Parer.

Senator Brown to move, on Wednesday, 15 March 2000:

That there be laid on the table by the Minister representing the Minister for Employment, Workplace Relations and Small Business (Senator Alston), by the close of business on 16 March 2000, the following:

(a) documentation of the procedures used by the Department of Employment, Workplace Relations and Small Business to establish that work for the dole projects meet the requirement ‘to liaise with their communities and with unemployed people to ensure enthusiasm and support for the proposed projects’ (Work for the Dole Handbook 2000); 

(b) the Government’s response to the report of the Australian Capital Territory (ACT) Legislative Assembly on work for the dole in primary schools, which expressed strong concerns with the quality of the proposed program and the lack of workplace and community support; and 

(c) documents demonstrating that the proposed placement of work for the dole participants in certain ACT schools meets all criteria specified in the handbook, including evidence of the liaison with communities which has ensured ‘enthusiasm and support’ for the project.

Senator Stott Despoja to move, on the next day of sitting:

That the Senate—

(a) notes that:

(i) according to the Australian Bureau of Statistics labour force statistics for February 2000, South Australia has the highest seasonally-adjusted employment rate of any state in the country, a position it has not held since February 1996, and

(ii) South Australia was the only state to record an increase in its unemployment rate in February 2000, contrary to a national trend of declining unemployment; and

(b) urges the Federal Government to consider the impact of all Cabinet decisions on South Australian employment and examine means by which employment opportunities in that state may be improved.
Senator Crossin to move, on the next day of sitting:
That the following bill be introduced: A Bill for an Act to amend the law in respect of the prohibition of discrimination against pregnant women in the workplace, and for related purposes.
Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000 [No. 2].

Senator Stott Despoja to move, on the next day of sitting:
That the Senate—
(a) notes that:
(i) the First International Youth Services Models Conference is being held in Adelaide in the week beginning 12 March 2000, and
(ii) this conference is being attended by 100 delegates from 27 countries, who will discuss means by which young people can best be assisted in overcoming problems which they may face and in achieving their potential; and
(b) endorses the comments by the keynote speaker of the conference, the head of UNESCO's Youth Co-ordination Unit, Maria Helena Henriques, that young people make enormous contributions to society and efforts must be made to reach out to those who find themselves alienated from society.

LEAVE OF ABSENCE
Motion (by Senator O'Brien)—by leave—agreed to:
That leave of absence be granted to Senator Lundy for the period 13 March to 16 March 2000 inclusive, on account of parliamentary business overseas.

NOTICES
Postponement
Items of business were postponed as follows:
Business of the Senate notice of motion No. 1 standing in the name of Senator Allison for today, relating to the reference of matters to the Environment, Communications, Information Technology and the Arts References Committee, postponed till 11 April 2000.
General business notice of motion No. 454 standing in the name of Senator Allison for today, relating to Formula 1 Grand Prix and tobacco advertising, postponed till 14 March 2000.
General business notice of motion No. 441 standing in the name of Senator Allison for today, relating to Telstra's Bendigo and Morwell Call Centres, postponed till 14 March 2000.

AUSTRALIAN WOMEN IN AGRICULTURE
Motion (by Senator Woodley) agreed to:
That the Senate—
(a) notes the contribution of Australian Women in Agriculture to the well-being of rural families and rural communities in Australia;
(b) commends its President, Ms Cathy McGowan, and her team for ably representing their organisation during the past few days in Parliament House; and
(c) calls on the Government to substantially upgrade its support for rural women and families in line with Australian Women in Agriculture's call to revitalise rural Australia and recognise the special role of women on this International Women's Day.

PARLIAMENTS: FEMALE REPRESENTATION
Motion (by Senator Stott Despoja) agreed to:
That the Senate—
(a) notes that:
(i) on 8 March 2000 the Inter-Parliamentary Union released the results of a survey of 187 women politicians from 65 countries titled 'Politics: Women's Insight' to be presented to the current meeting of the United Nations Commission on the Status of Women,
(ii) this survey is accompanied by international comparative figures which reveal that women make
up only 13 per cent of international parliamentary institutions,

(iii) Australia ranks only 20th in terms of its level of female participation in Federal Parliament, behind much of Europe and New Zealand, with the percentage of women members at just 22.4 per cent and women senators at 30.3 per cent; and

(b) urges the Government to take note of the suggestions of survey respondents to improve the level of female representation in parliaments.

WOMEN: STERILISATION

Senator ALLISON (Victoria) (3.45 p.m.)—I ask that general business notice of motion No. 448, standing in my name for today, relating to sterilisation of women with an intellectual disability, be taken as a formal motion.

Leave not granted.

Senator ALLISON—I seek leave to postpone that motion until the next day of sitting.

Leave granted.

Senator ALLISON—I move:
That general business notice of motion No. 448 be postponed till the next day of sitting.

Question resolved in the affirmative.

CASH: HYBRID ELECTRIC DRIVETRAIN

Motion (by Senator Allison) agreed to:
That the Senate—

(a) notes that:
(i) a new hybrid electric drivetrain will be fitted into a functioning motor car, aXcessaustralia LEV, by the middle of 2000,
(ii) it is predicted that the car will halve motorists’ fuel bills,
(iii) the car should also slash city air pollution, and
(iv) Australia is one of only ten countries in the world that can style, design, engineer and manufacture most components of the modern car, therefore allowing Australia a unique export market;

(b) congratulates the Commonwealth Scientific and Industrial Research Organisation and CMC Power Systems for their work on the hybrid electric drivetrain;

(c) encourage the Government to continue funding this project and other projects that will reduce air pollution; and

(d) encourages Federal parliamentarians to view the car when it is launched late May 2000.

MANDATORY SENTENCING

Motion (by Senator Greig) agreed to:
That the Senate—

(a) notes the opposition to mandatory sentencing of the following prominent Australians:
former Chief Justice of the High Court of Australia, Sir Gerard Brennan,
former High Court judge, Sir Ronald Wilson,
former High Court judge and former Governor-General, Sir Ninian Stephen,
former Chief Justice of the High Court, Sir Anthony Mason,
former Chief Justice of the High Court, Sir Harry Gibbs,
former High Court judge, Sir Daryl Dawson,
former High Court judge, John Toohey,
the Right Honourable John Malcolm Fraser, and
the Right Honourable Edward Gough Whitlam; and

(b) calls on the Government to give serious consideration to the views of these eminent Australians.

DOCUMENTS

Commonwealth Day

The DEPUTY PRESIDENT—On behalf of the President, I present a message for the Commonwealth Day 2000 from Her Majesty the Queen, together with a letter from Mr Arthur Donahoe, Secretary-General, Commonwealth Parliamentary Association.

Privilege

The DEPUTY PRESIDENT—For the information of the Senate, I present the judgment of the Federal Court of Australia in Crane v. Gething and others, which relates in part to parliamentary privilege, together with
a written submission made to the court on behalf of the Senate. Notice of appeal has been lodged in respect of the judgment.

COMMITTEES

Economics References Committee

Report

The DEPUTY PRESIDENT—Pursuant to standing order 38, I present the report of the Economics References Committee on the operation of the Australian Taxation Office, together with the Hansard record of the proceedings, which was presented to me on Thursday, 9 March 2000. In accordance with the terms of the standing order, the publication of the report was authorised.

Ordered that the report be printed.

Senator MURPHY (Tasmania) (3.48 p.m.)—I seek leave to have the tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

This inquiry had its origins in the Sunday television program screened by the Nine network in mid-1998. In essence, the program alleged that the ATO treats small taxpayers unfairly and inequitably while it goes soft on the “big end of town”.

The program also made a number of particularly serious allegations, including that ATO staff disregarded hardship provisions in dealing with some small taxpayers; that some senior ATO managers had improperly and corruptly influenced audit activity; and that “organised crime” had infiltrated the ATO.

On the balance of the evidence received, it appears that the majority of the Sunday program allegations were mainly inaccurate.

Unfortunately, while allegations like those aired on the Sunday program were shown as largely without foundation, they have the potential to undermine public confidence in the integrity of the ATO.

If the general taxpayer population begins to lose confidence in the overall integrity of the system, this can have severe implications for the government’s ability to collect the revenue it needs to provide the services demanded by the community at large.

So, it is important that claims are carefully researched and presentations about public organisations like the ATO are given responsibly and fairly. They do not do any favours to people who have a legitimate point to make when they don’t get the facts right.

The report the Committee has prepared deals with a much wider range of issues than those raised on the Sunday Program. The central issue was whether the ATO treats taxpayers fairly and equitably.

The Australian Taxation Office is an organisation that carries a heavy responsibility. The law constrains the ATO to protect the Commonwealth’s revenue base, a requirement that obliges it to ensure that taxpayers pay the taxes that are prescribed under tax law.

In order to meet this responsibility, the Parliament has given the Commissioner of Taxation and the ATO far reaching powers.

However, the community expects the ATO to exercise these powers fairly and to treat taxpayers equitably. Essentially, that is what this inquiry has been about—an examination of whether taxpayers are treated equitably and the adequacy of the measures that the ATO has put in place to ensure this is the case.

The Committee’s overall assessment of the ATO is that it is a highly professional organisation committed to treating taxpayers fairly and appropriately.

The office has established a range of programs and services to support its commitment to equitable treatment; allocating resources appropriately according to identified areas of risk; and addressing problems, improving practices and skills and being responsive to taxpayer concerns.

Central to the ATO’s commitment to treating taxpayers equitably is the Taxpayers Charter. The Committee does not accept the thesis that there is a systematic prejudice among the majority of ATO staff that treats taxpayers as cheats.

That said, it takes only a minority of officers to act prejudicially and improperly for the organisation’s public reputation to be marred. And there is no doubt in my mind that this happens.

Most ATO staff have succeeded in managing the challenge of balancing the interests of the revenue with the interests of individuals. However, the evidence shows that some individual officers and local work areas have concentrated solely on the goal of revenue collection.

It must be emphasised that improper and prejudicial conduct appears to be fairly uncommon, but when it happens, its effects can be quite disproportionate both for the taxpayer affected and for the reputation of the office.

The Commissioner recognises the problem and is implementing a range of measures to address it,
one example being the establishment of the problem resolution service.

The other main source of independent redress is the office of the Commonwealth Ombudsman. The evidence received by the Committee underscores the importance of the role of a strong, well resourced and independent Ombudsman as a counterweight to the ATO’s powers, an avenue of redress in instances when its powers are misapplied and thus as a check against improper and prejudicial conduct.

I’d like now to turn briefly to the content of the report.

Committee’s report is divided into nine chapters. The first of these describes how the Committee conducted the inquiry and deals with the allegations made by the Sunday program. The next two chapters deal with the Committee’s central task, an examination of the equitable treatment of taxpayers and factors that cause inequity.

The Committee also reports on mass marketed schemes such as Budplan and Sentinel. Persons involved in these schemes constituted nearly half of the submissions received.

Further chapters deal with the large business and International Division, the High Wealth Individuals Project, client settlement guidelines and the self assessment system.

The final chapter is about the Sunday program allegation that the ATO has been infiltrated by organised crime, a fairly serious allegation.

On that subject, it needs to be acknowledged that in any large organisation there are inevitably going to be some bad apples. What is important is whether the ATO has adequate measures in place to detect criminal activity by staff and minimise the risk of this happening.

The Committee found no credible evidence that organised crime has infiltrated the ATO. The Committee was also satisfied that the procedures the ATO has put in place to address the issue are sound.

This is not a report that pleases everyone. In fact I suspect that the Committee may well be the target of criticism from some corners.

On one hand, I suspect that the Tax Office might be less than happy with some of the critical comments we have made.

On the other hand, those who are personally convinced that the ATO has treated them unfairly or is not sufficiently vigilant in its pursuit of tax evaders will also probably be discontent.

It has to be said that the evidence simply did not support the thesis that the ATO is not doing its job or sets out to treat people unfairly. It is not a perfect organisation, but it does appear to be making a real effort to improve its performance in those areas where there are problems. In my assessment it does a good job in a difficult and complex environment.

Before concluding my remarks, I would like to bring to the Senate’s attention that this is a unanimous report. It is not a political report, but rather a non partisan examination of a serious issue.

I would particularly like to thank the Deputy Chair of the Committee, Senator Gibson and my colleagues Senators Watson, Murray, Chapman and Sherry for the constructive approach they have taken to what has been a complex and demanding task.

On behalf of the Committee I would like to thank our Secretariat, in particular Peter Hallahan, whose organisational role was essential in ensuring we got the job done. Angela Misic did a great job in getting the text of this report to the stage where we could present it to the Senate.

I would also like to thank Alistair Sands whose excellent background research was vital in helping the Committee prepare this report. I know that he worked many long hours on this report including weekends and I thank him, and indeed all the staff for their tireless efforts.

I commend the report to the Senate.

Foreign Affairs, Defence and Trade Committee: Joint Report

The DEPUTY PRESIDENT—Pursuant to standing order 166, I present the government’s response to the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on its Defence Subcommittee’s visit to Sydney Harbour foreshores Defence properties, which was presented to me on Thursday, 9 March 2000. In accordance with the terms of the standing order, the publication of the document was authorised.

DOCUMENTS

Auditor-General’s Reports

Report No. 33 of 1999-2000

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General, report No. 33 of 1999-2000, performance audit, Admini-
Senators Authorities

Senator ROBERT RAY (Victoria) (3.49 p.m.)—by leave—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Privileges Committee

86th Report

Senator ROBERT RAY (Victoria) (3.50 p.m.)—I present the 86th report of the Committee of Privileges, entitled Alleged threats to witnesses before the Select Committee on a New Tax System.

Ordered that the report be printed.

Senator ROBERT RAY—by leave—I move:

That the Senate endorse the findings at paragraph 12 of the 86th report of the Committee of Privileges.

On 7 December 1999, the Senate referred the following matter to the Committee of Privileges on the motion of Senator Allison:

Whether threats were made against persons who made submissions to the Select Committee on A New Tax System in consequence of their submissions to the committee and, if so, whether any contempt was committed in that regard.

Last November, the Managing Director of Wren Oil wrote to Senator Lyn Allison alleging that the then Managing Director of Nationwide Oil had threatened him by telephone as a result of a submission and evidence he had put before the select committee in February 1999, relating to the diesel fuel rebate and waste oil collections. The present Managing Director of Nationwide Oil, in acknowledging that words had been exchanged about the evidence given, defended his predecessor’s actions in terms set out in paragraph 8 of the report.

As the Senate is aware, and as is reinforced in the report, the committee has always taken seriously any threats against witnesses. However, given the nature of the telephone conversation and the context in which it was made, the committee has concluded that it should not find that any matter of contempt is involved. Its finding reflects this conclusion. I commend the report to the Senate and seek leave to continue my remarks.

Leave granted; debate adjourned.

87th Report

Senator ROBERT RAY (Victoria) (3.52 p.m.)—I present the 87th report of the Committee of Privileges, relating to a person referred to in the Senate.

Ordered that the report be printed.

Senator ROBERT RAY—by leave—I move:

That the report be adopted.

This report is the 32nd in a series of reports recommending that a right of reply be accorded to persons who claim to have been adversely affected by being referred to, either by name or in such a way as to be readily identified, in the Senate.

On 8 March 2000 the President referred a letter from Mr R.T. Mincherton to the Committee of Privileges as a submission under Privilege Resolution 5. The letter responded to comments made by Senator Knowles in the Senate in December last year. The committee considered the letter at its meeting on 9 March 2000 and recommends that the response be incorporated in Hansard.

The committee continues to remind the Senate that it does not judge the truth or otherwise of statements made by honourable senators or persons who seek redress. It emphasises that its sole duty is to recommend that a relevant response be incorporated in Hansard and neither judges the merits nor endorses the content of any such response. I commend the report to the Senate.

The response read as follows—

APPENDIX ONE
RESPONSE BY MR R.T. MINCHERTON PURSUANT TO RESOLUTION 5(7)(B) OF THE SENATE
OF 28 FEBRUARY 1988

On the 8th December, 1999, Senator Knowles gave a speech in the Senate in which she cast a very personal and vicious attack upon me.

In the midst of her speech, Senator Knowles stated:
“The article claims that I told Mincherton that I ‘had received death threats from Crichton-Browne at her homes in Perth and Canberra and was under police protection.’ All I can say to that is that Mincherton is totally dishonest and manipulative and well known for it in the party in Western Australia. His bias against me is unquestioned.”

The article to which Senator Knowles referred, was published in the “big weekend” which is a weekend insert contained in the “West Australian” newspaper.

The facts of the matter are as follow.

In or about May of 1995, I visited Senator Knowles in her West Perth office to discuss the recent bad press relating to Senator Noel Crichton-Browne and in particular the release of a dirt sheet.

I stated to Senator Knowles that Mr Ian Viner would probably be expelled from the Liberal Party for his part in releasing private documents relating to Crichton-Browne.

Senator Knowles responded by saying that the matter won’t end there, and then proceeded to tell me of recent threats she had received from Crichton-Browne, she said as follows:

“Noel Crichton-Browne made life-threatening threats to me by phone. He rang me and threatened my life at my home in Canberra, and he rang me and threatened my life at my home in Perth. I am so terrified of him that I will not fly on the same plane as him and I have spoken to the airline officials about him.

I am so terrified of Noel Crichton-Browne that I have reported his threats to the police and have sought police protection, and as a result I am under police protection.”

I immediately committed my conversation with Senator Knowles to my diary.

Subsequently, at the request of Counsel for Mr Crichton-Browne in a defamation action by Mr Crichton-Browne against Senator Knowles, I swore an affidavit of my conversation with Senator Knowles. Subsequently that affidavit became part of a Statement of Claim in those proceedings.

On 21st October 1998, in the West Australian Supreme Court, Senator Knowles settled the action brought against her by Mr Crichton-Browne.

Prior to Counsel for Senator Knowles reading out her apology, Mr Richardson, Counsel for Mr Crichton-Browne addressed Justice Wheeler in the following terms.

“Prior to the reading of that apology, it is important that the causes of action identified in the apology are identified in court, for two reasons:

firstly to ensure that the plaintiff has proper vindication for the apology which doesn’t itemise, which is the normal course, the articles or the publication complained of, and of course it is also an important consideration for the defendant that the apologies granted are identified in open court, because it is to those publications that the apology relates.”

In respect to my affidavit, Mr Richardson stated:

“The first publication, your Honour, appears at page 2 and that publication is an allegation of slander and it is a publication made to a Richard Mincherton and it was made in or about May of 1995 at the defendant’s West Perth office. The words were spoken to Richard Mincherton, and the allegation was that the words were as follows…”

Wheeler J: “Do we need to go through, actually read out, all of the allegations?”

Richardson, Mr: “What I propose to do is very briefly identify them. I won’t read it all out, but the essence of the publication was, “Noel Crichton-Browne made life threatening threats to me by phone, and as a result of that I have sought police protection.”

At the conclusion of the proceedings, Senator Knowles’ lawyer read out her apology which of course included the slander to me. That apology reads as follows:

“Statements that I have made to various individuals and on the radio during 1995 have been construed by some as meaning that Noel Crichton-Browne had made threats upon my physical safety by telephone. It was not my intention to convey that meaning. I unreservedly withdraw and retract the allegation that Mr Crichton-Browne threatened me on the telephone and unreservedly apologise to him for any damage, distress or embarrassment caused thereby.”

Prior to a State Executive meeting of the Western Australia Liberal Party, the State President sought legal advice in respect to certain matters relating to Senator Knowles’ admissions and apology in the Western Australian Supreme Court.

One of the questions asked of Freehill Hollingdale and Page, lawyers for the Western Australian Liberal Party was the following:

“What are the necessary proceedings for a reference involving a civil defamation, ie. Publication, re-publication of the defamation material at a special meeting of State Executive?”

The Liberal Party’s lawyers responded in the following terms:

“The matters, the subject of the defamation action commenced by Mr Crichton-Browne against
Senator Knowles, are in the public arena. They have been widely reported, have been stated in open Court and been the subject of a published apology.

It must be understood that the statements made by Senator Knowles have been acknowledged by her to be untrue. She unreservedly withdrew and retracted the allegations and unreservedly apologised. In the context of the apology read to the Court and published in newspapers, that is an admission by her that she made the allegations and that they were untrue. There is no scope for denial by Senator Knowles of these matters. That being so, it would seem that there is no need for discussion on the truth or otherwise of what was said.”

These facts demonstrate unequivocally that Senator Knowles’ allegations against me are not only totally untruthful but that she knows them to be untrue. Further, at my personal expense, she has now repudiated her admission and apology made in the Supreme Court. Senator Knowles’ attack upon me under parliamentary privilege has done great damage to my reputation and has caused great hurt to my family.

R.T. Mincherton

Senator KNOWLES (Western Australia)
(3.53 p.m.)—I want to make a few comments about this person. Clearly when I referred to him in December as totally dishonest and manipulative and that he demonstrated a bias against me that was unquestioned that was a bit of an understatement. What I knew at that stage was chickenfeed in comparison to what I know today and what has now been exposed about this individual. I just want to go through a little of the background of this individual to show the type of person that we are dealing with and why I made the comments I did in December.

This person sat in an office block beside my electorate office and spied on me, watching me coming and going, knowing where I was going and reporting back to his master. It was a very interesting exercise. Then one day out of the blue he sought to have a meeting with me. His words were that he wanted to help me. Knowing that he was best mates with a certain convicted criminal, I was reluctant to meet with him but thought I had better just out of decency. That was the most stupid thing I ever did.

We then had a conversation which was, from my point of view, less than frank because knowing exactly where this conversation would end up—and that was in the hands of Crichton-Browne—I was less than likely to be open and frank with this creature. He made no notes of the meeting or anything else. From my skimming of this report now, he says that he then went out and made diary notes. He certainly did not make any notes during the meeting, but the meeting formed the basis of an affidavit which Crichton-Browne then used against me in his proceedings.

He then went on, having participated in such a manner to help Crichton-Browne in his quest to try to get me over this 12-year period, and sought to be elected to the Appeals and Disciplinary Committee, knowing full well that I was going to be the subject of investigation, for want of a better word. He was deemed to be ineligible to sit on that first committee because he was a witness, so he was thrown off it. So when the committee became such a sham—the chairman resigned and there were only two people left on it—the committee had to be re-formed. What did he do? He sought renomination to the committee. Knowing that my issue was still live, he then sat on the second committee but refused to go off it because he did not think he was biased this time. Interestingly enough, not only did my legal representation and I protest at his presence but also his and Crichton-Browne’s legal representation protested at his presence. There is written documentation appealing that Mincherton should be ineligible to sit on any committee that considers me because he has a conflict of interest as a witness and a judge.

I might add at this point that, for that very reason and the way in which due process should operate, the Deputy Clerk of the Senate, having been alerted to the fact that this creature was going to be putting in a response, was kind enough to make sure that I did not receive any documentation as a member of the committee, and I decided to withdraw from the committee and the considerations and deliberations of this matter before the committee, unlike the conduct of Mr Mincherton, who sat right the way through the planned execution of me from the Liberal Party. I had a choice to stay on the
committee for the deliberations of this matter but chose not to do so. This afternoon is the first time that I have seen this letter.

He did, as I say, refuse to stand aside. He stayed participating and he constantly repeated the wrongful allegations he has made. I do not care what he writes about the Supreme Court and everything else that I specifically apologised for in the comments I have made—I covered all that in December. His affidavit was absolutely and utterly wrong. I have said that all the way along the line, and I will say it and say it again. But it does not stop him and Crichton-Browne pursuing me. Everyone thinks this has all gone away and is dead and buried. It is not dead and buried while there are creatures like Crichton-Browne and this man who are deliberately trying to pursue this matter.

Not only did he constantly repeat these wrong allegations about me at all forums of the Liberal Party; he also telephoned around Western Australia doing exactly the same. He has consistently lied about me and almost anyone else who is not a sycophant to Crichton-Browne, and he has consistently been exposed as being, as I said in December, totally dishonest and manipulative but, as I said before, more so than when I made the comments last December.

I am very grateful to those in the Liberal Party who decided that this witch-hunt had to stop. I am enormously grateful because it has been a very wide cross-section. My colleagues in this parliament have just been outstanding in their support, and there are so many people in the party who just did not fall for this Mincherton and Crichton-Browne line.

It is interesting to note that his presence on that committee was one of the most fundamental reasons why people voted the way they did and overturned their witch-hunt to expel me. He constituted the biggest abuse of due process that anyone could contemplate. There were others on the committee like George Cash and Julie Debnam who also abused due process, but nonetheless Ric Mincherton was just par excellence in this matter. He did know that he was doing the wrong thing, but it did not matter to him. His intention to follow his master’s instructions totally overrode what he and everyone else knew was right and proper.

I still stand by what I said in December absolutely and unequivocally, except with interest. I think that is the main thing. As I said, I am enormously grateful to all of those who have supported me throughout this ordeal. Clearly, it is not going to go away. I just wish they would go and do something else, particularly Crichton-Browne, who should go and do something useful in his retirement, instead of pursuing me and various other colleagues.

Question resolved in the affirmative.

TELECOMMUNICATIONS (INTERCEPTION) LEGISLATION AMENDMENT BILL 2000

First Reading

Bill received from the House of Representatives.

Motion (by Senator Ian Campbell) agreed to:

That this bill may proceed without formalities and be now read a first time.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.01 p.m.)—I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

The Telecommunications (Interception) Legislation Amendment Bill 2000 has its origins partly in the Telecommunications Interception Policy Review which was tabled in the Senate on 25 August 1999 and partly in response to rapid change in the telecommunications industry.

Senators would be aware that Australia’s law enforcement agencies rely on telecommunications interception to investigate criminal activity involving drug trafficking and other serious offences.

The amendments to the Telecommunications (Interception) Act 1979 proposed in the Bill will build on and develop the existing legislative
scheme to ensure that it continues to support law enforcement and security agencies in the face of developments in technology and the deregulation and globalisation of the telecommunications industry.

We must do this if we are to be effective in the fight against crime.

The Bill advances this objective with three groups of amendments. First, the Bill will enable the Inspector of the Police Integrity Commission of New South Wales to have access to intercepted material which is relevant to the performance of the functions of that office. The Inspector of the Police Integrity Commission is an independent statutory office set up under the Police Integrity Commission Act of New South Wales to monitor the operations of the Police Integrity Commission for compliance with the law and to deal with complaints of impropriety against the Commission. The Inspector is an integral part of the anti-corruption scheme set up under the NSW legislation but is technically a statutory entity separate from the Commission itself. Therefore, the Telecommunications (Interception) Act requires amendment to give the Inspector independent access to relevant intercepted information and enable it to use that information in the performance of its statutory functions.

A police force free of systemic corruption is crucial to effective law enforcement.

The Government confirms its support of the Government of New South Wales in eradicating police corruption by providing access to an investigative tool of proven value.

I can assure Senators that the proposed amendments are confined to allowing the Inspector access to intercepted information collected by other agencies and will not allow the Inspector to intercept telecommunications in its own right.

The second main objective is to provide for warrants against named persons.

As a result of rapid advances in technology—coupled with competition in the telecommunications market—customers may now choose from a variety of services and means of communication. For example, it is now a simple matter for a person to subscribe to multiple services by acquiring several pre-paid mobile telephone services which may be used in the one telephone handset, and swapped around and discarded at will. The Telecommunications (Interception) Act in its present form would require an agency wishing to intercept all of the telecommunications services used by a particular suspect to obtain a separate warrant for each service.

This is an unnecessary operational burden in circumstances where the same suspect and the one offence is involved and adds little in the way of protection of individual privacy.

The difficulties faced by an agency are compounded if it cannot identify at the time of applying for a warrant or several warrants all the services likely to be used by a suspect.

These changes have not escaped the notice of criminals, especially those involved in drug trafficking. Criminals are quick to take advantage of modern technology for the express purpose of concealing their activities.

The Telecommunications (Interception) Act is currently structured around the premise that a warrant relates to one, identified telecommunications service. This premise accurately reflected the telecommunications industry when the Act was first enacted over 20 years ago.

It no longer does so.

The legislation should enable connections, disconnections and reconnections—in rapid succession—of multiple services used by a particular suspect in connection with the same offence without the need to obtain fresh warrants each time.

To make it more difficult for criminals and terrorists to evade detection, the Bill will amend the Telecommunications (Interception) Act to provide for two new categories of warrant in addition to the existing type of warrant, making three categories in all.

The first category comprises telecommunications service warrants. These are the existing type of warrant directed at an identified service and which continue unchanged.

The second category comprises named person warrants. This is a new type of warrant which will enable an agency to intercept any service used or likely to be used by the suspect named in the warrant. The named person warrant will enable an agency—under the authority of the one warrant—to intercept different services as they become known to the agency, and to disconnect and reconnect them without having to apply for a fresh warrant each time.

It is not intended that this new, more flexible type of warrant diminish the safeguards which are embodied in the Telecommunications (Interception) Act. For this reason, the criteria for the issue of named person warrants and the associated accountability mechanisms will be more stringent.

The amendments will add an extra requirement that the judge or member of the Administrative Appeals Tribunal—before issuing a named person warrant—must first be satisfied that other meth-
ods of investigation, including a less intrusive telecommunications service warrant, have been considered and are either unavailable or ineffective in the circumstances.

There will be additional reporting requirements. After the expiry of a named person warrant, the agency concerned will be required to report to the Minister responsible for interception matters certain specified information, including a list of the services which were intercepted under the warrant and the reasons why it was ineffective to use a telecommunications service warrant.

The Bill will also enable the Attorney-General to issue named person warrants to ASIO for purposes connected with the performance of its statutory functions related to the collection of security intelligence and foreign intelligence. Like the corresponding warrants for law enforcement purposes, the criteria for issuing named person warrants to ASIO will be more stringent. Before issuing a named person warrant, the Attorney-General will have to be satisfied that relying on a telecommunications service warrant would be ineffective to obtain the intelligence sought.

ASIO will also be subject to additional reporting requirements in connection with named person warrants.

The third category of warrants proposed in the Bill comprise foreign communications warrants for the collection of foreign intelligence.

I have already mentioned that advances in technology and deregulation of the industry mean that the existing interception warrants directed at an identified service cannot operate effectively against a continually evolving telecommunications environment. The proposed named person warrants go much of the way in resolving the difficulties faced by law enforcement and national security agencies.

The proposed foreign communications warrant will enable the interception of particular communications which cannot be identified by reference to specific services or named individuals. This is a characteristic of the sophisticated digital technologies which are increasingly dominant in modern telecommunications systems.

The Bill limits the power to issue this category of warrants to interception for the purpose of collecting foreign intelligence. To reduce the possibility of inadvertently intercepting communications between Australians, these warrants may be issued only in relation to foreign communications.

Finally, the Bill makes a number of amendments which are consequential upon the amendments I have outlined above or which are minor amendments necessary to ensure the legislation operates effectively.

Consequential amendments to the Australian Security Intelligence Organisation Act 1979 are required to insert cross references to the new named person and foreign intelligence warrants.

The more significant of the minor amendments to the Telecommunications (Interception) Act will redefine the classes of police officers who may certify certain formal documents for the purposes of the Act. The amendments will ensure that only suitably senior officers perform the certification functions. This change has been made necessary by the restructuring of the Australian Federal Police and some State police services to reduce or eliminate ranks.

The amendments will also enable one agency to execute warrants on behalf of another and will remove an obsolete requirement for the Australian Federal Police to execute all interception warrants which also authorise entry onto premises. Agencies have executed their own standard interception warrants for some years now and the amendments will bring “interception plus entry” warrants into line with that policy. This amendment will not affect the Australian Federal Police’s supervisory function which is implicit in the procedures set out in the Act.

Other minor amendments will enable the disclosure of intercepted information in subsequent proceedings after being lawfully disclosed in other proceedings and in proceedings reviewing a decision to grant bail.

In conclusion, I remind Senators of the importance of telecommunications interception to effective law enforcement and intelligence collection.

This Bill is designed to enhance the effectiveness of this powerful investigative tool in a fast changing telecommunications environment while still retaining an appropriate balance between individual privacy and the public interest in effective law enforcement and national security.

I commend the Bill to the Senate.

Ordered that further consideration of the second reading of this bill be adjourned until the first day of the 2000 budget sittings, in accordance with standing order 111.

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL (No. 3) 1999
TIMOR GAP TREATY (TRANSITIONAL ARRANGEMENTS) BILL 2000
First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.02 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question resolved in the affirmative.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.03 p.m.)—I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in Hansard.

Leave granted.

The speeches read as follows—

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL (No. 3) 1999

This Bill reflects the continuing commitment of this Government to securing legitimate title to traditional lands on behalf of the Aboriginal people of the Northern Territory.

The Aboriginal Land Rights (Northern Territory) Act 1976 provides a mechanism whereby traditional Aboriginal land in the Northern Territory, referred to in Schedule 1 of that Act, may be granted to Aboriginal Land Trusts to hold title on behalf of Aboriginal people by agreement. Since the Act came into operation in 1977 a total of 61 separate parcels of land have been scheduled under the Act. This amendment will bring the total to 64.

The effect of this Bill would be to bring within Schedule 1 to the Land Rights Act the three areas of land which are subject to the Warumungu Land Claim as it relates to the Rockhampton Downs Station. The land is situated about 100 kilometres to the north-east of Tennant Creek, near the Barkly Highway.

An agreement has been entered into between the Northern Territory Government, the Central Land Council and the claimants. In addition to settling the Warumungu Land Claim in relation to Rockhampton Downs, the agreement also finally disposes of the Frewena Land Claim.

As part of this agreement, the Commonwealth will exercise its powers under the Land Rights Act, with the support of the Northern Territory Government, to grant the claim areas to the traditional owners by scheduling the respective areas under the Land Rights Act.

The result of this scheduling would be that no further hearing or report by the Aboriginal Land Commissioner would be necessary in order for the Aboriginal people concerned to be able to have the full rights of enjoyment of their traditional lands in fee simple, in other words, as freehold title.

The Government has the assurance of all parties to the negotiations that representative views of all Aboriginal people concerned have been obtained and their wishes taken into account.

There are no financial implications arising from this Bill.

TIMOR GAP TREATY (TRANSITIONAL ARRANGEMENTS) BILL 2000

Madam President, the purpose of the Bill is to amend the Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990 and related Acts to reflect the fact that the United Nations Transitional Administration in East Timor (UNT AET) has replaced Indonesia as Australia’s partner in the regulation and administration of petroleum operations in the Timor Gap.

The reason for the change is related to the recent developments in East Timor. On 26 October 1999, Australian time, the United Nations established UNT AET as the administrative and legal authority for East Timor, following East Timor’s rejection of Indonesia’s offer of autonomy within the Republic. From that time, Indonesia had no sovereign rights in the area covered by the Timor Gap Treaty.

UNT AET, acting on behalf of East Timor, has agreed to assume all the rights and obligations previously exercised by Indonesia under the Timor Gap Treaty, and this was formalised through an Exchange of Notes between Australia and UNT AET on 10 February 2000. The agreement with UNTAET applies retrospectively from the date of the United Nations Security Council Resolution establishing UNTAET, therefore
achieving a smooth and seamless transition between Indonesia’s exit from the Timor Gap Treaty and UNTAET’s entry into a treaty relationship with Australia. The agreement with UNTAET is without prejudice to the position of the future government of an independent East Timor. This Bill includes the text of the Notes exchanged between Australia and UNTAET in Dili on 10 February 2000.

The Timor Gap Treaty arrangements have worked effectively since coming into force in 1991, and have facilitated the expenditure of over US $700 million on petroleum exploration and development in Area A of the Zone of Cooperation. The first commercial production of petroleum commenced in July 1998 with the development of the Elang-Kakatua oilfield. It is currently producing at the rate of about 14,000 barrels of oil per day and will provide revenues to both Treaty States at a rate of about US $3 million per annum. There are other potential projects in the Zone of Cooperation, including the Bayu-Undan and Sunrise-Troubadour gas-condensate fields. On the basis of current knowledge, development of these fields could involve capital expenditures of about A $15 billion and they could be brought into production by the early to mid 2000’s.

While it is the Government’s normal practice to have legislation in place before a treaty comes into force, this was not possible in relation to the agreement with UNTAET. It was necessary that the Treaty enter into force with retrospective effect, and as soon as possible, to provide continuity and certainty in the legal arrangements for existing and future commercial operators in the Timor Gap Zone of Cooperation, as well as to provide an early flow of revenue to UNTAET. In the circumstances, it was not desirable to delay the entry into force of the new treaty to allow time for passage of the relevant legislation.

The enactment of this Bill will also contribute significantly to investor certainty in the Timor Gap. This will be achieved by amendments to the Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990, where necessary, to reflect the change in Australia’s treaty partner from Indonesia to the UNTAET. The Bill will validate actions of the Ministerial Council and the Joint Authority since 26 October 1999, and will also enable the continuation of a range of Australian taxation, customs, immigration, crime and quarantine laws relating to petroleum operations in the Timor Gap. The related Acts which have been amended consequent to the changes to the principal Act are the:

- Crimes at Sea Act 1979
- Customs Act 1901
- Fringe Benefits Tax Assessment Act 1986
- Income Tax Assessment Act 1936
- Migration Act 1958
- Passenger Movement Charge Act 1978
- Passenger Movement Charge Collection Act 1978
- Petroleum (Submerged Lands) Act 1967
- Quarantine Act 1908
- Workplace Relations Act 1996

In most cases, the consequential amendments to the various Acts are relatively minor - in many instances they amend the relevant Act by using expressions such as “Timor Gap”, “East Timor” and “UNT AET” in sections where “Indonesia” or the “Republic of Indonesia” previously appeared. For example, changes to the Migration Act 1958, the Passenger Movement Act 1978 and the Petroleum (Submerged Lands Act) 1967 only involve the substitution of the term “Timor Gap” in place of the term “Australia-Indonesia” in the definition of Area A of the Zone of Cooperation.

However, some of the changes to existing Acts are, of necessity, more detailed—notably those relating to taxation provisions and the application of the criminal law under the Crimes at Sea Act. With respect to taxation, it has been necessary to provide further guidance as to the meaning of the terms “resident of a Contracting State” and “competent authority” to ensure the current operation of the Treaty and the Taxation Code after 26 October 1999.

The Crimes at Sea Act 1979 contains provisions governing criminal law and law enforcement in Area A of the Zone of Cooperation, consistent with the requirements of the Treaty. These provisions apply Northern Territory criminal law to petroleum related activities and provide a framework for law enforcement co-operation between the Treaty partners.

As well as amending these provisions of the 1979 Act to reflect the change in Australia's treaty partner, this Bill also inserts equivalent provisions, as amended, in the Crimes at Sea Act 2000 (currently a Bill before Parliament). The Crimes at Sea Act 2000 will be the Commonwealth's part of a new co-operative crimes at sea scheme involving Commonwealth, State and Northern Territory legislation. The amendments to the Crimes at Sea Act 2000 will commence at the same time that the Crimes at Sea Act 2000 replaces the Crimes at Sea Act 1979.

As I noted earlier, the Treaty arrangements we have entered into with UNTAET will not change the rights and responsibilities of companies and
persons working in the Timor Gap, but merely provide for a continuation of those arrangements with effect from 26 October 1999. It is therefore appropriate for the Bill to retrospectively amend the relevant legislation to 1.23 am Australian Central Standard Time on 26 October 1999, the time when the United Nations Security Council established UNTAET.

However, the Bill has been carefully framed to ensure that the impact of the amendments on the criminal law will be beneficial only. There is an express provision that prevents any retrospective criminal liability arising under the amendments. Further, immunities from prosecution provided for under the Crimes at Sea Act 1979 are explicitly preserved from retrospective abrogation.

While the changes to the treaty arrangements in this Bill will enable continuity in the arrangements under the terms of the Timor Gap treaty, they will have no direct financial impact on companies and individuals or the Government. However, it is likely that projects currently awaiting approval could, if developed, provide several tens of millions of dollars per annum to both East Timor and Australia for a period of 10 to 20 years commencing in about 2004. Investor certainty in the rules that will apply in the Timor Gap are a necessary pre-requisite for such projects. I am confident that the actions taken to date and the provisions contained in this Bill will establish a favourable climate for those investments following a period of great uncertainty.

Madam President, it is clearly in the national interest that these legislative amendments be approved as soon as possible. I commend the Bill to the Senate.

Debate (on motion by Senator Quirke) adjourned.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

CENSUS INFORMATION LEGISLATION AMENDMENT BILL 2000

CUSTOMS LEGISLATION AMENDMENT (CRIMINAL SANCTIONS AND OTHER MEASURES) BILL 1999

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.04 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question resolved in the affirmative.

Bills read a first time.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.04 p.m.)—I table a revised explanatory memorandum to the Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 1999 and move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in Hansard.

Leave granted.

The speeches read as follows—

CENSUS INFORMATION LEGISLATION AMENDMENT BILL 2000

As we approach the Centenary of Federation our minds naturally turn to trying to understand the nature of Australia today, 100 years after its move to Federation in 1901. The 2001 Census provides a unique opportunity to provide such a window on Australian society in 2001.

This Bill will ensure that name-identified 2001 Census information from households which provide explicit consent on their Census form, will be kept by the National Archives of Australia. The information will then be preserved for future genealogical and other research, after a closed access period of 99 years. This will be a valuable commemorative activity for the Centenary of Federation and will give today's Australians the chance to provide a gift to future generations, in the form of a comprehensive picture of the people and the society 100 years after Federation.

All name-identified information from past Censuses has been destroyed. The retention of such information in future Censuses was recommended by the Standing Committee on Legal and Constitutional Affairs in its report, Saving Our Census and Preserving Our History. The Government agrees with the Committee that saving name-
identified census information “for future research, with appropriate safeguards, will make a valuable contribution to preserving Australia’s history for future generations”.

Australia has a justifiably strong reputation for the quality of its Census information, which provides the statistical foundation for decision making by the public and private sectors. This reputation has been achieved, not only by the Australian Bureau of Statistics’ sound work, but also by the public trust that the information collected will be protected. The Government believes that nothing should be done which will put at risk public cooperation and hence the quality of Census information. For this reason, and in keeping with good privacy practice, the Bill requires the consent of households before the name-identified information is kept. This information from households, which do not consent, will be destroyed as soon as statistical processing is completed. The Australian Bureau of Statistics will be working with the Privacy Commissioner on how that consent should be sought, and to ensure the requirements of the Privacy Act 1988 are met.

Also, the Bill ensures that in the closed access period the retained name-identified information is completely protected whilst held by the ABS and by the National Archives of Australia. The information will not be available for any purpose within the 99 year closed access period, including use by a court or tribunal. The public can be confident this picture of Australia will, in a very real sense, be preserved in a time capsule, unavailable for 99 years, but available as a message to our descendants in August 2100.

The Bill relates only to information from the 2001 Census and not to all future Censuses. Given the importance of high quality Censuses, the Government believes a decision on future Censuses is best made in the light of the experience in 2001. The Bill also allows for an administrative change in the form of a name change for the Australian Archives to the National Archives of Australia.

I commend this Bill to the Senate.

CUSTOMS LEGISLATION AMENDMENT (CRIMINAL SANCTIONS AND OTHER MEASURES) BILL 1999

The Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 1999 contains amendments to the Customs Act 1901 to provide for special criminal sanctions in respect of the import or export of certain goods. It also increases financial penalties for Customs civil offences, and narcotic penalties.

The Bill also contains amendments to the Australian Postal Corporation Act 1989 to allow Customs officers to open international mail where there is a reasonable belief that the mail article contains prohibited drugs or chemical compounds. Accountability is enshrined in the Bill. The Bill provides Customs with powers to use technology during a consensual external search of someone suspected of carrying drugs. Customs must consult expert Government agencies on the selection/acquisition of equipment and to provide detainees with information about the machine, and any risks that use of the equipment may pose to a detainee’s health. The Customs CEO must advise the Minister for Justice and Customs on safety aspects for the equipment. Record-keeping and accountability provisions are contained in the Bill.

The Bill contains a range of amendments relating to arrest powers, disposal of abandoned goods, and extension of time for Customs to retain evidential material/seized goods. The Bill also allows for flexibility in the appointment or reappointment of the Chief Executive Officer of Customs, for periods up to five years.

The Bill demonstrates the Government’s continuing commitment to the approaches it has adopted under the National Firearms Agreement, the Tough on Drugs and Tough on Drugs in Sport Strategies.

The offences in this Bill concern serious matters. Matters which have significant potential for community harm. Substantial penalties play an important role in providing an essential deterrent to those who would commit those serious offences. The penalties don’t represent a complete answer to offences involving the import or export of drugs, weapons, child pornography or child abuse items. But they do provide an important element of community protection policies. The seriousness of the penalties also send a strong signal of our abhorrence for offences which destroy lives, damage property or have the potential to cause long term harm.

The Federal Government is working closely with State Governments, at Ministerial level, at officer level and in various other fora which include community representatives, on a range of policy objectives designed to comprehensively and consistently address community protection issues such as drug taking, dangerous weapons in the community and the like. This Bill plays an integral role in that effort.

The offences and penalties for import of performance enhancing drugs are vital now we are in the period leading up to the Sydney 2000 Olympics. There is widespread community and sports sup-
port for the serious offences that relate to performance enhancing drugs. I was particularly impressed to hear Nicole Stevenson and Mike McKay, as representatives of the Olympic sporting community, visited Canberra to express support for the Bill to the Senate Inquiry. What better way to assist in sending a strong message to all potential competitors, anywhere in the world, than the introduction of significant penalties for offences involving performance enhancing drugs.

To those young Australian athletes struggling to qualify and perform at your home Olympics – not only good luck in your endeavours – but in this Bill the Government is seeking to ensure that we are doing all we can to achieve a clean pure performance Olympics.

There has been comment from various quarters that perhaps some of the penalties in this Bill are “over the top” – draconian – too severe.

There is no doubt the penalties are significant – severe if you like. However they compare favourably with equivalent State offences. They go some way towards reflecting the potential harm these goods cause in society, and the profits that can be derived from their illicit trading.

It is important to recognise these penalties are maximum penalties. It will only be serious offences which attract serious penalties. Should we apologise for that? Or should we continue to say that protecting the community is also a priority that we will not demur from?

Just as the Government has demonstrated in its Tough on Drugs and Tough on Drugs in Sport strategies, we are strongly committed to a balanced approach for dealing with community protection issues. The Government has promoted a sound mix of demand reduction, supply reduction, education, research and treatment to tackle the substantial harms that can be caused by illicit use and trading in such substances.

As Honourable Senators will recall, in releasing a landmark report on Pathways to Prevention, I emphasised the Government’s commitment to exploring ways in which we as a society can influence a reduction in crime. Parliaments also have an important role in passing laws which help to deter illegal activity.

I commend the Bill to the Senate.

Debate (on motion by Senator Quirke) adjourned.
Schedule two of the Bill commences on the fifteenth of November 1999 and contains customs tariff measures to deter fuel substitution. I commend the Bill.

**EXCISE TARIFF AMENDMENT BILL**
(No. 1) 2000

The amendments proposed in this Bill ratify changes to the Excise Tariff Act 1921 in relation to tobacco and petroleum excise which have already taken effect. These proposals were tabled in Parliament on 21 October 1999 and 24 November 1999, respectively.

The changes are part of the Government’s reforms for a new tax system.

**Tobacco products**

From 1 November 1999 a ‘per stick’ rate of excise for tobacco has applied on most cigarettes, light-weight cigars, bidis and any other light weight tobacco products marketed in stick form.

Prior to the per stick rate, tobacco was taxed on a per kilogram rate. This encouraged the manufacture of low value, low weight cigarettes packaged in large packets. The taxation advantage had skewed consumption towards light weight, high volume cigarettes, which experts consider more harmful on health grounds.

The per stick arrangements are similar to those used for taxing tobacco in most other countries. All other tobacco products, such as heavy cigarettes, cigars, roll your own and pipe tobacco will pay duty on a per kilogram rate. The rates have been set so that there is parity between cigarettes subject to the per stick rate and roll your own tobacco.

These arrangements also replace the complex arrangements that were introduced as a measure to shore-up state revenue, when business franchise fees on tobacco products were held to be unconstitutional by the High Court.

To address the illicit tobacco industry, this Bill also inserts a definition of tobacco to clarify when tobacco leaf becomes excisable. This will restrict access to tobacco leaf to registered growers, dealers and licensed manufacturers.

**Petroleum products**

This Bill also addresses petroleum excise evasion activities.

Petroleum excise was being evaded by some parties by exploiting weaknesses in the tariff structure that allowed certain fuel substitution activities to occur. These activities, such as replacing petrol or diesel fuel used as a transport fuel with product which is subject to a lower rate of excise, lead to unfair competition and destabilisation of the marketplace.

As of 15 November 1999, the particular tariff items that were being abused were removed. The changes do not impose an additional excise liability. Arrangements are in place to ensure that those with a legitimate need to access certain products at a free rate of duty can do so.

The changes compliment the marker system the Government introduced in January 1998 that required excise free petroleum products to carry a chemical marker. The marker system also makes it illegal to sell these products in circumstances that attract the highest rate of excise, such as for use in an internal combustion engine and on road use.

The changes also more clearly deliver the Government’s decision to make certain recycled products subject to excise.

As I mentioned earlier, this Bill simply confirms changes to the excise tariff made by proposal which the Parliament has already considered.

Full details of the measures in this Bill are contained in the explanatory memorandum.

I commend the Bill.

Ordered that further consideration of the second reading of these bills be adjourned till the first day of 2000 budget sittings, in accordance with standing order 111.

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Message received from the House of Representatives acquainting the Senate that the House has agreed to the amendments made by the Senate to the following bill:

- Crimes at Sea Bill 1999

**ASSENT TO LAWS**

Message from His Excellency the Governor-General was reported informing the Senate that he had assented to the following laws:

- Petroleum (Submerged Lands) Legislation Amendment Bill 1999
- Health Legislation Amendment Bill (No. 2) 1999
- Customs Amendment Bill (No. 1) 1999
- Civil Aviation Amendment Bill 1998
- Australian Federal Police Legislation Amendment Bill 1999
 COMMITTEES
Legal and Constitutional References Committee
Report
Senator MCKIERNAN (Western Australia) (4.07 p.m.)—I present the report of the Legal and Constitutional References Committee on matters arising from the introduction of the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999, together with the Hansard record of the committee’s proceedings and submissions.

Ordered that the report be printed.

Senator MCKIERNAN—I seek leave to move a motion in relation to the report.

Leave granted.

Senator MCKIERNAN—I move:

That the Senate take note of the report.

The inquiry’s public hearing gave interested persons, government representatives and non-government organisations a much-needed opportunity to present evidence, and members of the committee also had a chance to listen and to engage in dialogue with the witnesses. As a result of this we have produced an incisive, balanced, informative and detailed report that will become an important resource detail during the ongoing debate on mandatory sentencing.

Credit for a successful inquiry must go to all my committee colleagues. I express my gratitude to my deputy, Senator Payne, and to senators Cooney, Coonan, Ludwig and Greig. It would not have been achieved without their cooperation. I also thank senators Brown and Crossin for their attendance and patience during the public hearings. As participating members, they waited whilst members of the committee had priority in questioning.

Having praised my colleagues, I feel I must make brief mention of one incident that did mar the inquiry—an unbelievable publicity-seeking stunt that was made during the public hearings in Alice Springs. Senator Greig tried to use the hearing to press his desire for Mr Konrad Kalejs to appear before the committee on a totally different inquiry. Senator Greig’s actions shocked me and gave me a further understanding of the meaning of cheap publicity.

Senator Greig—On a point of order, Madam Acting Deputy President, I claim to have been misrepresented.

The ACTING DEPUTY PRESIDENT—Senator Greig, you can make a statement, if you claim to be so misrepresented, at the end of the debate.

Senator Greig—I will take that opportunity.

Senator MCKIERNAN—The senator got his distorted headline and an interview on the ABC’s 7.30 Report. Thankfully, his attempted ambush did not divert the committee’s attention from the task at hand, the very sensitive issue of mandatory sentencing, and I shall be very wary of the senator in the future.

On behalf of the committee, I formally thank the secretariat for their effort in preparing this report. The size or bulk of the report by no means reflects the hours and hours of analysis and research of the 130 submissions as well as the 191 pages of evidence taken during the four days of public hearings. I thank Dr Pauline Moore, Mr Noel Gregory, Mr Paul Harris, Ms Yvonne Marsh and Ms Saxon Patience for their assistance.

I record that the committee formally adopted this report on the day that John Howard and Kim Beazley, on behalf of the parliament and the people of Australia, formally thanked the service men and women who had returned from East Timor. That event in parliament’s Great Hall was an expression of the nation’s pride in Australia’s defence of human rights overseas. Australia has a proud tradition of responding to calls from the international community to provide assistance to those people whose basic rights and freedoms are in jeopardy. Our troops had gone to East Timor in a time of dire need to defend the human rights of the East Timorese people. The committee’s report is about the defence of human rights within Australia. The committee’s recommendations, if accepted and implemented, will give the community, including the international community, further opportunity to applaud Australia’s human rights record. This time it will be for action within our own borders and within our own community.
The committee, after exhaustive deliberation, has recommended that the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999, jointly sponsored by Senators Brown, Bolkus and Greig, be passed by the parliament. In arriving at this recommendation, the committee has concluded that the mandatory sentencing regimes as they operate in Western Australia and the Northern Territory are quite different in the scope of offences involved and in their separate outcomes. The committee is cognisant that the Western Australian judiciary, in practice, have exercised a degree of discretion in sentencing young people who are convicted for a repeat offence of home burglary. Whilst the practice in WA may be less obviously in contravention of the UN Convention on the Rights of the Child or the International Covenant on Civil and Political Rights, the committee believes that if the legislation were administered in the way that the Western Australian parliament intended upon its enactment it would be in breach of our international obligations.

In arriving at the recommendation that the bill be passed, I am very mindful of the earlier debates in Western Australia about mandatory sentencing in general. As a senator from that state, I am acutely aware that the WA law may not be as draconian as the law in the Northern Territory. However, I am convinced that mandatory sentencing, particularly as it affects children and young people, is bad law. I note the views of the Law Council of Australia on this matter. In response to a question about the safeguards in WA, the President of the Law Council of Australia, Dr Gordon Hughes, said:

The problem with the question is that we are comparing bad with bad and we are trying to prioritise badness.

Dr Hughes went on to say:

If you are asking me whether that makes the Western Australian situation acceptable when compared with the Northern Territory, no it does not.

What is a bad law? I argue that any law that would automatically incarcerate a 15-year-old child for a period of 28 days in a place of detention some 800 kilometres from his home, family and friends for stealing and damaging property to the total value of less than $150 must, in any fair-minded person’s language, be a bad law. A law that compelled a magistrate to sentence a homeless man for a mandatory minimum period of 12 months in jail for stealing a towel worth $15 is a bad law. A law that provides for a mandatory minimum sentence of 12 months imprisonment to a 22-year-old man for the theft of biscuits valued at $23 is a bad law. Even the sentencing magistrate recognised this. In delivering sentence on 16 February this year, Magistrate Cavanagh is reported to have said:

My only discretion is not to make the sentence more than 12 months.

These examples are a few of the many indictments that have been publicised and offered in evidence to the inquiry. They provide compelling evidence. They are not the only examples that have come out of the Northern Territory. What is happening in the Northern Territory is a national disgrace. Indeed, this disgrace is compounded when one measures the additional impact that the laws have upon Australia’s indigenous population in the Territory.

The committee has detailed some of the impacts in this report. Many of the people who are affected by the Northern Territory mandatory sentencing regime do not have English as their first language. It was alleged to the committee that some of the people had no knowledge of what the court processes were, had no interpreters available to them to explain the procedures and therefore had no understanding or comprehension of why they were being punished and interned. The Northern Territory government, it would appear, has now recognised the value of alternatives to the enormously expensive policy of incarceration. During the course of the inquiry the Minister for Corrective Services, Mr Manzie, announced that he had approved an additional 11 diversionary programs, but he failed to give details of the commencement date or the funding arrangements for those programs.

It is regrettable that the statistical information on the impact of mandatory sentencing contained in chapter 3 of the committee’s report is not adequate. The statistical information is the best available to us from a
A considerable amount of the secretariat’s time was spent attempting to compare and analyse the figures provided to the committee, many of which were anecdotal. On a number of occasions the committee had to go back to the Northern Territory government representatives to clarify the information that was provided to us. Confidence in the justice system of any state or territory requires that accurate information be maintained so that it is possible to evaluate the impact of sentencing laws.

Mandatory sentencing, particularly as practised in the Northern Territory, is a blight on our society and a dark cloud overshadowing our young people. Mandatory sentencing tarnishes Australia’s good name at home and abroad. Mandatory sentencing demonstrates to all and sundry that sections of the Australian community, namely the governments of the Northern Territory and Western Australia, have little regard for Australia’s national obligations or for our nation’s reputation abroad. It is an indictment upon the governments of Western Australia and the Northern Territory that they do not act to remove the tarnish on Australia’s reputation or act to put real value on the rights of their citizens, particularly the most vulnerable of our citizens—the children.

Before I conclude, let me read into the *Hansard* a poem by a young woman that was given to the committee whilst in Alice Springs on 1 February:

> Life is more than we think it is  
> It’s about ups and downs, loves and hates.  
> But, in the end we seem to make it through  
> For we remember  
> how many people care for us  
> and how upset so many people would be  
> if we died too young  
> and for no particular reason  
> except the fact that  
> we felt no one cared enough to bother  
> whether you died or not.  
> So don’t let that get to you  
> And remember how many people would get hurt  
> If you gave up on believing on life  
> And felt the only way out was death.

Just one week after this poem was presented to the committee, a 15-year-old boy died in Don Dale Detention Centre in Darwin while serving a minimum mandatory sentence of 28 days for the theft of textas. I thank Tamara Peck for the poem and commend the report to the Senate.

Senator PAYNE (New South Wales) (4.18 p.m.)—In addressing this motion I begin as the chairman did and note that this was a very broad ranging inquiry in which the committee took very valuable evidence in Alice Springs, Darwin and Perth from all witnesses. It was a constructive and encouraging committee process in my view, and for that I thank the chair, Senator McKiernan, very much and other senators, and endorse the chair’s thanks to the secretariat for putting together what has been a very complex report. In relation to the preparation of the government senators’ report, I thank my colleague, Senator Helen Coonan, and the secretariat for their efforts in that regard.

The inquiry was essentially, of course, about whether this bill, the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999, is an appropriate way to deal with concerns about mandatory sentencing regimes in the Northern Territory and Western Australia as they impact on juveniles, and about the discussion of Australia’s international obligations as they are affected by this legislation. Government senators have reported that we believe the Western Australian legislation is applied in a much narrower set of circumstances, and its implementation is, we believe, directed very differently from the legislation in the Northern Territory. We emphasise those differences in our comments.

I wish to comment briefly on the impact of external events on the inquiry. It was, of course, conducted in recent times and in a heightened political context due to a by-election recently held in the Northern Territory. But, even more importantly, the attention of the community to the committee and its efforts was heightened by the tragic death of a 15-year-old Groote Eylandt boy whilst in detention at Don Dale Detention Centre in Darwin. We all know about the high rate of youth suicide in this country. I have spoken about it here before. I have experienced it
myself, unfortunately, close at hand, and I can only say, as an observer of the process of the Royal Commission into Aboriginal Deaths in Custody, that it cannot be a help in addressing this difficult area to detain young indigenous people in a place like Don Dale Detention Centre if you do not have to.

I would also comment in relation to other aspects of the inquiry that government senators have noted clearly that the regimes in both the Northern Territory and Western Australia resulted from legitimate community held concerns about crime levels in those areas. We have acknowledged those concerns seriously. We do not seek to trivialise them in any way. But the real question is about the impact on juveniles; on 15- and 16-year-old Australians and, most particularly, indigenous Australians. Examples of concerns raised in evidence include: the isolation and resultant stresses arising from the removal of young people from remote areas to detention centres hundreds of kilometres from their families; difficulties associated with contacting their families even by telephone or arranging visits from family members whilst in detention; the possibility that the offender will have a very complex set of significant social problems, including substance abuse, homelessness or illiteracy, amongst others; disruption to their education or employment responsibilities which arise from what may have been a minor offence for which the offender has been imprisoned for 28 days; and obviously, and most importantly in the context of this inquiry, the inability of the sentencing judicial officer to take into account those circumstances, let alone the nature of the offence committed and its impact on the victim in the process of determining the most appropriate sentence for the offence.

I want to emphasise that this is about young people. I know the proponents of the legislation will tell me that people are tired of having their homes violated and things stolen, and I recognised that. I do not dispute that they should be tired of it. I would also emphasise that we are not suggesting that offenders should go unpunished, but the difficulty with mandatory sentencing is that the punishment does not always fit the crime. Where you remove the court’s discretion, you remove their capacity to take into account all the circumstances of the case both for the offender and for the victim. If I have learnt anything in this inquiry it is that the complex circumstances which obtain in the life of almost every young person whose story I have heard over the last few months are the things that should concern us most.

Let me digress briefly to ask the question: what is the theft of some paltry amount of food in comparison to a child’s life that may include but is not limited to the lowlights of substance abuse, homelessness, high rates of youth suicide, illiteracy, language barriers and poverty? The problems that led to the introduction of mandatory sentencing are very complex. To deal adequately with the problem, to deal justly with all of the parties involved, needs a solution that is able to address that complexity, and I would note for my own part that mandatory sentencing is not that solution.

The government senators’ report has addressed the terms of reference of the inquiry and made what we believe are constructive suggestions as to how the laws may be amended to ameliorate some of the adverse impacts on young people. We have looked in detail at the diversionary programs currently run in the Territory and have welcomed the announcement in February of new ones. I note in particular evidence that we received from people like Mr Tilmouth, which was very valuable and is extracted in detail in our report. These programs need to be adequately resourced. They need to take into account the needs of remote indigenous communities, to involve indigenous communities in the program delivery, to assist communities to develop self-generated initiatives to deal with indigenous juvenile offenders.

We were very concerned at evidence about the situation of young offenders whose first language may be a tribal language. We are not convinced that they are appropriately supported in the court process and have recommended that the Commonwealth provide funding to assist with the development of an adequate interpreter service in the Northern Territory. I refer the Senate to the words of Richard Coates, the Director of the Northern Territory Legal Aid Commission, at page 83
of the transcript of evidence, to set that out more expressly.

But these are just some options. We have not set ourselves up as experts but are hopefully making a constructive contribution to the entire debate. We have recommended, further, that the Commonwealth, in consultation with the relevant governments, may like to do things like undertaking an audit review of all available diversionary and other support programs for offenders, to actively canvass and develop options for rehabilitating and deterring juveniles and young adults from repeat offending as alternatives to mandatory sentencing—to, as I said, do that in consultation with indigenous communities—and to monitor the impact of mandatory sentencing on juveniles and young adults and publish the results at least annually.

We have, of course, canvassed the question of our international obligations, concluding that the Commonwealth does have the constitutional power to override the Northern Territory legislation. I want to make brief comments in relation to the Convention on the Rights of the Child, and five provisions in particular: article 40(4) of the convention, which requires the facts of the offence and the circumstances of the offender to be taken into account; article 3(1) of CROC, which requires that ‘the best interests of the child shall be a primary consideration’; article 37(b) of the convention, that the detention of children should be ‘a last resort’ and for the shortest possible period; article 40(2)(b) of CROC and article 14(5) of the International Covenant on Civil and Political Rights, that the convention and sentence should be reviewable by a higher court; and article 40(2)(b)(vi) of CROC, that every child alleged as, accused of or recognised as having infringed the penal law has the guarantee to have the ‘free assistance of an interpreter if the child cannot understand or speak the language used’.

I have thought very carefully about where this inquiry has led me. None of the comments that I have made are comments I have made lightly; none of the decisions I have taken are ones which I have taken lightly. I have added comments further to those which appear under my name in the government senators’ statement. I would say initially that we have a letter from the Commonwealth to the Western Australian and Northern Territory governments on which I believe we are still awaiting a response, that this issue is an item on the agenda of the Standing Committee of Attorneys-General for its next meeting, and these are important parts of this process.

In my personal view the most desirable outcome of this inquiry and the public debate on this issue is the repeal of all mandatory sentencing laws affecting young people that would obviate the need for the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999. In the current circumstances this appears unlikely. Alternatively, it is still clearly preferable that both the Northern Territory and Western Australian jurisdictions have the opportunity to address directly and independently the undesirable consequences of the mandatory sentencing legislation. And, to provide an adequate opportunity and time for this process to occur, I do not support the passage of the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 at this stage.

The government senators’ report has outlined the efforts we believe the Western Australian government has made in this regard. Both governments should therefore be encouraged in these approaches to go further, to consider and implement other models of rehabilitative justice for juveniles that will also meet community need and expectations for deterrence. In our federation this is by far and away the best solution to this vexed question. However, I do believe that it is appropriate to consider what will happen if none of the recommendations or approaches to juvenile sentencing contained in the majority report or the government senators’ report—or any other options—are taken up for implementation in the Northern Territory. It is difficult to predict how effectively and over what period any recommendations may be considered and implemented, if at all.

In light of the weight of evidence and opinion that the laws as they stand do breach the Convention on the Rights of the Child, and arguably the ICCPR, then if the operation of the Northern Territory mandatory sentencing laws remains incompatible with
our international obligations I recommend the Commonwealth government should intervene to override them. These are not statements I make lightly. They will not be popular in some quarters. But I did not come here to be popular; I came here to do the right thing.

Senator GREIG (Western Australia) (4.27 p.m.)—I compliment Senator Payne on her words. Mandatory sentencing is the first great moral question that our parliament has faced this century and one which the Legal and Constitutional References Committee was asked to explore and report on. I realise that many people, including the Prime Minister, have said that the issue of mandatory sentencing is not a moral issue but a simple matter of civil law for the state and territories to determine for themselves. However, it is beyond my comprehension how the compulsory jailing of a 15-year-old orphaned Aboriginal child for stealing textas cannot be viewed as a moral question, particularly when this child then took his own life while in detention.

And, of course, this is only one example of mandatory sentencing from the Northern Territory that beggars belief. There are many others. Senators may have heard about the more recent case involving a young mother, accused of stealing her own pram from her estranged husband, now facing a mandatory sentence despite the fact that she will be nine months pregnant at the time of her court appearance and inevitable jailing.

As a Western Australian I am acutely aware that mandatory sentencing first evolved and became legislated in my home state before it did in the Northern Territory. While the design and application of mandatory sentencing laws in that state are not as draconian as those in the Northern Territory, there is no question in my mind that the laws in WA and the Northern Territory breach the Convention on the Rights of the Child to the same extent. So from the outset I must ask: what price do we pay for these unjust laws? What responsibility do we bear when we allow such laws to go unchallenged?

I remember thinking that when young Johnno, that child, was before the Darwin magistrate on charges of petty theft and vandalism it was really the mandatory sentencing laws themselves that were on trial, never mind that a confused orphaned Aboriginal child could find himself in the position of being before the courts on a charge he probably did not understand, especially since the courts most often do not or cannot provide interpreters familiar with indigenous languages. So when this child appeared before the courts it was society as a whole that was on trial, and it was the mandatory sentencing regime that was found guilty.

As a West Australian I am also very aware of the sustained popular support for mandatory sentencing laws. This is also true in the Northern Territory. Being opposed to mandatory sentencing is not a popular position to hold, but good laws and a just society mean that members of parliament must do what is right, not what is popular. This issue, more than any other to come before the federal parliament in recent years, requires leadership. I note with some disdain the comments of the Chief Minister of the Northern Territory, Mr Denis Burke, who, in claiming political victory at last weekend’s Port Darwin by-election result, claimed there was overwhelming support for mandatory sentencing, notwithstanding a 13 per cent swing away from his party at this poll. But politics is not just about polls. It is worth noting that Prime Minister Howard did not hesitate to intervene in the Northern Territory to overturn its voluntary euthanasia laws, despite polling in the Territory showing that support for that concept was even greater than it is for mandatory sentencing.

I know that the Prime Minister and his supporters claim that the issue of voluntary euthanasia is fundamentally different from that of mandatory sentencing, in that voluntary euthanasia dealt with the core philosophical questions of life and death and mandatory sentencing deals with the core issue of state based criminal laws. But this is contradicted by Mr Howard’s vote in 1994. At that time the Commonwealth intervened to invalidate anti-gay laws—that is, state based criminal laws—in Tasmania and Western Australia with the Human Rights (Sexual Conduct) Act. Hansard records that Mr Howard, who was then in opposition, voted in favour of federal intervention in these two
As for the locking up aspect of these laws themselves, we see all too clearly the way in which they grossly disadvantage youth, and Aboriginal youth in particular, while at the same time not applying to the middle-class practice of white-collar crime. It is fatuous for the governments of Western Australia and the Northern Territory to claim, as they do, that such laws are not directed at Aboriginal people when the overwhelming number of people who are caught in the net of these laws are indigenous.

I felt it was very important for the committee to see how these laws actually worked in the Northern Territory. I think the trip to Alice Springs, in particular, helped illustrate to some extent the social culture which has led to their implementation. On the evening that I was in Alice Springs, I wandered into a local shopping centre. While I was there, an Aboriginal woman wandered into the shop and swayed up one of the aisles. She may have been drunk, affected by petrol sniffing or disabled—I do not know—but what I then saw shocked me. From out of nowhere came a tall, imposing security officer who bellowered at great volume, arms waving wildly, ‘Get out of here; you are trespassing.’ The woman had broken no laws, was not offensive, was not causing any harm and had not spoken a word. Just for a moment, when the startled woman hurriedly left the store with the uniformed security officer close behind her, I felt that I was not in Australia but in Soweto.

I do not doubt for a second that some Aboriginal people may have been a problem to this store in the past and I do not doubt that this violent, although verbal, reaction was probably in response to what I assume is a long pattern of bad behaviour from some Aboriginals. But what struck me the most in this brief moment was the way in which all of the people in the store, myself included, looked on with a sense of frustration and helplessness at what seemed to be a hopeless situation. It seems to me that this is the social culture from where mandatory sentencing laws evolve: the clash between serious, unresolved social problems and our desire to protect ourselves from the results of this by placing our faith in the clumsy and inade-
quate application of criminal law. The very reason that we have judges and magistrates is so that they can make reasonable decisions based on a reasonable consideration of all of the circumstances. It is not the job of politicians to tell judges and magistrates what must be done in each and every case. But when this does happen, when laws so clearly breach international human rights conventions—particularly as they relate to children—we must respond as a nation through our federal parliament. It is not only proper that we respond with federal intervention; it is our humanitarian duty to do so. Mandatory sentencing in the Northern Territory and WA must be repealed. This is not a popular position to hold but it is the right one, and in that sense I endorse the chair’s report.

In closing I would just like to respond to Senator McKiernan’s criticism of me earlier and make the point that he did not give the full picture when he accused me of ambush ing him, as it were, in Alice Springs. This was in relation—the Senate would not be aware of this—to my proposal to subpoena Mr Konrad Kalejs before the Senate inquiry. I make the point that I had phoned Senator McKiernan prior to doing this, I had written to Senator McKiernan prior to doing this and I had no response. I felt that I was being ignored and patronised, so I took the first opportunity when the committee met to formally move the motion that I did and to which he objects so strongly. I suggest that this is based on the ALP’s reluctance to seriously pursue war criminals and nothing else.

Senator BROWN (Tasmania) (4.37 p.m.)—I seek leave to continue my remarks later.

Leaf granted; debate adjourned.

DOCUMENTS

Redistribution of Electoral Divisions

Senator ELLISON (Western Australia—Special Minister of State) (4.38 p.m.)—I table two reports. These reports are for the 1999-2000 redistribution of Tasmania into electoral divisions and the 1999-2000 redistribution of New South Wales into electoral divisions. This is the last day for tabling, and accordingly I table those documents.

PERSONAL EXPLANATIONS

Senator McKIERNAN (Western Australia) (4.39 p.m.)—(Western Australia) I seek leave to make a statement as I have been misrepresented.

Leave granted.

Senator McKIERNAN—I am going to be very brief. It is in response to the comments by Senator Greig about the happenings during the committee’s public hearing in Alice Springs. Senator Greig certainly had phoned me and during the course of the hearings did provide me with a letter, which was a request that Mr Kalejs be subpoenaed to appear before the committee. That letter was distributed and circulated to all committee members during the hearing. What Senator Greig failed to tell the Senate was the effect of his ambush. Whilst the hearing was going on, the senator issued a media release, which I can have brought into the chamber, headlined something like ‘Labor blinks on Kalejs’. As soon as we broke for lunch and my mobile phone was turned on, the calls came in to me from the media about this particular media release. Not only that; there was an ABC camera crew at the hearing which sought to interview me immediately after we broke for lunch. That type of behaviour has never been directed to me before and hopefully, by my raising it here, it will never happen to me again. I will not stand for it. I will not stand to be ambushed like that from a colleague, particularly during something as sensitive and as serious as what we were doing, and that was the public inquiry into mandatory sentencing.

BUSINESS

Mandatory Sentencing Legislation

Suspension of Standing Orders

Senator GREIG (Western Australia) (4.40 p.m.)—Pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent Senator Greig moving a motion to provide for the consideration of the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 take precedence over all government and general business until proceedings on the bill are concluded.

In doing so, I believe that the time has come for the parliament to bite the bullet on this
issue. There has been a comprehensive, exhaustive inquiry into this issue. There has been considerable media debate. There is undoubtedly considerable electorate interest in this issue. I see no particular reason why we should not get on with the job. I believe that, particularly since the death of that child in Darwin, there has been a sense of urgency about mandatory sentencing that we have not had before. I regret that it apparently took his death to focus the great strength of interest on this issue that has resulted. To that extent, I am a little worried that perhaps that has taken some of the focus off Western Australia, but that is not the case now that we have heard a broader report from the chair on the findings of the majority of the committee. We now have the opportunity before us to stop procrastinating, to get on with the job and to allow the Senate its full and proper opportunity to debate all the aspects of this and then bring it to a vote. I believe it is quite literally a matter of life and death, and it ought to be treated with the seriousness that it deserves. I shall leave it there.

Question resolved in the affirmative.

Motion

Senator GREIG (Western Australia) (4.42 p.m.)—I move:

That consideration of the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 take precedence over all government and general business until proceedings on the bill are concluded.

My reasons for doing so I have previously outlined.

Senator BROWN (Tasmania) (4.43 p.m.)—I support the notion of urgency with this matter. One cannot have taken part in the committee hearings in Alice Springs, Darwin and Perth without feeling a sense of great urgency that Australia should put to rights a wrong that is going on in our society in the Northern Territory and in Western Australia—namely, mandatory sentencing. I do not have to reiterate the debate that we have just heard except to say this: mandatory sentencing is wrong. It is wrong because it damages children. Every committee member said so. It is wrong in particular because it damages the indigenous children of this country, who are snared up in it. We have to act on that. I do not believe that making calls for the Western Australian government or the Northern Territory government to change is the right road to go down. These calls are certainly aimed at taking the urgency out of the matter, but we have already had Premier Court and Chief Minister Burke say to the Prime Minister, ‘You go bowl your hoop. Don’t come and intervene in our mandatory sentencing laws because we are in the business of locking up children and taking away the rights of the courts.’

I do not think we should be in the business of saying to the Prime Minister, ‘Yes, go on, bowl your hoop. Don’t do anything.’ I do not think the Prime Minister should be in the business of that. Even he believes mandatory sentencing is wrong. The time for action is now. One only has to read this report to see why that action must be taken, whether it be in the interests of an individual child—inca- cerated, bewildered and wondering what they will do about their own future and their own life—whether it be in the interests of the community that has not benefited from a downturn in crime but is paying the hugely increased cost of detaining such youngsters in detention centres, or whether it be in the wider interests of this nation that we uphold the international Convention on the Rights of the Child as well as other conventions that over 180 countries have signed.

It is time for action. We cannot sit on our hands. Neither the Prime Minister nor any other member of this parliament can wash their hands of the responsibility to override the laws in Western Australia and the Northern Territory. We know what the reaction is going to be from the Perth and Darwin administrations. They have not done anything, they like these laws, they want to lock up children who get ensnared by these laws, and they are far short of the mark of doing the right thing by society for those children. So I believe we need urgent action. I will move an amendment to Senator Greig’s motion so that we begin the debate of this legislation tomorrow. I move:

After ‘business’, insert ‘from the commence- ment of business on Tuesday, 14 March 2000’.

I do that as a simple, logical and procedural matter which expresses the seriousness with
which I take this matter. Most of the members of the Senate have not had time to read this report. It is a thick report, it is more than 100 pages and it is detailed in its argument for ending mandatory sentencing. I do not believe it is proper procedure for us to immediately go into a debate without senators having had time to digest what is in this report. I am moving a 24-hour delay, which also gives the caucus rooms of the parties time to debate the matter in the morning.

I do not think that is an unreasonable delay—in fact, I think it is warranted and sensible. We cannot throw caution to the wind, nor can we overlook the urgency of this matter. To facilitate a more learned debate, to facilitate a more informed position from the Senate as it debates this extraordinarily important matter for the nation, I suggest that we take this one day out to allow every member to read the report, including the differing reports from committee members opposite as they have added their thoughts and their deliberations to the recommendation that the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 be supported.

Senator ELLISON (Western Australia—Special Minister of State) (4.48 p.m.)—I will be brief in my remarks. The government does not see any reason for the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 to be dealt with on a basis of urgency. We have today a report from the Senate Legal and Constitutional References Committee tabled in the chamber, and it is the government’s belief that this is a very important matter that should receive due consideration. Senator Brown seems to acknowledge that, but he is saying that we should put it off until tomorrow to give people time to consider the matters raised in the report. The government is very firmly of the view that a deferral of one day would do nothing to help give this adequate attention. The government has stated that it will consider the Senate committee’s recommendations. It will respond to those recommendations in due course, and that is the way this should go. The bill that is being contemplated should await the due consideration of the Senate committee’s report.

The government did act swiftly to express its concerns to the Northern Territory and Western Australia. That was done by way of communication to those respective governments. However, the government does realise that, constitutionally, law and order is the responsibility of the states and that there are problems with a Commonwealth government riding over a state government. Similarly, there are difficulties in relation to how a Commonwealth government might impinge upon the self-government of a territory. These are all weighty issues, which are combined with the very aspect of mandatory sentencing—which is, in itself, a complex issue. That is why the government is very firmly of the view that this debate needs time for people to consider it and should not be dealt with on the run. Therefore, we will oppose Senator Greig’s motion and Senator Brown’s amendment.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.50 p.m.)—The motion of precedence before the chair which is being debated currently leaves the Senate with three options: the Senate cannot give precedence over government business and general business to the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999; it can give immediate precedence to the bill, in accordance with the motion that has been moved by Senator Greig; or the Senate can—courtesy of the amendment moved by Senator Brown—commence this debate as soon as government business commences tomorrow.

The speech that Senator Brown has given is one worthy of serious consideration by the Senate, for the points made by Senator Brown had some strength. There is no doubt about that. The points made are reasonable. I have asked the clerks of the Senate if I could be provided with a copy of the committee’s report and I have just been informed that the report has not been printed. As a result of that, as the first speaker in the second reading debate, I will not have the benefit of the committee’s report as I proceed—if debate proceeds—and certainly will not have any opportunity to read or to digest what might be contained within that report.
We need to note that not only is there a majority committee report but also, as I understand it, government members of the committee have dissented from the majority report and a minority report is included in the printed documentation. Both the majority committee report and the minority report are not available for the benefit of the Senate. That is the circumstance that we face. The opposition for its part has given this matter serious consideration.

Let me say on the procedural issue before the chair that the opposition do not want to delay debate on this important bill. We do not want to face a situation where even one day’s delay may be misinterpreted by some, because our position in relation to this bill is clear: we believe that it is a very important matter which deserves serious and urgent consideration by this chamber. While the arguments mounted by Senator Brown are very strong, I am very concerned that, if the opposition were to support his quite worthy amendment on this occasion, some might take advantage of that and accuse—very wrongly—the opposition of delaying tactics. I do not want to place the Labor Party in that position, given that we have such a strong and clear position on the mandatory sentencing of juvenile offenders. It is for that reason, and that reason only, that the opposition will not support Senator Brown’s amendment and will support the substantive motion that has been moved by Senator Greig.

I understand the difficulty that Senator Brown faces. Let me say that all senators are in the same position because this report has not been printed. There have obviously been private discussions in the chamber. Senator Greig has made a decision on behalf of the Australian Democrats’ party room that he would prefer to proceed with debate on the bill now. In that circumstance, the opposition will support the precedence motion before the chair, whatever its weaknesses, because I am simply not willing to place the opposition in a position where—however unfairly—its actions might be misinterpreted by unreasonable people.

Senator GREIG (Western Australia) (4.55 p.m.)—I rise to speak briefly to Senator Brown’s amendment. The Democrats continue to oppose it. I think Senator Faulkner is quite right. The key point he made in his speech was that the Labor Party’s position is very clear, and that it is. That was reflected in the public debate and also in the majority report. The same is true of Senator Brown. His position has been very consistent in this regard. So, too, is the case with the Australian Democrats.

I have understood all along that the coalition would not be supporting the bill. They have made that very clear. So, to that extent, I do not see that delaying this debate by one day will make any difference whatsoever. I think we should press ahead. The issues are all before us. I wonder how many senators would really avail themselves of that time to read the report. The issues are very clear; I do not think the issues are at all ambiguous. The Labor Party, the Australian Greens and the Australian Democrats have made their positions very clear. I do not know that I can say more, other than to continue to press my point that I think any delay is unnecessary and that we should move on with it.

Amendment not agreed to.

Original question resolved in the affirmative.

HUMAN RIGHTS (MANDATORY SENTENCING OF JUVENILE OFFENDERS) BILL 1999
Second Reading

Debate resumed from 25 August 1999, on motion by Senator Brown:

That this bill be now read a second time.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.57 p.m.)—Mandatory sentencing is a recycled, ineffectual and failed model for dealing with crime. It was tried in England in the 18th century and for a brief time in New South Wales in the late 19th century. It failed and it was discredited in both jurisdictions because it was widely seen as unjust and offensive to public morality. Now it is used in many US states with alarming social consequences and absolutely no drop in the crime rates.
In 1883, more than a century before the Northern Territory’s laws were put in place, the colony of New South Wales experimented with mandatory sentencing. Under the Criminal Law Amendment Act (NSW) 1883, the New South Wales parliament created a sentencing structure with five distinct steps or categories, with both minimum and maximum sentences. That scheme led to palpable injustices and the Sydney Morning Herald editorialised on 17 September 1883 as follows:

We have the fact before us that in a case where a light penalty would have satisfied the claims of justice, the judge was prevented from doing what he believed to be right, and was compelled to pass a sentence which he believed to be excessive, and therefore unjust, because the rigidity of the law left him no discretion.

After such inequities were clearly established, the scheme was abandoned in 1884. In a tragic irony, the Herald ran a similar editorial on 26 February this year in relation to the Northern Territory’s mandatory sentencing laws. You have to wonder how far we have come as a nation in 116 years. The adage that those who do not heed the lessons of history are bound to repeat its mistakes certainly rings true.

Yet, the more immediate connection of the Northern Territory and Western Australian mandatory sentencing laws is with the United States, as it is there that over the 1980s and 1990s the populist mantra of ‘three strikes and you’re in’ and the theory and practice of mandatory sentencing have been refined. It is worth noting some recent examples of the direct consequences of the mandatory sentencing regimes in the US.

There was the case of a man and his girlfriend who were found dead in the garage of their house in Sacramento, California, in January. It was murder-suicide. The man had shot his girlfriend and then himself. The man was facing a sentence of life imprisonment for possession of less than one ounce of marijuana. It was his third conviction and in California, the home of the three strikes law, any third conviction for an offender means a mandatory sentence of 25 years to life. Also in California, a man is serving a life sentence for snatching a pizza from a group of school-children when he was drunk. That is right, a life sentence for stealing a pizza. His first two convictions were on robbery and drug counts; his real crime, it would seem, is that he was hungry and he was destitute.

In a civilised society, and indeed in any society where the social and financial costs of such policies are properly considered, it would be considered ludicrous to sentence someone to life imprisonment for stealing such small items of property. That someone serves time for these offences is not the issue. The issue is that the punishment so clearly does not fit the crime in these cases.

Tragically, the expression ‘only in America’ does not apply to mandatory sentencing. Here in Australia the recent death in custody of the 15-year-old Wurramarrba boy has come as a wake-up call to all Australians on the issue of mandatory sentencing. He stole pens, pencils and liquid paper from the local community council offices on Groote Eylandt; their value was less than $50. For that crime, under the cruel and inflexible mandatory sentencing laws of the Northern Territory, the young Wurramarrba boy was sentenced to 28 days in prison. Locked up far away from home, he was found hanged in Darwin’s Don Dale detention centre on 9 February 2000, only a couple of days before he was due to be released. His mother died when he was a baby, and his father died in a car accident a few years ago. His personal circumstances could not by law be taken into account by the sentencing judge. Under the Northern Territory laws, the young Wurramarrba boy’s sentence was cold and automatic.

Another case from Darwin illustrates how absolutely inflexible and unjust the NT laws are. Matthew Bradley, a 17-year-old boy from Darwin, left prison on 15 July 1997 after serving 14 days imprisonment for stealing yoyos and computer games valued at $579 from a toyshop. The Darwin Magistrates Court was told that Matthew was an above-average student at St John’s College and a first offender who had paid full restitution for the thefts and damage. He had also apologised to the manager of the toyshop. In fact, Matthew had confessed to his father, who had taken him and the stolen objects to
the police station. So Matthew did the right thing, showed genuine remorse, confessed to a crime that the police had no idea he had perpetrated—and society dealt with him for doing this by sending him to prison for 14 days. How many of us would tolerate this treatment for our own children?

In early February this year, three Aboriginal men were sentenced to terms of one year, one year and 90 days respectively for the theft of biscuits and cordial worth $23. They committed the crime on Christmas Day 1998. The men were hungry, so they entered a storeroom at the Gemco mine on Groote Eylandt and took the food and drink. They did not touch any of the expensive equipment that was stored there. They did not hurt or threaten anyone. When he sentenced the third of the men, Jamie Wurrumurra, the visibly upset magistrate, Greg Cavanagh, questioned the benefit of a custodial sentence but said that he had no option under the law. So the Northern Territory will outlay about $135,000 to hold these young men, not counting the construction costs of the jail or the costs of the court proceedings. The cost to the community is more than 5,000 times the value of the goods they stole.

I asked last week—and I have yet to receive a satisfactory answer from any quarter: where is the justice in obliging a court to send a person to jail for one year for stealing biscuits and cordial and allowing someone who has been convicted of the nation’s biggest fraud to walk free after little more than three years behind bars? Alan Bond’s fraudulent behaviour hurt thousands of small investors; some of them lost their life savings. The lesson of Alan Bond’s case is that, in Western Australia and the Northern Territory, there is one rule for the rich and one rule for the poor. Why is it that there is a judicial discretion for such business criminals and not for petty thieves?

Today in the Senate and later in the House of Representatives we can do something to rectify the obvious injustices of mandatory sentencing. The Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 states that a law of the Commonwealth or of a state or territory must not require a court to sentence a person to imprisonment or detention for an offence committed as a child. If passed, the bill will ‘override’ those provisions of the Northern Territory and Western Australian laws that require, without any meaningful judicial discretion, a court to impose a custodial sentence upon a child.

Let us take a look at the Northern Territory and Western Australian laws at issue here. The Northern Territory’s Juvenile Justice Act provides that a 15- or 16-year-old child found guilty of a property offence for the second time must be detained for 28 days. The court may order the child to complete an approved program, provided that a program is available and the child has not previously completed a program. Tragically, no such program was available to help the 15-year-old Wurrumurba boy. In part, that was because of the Northern Territory government’s lack of financial support for constructive programs for Aboriginal children. It seems that it only wants to construct jails for them. Further, the Northern Territory’s Sentencing Act provides that a 17-year-old child must be imprisoned for 14 days for the child’s first property offence, unless there are exceptional circumstances. In relation to the second and third offences, a 17-year-old must be imprisoned for 90 days and 12 months respectively—and there are no exceptions.

Western Australia’s Criminal Code provides that a child who is found guilty for the third time of entering a house with intent to commit an offence must be detained or imprisoned for at least 12 months. In WA a child is a person aged between 10 and 17.

There is some overlap between the Northern Territory and Western Australian laws. For example, a 17-year-old found guilty for the third time of stealing a small quantity of food from a house will in both jurisdictions be sentenced to 12 months in custody. The circumstances of the offence will be wholly irrelevant to the sentence imposed by the courts in the Northern Territory and Western Australia. In both jurisdictions, by requiring a mandatory sentence for an offence, the laws are tying the hands of judges. In doing so, they are tying the hands of justice itself. In these circumstances, justice will neither be done nor be seen to be done.
We must maintain the balance between the broad discretion judges have to ensure that justice is done in each individual case on the one hand and the need for consistency in sentencing and the promotion of public confidence in the administration of justice on the other. Mandatory sentencing corrodes both of these principles. It also dangerously shifts power from the judges to the prosecutors.

We will all pay a heavy price for the erosion of public confidence in the judiciary. That probably is not of concern to the likes of Denis Burke, who justifies mandatory sentencing with the appalling and irresponsible line that they need such a system because ‘the judiciary is corrupt’. Such matters are of concern to our party and to most Australians, but not of course to the cowboys of the Northern Territory CLP.

It is the strong view of the Labor Party that human rights are more important than so-called states rights. It is our strong view that mandatory sentencing is both wrong in principle and tragically wrong in its consequences. Punishment should never be blind to the person it is being applied to and their circumstances.

Aside from the alarming social cost of the Northern Territory’s mandatory sentencing laws, there is a significant and totally unjustifiable financial cost to the taxpayers of Australia for maintaining that system. The Northern Territory administration governs a population smaller than a medium-sized city council and is massively subsidised by federal tax dollars. Although the precise details of the cost of mandatory sentencing have not been made available by the Northern Territory government, according to the Commonwealth Grants Commission the average daily cost of imprisoning a person in the Northern Territory is $169.44. Annually that is a very significant cost.

Consider the cost to taxpayers of mandatory imprisonment in relation to the following examples. Margaret Wynbyne: sentenced to 14 days in prison for the theft of one can of beer; cost to taxpayers, $2,400. Jamie Wurramurra: sentenced to one year in prison for the theft of biscuits and cordial; cost to taxpayers, $62,000. Kevin Cook: sentenced to one year in prison for the theft of a towel worth $15; cost to taxpayers, $62,000. A 17-year-old girl: sentenced to 14 days in prison for stealing orange juice and Minties; cost to taxpayers, $2,372.

Studies conducted in the Alice Springs area have shown, not surprisingly, that the key issues affecting juvenile offenders are homelessness, extreme poverty and exposure to domestic violence and sexual assault. The evidence is clear as to the identity of the majority of victims of mandatory sentencing policies; they are young Aborigines and they are poor. One could add that the Australian taxpayers are also victims of this policy.

The Prime Minister was last week reported to have described the Northern Territory and Western Australian mandatory sentencing laws as ‘silly’. Yet it seems he is reluctant to do anything about these so-called silly laws, as he calls them, because of legal opinions furnished by the Northern Territory and Western Australian governments indicating that their laws do not contradict Australia’s international obligations.

Let us have a bit of a look at how sturdy this legal crutch is that John Howard has chosen to lean on. The Prime Minister was recently provided with a legal opinion from 33 eminent Australian lawyers. I would like to look at one part of that opinion—that dealing with articles 37(b) and 40(4) of the Convention on the Rights of the Child. These articles provide that detention of a child should be used only as a measure of last resort for the shortest appropriate period of time and that a variety of measures should be available to ensure that children are dealt with in the manner appropriate to their wellbeing and proportionate both to their circumstances and to the offence. There is no doubt that mandatory sentencing schemes which apply to children violate both these provisions.

Nevertheless, the Western Australian and Northern Territory governments deny that mandatory sentencing laws infringe the convention. Mandatory sentencing laws are said to be an appropriate and proportionate response to the worst case offender. This argument is wrong and is not sustainable.

Under both the Western Australian and Northern Territory regimes, mandatory sen-
tencing laws are the first resort for relatively minor offences. It is preposterous to suggest that a 15-, 16- or 17-year-old child who, while hungry, steals food from a house is a worst case offender.

The Western Australian and Northern Territory governments also argue that mandatory sentencing laws ought to be viewed as a relatively minor part of a much larger beneficial juvenile justice regime created by the WA Young Offenders Act and the NT Juvenile Justice Act. This argument is also completely indefensible. Article 40(4) of the convention requires that each child be dealt with in the light of the circumstances of that child and the circumstances of that offence. Mandatory sentencing laws ignore both the circumstances of the child and the circumstances of the offence.

Reference should be made to the recommendations in the stolen generations report and the report on Aboriginal deaths in custody. Both recognise the many underlying reasons which result in Aboriginal people becoming involved in the criminal justice system. Both conclude that, without a policy of imprisonment as a sanction of last resort in relation to Aboriginal offenders, a significant proportion of young Aboriginal people in Australia will face a life of detention. Mandatory sentencing laws are the antithesis of the recommendations of these reports.

The abolition of mandatory detention would not result in the elimination of detention as a sentencing option for juvenile offenders. That option would still be available in those circumstances where it is warranted and where there is no other alternative. However, it would be subject to the exercise of judicial discretion and the requirement that the severity of the penalty be proportional to the seriousness of the offence. It would also be subject to the requirement that the detention of juveniles shall be a measure of last resort, which is a fundamental principle under international human rights law.

According to the legal advice given to the Prime Minister, the Northern Territory and Western Australian mandatory sentencing laws breach at least three international human rights treaties to which Australia has committed itself. The areas of concern in the advice have been underlined by the reference paper prepared by Mary Robinson, the United Nations High Commissioner for Human Rights. It is worth noting that John Howard has stated throughout his career that ‘symbolism is no substitute for relevant working policies to alleviate health and education standards for Aborigines’. Prime Minister Howard, here, right in this bill, is a relevant working policy that, while dealing with the sentencing of offenders, will also have a direct effect on the health and educational opportunities of Aborigines.

I call on the Prime Minister to show some courage on this particular issue. I ask the Prime Minister to do more than just have a look at the most recent Liberal Party or CLP polling on mandatory sentencing. I actually call on the Prime Minister to show some ticker on this issue. I also call on the Prime Minister to stand up for the rights of young Australian children, and there is one way of doing that—that is, by supporting this bill that is before the Senate.

The opposition supports the principle of punishment fitting the crime. It is our strong view that mandatory sentencing is both wrong in principle and tragically wrong in its consequences. It threatens the independence of the judiciary, and experience shows that mandatory sentences do nothing to lower the crime rate. In fact, it probably does the opposite. This is an opportunity for this Senate and this parliament to right a grievous wrong. The Labor Party, the opposition, supports this bill, and we urge other senators and the Australian parliament to do the same. (Time expired)

Senator BOLKUS (South Australia) (5.17 p.m.)—I also rise to speak on the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999, and in doing so indicate that I am proud to have co-sponsored this legislation on behalf of the Labor Party. This bill seeks to overturn unjust and discriminatory mandatory sentencing laws in the Northern Territory and in Western Australia. This is an issue which has been around for some time. It is an issue which has long been of concern to many Australians. It is an issue which has both national and international significance. What we are debating here to-
day is not simply a matter of state criminal law enforcement; we are debating an issue with broader implications, an issue which raises matters of the most fundamental of human rights and an issue which affects directly our international standing.

Human rights are the subject of legitimate international and domestic interests. We have been criticised internationally for this legislation for some three years already, and the eyes of the rest of the world are on us today as we debate this legislation. Let us also remember that this is an issue that has already been raised in international debate by some who try to isolate Australia, even within our own region. What is more, this is an issue which will be used to undermine Australia's moral standing when we try to advocate, as we have long done and as we will continue to do, on behalf of the human rights of others across the world.

The overwhelming weight of evidence is that mandatory sentencing cannot be justified from a moral, political or law enforcement perspective. If the Northern Territory and Western Australian governments are not prepared to revise their current mandatory sentencing regimes—and they have had more than enough time to do so—the Australian Labor Party believes that the federal parliament must override the offending laws.

The Prime Minister tries to excuse himself from this responsibility and hide behind the excuse of states rights. But this is a policy with direct discriminatory impact on Aboriginal Australians—a policy which has the capacity to destroy the lives, and is destroying the lives, of a generation of young Aboriginal Australians. Since 1967, under our Constitution the Commonwealth government has a more than direct responsibility to act in their interests. To the extent that today we in this parliament run away from this issue, we are shirking that constitutional responsibility. The most pertinent starting point, I believe, in discussing this legislation is the report of the Royal Commission into Aboriginal Deaths in Custody.

Although mandatory sentencing legislation is intended to curb all offenders equally, it cannot be disputed—and I believe the state and territory jurisdictions involved do not dispute—that it is discriminatory in its application and consigns the current generation of indigenous youth to a lifetime of incarceration. That is exactly the type of outcome that the deaths in custody report recommended against.

In its recommendations of 1995, the report stated unequivocally that imprisonment must be the sentence of last resort. The report recommended time after time that alternatives to imprisonment should be examined and that steps should be taken to ensure that such schemes achieve maximum advantage for Aboriginal offenders. The commission found—and the evidence since vindicates its finding—that jail has led time and time again to deaths in custody. This fact was evident quite some years ago when the commission reported. It is becoming even more evident now. The evidence, I believe, in this area is indisputable.

We also have a national responsibility to protect Australia's international standing and international reputation. If we want more timely evidence of this, we really need only look at today's United Nations reference paper on Australia's international obligations with respect to mandatory sentencing. Despite the attempts by the Prime Minister to silence the United Nations on the issue, the paper released today confirms that the Northern Territory and Western Australian regimes offend a number of significant human rights conventions and principles. It draws attention in particular to significant inconsistencies with the UN Convention on the Rights of the Child and the UN standard minimum rules for the administration of juvenile justice.

In its advice, the UN states conclusively that this matter is 'a very important one from the human rights perspective and all states should give the principles involved the closest attention in both legislation and practice'—'states' meaning UN member states, one of course being Australia. The UN has specifically brought to the government's attention articles 37, 39 and 40 of the Convention on the Rights of the Child; articles 9, 11 and 14 of the International Covenant on Civil and Political Rights; article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination; and rules 5,
Mandatory sentencing breaches article 37(b) and (c) of the Convention on the Rights of the Child and it does so by arbitrarily depriving children of their liberty, failing to use detention as a measure of last resort and failing to take the needs of the particular child into account. Mandatory sentencing also conflicts with article 14(5) of the International Covenant on Civil and Political Rights and article 40(2)(v) of the Convention on the Rights of the Child—provisions which require that sentences should be reviewable by a higher or appellate court.

But this is not the first time that the UN has brought to our attention areas of contravention of our legislation with our international obligations. In 1997, the United Nations Committee on the Rights of the Child observed:

The situation in relation to the juvenile justice system and the treatment of children deprived of their liberty is of concern to the committee.

It goes on:

The committee is also concerned about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile system.

It goes on:

The committee is particularly concerned at the enactment of new legislation in two states where a high percentage of Aboriginal people live, which provides for mandatory detention and punitive measures of juveniles, thus resulting in a high percentage of Aboriginal juveniles in detention.

The sad history of this issue is that the government has deliberately ignored UN concerns for some three years and now continues to refuse to intervene to maintain the most basic of basic rights for Australians. And this is a government that continues to be in denial. The Minister for Foreign Affairs today put out a press release denying the content of the UN reference paper. Anyone who can read the paper can see that that paper condemns the mandatory sentencing legislation. But let’s come a bit closer to home. Let’s look at some of the principles governing our own legal system and see how mandatory sentencing sits in respect of them.

Mandatory sentencing not only breaches international human rights provisions but also overturns long established common law principles. In making no distinction between trivial and serious culpability, mandatory sentencing breaches the fundamental common law principle of proportionality, a principle which requires that the particular circumstances of an offence and offender need to be taken into account in the process of sentencing. It is no wonder that just about every senior judge in Australia has come out strongly opposing mandatory sentencing. All of the most recently retired High Court judges, no matter what positions they took on the bench, now speak with one voice. Former Chief Justice Sir Gerard Brennan said:

A law which compels a magistrate to send a person to jail when he doesn’t deserve to be sent to jail is immoral.

Sir Ronald Wilson said:

I have no doubt mandatory sentencing is contrary to the Convention on the Rights of the Child, the most widely accepted UN convention.

Sir Ninian Stephens said:

Mandatory sentencing is inherently inappropriate.

And there are others—Sir Harry Gibbs, Sir Daryl Dawson, John Toohey, Sir Anthony Mason. As I say, the seven most recently retired judges all speak with one voice and all condemn mandatory sentencing. On top of this, in February this year some 33 of our most eminent legal academics sent a letter to the Prime Minister condemning the laws.

Mandatory sentencing laws compromise the fundamental principle upon which our system of government is based—that is, a separation in function and power between the parliament on one hand and the judiciary on the other. In one sense, mandatory sentencing amounts to unwarranted political interference in the judicial process. The Northern Territory Juvenile Justice Act provides that a 15-
or 16-year-old child found guilty of a property offence for the second time must be detained for 28 days. Although the court may order the child to complete an ‘approved program’, this depends on whether a program is available and whether the child has previously completed a program. In practice, this amounts to mandatory imprisonment. Unfortunately, as we know full well, no such program was available to the 15-year-old boy from Groote Eylandt who died on 10 February 2000 while serving 28 days detention for property offences.

None of us in this place or in the House of Representatives, the Prime Minister included, would like our children to fall victim to such legislation. All parents want their children to be steered, albeit sometimes late in the process, away from jail to give them a chance to steer them from what more often than not is a life sentence in and out of jail—because once you are in there it is very hard to stay out thereafter. Let’s show, therefore, the same concern for the children of others, particularly the children of indigenous Australians, who are the real victims of this legislation and who, by the way, are the victims of the legislation more often than not because they are the victims of hundreds of years of marginalisation, oppression and abuse. Let’s face it, too often in this case we are talking about immediate descendants of families ripped apart by our institutionalised program of stolen generations.

Western Australian and Northern Territory governments concede that Aboriginal children are overrepresented in custody. Indeed, the Northern Territory government even suggested Aboriginal people commit more offences as a result of underlying factors related to poverty, unemployment and alcohol abuse. No wonder in many circumstances we have ripped their families apart. The UN report also goes to this point. In canvassing a breach by Australian laws of the Convention on the Elimination of all Forms of Racial Discrimination, the UN refers us to article 5, telling us that it is of particular relevance in cases of discriminating impact of legislation which may, for example, ‘lead to disproportionately high rates of detention for individuals belonging to a particular ethnic group’.

One question has to be asked in the light of all this: do the laws produce results? Do they protect the broader community? Are they achieving results to satisfy the Burkes and the Courts of this world? Here we are struck with the ultimate futility of the legislation in question: despite the intention of, and the rhetoric on, mandatory sentencing laws being there to protect the community, all the available evidence shows us that incarceration in fact increases the likelihood of further criminal activity. All available research shows that increasingly harsh approaches to treatment of, particularly, young offenders does not work. The longer the detention period, the higher the probability of reoffence and the likelihood that future crimes will become increasingly serious. The paradox of mandatory sentencing is that it does not work: it increases community danger; it detracts from community safety.

The most favourable analysis of the mandatory sentencing policies of the Territory and the Western Australia governments is that they have been framed on the basis of flawed assumptions or they have been based on misinformation about youth crime. The alternative analysis is that the policies have been motivated by base political opportunism which has replaced political leadership and rejects the application of sound principles. Let us put it on the record: mandatory sentencing does not reduce or deter crime. It is expensive and harmful. Mandatory sentencing is increasing the incarceration of Aboriginal people, women and juveniles, and mandatory sentencing commits young people in particular to a lifetime in and out of jail.

Why are these provincial governments so keen to insist on such laws? The answer to this question is—no matter how unpalatable it is—I believe quite simple. It will not take all that long for it to be disclosed. This is all about the forthcoming Northern Territory election. It is about talking in code; it is about beating up resentment on racial grounds; it is about belting the victims; it is about, once again, shoring up a corrupt Northern Territory administration by a campaign of fear and race. This Northern Territory government, no matter which leader, has played this card all too often. The PM will not intervene because
the language he knows best is the language of
code, and it is the language spoken by the
Northern Territory government.

In essence, let us strip it to the core. The
Prime Minister’s opposition is not really
about the rights of states and territories. Let
us remember it is this Prime Minister whose
government introduced legislation to overrule
similar provisions in respect of some of our
territories. It is this Prime Minister who en-
couraged national legislation to overturn
Northern Territory criminal law in respect of
euthanasia. And it is this Prime Minister who
has cancelled the Premiers Conference. So
much for states rights. For this Prime Minis-
ter, unfortunately, this is about a coded mes-
 sage, appealing to those redneck sentiments
in our community. It is not about states
rights; it is about base Northern Territory
CLP government rights, and such rights
should not be more important than human
rights. If Alan Bond has been tried in the
Northern Territory, because of the definition
of property in the territory there would not
have been an obligation to sentence him to
jail. Yet a 17-year-old on Groote Eylandt was
incarcerated for 30 days for breaking into his
school with a cousin to steal food because he
was hungry.

The legislation that Senator Brown has
brought before the parliament—and I com-
 mend him for that—is all about making the
punishment fit the crime. The Chief Justice
of the New South Wales Supreme Court, Jim
Spiegelman, recently noted that, unless
judges are able to mould the sentence to the
circumstances of the individual case then,
irrespective of how much legislative fore-
thought has gone into the design of a par-
ticular sentencing regime, there will always
be the prospect of injustice. This is because
the very core of the sentencing task is a proc-
ess of balancing overlapping objectives. The
requirements of deterrence, rehabilitation,
denunciation, punishment and restorative
justice do not generally point in the same
direction. Specifically, the requirements of
justice in the sense of just deserts and of
mercy often conflict. We would like to be-
lieve that we live in a society that values both
justice and mercy. The legislation that we are
trying to overturn today does not do that, and
as a consequence I commend the Brown-
Bolkus legislation to the Senate.

Senator WOODLEY (Queensland) (5.34
p.m.)—This debate today proves that nothing
has changed in 212 years. We all remember
the horror stories that we learnt in Australian
history about the original reason why Aus-
tralia was used as a dumping ground for the
so-called criminal classes from the United
Kingdom. Because of changes in English
society, people found themselves in situations
where they were unemployed, living in pov-
erty and starving. Because of that, they were
regarded as part of the criminal class. In other
words, the English society of the day decided
to solve its problems—problems that should
have been solved in other ways—by turning
people into criminals, incarcerating them and
then eventually transporting them to Austra-
lia.

I have campaigned against this legislation
since its inception. It unquestionably hits
young indigenous people the hardest; it is
unquestionably unjust; it unquestionably does
not work as a deterrent; it is not the most ef-
ficient use of taxpayers’ money for crime
prevention; and it has to go. If we have not
heard enough evidence against these unjust
laws and enough tragic evidence about the
unnecessary deaths of Australian youths, I
will give you some more. These are the most
recent examples. A miner, in this case a white
miner, is facing a two-week jail term after
cutting a $0.17 wire with a backhoe on Groote
Eylandt. The Northern Territory News on
Saturday, 11 March 2000 said that the man is
expected to be charged with criminal damage
which attracts a two-week jail term under the
Territory’s mandatory sentencing laws. The
father of two, Greg Stewart, looks like saying
goodbye to his family for a stint in jail for an
alleged crime worth $0.17. I do not think peo-
ple were transported to Australia for as much
as that; I think it had to be a little more sig-
nificant than that. Last Saturday’s Northern
Territory News said:
A Territory miner could face two weeks in jail
after cutting a 17c wire on a backhoe at Groote
Eylanld.

The man, employed by GEMCO (Groote Eylanld
Mining Company) for seven years, was expected
to be charged last night with criminal damage
which attracts a two-week jail term under the Territory’s mandatory sentencing laws.

That is a very recent example of what we are talking about. There is more evidence. The *Northern Territory News* also reported just today under a headline ‘Prison rate is “killing off Aboriginal society”’:

Many Territory Aboriginal communities could die out as a result of high rates of imprisonment, the NT Aboriginal Justice Advocacy Committee (AJAC) warned today.

Committee executive officer Christopher Howse said Aboriginals comprised just under 75 per cent of the Territory’s prison population but less than a quarter of the total adult population.

As the AJAC prepared to challenge the transfer of five Aboriginal prisoners from Darwin to Alice Springs in the Supreme Court today, Mr Howse warned some communities could die out.

Mr Howse said: “It is hard to see how they could survive another 30 years. Communities expect many men to be in jail for a high percentage of their lives.

As a result, tribal communities began to break down, and now faced uncertain futures.”

Mr Howse said: ‘Rates of incarceration are increasing.

In my opinion, it is rare to find kids in some (Aboriginal) communities without a prior record.”

What an indictment of Australia’s, the Northern Territory’s and Western Australia’s justice system. The article further quoted Mr Howse:

‘The transfer of inmates 1500 km from their nearest relatives only served to exacerbate the problem’, he said.

Mr Howse said: ‘Looking into the matter, we see that transfer of Top End Aboriginal prisoners so far away from their families makes it completely impractical for visiting for the entire period of sentence.

Some of these prisoners will be cut off in this way for more than three years.’

The transfer of prisoners so far from their communities also breached Recommendation 168 of the Royal Commission into Deaths in Custody, the AJAC would allege in the Supreme Court.

The question we need to ask ourselves is: what kind of society do we want to live in? Do we really want to go back to the late 18th and early 19th centuries? Is that the kind of Australia that we still want to live in today?

Certainly, the Democrats do not want to live in that kind of society, for it is indeed more like the convict society than Australia ought to be at the beginning of the third millennium. These mandatory sentencing laws have no place in a civil society.

While the Chief Minister, Mr Burke, is applauding his victory on Saturday, I believe it is a hollow victory. It was hardly a plebiscite on mandatory sentencing laws, seeing it was a completely safe CLP seat. And let us underline the fact that they lost five per cent of their vote. But in order to counteract what Mr Burke was saying, I read a little from what the Council of Churches in the Northern Territory said:

At its meeting on Thursday 22 April 1999, the NT Council of Churches resolved the following regarding mandatory sentencing legislation in the Northern Territory:

1. The NT Council of Churches remains opposed to all forms of mandatory sentencing and calls for the repeal of the current legislation relating to property offences.
2. The Council is opposed to the broadening of the legislation to include sex and violent crimes and calls for the introduction of this legislation to be abandoned.

5. The Council believes that the crime prevention techniques outlined by Professor Ross Homel, prominent Australian Criminologist, at the NT Council of Churches Community forum looking at alternatives to mandatory sentencing, are the way the Government should be heading. Professor Homel convincingly showed that mandatory sentencing never works, and has never been effective in any jurisdiction in the world.

6. The Council calls on the Government to look at effective and well funded programs such as more ‘beat type’ policing; family intervention programs; pre-school and early intervention programs; cautioning of juveniles and other effective and just methods of crime prevention as outlined by Professor Homel in his recent report to the Federal Government called ‘Pathways to Prevention.’

8. The Council believes that it is possible to have effective laws that curb crime while maintaining our international human rights obligations. It will continue to pursue the matter until these unjust laws are overturned.
That came from the Secretary of the Northern Territory Council of Churches, the Reverend Gale Hall. It was supported by a number of letters, which included one from the Catholic Diocese of Darwin and one from the Uniting Church in Australia Northern Synod.

It is interesting that that was not the end of the interest of the churches in Australia. In fact, it is not only the churches in the Northern Territory; the National Council of Churches in Australia has also published a very strong statement regarding mandatory sentencing. I underline who the National Council of Churches in Australia represent. It represents the Anglican Church of Australia, and it is signed by the Primate, Archbishop Peter Canley. It represents most of the orthodox churches: the Antiochian Orthodox Church, the Armenian Apostolic Church, the Assyrian Church of the East, the Churches of Christ in Australia, the Lutheran Church of Australia; the Roman Catholic Church, the Salvation Army—Eastern Territory and Southern Territory—and the Uniting Church in Australia. I have not mentioned them all. This is what the Council of Churches said:

The Executive of the National Council of Churches in Australia affirms that mandatory sentencing as a legislative policy is a fundamentally flawed, unjust and inflexible approach to dealing with crime in our society; it is inimical to the principle that the punishment should fit the crime; it impersonally prescribes a punishment and therefore removes the principle of judicial independence and the possibility of a magistrate or judge exercising judicial discretion by taking into account the varying circumstances of specific individual cases; it automatically cuts off alternative and more creative ways of dealing with offenders through conferencing, wilderness programmes, rehabilitation and therapy, and the development of electronic methods of surveillance particularly for enforcing confinement in their homes or in detention centres; in practice it impacts disproportionately on the Aboriginal population, under-age youth, homeless and other disadvantaged people in the community, including those suffering from mental illness, for whom the community provides ever decreasing support, and for whom imprisonment may be the least appropriate way of dealing with their underlying problems.

The National Council of Churches in Australia, which includes all of the major churches and some of the smaller ones as well, goes on to say:

Accordingly, the NCCA Executive expresses its deep concern that mandatory sentencing laws in the Northern Territory and Western Australia have resulted in underage youth and other vulnerable people being imprisoned, sometimes for trivial offences;
calls upon the people of the Northern Territory and Western Australia to review their governments’ commitment to mandatory sentencing laws with a view to having those laws repealed;
And so it goes on. The executive:
urges the Commonwealth Parliament to pass the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 and to do all in its power to ensure that policies of mandatory sentencing cease to operate in this country so as to ensure its standing in the international community as a civilised, just and compassionate nation.

I have to say that I endorse everything that the National Council of Churches says about mandatory sentencing. The Democrats will certainly add their votes in this place to those who agree with all of the leaders of those churches.

But, as Senator Bolkus says, there is another problem with mandatory sentencing; that is, it does not do what it sets out to achieve. It fails to deter crime. Let me give you some statistics. The Territory already has the highest rate of imprisonment in Australia. In January 1990 there were 358 adults in Northern Territory prisons. In June 1997 there were 604 adult prisoners. Territorians are being imprisoned at a rate of more than three times the national average. If imprisonment is a deterrent to property crime, why does property crime continue to be such a problem in the Northern Territory? That is a very valid question for those in this place and for all Australians to answer. If it were working, surely we would see a decrease in crime.

In addition, I am told that police clear-up rate for property crime in Northern Territory urban centres such as Darwin is very low—around 20 per cent. Thus only a small percentage of offenders will be affected by the new
legislation. Mandatory sentencing has no effect on the clear-up rate of property crime. The bulk of offenders will continue to escape punishment. It may look good during an election campaign and it may give some people a feeling that they are doing something about crime, but all of the statistics and evidence suggest that it does absolutely nothing. It is about time we all voted to change these unjust and very backward looking laws. Otherwise we will have to ask ourselves: have we come anywhere in the last 212 years or are we still the Australia that was established by white settlement in 1788? Since we arrived here in 1788, we have certainly imposed a system of justice on the indigenous people of this country that is nothing short of shameful and which is not only threatening to put many of them in prison but—as one of the press clippings that I read earlier in this speech says—threatens the very survival of Aboriginal communities in the Northern Territory and in Western Australia.

Senator ABETZ (Tasmania—Parliamentary Secretary to the Minister for Defence) (5.45 p.m.)—Today we are debating the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999. I wish to make a few comments about this bill and some of the principles that I think we as a Senate need to consider when determining our attitude to this legislation. First, allow me to deal with the principle of mandatory sentencing. I come from a standpoint where, in an ideal world, there would be no mandatory penalties, and the judiciary—both magistrates and judges—could determine what a fair and reasonable penalty was for each offence committed. That is not surprising coming from me, given the time I spent in my previous life as a lawyer, often representing people who were on the receiving end of the criminal justice system.

Having said that, the community has within its legislation mandatory penalties for offences in a whole host of areas. So, no matter what the justice of a particular circumstance, you are statute barred from availing yourself of a penalty determined by the judiciary. We have to come to this debate with a clear mind and an understanding of what we are actually talking about. For example, in my home state of Tasmania, if you breach the breathalyser for a second time around or breach it above a certain level, you will be denied access to the possibility of a restricted licence, no matter what the circumstances.

I suppose most of us—or some of us—might have got speeding tickets, where there is the prescribed penalty set out and, unless you want to access the judicial system, you have got to pay up a predetermined penalty. Or indeed, in Tasmania if you lose 12 points on your licence within a specified period of three years you lose your licence for a period of three months by an administrative decision—no questions asked. You cannot go back to the court and say, ‘The circumstances of these offences are such that I should not really be disqualified for three months; it should only be for one month or only one week.’ So we have mandatory penalties littered throughout the legislation of the states. Indeed, for a long time—I do not know what it is like in other states—if you committed the crime of murder the judge had no leeway whatsoever. He could simply impose the penalty of life imprisonment. That was the only penalty—no judicial discretion on what some might argue was the most serious crime.

So it seems, with respect, somewhat novel that all of a sudden mandatory penalties and sentencing have become a cause celebre but only in relation to a very specific area of the criminal system within this country. Having said that, if indeed my friends in the Labor Party opposite ever were to vote against their party in this parliament they would face automatic expulsion—a mandatory penalty. Indeed, there is a whole host of mandatory penalties that are imposed by organisations such as the Labor Party on their own members.

Having said all that, let me repeat that in principle I oppose mandatory penalties, but I can also understand that when the community feels the judiciary is failing it in a particular area, then there will be a community demand for mandatory penalties to be imposed. Indeed, from time to time, we hear from the judiciary that they have to intervene in circumstance where they believe the parliament has failed. In a system of checks and balances it may also be appropriate that the parliament
intervene where it is considered that the judiciary has failed.

Let me say that in relation to certain offences there is a widespread community view that the judiciary has only given consideration to the perpetrator and not to the victim or the community at large. So in a democratic society—where you have a full franchise; where you have freedom of speech to campaign on those issues—I believe it is appropriate for the state parliament of Western Australia and the Northern Territory parliament to have come to the determinations that they have.

Let me simply say in response to Senator Woodley’s comments about the result last Saturday in the Northern Territory by-election that it was not a very wise thing to mention, because during the last general election in the Northern Territory the seat we are discussing was held by the Chief Minister, Shane Stone, who was a very popular Territorian parliamentarian. The Labor Party at that election received 25.5 per cent of the vote. On Saturday at a by-election mid-term of a government commanding a huge majority—where, if people wanted to, they could have really given the government a bit of a gee-up—the Labor Party increased their vote by 0.5 per cent. They got 26 per cent of the vote.

But the interesting thing is that by-elections in the Territory have large swings—up to 22 per cent. And guess what? An independent Labor candidate ran in that seat supporting mandatory sentencing and that candidate received 16 per cent of the vote. So candidates supporting mandatory sentencing, in rough terms, got about 70 per cent of the popular vote. I have to say to the judiciary of this country that that, I think, says something about the community feeling on these issues.

But at the end of the day whether something is popular or not is not necessarily the sole determinant of an issue; there are questions of principle involved. Of course, one of those principles is whether or not we as a federal parliament ought to intervene in the democratic rights of a state and a territory. Can I say in relation to Western Australia that we would need to use the external affairs power. Whilst those supporting this legisla-

Corrections:
- Change “the judiciary has failed” to “the judiciary has failed.
- Change “in a democratic society” to “in a democratic society—where you have a full franchise; where you have freedom of speech to campaign on those issues.”
- Change “it was not a very wise thing to mention” to “it was not a very wise thing to mention, because during the last general election in the Northern Territory the seat we are discussing was held by the Chief Minister, Shane Stone, who was a very popular Territorian parliamentarian.”
- Change “the Labor Party at that election received 25.5 per cent of the vote.” to “The Labor Party at that election received 25.5 per cent of the vote. On Saturday at a by-election mid-term of a government commanding a huge majority—where, if people wanted to, they could have really given the government a bit of a gee-up—the Labor Party increased their vote by 0.5 per cent. They got 26 per cent of the vote.”
- Change “candidates supporting mandatory sentencing, in rough terms, got about 70 per cent of the popular vote.” to “So candidates supporting mandatory sentencing, in rough terms, got about 70 per cent of the popular vote.”
- Change “Can I say in relation to Western Australia that we would need to use the external affairs power.” to “Can I say in relation to Western Australia that we would need to use the external affairs power. Whilst those supporting this legisla-
that the Territorians, rightly or wrongly, have
done this on mandatory sentencing as well. The honourable senator also referred to ‘per-
sistent opinion polls’. I think we also have
them right around Australia in favour of mandatory sentencing. I have to say to you
that I wish they were not that persistent. I
wish people did have confidence in the judi-
cracy to mete out appropriate penalties for
crimes that are committed but, unfortunately,
the community feeling is not as I would like it. That is because, in relation to sentencing,
people do not have sufficient faith in the ju-
diciary balancing up the needs and expecta-
tions of both the perpetrator/victim and soci-
ety at large.

The honourable senator who introduced
this legislation announced publicly in Tasma-
nia that he would hold a demonstration out-
side my office. As we have come to expect
from the Greens senator, whenever there is an
issue there is the mandatory stunt. The man-
datory stunt on mandatory sentencing was to
have a demonstration outside my office. The
good Senator Brown could muster all of 12
people. Let me say that those 12 people were
more than outweighed by the literally dozens
of phone calls to my office saying, ‘Abetz,
don’t you weaken on the issue of mandatory
sentencing.’ I had to disappoint many of
those people and say that, in principle, I did
in fact have a problem with mandatory sen-
tencing, but I would not be suggesting that
we ought to be overriding the Western Aus-
tralian legislation or the Territory legislation.

There has also been commentary from
certain quarters, from the capital cities of this
country—from what are often referred to as
the ‘leafy suburbs’. I do not know what the
rate of home burglaries, home invasions and
property thefts are in those leafy suburbs but
I do know, from the odd occasion when I
make a visit to them, that the home security
systems and monitored alarms, et cetera, that
cost thousands of dollars to install and a con-
siderable cost to maintain are beyond the
reach of the average home owner in this
country who is genuinely concerned about
the issue of home invasion and property theft.
While these people have the capacity to de-
fend their homes and therefore speak from a
privileged position, the people who live in
other areas and cannot afford such security
systems provide a different perspective on
this very important and vexed issue. Can I
say that I, too, receive correspondence from
the National Council of Churches in Aus-
tralia, and I read through that today. As has been
their wont in recent times, they have political
arguments but hardly ever theological argu-
ments. Their support on this occasion was
based not on the Scriptures or some biblical
principle; instead, they placed their reliance
on their interpretation of international trea-
ties. Let me suggest to the National Council
of Churches that their authority should possi-
bly not be derived from international treaties
which are, at best, open to very wide inter-
pretation and which, I would submit to the
Senate, place no obligation on us to change
the legislation in these jurisdictions.

The issue of mandatory sentencing came
to the fore because of the 15-year-old boy
who killed himself in Darwin. The argument
was made out today in this place, and it has
been made out in the media time and time
again, that this poor fellow was incarcerated
because he stole about $50 worth of pens and
textas. But what is the real history of this
very sad case? Most people reading the
headlines and the utterances in this place
would be surprised to learn that he had been
charged with 28 offences in his short life.
Once he broke into his principal’s house and
stole clothes and a $900 stereo. He vandal-
ised cars and stole petrol to sniff with his
friends and four times he burgled his school.
At first he was let go without formal convic-
tions, but last year he and his friends robbed
the local store of food, cigarettes and $7,850
cash. His relatives found him with the money
and told police. His very own relatives were
the ones who reported him to the police, al-
though they probably knew that he would be
jailed. He was jailed, and he spent 20 days at
Don Dale Juvenile Centre, a centre which has
in fact been lauded by Amnesty International.
All of a sudden, it has been turned around to
be some archaic jail when in fact the centre
that he was in had been lauded by Amnesty
International.

Despite his 28 days at Don Dale, he was
soon back breaking into council offices and
looking for the keys to the safe. He and his
two friends could not find them, so they took some pens and textas worth $50 instead. Days later, he again raided the school, breaking louvres and stealing oil and paint. He was caught and once more sent to Don Dale. You have to ask yourself: in fairness, what motivated this boy to commit all these offences? When you have a look at his life history, it is absolutely sad. His mum and dad died. He was brought up by his grandmother. She died. Then he lived with uncles and aunts. As I understand it, it was only as it was coming up to the end of his 28-day stay and he had four days to go that he apparently unfortunately took his own life.

Given that he had been in the same centre already for 28 days, given all the penalties and given that he was in there for another 24 days, can the argument reasonably be made that it was mandatory sentencing that killed this person? I have to say to you in all honesty that that argument cannot be sustained or maintained. Those people who seek to rely on the emotions of it do themselves a great disservice and in fact do a great disservice to the underlying problems that we as a nation continually face in how we deal with the likes of this poor young man who found that there was no hope left within him and took his own life.

We as a community have to assist people like that and give them hope, assistance and support. That is why I said when I started off that I oppose mandatory sentencing in principle. But do not use emotive, unsustainable arguments to try to make the point, because you will fail. I urge all honourable senators who take part in this debate to put on the record, whenever they mention an example of somebody who has been the subject of mandatory sentencing, all the offences that each of the individuals has been convicted of. (Time expired)

Senator EGGLESTON (Western Australia) (6.10 p.m.)—I seek leave to incorporate my speech in the second reading debate on this matter.

Leave granted.

The speech read as follows—

RESPONSE TO THE HUMAN RIGHTS (MANDATORY SENTENCING OF JUVENILE OFFENDERS) BILL 1999

Mandatory sentencing in both Western Australia and the Northern Territory is a measure of last resort introduced to protect the broader community from situations of extreme lawlessness, and to provide a means by which the worst offenders can be removed from society for a period of time during which attention can be given to measures to assist them with their problems.

Western Australia and every State in Australia have always had mandatory sentencing. There is mandatory sentencing for murder and wilful murder (life imprisonment). A conviction for the offence of driving under the influence of alcohol carries a mandatory loss of motor driver’s licence and a mandatory fine. Under fishery laws, taking undersized crayfish imposes a mandatory fine.

In Western Australia, under the “three strikes” legislation it is only upon a juvenile’s third conviction for home burglary within a 2 year period that he or she becomes liable to a mandatory period of detention of 12 months. Prior to this, the Children’s Court has had the full range of sentencing options available to it under the Young Offenders Act 1994, including diversionary programs. Even upon conviction of a third offence, it is not inevitable that the juvenile will be detained.

“As an alternative to immediate detention, the President [of the Children’s Court] can place a young person on an Intensive Youth Supervision Order (with detention as a default option) where it is deemed appropriate”. 1

It is quite clearly one of the roles of Parliament to say when enough is enough, and to set the rules. Parliament has a right to set sentences, both maximum and where relevant the minimum penalties for criminal offences. The Western Australian Parliament on the issue of repeat home burglary has been extremely reserved and extremely cautious in the passing of the “three strikes” law. Many members of the general public have claimed that this law is too lax, and that a mandatory prison/detention sentence should be imposed on the first or second home burglary conviction.

It is important to get some perspective into this debate. The legislation has not resulted in massive numbers of young people being imprisoned. In Western Australia, only 88 juveniles have been sentenced under the legislation since its introduction in November 1996 to 31 December 1999 2. Of these, 9 received an Intensive Youth Supervision Order, and 2 cases were successful on appeal. 3 This represents some “0.5% of sentencing appearances in the Children’s Court since the introduction of the legislation” 4. The trend of convictions under the legislation has also been declining,
with 57 juveniles convicted in 1997, only 9 in 1998, and 22 last year.  

In the Northern Territory, the number of “juveniles convicted [of a second or subsequent offence] in 1997-98 was 46, rising to 60 for 1998-99”, whilst only 21 juveniles have been convicted during the first 6 months of 1999-00.  

The “daily average number of juveniles in Northern Territory detention centres during 1998/1999 was 27, which is only 4 more than during the previous year”.  

On 10 March of this year, there were only 9 juvenile detainees in the NT, with just 2 of these having been detained under the mandatory sentencing legislation.  

The purpose of mandatory sentencing is firstly to protect the community from these recidivist criminals by removing offenders from society for a period. Surely no one could reasonably argue that the members of the broader community are not entitled to protection from these criminals. Anyone who has an elderly relative who has been the victim of a hazing after their home had been invaded would certainly not argue that protection of society was unreasonable.  

Secondly, mandatory detention offers an opportunity to provide counselling and support to these individuals. It has to be acknowledged that many of those responsible for the crimes do come from disadvantaged backgrounds and their many problems underlie the crimes they commit.  

A poignant point that I would like to make is in regard to the attitude of Aboriginal juveniles themselves. As shocking as it may sound, there are some who commit offences for the sole purpose of being imprisoned, viewing it as a rite of passage. Leading Aboriginal advocates have themselves admitted this. Mr Gatjil Djerrkura, a former head of ATSIC, at a recent Senate Legal and Constitutional References Committee hearing said that some Aboriginal youth viewed a period in a detention centre as “fun” and as a means “to get away from their own society, to get away from their own family”. At the same hearing, ATSIC Commissioner, Ms Alison Anderson stated: “When we bring kids forward and threaten that we are going to report them to police and tell them that they are going to jail, they say, ‘Okay, that’s good’, because they know that they are going to get three meals a day, they are going to have a bed and they are going to have a shower … [T]he kids just want to go to jail now”. This attitude ensures that authorities are forced to operate in a very difficult environment indeed.  

Of those juveniles who are sent to detention centres, they are not being kept in cruel or inhuman conditions. Regular family contact is permitted, and the centres allow for early release on compassionate grounds. There is also provision for temporary absences from the centres for the purposes of health, education, and social engagements. A period of detention also allows the offender to receive counselling and treatment for his problems, including alcohol and drug abuse. In this manner, the offender will be encouraged to become a useful and productive member of society upon his or her release.  

I would like to make clear that both the Western Australian and Northern Territory Parliaments are democratically elected bodies, and mandatory sentencing laws are supported by public opinion in those states.  

A recent poll has demonstrated that the mandatory sentencing legislation has a popular mandate, with some 58.7% of respondents supporting mandatory sentences. Only 36.1% of respondents were opposed to the legislation. The poll also found that 70.7% of people in WA support mandatory sentencing. Interestingly, the poll found that 18 to 24 year olds, the group closest in age to juveniles, had the strongest support of any age group, with 61.3% favouring mandatory sentencing. Those who argue that this legislation should be overturned are clearly out of touch with the concerns of their electorate in regard to lawlessness and its effect on the community. They would do well to make themselves cognisant of those concerns before they pass judgement on this Bill.

Should the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 be passed, the result, via sections 5 and 6, will be to render invalid the mandatory sentencing laws relating to juvenile offenders in both jurisdictions. It is only in the most exceptional of circumstances that the Federal Parliament should overturn duly enacted legislation of another parliament of the federation. As I recall, Australia is still a federation and the rights of regional governments to make laws appropriate to the needs of their jurisdictions should be respected.  

While I respect the idealism of those who have proposed that WA and the NT laws be overturned I can only say that their understanding of the reasons for the introduction of these laws is sadly deficient. I strongly urge all members to reject this Bill.

P. Foss, “Mandatory Sentencing; Aboriginal Imprisonment”, p.1.

P. Foss, “Mandatory Sentencing; Aboriginal Imprisonment”, p.1.

P. Foss, “Mandatory Sentencing; Aboriginal Imprisonment”, p.1.

P. Foss, “Mandatory Sentencing; Aboriginal Imprisonment”, p.1.
Senator FORSHAW (New South Wales) (6.11 p.m.)—I rise to speak in this debate and to indicate the reasons why I strongly object to the mandatory sentencing laws, particularly in the Northern Territory but also in Western Australia. I might start by picking up some of the points that were made by Senator Abetz in his contribution. I listened carefully to Senator Abetz, as I always do, particularly on this matter because like a number of us he is legally qualified.

Firstly, let me say that I accept that this is not a simple issue, and it is not an issue where one’s views or position should be driven simply by emotional arguments. That is one of the problems with the mandatory sentencing legislation, particularly as it exists in the Northern Territory but also in Western Australia. I might start by picking up some of the points that were made by Senator Abetz in his contribution. I listened carefully to Senator Abetz, as I always do, particularly on this matter because like a number of us he is legally qualified.

Senator Abetz talked about the fact that mandatory sentencing exists in the law. I acknowledge that, but it is a false argument. It really is sophistry, and it does not do Senator Abetz any credit to put that argument when he himself is a lawyer. To compare mandatory loss of licence after your second offence for driving a motor vehicle with more than the prescribed content of alcohol with mandatory sentencing for property offences is really a red herring. I do not need to deal with that any further. We could debate the whole issue at greater length, but I do not think it does Senator Abetz’s argument any good to try to compare the two.

Another principle, besides judicial discretion, that underpins our legal system is that the punishment should fit the crime. The problem with mandatory sentencing, particularly when you look at the law in the Northern Territory, is that there is very little, if any, relationship between the concept of the punishment fitting the crime and the mandatory sentencing laws. That is why we can end up with the situation where an individual, particularly a juvenile who comes from a very socially and economically disadvantaged group within our community, can be detained in a detention centre or in a jail for a minimum period of 28 days, or more, for the smallest of property offences. We have had evidence presented in the debate to date of a significant range of instances where people have been sentenced, are awaiting sentence or can potentially be sentenced for very trivial offences. They are property offences, and I accept that anyone who has their property stolen or damaged is entitled to be upset and outraged. But, equally, that is no basis for our system of justice to be turned on its head to the extent that stealing a box of paints from a major company can result in such a significant penalty as the one imposed.
I know other speakers have already covered the key aspects of this debate, and I particularly refer to Senator Faulkner’s and Senator Bolkus’s remarks. But I want to raise an issue that has not been focused on, and that is the responsibilities of the state. I recall reading about this in one article but I cannot recall who wrote it. This is something that has troubled me. There has been no focus at all upon the responsibility that the Northern Territory government had to the juvenile who was detained. The Northern Territory government had a duty of care to that young person. When it detained him at that centre, it was responsible for his life. We know that person tragically hanged himself. No-one has really focused upon how that was able to occur when the child was in detention. From the report of the Royal Commission into Aboriginal Deaths in Custody, we know this has been a problem for many years and continues to be a problem. But I get rather irritated by the fact that I continue to read articles by the Chief Minister of the Northern Territory about how important mandatory sentencing is and how mandatory sentencing was not responsible for this child’s death. There has been no focus at all upon why it happened. To my mind, what that young juvenile did, whether it was on one occasion or on 28 occasions, as Senator Abetz pointed out, pales into insignificance against the failure of the Northern Territory government, the Northern Territory legal system, the relevant Northern Territory departments and probably all of us to ensure that juvenile did not take his own life.

That is the real problem that needs to be addressed here. We have our priorities sadly skewed when the Northern Territory Chief Minister and others can trumpet on about public opinion supporting mandatory sentencing and talk about the results of a by-election as if it were some determinant of this issue while we forget about the responsibilities that the state, the government, equally holds when it determines to detain people. That is one of the factors that judges and magistrates can take into account when they exercise judicial discretion—whether it is appropriate for an offender who has been convicted to be detained in jail, in a detention centre or in some other situation; whether there is some chance of rehabilitation; and whether that person should be required to undertake some program. All those options—and there are many of them, as we know—are taken away when you simply rely upon mandatory sentencing.

While I am on that, I want to talk about the issue of public opinion. The Northern Territory government arranged for a poll to be taken to ascertain the views of Australians on mandatory sentencing. It stated that, according to Newspoll, 58.7 per cent were in favour of the Territory’s mandatory sentencing laws. First of all, I do not regard 58 per cent as some overwhelming majority. But, in any event, I do not think that is relevant. Public opinion should never be the determinant of what is good law and what is not good law. I am reminded of something that Bertrand Russell said, and it would have been rather ironic if he had known at the time:

One should as a rule respect public opinion in so far as it is necessary to avoid starvation and to keep out of prison, but anything that goes beyond this is voluntary submission to an unnecessary tyranny, and is likely to interfere with happiness in all kinds of ways.

Public polls are taken on all sorts of issues. I remember public opinion polls being taken on euthanasia. I was one who voted to overturn the Northern Territory laws on euthanasia, just as Senator Abetz did and just as the Prime Minister did. We did not take the view that, because public opinion may have said that euthanasia should be legalised, we should just accept that and allow public opinion to determine our attitude. The problem with public opinion is that, whilst we should always have regard to the views of the majority, it is our job as legislators to apply our minds and our attention to all of the detail. That is not what you get when you hear Howard Sattler, John Laws or Alan Jones on talkback radio whipping up public opinion on issues like this and many others. That is always fraught with danger in my view because, whilst I respect the views of the majority as well as of the minority, I do not believe that that should be the simple determinant of very complex issues such as this one.

Sure, it is appropriate for people to be critical of the judicial system when they be-
lieve that sentences that are being handed down certainly do not reflect the seriousness of the crime. We have had an example of that in recent days with the appeal decision with respect to Alan Bond. I can also recall a famous incident last year where the owner of a radio station that employs some of these talkback radio hosts managed to escape any penalty at all for driving his motor vehicle at pretty close to a couple of hundred kilometres an hour down a main road. I would have thought that was a pretty dangerous, even lethal, activity but that individual was able to escape any penalty under what is known as a section 556A.

I do not believe that just because the Northern Territory’s Chief Minister, Denis Burke, says that the majority of Australians are concerned about sentencing and are concerned about property offences that it means we should throw out many of the principles of our judicial system and adopt mandatory sentencing. It is often the case that the full facts of a trial that confront a jury and a judge either are not known or are forgotten about when such issues are reported in the press. There have been some very notable instances of where commentators, talkback radio hosts and others have got it very badly wrong when they have attacked a judge over a particular sentence that they have handed down. I accept that there is freedom of speech, there is the right to criticise and there is a concern out there in the community. But we do not fix that problem by simple knee-jerk reactions to public opinion.

A number of speakers have made comment about our history and the fact that many people came to this colony, when it was founded, for the most trivial of offences after being sentenced to transportation. You have only to read the opening pages of the book by Robert Hughes entitled *The Fatal Shore* to get an inventory of some of those offences. It is interesting when you read it, because those offences are not all that dissimilar to some of the ones for which the mandatory sentencing laws have been implemented with respect to individuals in the Northern Territory. I do not have time to read the passage that I was going to quote, but it would seem to me that we have not improved all that much in 200 years if today we have to adopt strict mandatory sentencing laws without any form of judicial discretion and without any regard to the concept of the punishment fitting the crime.

May I make one final comment in respect of the Prime Minister’s attitude. It seems that the Prime Minister was capable of coming to the conclusion that it was appropriate to overturn the laws of the Northern Territory on euthanasia in a situation when there were individuals who supported that law and who believed that they had a right to have their life terminated. The Prime Minister did not support that and I did not support it either. But in a situation where the Prime Minister believes that these laws are silly—I take from that that he does not support them and I would expect that they would offend his views about justice—then he should be able to come to the conclusion that it is appropriate in these circumstances to overturn these laws as well. I do not think he can have it both ways on this issue.

In conclusion, I think we should heed the words of Bertrand Russell. We should not let emotions or public opinion drive this debate. We should have regard to the very principles of justice that have underpinned our system and we should reject mandatory sentencing on that basis.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator RIDGEWAY (New South Wales) (7.30 p.m.)—Like many Australians, I have been closely following the debate on mandatory sentencing that has unfolded over recent weeks, and I want to speak on that matter now. I believe it is important to note that, had it not been for the tragic suicide of a young boy in a Darwin jail not so long ago, we probably would not be having this public debate. Without this tragedy having occurred, so many other injustices that go unchecked on a regular basis as a result of mandatory sentencing laws in Western Australia and the Northern Territory would have passed without the stinging community outrage and condemnation that they have inspired.

I think it is no coincidence that the issue of mandatory sentencing inspires a spectrum of emotions in the Australian community. The
fact that the implementation of these laws disproportionately affects indigenous Australians is definitely a factor in why opinions are so divided—because, in addition to being a legal and racial issue, it is also a moral one. This trifecta is bound to result in the community having mutually inconsistent responses to the question of whether the Australian government should intervene to prevent mandatory sentencing, or whether the states and the territories should continue to excise their own legislation. As Justice John Dowd pointed out last week:

Politicians often forget that the community, like ordinary citizens, retains the right to have mutually inconsistent views on most difficult subjects. It is easy to appeal to the prejudice of the community against drugs and crime. Getting tough on crime using mandatory sentencing and ‘three strikes and you’re in’ legislation is usually electorally popular. It is not so easy, however, to make the community aware of the individual humanity of particular cases.

Not only do we need to be mindful of the need for the judiciary to be free to excise their independence and to see the individual humanity of individual cases, but we also need to protect Australia’s place in the international community as a respected upholder of human rights and the rule of law. Opinion polls do tell us that Australians are equally divided on the question of national reconciliation and whether there should be a formal apology to indigenous Australians by the national government. At first blush, reconciliation and mandatory sentencing may appear to be two separate issues. But it is perhaps closer to the truth to say that they are two elements of a common whole; they are both about how indigenous and non-indigenous Australians live together, how we relate to each other and whether or not we respect each other.

But inherent in mandatory sentencing legislation is a very clear message for indigenous Australians: it’s okay for us to send you to jail for the petty crime; it’s okay that you’re subject to racial discrimination as a result of this legislation; and, in some cases, it’s unfortunate that incarceration might put you in a situation where the only option appears to be suicide. I will just paraphrase what Mr Justice David Malcolm of Western Australia said yesterday: fighting crime is a whole of community problem. It is time that the community begins to ask itself what it can do to help. The people of Western Australia expect too much from the justice system. The community as a whole needs to look at the causes of crime and address them with long-term aims and objectives.

To me, this is really what is at the heart of the matter. This is why I think it is so important to recognise that our inaction as senators not only perpetuates the injustice of mandatory sentencing but also perpetuates another obstacle in the reconciliation process for us all. Why is it that a nation can show such compassion and respect for human rights overseas and yet be so blind to the human tragedy that it perpetuates at home?

Perhaps the answer lies in the genesis of the nation of Australia some 100 years ago, and in the six colonies the 100 years before that. It was commonplace then for the British government to exile its subjects to the other side of the earth for the crime of stealing a loaf of bread or a piece of clothing. The moral outrage at that time in Britain was against a phrase that is familiar today—namely, ‘offences against property’. The euphemism then was ‘transportation’; now it is ‘mandatory sentencing’. Today the governments of Western Australia and the Northern Territory are taking children far away from their homes and families because they stole what they probably could not afford to buy. This is no different from the British justice system 200 years ago. I hope that the pace of law reform in Australia today will be quicker than the 50 years of debate and soul-searching required by the British parliament of the day to abolish transportation as a punishment that did not fit the crime.

Australia will always be a target for international condemnation and derision so long as one errant state and a territory persist in their blind crusade to make the criminals pay. If we allow these contradictions in Australia’s commitment to global citizenship to continue, Australia will leave itself open to criticisms from other countries—as the US has—that we have one set of universal laws for others and another for Australia.
Fortunately, there are already many Australians who know that mandatory sentencing does not stop people who are living in despair and disadvantage from committing impulsive acts, some of which constitute petty crime. People who think deeply and compassionately accept that this arbitrary response that flies in the face of natural justice will not cure people from continuing to commit such acts. This is not to say that they should be let off scot-free; but to impose disproportionate punishments on these young people will simply further embitter them, pushing them even deeper into the criminal justice system.

The senseless waste of human life that will continue if mandatory sentencing is not stopped is crushing. It is particularly crushing to indigenous Australians, who cannot help but feel that justice for black Australia only comes in the shape of a prison cell. If prison is becoming the rite of passage to manhood for young Aboriginal men in Western Australia and the Northern Territory, what long-term impact will this have on Aboriginal culture and identity in these places? What kinds of people will we be sending back into communities after another stint in the lockup? What was the point of the Royal Commission into Aboriginal Deaths in Custody or the Bringing them home report?

Just as transportation was a simplistic, politically motivated response to the social and economic crisis that Britain was experiencing during the early to mid-1800s, so too is mandatory sentencing in relation to the socio-economic problems that befall many indigenous communities in Western Australia and the Northern Territory. Disadvantage and poverty beget crime with monotonous predictability, and the governments in Western Australia and the Northern Territory must be aware of this simple truth that is common to humanity regardless of time or geography.

But politicians in these states have been blatant about why they have mandatory sentencing laws and why they will fight to keep them. It is all about how many votes are in it. I am yet to hear any other defence for these laws, apart from the lame excuse that Commonwealth intervention is an intrusion on states rights. However, I must question the mandate that Mr Denis Burke believes he has to enforce mandatory sentencing laws in the Northern Territory. The recent referendum in the Northern Territory for statehood, which was met with an overwhelming vote of no, suggests to me two things. First, Territorians do not have sufficient confidence in their legislature to take sole responsibility for their affairs and, second, Territorians do not want to remove the ability of the Commonwealth to intervene in their legal affairs. If they had, surely the referendum would have produced a resounding yes vote.

Similarly, in Western Australia, mandatory sentencing laws were introduced prior to the reform of the upper house which made this chamber more representative of the views of Western Australians and more democratic. Again, this fact leads me to question whether Premier Court really does enjoy the support of a majority of voters in his state for its mandatory sentencing laws.

As has been pointed out by other commentators this week, the Commonwealth government has every right under our Constitution and, I would argue, every responsibility to intervene to ensure that Australia meets its international responsibilities we have signed up to. Not only is Commonwealth intervention to stop mandatory sentencing required, but the Commonwealth’s repeal of this legislation would be a long overdue display in real terms of this government’s commitment to reconciliation.

The Prime Minister, John Howard, has repeatedly stated that this government will not apologise for blemishes in our national history that contemporary Australians were not responsible for. But if we allow mandatory sentencing to continue anywhere in Australia, we as individuals and collectively as a nation will be responsible for a new blight on the pages of our national history. We will be judged by future generations, whether it is for our willing blindness to injustice or our willingness to put into practice at home the fundamental principles of human dignity that we have demonstrated so commendably overseas.

Neither the Northern Territory nor Western Australia belongs to itself but to all Australians. We are not talking about three countries but one. When it is necessary, this place
must rise to meet its obligation and act in the national interest. This is one of those moments. I have pondered the Prime Minister’s views of why he chooses not to believe that this is a matter of moral conscience, and I can find no sufficient reason that would compel me to believe that this is a matter concerned only with the delicate relationship between the rights of the Commonwealth and the rights of the Northern Territory and Western Australia.

In confronting the matter, we must stop to examine our conscience when such laws are unjust in their effect. It is my view that the centre of the laws in Western Australia and particularly the Northern Territory goes to the heart of equality and opportunity for our young people, whether they be black or white. If we are unable to provide adequate education, if we cannot give people an opportunity for a job, if we ignore the problems of health and substance abuse within so many of our communities and if we deny young people the ability to enjoy life fully, then it is not their failure but ours. Who carries the greater crime? Them or us?

So our job is not to find quick ways to lock young people away but to protect their right of basic freedom and to give opportunity and hope. If the nature of such laws diminishes the right of any one individual, be they black or white, then it is a law that diminishes us all and it is a law not worth having.

The nation’s federal parliament cannot prudently choose to ignore our responsibility to act. We must act to avoid a moral crisis and remove now what is a stain on our national character. These laws are unjust and today I act on moral conscience in calling for those laws to be removed. For that reason alone, I support the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (7.43 p.m.)—Not since the euthanasia bill in 1996 has an issue—this one of mandatory sentencing in the Northern Territory—ignited so many passions. In the past few weeks, we have seen a scrambled egg omelette made of the ideals of law and order, crime and punishment, law reform, Aboriginal justice, deaths in custody, reconciliation, juvenile corrections and the religious and Left and Green politics presented in contrast to the so-called abominable antics of Australia’s problem child, the Northern Territory.

What we have before us, fanned of course by a sensationalist media, is a melange of issues that skirt but do not address the core principle of Northern Territory law. Just as I did in 1996 and 1997, once again I stand in this chamber fighting for Territory law. Once again, I have the support of Territorians. Once again, we are fighting against a bill that has been introduced by a southerner with little or, should I say, no idea of the realities of life in the Northern Territory, little or no idea of the wishes of Territorians and no respect for the laws of the Territory parliament.

Mandatory sentencing was the main issue in the most recent Northern Territory Legislative Assembly election, which was held in 1997. This election saw the best ever result for the Country Liberal Party. The Country Liberal Party gained an overwhelming 18 seats of the 25-seat parliament, and this victory was a ringing endorsement by the Northern Territory voters of the CLP and its policy of mandatory sentencing. It was an endorsement from the people who matter in this debate, Northern Territory voters—the people who are affected by crime, the people for whom mandatory sentencing is working, Territorians.

It amazes me and, I am sad to say, disgusts me that interfering, humbugging, busybodies from southern states cannot understand that we live in a democracy. Those people who are protesting the Territory’s mandatory sentencing laws are the same people who fight for the fundamental tenets of democracy, but it seems as though only if it is the right sort of democracy. The people of the Territory have already overwhelmingly indicated their support for mandatory sentencing, and it is their right to have it as part of the legitimate law of their home, the Northern Territory. No person and no other government or international body should have the presumption to tell Territorians what is right for them in their own home.
It particularly saddens me that a few of my coalition colleagues have jumped on this bandwagon for what I think can only be purposes of seeking self-serving publicity. I would have expected the Labor Party to typically use this in their hypocritical self-serving way and to play politics with people’s lives. But I am surprised at the reaction of a handful of fellow coalition members, those few who are obviously not listening to their electorates. As for the opposition, the Labor Party seem to have about four or five different stances on this issue. It depends on whom you talk to, whether they are a federal parliamentarian, a Northern Territory parliamentarian, what they had for breakfast and what day of the week it is. But the only common thing is that they have no idea and are running in all directions on this issue, mouthing off as they go.

Warren Snowdon, that great defender of Northern Territory rights, wants to have the United Nations trample all over our laws. He sees nothing wrong with an international body, with no members elected by Territorians, overturning laws enacted by the democratically elected Territory parliament. In an Alice Springs news article of 16 February this year, Mr Snowdon said that he will support ‘any and all moves to get rid of mandatory sentencing’. His federal colleague Senator Trish Crossin wants the federal parliament to overturn the law and has stated her support for Bob Brown’s motion, stating that it ‘could hardly be labelled anti-Territory’. In that case, I would hate to see Senator Crossin’s definition of what is anti-Territorian.

Claire Martin, the leader of the Labor Party in the Territory, also wants the law overturned. Her spin on the issue is that the law should be overturned in the Territory parliament. At least she, unlike her other Labor colleagues, is looking to have Territorians make their own laws, but still Claire is totally out of touch with the issues of Territorians. This weekend’s important Darwin by-election, which saw the Labor Party, as the NT News so succinctly put it, ‘comprehensively flogged’, put paid to any argument that Claire Martin and company might have been emerging from the political wilderness. But, then again, we have come to expect such policy clangers from a party that has been lost for 25 years.

Federally, Kim Beazley seems to think it is okay to run to the United Nations about the Territory’s laws and unstintingly attack Territorians but hardly ever mention that his home state of Western Australia also has mandatory sentencing. That is hypocritical of him, but at least he is sticking up for the rights of Western Australians, which is more than you can say for the sad and sorry Labor lot we have in the Territory.

Let me state some facts, although I am sure the Labor Party and the majority of those opposed to mandatory sentencing would consider anything that would get in the way of a good story to be irrelevant. There is no international law that prohibits mandatory sentencing. The Northern Territory is aware of the numerous international conventions and declarations that deal with the detention and treatment of juvenile offenders. These conventions and declarations do not create binding international legal obligations on Australia. They do not form part of Australian law, unless the provisions are enacted into domestic law. They do not invalidate an otherwise valid Northern Territory law.

The Northern Territory maintains that the mandatory sentencing provisions do comply with the requirements of international law. The best interests of the juvenile are taken into account under mandatory sentencing. A juvenile first offender whose offence is trivial is cautioned by police, if it is appropriate in the circumstances and to the benefit of the juvenile. A juvenile who is found guilty of a property offence, or offences, before a court for the first time whilst aged 15 or 16 has the full range of sentencing options available to the court, which can take account of the interests of the juvenile in determining sentences. Similarly, a juvenile who is found guilty of property offences before a court for the second time whilst aged 15 or 16 can be referred to a diversionary program which focuses on individual rehabilitation.

The Territory legislation is not affecting vast numbers of juveniles, as the media would have you believe. In fact, in a recent
article in the *Northern Territory News*, Chief Minister Denis Burke pointed out that, on the day of the article, 6 March this year, only nine juveniles were detained in the whole of the Northern Territory. It is even more important to note that only two of the nine detainees were in detention in relation to mandatory sentencing offences. It is also interesting to note that, whilst Aboriginal people are represented in Territory jails at three times their proportion of the general population, the situation is still much worse in other parts of Australia. In South Australia—Senator Schacht's state—Aboriginal people are jailed at 12 times the rate of non-Aboriginal people, and in New South Wales the rate is nine times that of the general population. Obviously, an over-representation of Aboriginal people in jails in any state or territory is cause for concern, but to single out the Territory is illogical and unfair.

It is important to examine the reason why mandatory sentencing was introduced, and I believe that it is quite a simple one: community dissatisfaction. The Northern Territory community had basically had enough of the courts handing out sentences to repeat offenders that were nothing more than slaps on the wrist. Judicial standards were perceived by the community to be very obviously out of touch. The Northern Territory government was forced to act to ensure that the level of punishment fitted that perceived as necessary by the vast bulk of the wider Territory community.

On Saturday I was in Darwin and able to see the community express its support, yet again, for mandatory sentencing and the Country Liberal Party in the most important and democratic forum of all—the ballot box. A by-election was held for the seat of Port Darwin following the resignation of the former Chief Minister, Shane Stone, from the Territory Legislative Assembly. As we are all well aware, voters usually see by-elections as a chance to give the incumbent government a bit of a scare or a kick in the pants. This did not happen, despite the resignation of a high profile former member, a big spending Labor campaign and the rhetoric of Claire Martin and her Labor cohorts regarding mandatory sentencing.

The CLP candidate for the seat, Sue Carter, received twice the first preference votes of her nearest rival, the Labor candidate, Ian Fraser—a stunning victory that is well described in the *Northern Territory News* editorial of today, which states:

Labor strategists have the job ahead of them after the party was comprehensively flogged in the Port Darwin by-election. The clear endorsement of mandatory sentencing proved that even with a strong leader in Claire Martin, voters make up their minds on issues of substance—those that matter most in voter land. In the case of Port Darwin, the issue that mattered most was mandatory sentencing. The end result proved beyond doubt that the legislation is supported by the voters, and that Territorians refuse to be told by outsiders how to run our affairs.

Labor now finds itself in the impossible situation of being opposed to mandatory sentencing, knowing only too well that most voters do not share their views.

This by-election was a big blow to Labor in the Territory and a sweet victory for Sue Carter and the CLP. Most importantly though, it is an indication of the strength of feeling regarding the issue of mandatory sentencing.

It is my fervent wish, and that of the vast majority of Territorians, that we do not see history repeat itself and have the unedifying spectacle of law passed by a democratically elected parliament being overturned, as happened so shamefully with the Territory’s euthanasia laws. I do not believe this will be the case and am pleased that the Prime Minister has indicated that there will not be a conscience vote on this issue and that, rightly so, the federal government believes that this is an issue for the government of the Northern Territory. It is a pity that others in this chamber do not hold the same opinion.

The actions of the Tasmanian Green Senator Bob Brown are hypocritical in the first order. I recall him standing in this place quivering with rage during the euthanasia debate. What had angered him so much? Backflip Bob Brown was angry because a law that was enacted in the Territory parliament, the groundbreaking euthanasia legislation, was being overturned by the federal parliament. It seems that it is okay for the Territory law to be overturned but only if the
international green brigade agrees with it. Does that mean that the Territory parliament should run all of its bills past every half-interested outsider before it votes on them just so that we can get everyone’s okay and save us the trouble of going through this farce again?

Let me quickly run through a couple of the statements that Senator Brown used to justify his meddling in the affairs of others. On 28 October 1996, he said:

I concur with the overall sentiments of the previous two speakers, Senator Bob Collins and Senator Tambling, that this parliament is not the place to be overriding the legislation of the Northern Territory ...

On the remonstrance issue, Senator Brown said:

It is, of course, a means of drawing attention to the feeling of angst that there is in the Northern Territory that this parliament, through a bill which is an artifice, might override the pioneering legislation for euthanasia, which has such popular backing in the Northern Territory. The so-called Andrews bill, which may come from the House of Representatives to the Senate later this year, is an artifice. It is a wolf in sheep’s clothing. It is purporting to be protecting states rights, but the real intent is to take away the hard-won individual rights of individuals in the Northern Territory to have access to euthanasia under the conditions laid out in that territory’s euthanasia legislation...I see the artifice that is being brought into this parliament to try to override that legislation.

On 24 March 1997, Senator Brown said:

I can scarcely believe that so few empowered senators so painlessly will move to disempower so many citizens so painfully.

He also said:

How could you, majority, if that is the vote that is coming, say, ‘Not only do we override the elected representatives of the Northern Territory; we also override the 75 per cent or more of Australians who in every opinion poll say, “We want the option of voluntary euthanasia for ourselves”’?

He also said:

It is a moment of great indignity—an abrogation of the democratic process as I see it.

What about this time round with mandatory sentencing? Senator Brown is calling for that same democratic process to be abrogated. In any case, why did he not bring his bill before the parliament in the six-month period which allows Territory legislation to be overturned? Why has he waited so long, years after the legislation was introduced?

But Senator Brown is not alone in presenting conflicting arguments with regard to Northern Territory legislation. The Democrats are on record too. Let me quote from the New South Wales Democrat Senator Vicki Bourne. On 19 March 1997, in her speech on the second reading of the Euthanasia Laws Bill, she said:

We have just heard a very passionate speech from Senator Tambling—and I must agree with him—that it is a really outrageous step for this parliament to take to override a piece of Northern Territory legislation.

She also said:

The second principle that I mention, and I am very conscious of it in this debate, is the autonomy of the Northern Territory parliament and its right to enact laws which have effect in the Northern Territory ... Now we are considering, in Canberra, whether we will allow them to keep that act. What will be the next act of the Northern Territory parliament to be challenged? What about ACT legislation? Should we let them? Are they old enough and big enough to make their own legislation?

What about the Democrats’ Western Australian Senator Andrew Murray? Again, on the euthanasia bill, he said:

... I accept that, as the constitutional laws of Australia now stand, the Northern Territory has the right to draw up and pass legislation dealing with the life and death of its citizens. The Commonwealth does indeed have the right to overturn their legislation. If the Northern Territory were a state, the Commonwealth would not have that right. This is a strange anomaly for our citizens.

Indeed, mandatory sentencing is a Territory issue and one in which Territorians should retain responsibility for addressing aspects of mandatory sentencing legislation—a legislation that, may I remind this chamber, remains valid under Australian law and mandated by the people of the Northern Territory.

The core principle here, the one which has stirred up so many emotions, is that of Northern Territory law, but no-one has presented any solutions; they have only taken the opportunity to heap reprimand and blame onto the Territory parliament. For those who
find these laws so offensive, I prescribe a conference on juvenile justice, if only to explain the laws and the reasons why they were enacted and also to explore the options available to the judiciary.

I also call on the Aboriginal and Torres Strait Islander Commission, Aboriginal groups and communities to get involved and take an increased role by providing greater support to parents and also for home area detention. I also remind the chamber of the Northern Territory’s diversionary programs, which are well resourced, and which the Senate committee conspicuously neglected to mention in its report. The Senate report is also conspicuous in its assertion that the Northern Territory legislation contravenes Australia’s international obligations under the Convention on the Rights of the Child. This is an inconclusive, arguable point, and the NT government patently disagrees. These laws apply to everyone regardless of colour. There may be inconsistencies in sentencing, but this is most surely a matter for the Northern Territory parliament and the Northern Territory government to sort out, not action by patronising, interfering busybodies from outside.

For those outraged by mandatory sentencing and calling for the intervention of the federal government, let us look beyond the politics and address the reason why the Northern Territory government has decided to set its own house in order. As the report so quaintly puts it, ‘It is because the people of the Territory want it.’ At the end of the day, mandatory sentencing remains democratically sanctioned legislation, mandated by the people. The Northern Territory is very specifically looking after the victim first, not the criminal.

At the outset of this speech I mentioned that, unfortunately, on this issue so many people are caught up in differing points of principle. I said it was a scrambled egg between law and order, crime and punishment, law reform, Aboriginal justice, deaths in custody, reconciliation, juvenile corrections, religion and the politics of the Left and Right. We need to look very carefully behind the motivation of each and every person to see from which one of those issues either they or the media are coming. Generally they tend to pick up and ride in partnership with one of the issues for which they have a personal passion. When you look at the issues they are raising, you can see that they are not returning to the fundamentals of the electorate. The electorate is saying, ‘If you do the crime, you do the time.’ Certainly there are the issues that I mentioned in which all governments and government bodies, whether they are from here, from the Aboriginal and Torres Strait Islander Commission or are people that are caught up from each and every one—

Senator Schacht interjecting—

Senator TAMBLING—It is easy to see that people like Senator Schacht have one-issue agendas.

Senator Schacht interjecting—

Senator TAMBLING—Those one-issue agendas make so much out of any particular issue rather than going to the issue of crime in the community, appropriate punishment and appropriate rehabilitation for those people that need it.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Order! Before I call the next speaker, I remind senators of the standing orders in respect of debate. This is an issue that ignites emotion, but there are standing orders that ought to be applied and senators ought to take heed of them.

Senator CROSSIN (Northern Territory) (8.03 p.m.)—Senator Tambling has done absolutely nothing tonight to defend the merits of mandatory sentencing. It is not an argument that he will win. There are no merits in mandatory sentencing. Senator Tambling spent most of his time maligning and sledging senators in this chamber or members of the House of Representatives. If that was not enough, he hopped onto his old hobbyhorse of giving indigenous Australians a bit of a go.

Senator Tambling—I did not.

Senator CROSSIN—It is something that we have become accustomed to from you, Senator Tambling.

Senator Tambling—I rise on a point of order. I ask Senator Crossin to withdraw that remark. I did not make any disrespectful
statement about any indigenous person in my speech. I ask that she withdraw that comment.

Senator Brown—Mr Acting Deputy President, I wish to speak to the point of order. Senator Crossin has the ability to canvass the issue widely, and she is doing that, and to respond to what Senator Tambling said. She has infringed no standing order.

Senator Tambling—She implied that I had offended Aboriginal people.

The ACTING DEPUTY PRESIDENT—Order! I assume you rose to take a point of order and in doing so raised a point of order about an alleged comment by you. You have asked me to rule on that. I have to say—unless my advice is otherwise—that I do not believe that Senator Crossin has necessarily accused you of the point that you raised.

Senator Tambling—I take issue with that, Mr Acting Deputy President. Senator Crossin made the point that I had disparaged indigenous Aboriginal people. I did not at all in any part of my speech.

The ACTING DEPUTY PRESIDENT—As I said previously, my opinion is—unless my advice from those people sitting directly in front of me is otherwise—that I do not believe the point that was raised about Senator Crossin’s speech is valid, and I have ruled there is no point of order.

Senator CROSSIN—It is a tactic that we have become accustomed to in this chamber in recent weeks from Senator Tambling who has made a number of speeches in relation to, particularly, my colleague in the House of Representatives and the Northern Land Council. But let us move on to the issue that is at hand. The Northern Territory’s mandatory sentencing laws must be repealed. We know that the only way that that is going happen now is if this federal parliament seizes the opportunity before us, right now, to enact legislation to override them. This issue is not about protecting states rights. It is a fundamental issue of protecting and upholding human rights. It is about having the integrity and the principle to put the lives of children first. It is about putting people above party politics.

Mandatory sentencing is a law based on a perceived popularity that has been built up by the Northern Territory government. It targets Aboriginal people and is damaging Aboriginal families and children. It is wrong. It is not based on any form of legal or moral principle. As parents, decent human beings and, I hope, fair-minded politicians we cannot step away from our responsibilities to protect our fellow human beings from this injustice. We cannot in all conscience walk away from this. If we do, then we can no longer consider ourselves to be a civil society.

The prime motivation for introducing mandatory sentencing appears to be perceptions of an increased crime rate—often colloquially referred to by politicians, particularly in the Northern Territory, as a crime wave. In the Northern Territory, mandatory sentencing was introduced in response to community concern about rising crime—or at least a perceived rise—and in a response to a perception that, as Shane Stone said in the Northern Territory parliament, ‘soft, cuddly, pussy cat magistrates and judges are to blame for high rates of property crime.’ It was introduced without meaningful and genuine consultation with the judiciary, the legal profession and other interested parties.

During the inquiry we heard an overwhelming body of evidence that these laws are not only unjustified but do not work. Overwhelmingly, the evidence has also shown that mandatory sentencing laws breach fundamental human rights principles. Since the tragic death of a young Aboriginal man from Groote Eylandt last month, this issue has gripped the nation—and so it should—and has become an issue of international concern. We have had the Chief Minister of the Northern Territory tell the federal parliament, the rest of the country and indeed the rest of the world to butt out of its affairs. The same Chief Minister embarked on a campaign of name calling and maligning various sections of the Australian community, including a number of eminent Australians. This is the man who has said the judiciary is ‘totally corrupt’, when he himself holds the position of Attorney-General in the Northern Territory; that Australians making representations to the United Nations are
‘gutless’; and that people who are critical of mandatory sentencing are ‘southern do-gooders’ and ‘hack journalists’. We had the same Chief Minister running a national advertising campaign to supposedly ‘set the record straight’ on mandatory sentencing and to conduct a poll of only 1,500 Australians, which he then used as a desperate measure to garner support for his law.

Both government senators on the committee that reported today have urged the Western Australian and Northern Territory governments to repeal their laws and to consider and implement other models of rehabilitative justice for juveniles that will also meet community need and expectations for deterrence. But the time for the Northern Territory and Western Australian governments is up. Both these governments have shown they are unwilling to take advice and to make any changes. We cannot allow these laws to remain on the books. In 1997, the Human Rights and Equal Opportunity Commission handed down their report Seen and heard: priority for children in the legal process. In the report they suggest in recommendation 242 that ‘the Attorney-General should encourage Western Australia and Northern Territory to repeal their legislation providing for mandatory detention of juvenile offenders. In the event that this is not successful, the Attorney-General should consider federal legislation to override the Western Australian and Northern Territory provisions.’ So this has been around since 1997. The Western Australian and Northern Territory governments have been placed on notice for nearly three years. In the last couple of weeks, eminent Australians and legal experts—including no fewer than five former court judges—have come out condemning the law. And so must we.

In 1992 the Convention on the Rights of the Child was declared by the Commonwealth Attorney-General to be an international instrument relating to human rights and freedoms, and it was made pursuant to section 47 of the Human Rights and Equal Opportunity Commission Act. Australia took a leading role in drafting this convention, and when we as a nation signed up to this convention—and that includes the Northern Territory in agreeing to this convention; we would not have been able to sign up to the convention if each state and territory had not agreed to it—we promised a number of things. We promised that incarceration would be the last resort for children. We promised that detention would not be arbitrary; that juvenile justice laws and our court processes would be focused on rehabilitation; and that treatment of children in all ways would make the best interests of children a primary consideration. These laws break that promise.

Mandatory sentencing also contradicts the most fundamental finding of the Royal Commission into Aboriginal Deaths in Custody. There are many specific recommendations but the key recommendation in this regard is:

That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.

That was recommendation No. 92 from that report. Under mandatory sentencing, the consideration of non-custodial sentencing options is prevented, as is consideration of the specific circumstances of individual offenders. It is patently ridiculous for states and territories to claim that imprisonment is used only as a sanction of last resort when mandatory sentencing legislation unambiguously imposes imprisonment independent of any considerations other than the offence type and the prior record. Mandatory sentencing does not allow for judicial discretion, and it is an unwarranted attack on the independence of the judiciary. An independent judiciary is internationally recognised as a cornerstone of democracy.

The Prime Minister has labelled these laws as silly. Even last Wednesday in his address to the National Schools Constitutional Convention, talking about the separation of powers, he said:

We may not always agree with the decisions made by courts and they may often be wrong, because they are comprised of men and women who have human frailty. But it is a magnificent thing to feel that fundamentally this is a country where, if you have a just cause, if you go to court, the outcome will be a just adjudication which is not the subject of interference by people with a
political axe to grind or people who are in some way trying to pervert the course of justice.

Well, that is true, Prime Minister. We welcome those words. One would hope that it was said as an indication to the Northern Territory or Western Australian governments that something should be done about these laws. But words are not enough from the Prime Minister; we now need him to make a commitment to support these laws and to provide for his members in this chamber and in the House of Representatives to have a conscience vote.

The loss of this judicial discretion has rendered the justice system incapable of adequately dealing with a vast range of minor crimes, especially where consideration of mitigating circumstances is vital. For example, there is no judicial discretion to take into consideration severe social breakdown. This has occurred in parts of the Northern Territory where children as young as four are affected by the petrol sniffing epidemic. This social problem results in the commission of minor crimes, sometimes for basic necessities such as food, shelter and—especially in the winter—warm clothing.

One of the key elements that is missing in this whole debate and a significant element that was missing in Senator Tambling’s contribution this evening—which extremely disappoints me as he comes from the Northern Territory—is that there has been no discussion, no analysis and no acceptance of the reason why these juveniles are committing these crimes in the first place. Of the debates that we will hear in the next 24 hours and of the debates that we have heard in the last three or four months this is the most tragic area which has not been counselled and considered in depth.

The Northern Territory and Western Australian governments turned a blind eye to the reasons why these crimes are being committed. I asked in the hearing: if I were a juvenile who had come from a dysfunctional family in a remote part of the Northern Territory and I had wandered into Alice Springs, what were my options for protection, for shelter and for food—for my basic necessities? The answer I got from the witnesses appearing before me was: ‘Very little.’

We have seen that mandatory sentencing does not reduce crime. The evidence before the committee was tabled this afternoon in the report. Western Australia and the Northern Territory have the highest rates of home burglary and attempted home burglary in Australia. There has been no change in the overall reporting of property crime in the Northern Territory since mandatory sentencing was introduced. Reports of home burglaries increased between June 1997 and June 1998. There has been no real change in the number of offenders charged with property offences.

Mandatory sentencing does not deter crime. The Northern Territory Correctional Services report that the rate of reoffending has not gone down since mandatory sentencing was introduced. NT police report that the clear-up rate for housebreaking is about 15 per cent in the northern suburbs of Darwin. This means that 85 per cent of suburban burglars are not getting caught. That is what Territorians want; they want the people who actually break into their house to be caught by the police. Darwin’s property offenders are unlikely to be deterred while they know the odds of getting caught are extremely low.

We in the committee heard evidence that mandatory sentencing is extremely expensive. It costs around $147 a day to imprison an adult. It is estimated that almost $5 million has been spent imprisoning property offenders sentenced under mandatory sentencing laws. It costs around $332 a day to detain a juvenile. Juvenile detention increased by 53 per cent in the 1997-98 financial year in the Northern Territory. This represents additional spending of nearly $1 million. Of course, $1 million is the figure that has been put on providing an adequate Aboriginal interpreter service in the Northern Territory. Since 1996 the Correctional Services budget has increased by almost $8.5 million in four years. This is an increase of 26 per cent. The Darwin prison has had to undergo major expansion since the introduction of mandatory sentencing laws. This represents a significant capital cost.

All available evidence clearly shows that imprisoning young people at an early age in their development is damaging. Mandatory
sentencing sends young first offenders to jail and juvenile second offenders to detention. It results in increased contact between young people and more serious criminal elements. The Northern Territory Correctional Services report says:

The evidence is clear that the more access juveniles have to the criminal justice system, the more frequently and deeply they will penetrate it.

In many cases detainees learn from their fellow inmates how to become more effective in committing crime. Mandatory sentencing could well lead to increased criminal activity among some young people.

I want to draw the Senate’s attention to comments in the report that was tabled this afternoon about the need for an adequately resourced interpreter service. Numerous witnesses who appeared before us on this committee were able to demonstrate that Aboriginal people in particular did not understand the laws, did not know why they were being detained, did not know what mandatory sentencing was about and, even more significantly, did not understand the proceedings of the court and were in fact denied their natural justice to be able to understand and participate fairly in that system. The Northern Territory government has indicated that it is attempting to raise the standards of interpreter services available to Aboriginals, but we can see no evidence of that to date. If anything comes out of this debate, it must be that the Commonwealth finally recognises that there is a need to provide an interpreter service for Aboriginal people in the Northern Territory—at least in the first instance—so there can be some justice afforded across the system for not only juveniles but adults who are subject to these laws.

Let me finish by saying two things. The parliament dealing with the mandatory sentencing laws I believe is extremely different to the issue of euthanasia. As a Territory senator, if I had been here when the euthanasia laws were presented, I would not have voted to overturn them. That was an issue of moral rights. It was an issue that I believe the Northern Territory government had the right to deal with. It was not linked to an international convention. But here we find ourselves in a position where we are dealing with a law that is similar to Tasmania’s anti-gay laws in 1994. We have an international obligation to uphold the Convention on the Rights of the Child. We are part of and members of—proudly so—the international community. We must do all we can to uphold that reputation and to put into action the promises that we made when we signed that convention. So in this instance I believe there is a role for me as a federal politician representing the Northern Territory to make sure that the international convention that we have signed is upheld.

So yes, we did have a by-election in the Northern Territory on the weekend as a result of Shane Stone’s resignation from the seat of Port Darwin. But no, I do not believe that it is a resounding endorsement of the Northern Territory’s laws on mandatory sentencing. They would like to believe that. They will twist the figures to try to convince not only Territorians but the rest of the nation that that is a fact. But the vote for the CLP did not increase by one. In fact, it dropped by nearly 480 votes. On a two-party preferred basis their support plummeted by 14 per cent. The Labor Party did increase its primary vote. The CLP will never admit that. And they hate to admit that, because they are on the way out. This is the third by-election in 12 months where we have had a swing to us and they have had a swing against them. We had a swing of eight per cent. If that had translated to a general election, there would be a Labor government in the Northern Territory by now. So no, it is not a resounding endorsement for the laws for mandatory sentencing; it is an endorsement that people are tired, fed up, sick of being treated that way by the Northern Territory government, and they do want change.

I welcome today the report by the United Nations committee and the tabling of the reference paper by the United Nations Commissioner for Human Rights. And they do make some very strong statements about this law. They do say, for example:

The committee is particularly concerned at the enactment of new legislation in two states where a high percentage of Aboriginal people live which
provides for mandatory detention and punitive measures for juveniles.

They do also go on to say:

This committee is also of a view that there is a need for measures to address the causes of the high rate of incarceration of Aboriginal and Torres Strait Islander children.

The United Nations committee does have a view, and it is a view that we should be taking note of. It certainly is a view that the Northern Territory and Western Australian governments should be taking note of.

Let me say in finishing that I am aware that by standing in the chamber this evening and declaring my support for Bob Brown’s bill I will be labelled as unterritorian by some people in the Territory and be accused of not defending Territorians’ rights—probably to about the same degree that we notice the Chief Minister and the Northern Territory government have done nothing to protect the Northern Territory people from the impact of the GST, or to protect the Northern Territory people from the increase in fuel prices in the last couple of weeks, or to protect the Northern Territory from having to pay additional money towards the railway that the Commonwealth guaranteed they would put into but have now reneged on.

Unterritorian I am not. I believe that as a federal parliamentarian I have the right and the responsibility to act on what I believe is right. I believe, as I said at the beginning of my speech, that this is not about protecting states rights; it is about protecting human rights. I stand in this chamber declaring my support for this bill as a matter of principle, not as a matter of popularity. It is a pity that my colleague Senator Tambling has not chosen to do the same.

(Time expired)

Senator COONAN (New South Wales) (8.25 p.m.)—We are being asked to consider the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999, which has as its purpose to override the mandatory sentencing regimes for juvenile offenders in both Western Australia and the Northern Territory. So as it stands the bill addresses both jurisdictions. There is a distinction to be made, and it is important because not only are they differently constituted—being a state and a territory, respectively—but also they have markedly different mandatory sentencing practices for their juveniles. I mention this at the outset because I have some doubts whether the bill in its current form would be a valid exercise of the Commonwealth power, where a single provision intentionally deals with disparate subject matters. That is something that we might get to in the committee stage, but nothing seems to have been said about that topic, at least by previous speakers, and I do think that it is a matter that needs to be addressed.

However, I do not think that these problems are insurmountable. If it was the will of parliament a way could be found to use the external affairs power to pass a Commonwealth law and to rely on section 109 of the Constitution to invalidate the inconsistent state or territory legislation. Whether it would survive a High Court challenge is quite another matter. I have come to the view that the breaches of the conventions that have been referred to during this debate—the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child—are arguable but not conclusive. I tend to think I am probably correct in that, even though I have not yet had a chance to read the United Nations committee report, which seems to be rather equivocal about breaches but very long on concerns, as indeed we are all.

However, in respect of the Northern Territory we do not face the same problem, because it is certainly established that the Commonwealth’s plenary power would permit legislation in respect of the Territory. But the more compelling question, I think, is whether the Commonwealth—assuming it has the necessary power—should intervene.

I wish to speak to this bill—probably rather more briefly than my colleagues—by reference to my experiences on the Legal and Constitutional References Committee, which took evidence on this matter in Alice Springs, in Darwin and in Western Australia. I want to start by making it perfectly clear that in my view the practice of mandatory sentencing is simply incompatible with contemporary no-
tions of justice. I have said elsewhere—and I repeat it here—that mandatory sentencing is in fact a blunt instrument that can lead to sentences seriously disproportionate to the gravity of the crime. There is little evidence that it works, as earlier speakers have said. It is a very expensive way to dispense justice, and there is really very little to recommend it. But the committee heard evidence that the average number of convictions of juveniles on a sentencing occasion was in the order of eight—not first-time offenders but eight-time offenders—which of course starts to put into perspective the sorts of problems as perceived by people in the Northern Territory and in Western Australia.

Be that as it may, in my view the evidence clearly established that there are at least some convictions that have been recorded for what can only be regarded as the most trivial of offences, and in my view one miscarriage of justice is simply one too many. I wanted to put that in context: that I acknowledge the fact that there is a serious crime problem, as perceived by Northern Territory and Western Australian citizens, but that we really do have to address, in the best way we are able, the fact that sentencing for trivial offences really achieves no social good whatsoever. In principle, then, I do not support mandatory sentencing. However, in assessing the two regimes it is appropriate to recognise the practical differences in impact between the mandatory sentencing regime for juveniles in Western Australia and that in the Northern Territory. In Western Australia it impacts only on those convicted of third-time home burglary and, even then, in an appropriate case the offender can be given a conditional release order. The Northern Territory position is more draconian and targets a broader range of property offences than home burglary. In particular, it targets third-time juvenile offenders—14 to 16 years of age—where no discretionary programs are available and also, of great concern, 17-year-olds who are treated as adults for the purposes of law, even on a first offence. This means that even a first offender can get 14 days jail, with very limited discretion in special circumstances. For second and third occasions there is no discretion at all. That is the area of impact I think we need to concentrate on.

The government senators recommended in the report that it would be a logical step if the Northern Territory government were to consider taking steps to extend the availability of discretionary programs to 17-year-olds to alleviate the harsh effects on young adults and that discretionary programs be made available on more than one sentencing occasion in the sentencing process. But these measures do not address the critical question before the Senate, which is whether the Commonwealth should intervene now as opposed to sometime in the future—because that is when we are considering the bill, now—to override the mandatory sentencing regimes incorporated in Northern Territory and Western Australian legislation. To deal with this question a couple of comments are apposite. Clearly, the effect of mandatory sentencing of juvenile offenders has been tempered in both jurisdictions. In Western Australia the courts have been able to interpret the legislation so as to permit the exercise of discretion in an appropriate case. In the Northern Territory the recent amendments have had the effect of ameliorating the impact of mandatory sentencing on juveniles through the introduction of diversionary programs.

Since the introduction of the legislation in Western Australia there have been a number of rulings which have qualified the operation of ‘three strikes’ with respect to juveniles, and it is worth noting what these are. They include an alternative to immediate detention. The president of the Children’s Court can, when it is appropriate, place a young person on an intensive youth supervision order, which means that the offender is supervised in the community, with detention as a default option. They give credit for time spent on remand. Backdating of sentences is another ruling. A further ruling is that previous convictions that are more than two years old do not count as strikes, and there is also a ruling that previous convictions for home burglary where no penalty was given do not count as a strike. In the Northern Territory the legislation applying to both adults and children has been amended several times. The most notable amendments were last year when it was determined that offences could be grouped for the purposes of a sentencing event, that
adults need not be sentenced for a first strike in certain circumstances—these were the special circumstances that I mentioned—and that juveniles could be assessed for diversionary programs instead of mandatory detention for second appearances. This saw the introduction in the Northern Territory of some leniency in the mandatory sentencing regime, most particularly on the diversionary sentencing aspect.

Diversionary programs are right at the coalface of juvenile justice. They play a very important part in ensuring that young offenders do not get irrevocably locked into the court system and that options can be canvassed on their behalf. Initially, 10 programs were approved and gazetted. They were programs directed at enhancing self-esteem and at training and employment. They also included sports programs aimed at spotting and encouraging a bit of potential. Another type of diversionary program was victim-offender conferencing. I am the first to say that it has been very difficult to properly assess how well these programs are working. However, it is, I think, necessary for those listening to this debate to understand that implementing in the order of 21 diversionary programs in the Northern Territory is not the same as having a whole lot of large regional centres where you can simply put them in at will. This involves trained counsellors going to Aboriginal or indigenous communities and trying to work out a program which might actually assist that community and receive some community acceptance—because a lot of the problems, of course, are with indigenous young people and some of the crime is also against other indigenous persons. Diversionary programs are, I think, on the right track, even though they are a little slow to get off the ground. I do think there are perhaps some reasons for that.

Another important initiative in the Northern Territory that needs to be explored is to assess the extent to which indigenous communities can actually generate their own programs for their young offenders. We received some very compelling evidence from Mr William Tilmouth, who described several models that his community thought would work for dealing with young offenders. Perhaps the most exciting and the most promising was the notion of having indigenous camps for young kids, where respected Aboriginal elders would take them a long way away, out of trouble, and teach them some self-esteem and some skills like how to cook and how to look after themselves. Indeed, they were very enthusiastic about exploring that sort of model. My point about this is that the Western Australian and Northern Territory governments should be encouraged to build on these more appropriate approaches to sentencing and to consider other models of rehabilitative justice for juveniles that will also meet the community need for and expectations of deterrents. I do not think you can have one without the other. What seems to have happened is that the balance has got somewhat out of sync.

We have recommended a lot of reforms, and if I have time I will get back to some more specific ones, but it is clear that many people in Western Australia and the Northern Territory strongly favour the intention that underwrites the legislation that some seek to overturn. The coercive powers of the Commonwealth to override the legislation should, in my view, be used only as a last resort after all available processes of consultation and attempts at consensual resolution have been explored. That time has not yet come. Interestingly, I find some support for my view not from somebody in my party but in fact from the former Attorney-General, Michael Lavarch. In 1994, Mr Daryl Melham, the member for Banks, asked the question: Has the Keating Government considered the introduction of legislation to override the provisions of the Western Australian Act which are a breach of international conventions; if so, on what occasions and with what result?

I will just remind those listening to the debate that the Western Australian Crime (Serious and Repeat Offenders) Sentencing Act 1992 was in fact introduced by the Carmen Lawrence government. This was a particularly pertinent question that Mr Melham asked the former Attorney-General, Michael Lavarch. This was his reply on 3 May 1994:

... should a State or Territory enact legislation which plainly puts Australia in breach of its international obligations, it would be this Government's responsibility to engage in a process of...
consultation with that State with a view to reme-
dying that breach. In relation to the West Aus-
tralian legislation, I understand that that State is re-
viewing the laws in question and it would be pre-
emptive for the Commonwealth to act in such

circumstances.

How the wheel turns. That is not to say, of
course, that as we face the problem today
more determined efforts should not now be
mounted in both of these areas. It is trite to
say that good government dictates that citi-
zens should both understand and support the
legislative measures that result in others,
most particularly juveniles, losing their lib-
erty. It would be entirely wrong, in my view,
to conclude that the Australian public, in-
cluding those in Western Australia and the
Northern Territory who presently support
mandatory sentencing, will not yield to per-
suasion rather than coercion. It would be an
insult to the honestly held beliefs of those
persons to conclude that a path to reform
could be achieved only by coercive action.

Nothing I have said should be read as ad-
vocating the abdication of the parliament’s
function, where necessary, to lead public
opinion in an appropriate direction. However,
the legislative supremacy of the Common-
wealth should stand as the last resort in cases
where there is a genuine difference of opin-
ion and where the operation of the law is con-
fined to a particular state or territory, not go
to some national benchmarking on sentencing
practice. In such cases, the parliament’s ini-
tial task, in my view, is to educate, to per-
suade and to consult.

We were urged continually throughout
the course of the hearing to intervene on the ba-
sis that Australia was said to be in breach of
its treaty obligations. I think it is relevant to
mention to those listening to this debate that
there are some general principles of treaty
interpretation that are appropriate and some
processes that are usually undergone, as re-
ferred to by Mr Lavarch, before you would
think of doing something as drastic as what
we are being asked to do tonight: to pass a
bill to intervene in another state’s business
and to overturn a territory’s law. These gen-
eral principles are that a treaty is to be inter-
preted in good faith in accordance with the
ordinary meaning of the words in their con-
text and the context of the treaty as a whole
and in the light of the object and purpose of
the treaty. States are accorded a measure of
appreciation in their implementation of inter-
national obligations. This simply refers to a
degree of latitude in how treaty obligations
are both interpreted and applied. This is
really the important thing: if there are con-
cerns as to whether a state or territory has
breached international obligations, there are
a number of options available to the Com-
monwealth, which include a detailed, ongo-
ing review of the relevant laws to better de-
termine how the potential difficulties of
meeting international obligations should be
overcome. I trust we have generated many
options in the government senators’ report to
be able to deal with that, even if it were
thought that there had been a breach of treaty
obligations.

The second process is an assessment of
available alternative programs and of how
to better to coordinate the reach or resourcing
for those programs. The third process is, in
consultation with the states and territories
through the Standing Committee of Attor-
neys-General or the Joint Standing Commit-
tee on Treaties, to help address the breaches
and provide a remedy. I should note that in
this regard mandatory sentencing is on the
agenda for the next SCAG meeting. Only as a
last resort would we pass inconsistent Com-
monwealth legislation.

The likely outcome of intervention is fairly
problematic, but my point in the second
reading debate is to simply say that this pre-
empts the situation. It is time to consult, not
to intervene. The immediate repeal of all
mandatory legislation would be good, in
principle. I have come to the conclusion that
both constructive and sustainable outcomes
are more likely to be achieved by cooperation
amongst the Commonwealth, Western Aus-
tralian and Northern Territory governments in
dealing with recidivist juveniles than by the
passage of this bill.

Senator Ludwig (Queensland) (8.45
p.m.)—I wish to take the opportunity tonight
to speak in respect of the amendment and
also to particularly note that I participated in
the committee inquiry into the Human Rights
(Mandatory Sentencing of Juvenile Offend-
ers) Bill 1999. The committee held four pub-
lic hearings—in Alice Springs, Darwin, Perth and Canberra—all of which I was able to participate in. I was able to listen to the range of submissions that were brought before the inquiry and also to see those that were sent to the inquiry. The committee, in and on those inspections, had the opportunity to visit town camps, drop-in centres and community organisations. Before I go to the crux of the issues I wish to raise tonight, I wish also to place on record my thanks to those people who assisted in the inquiry, particularly those people that gave of their time to show the committee members around Darwin and Alice Springs and to highlight some of the more pertinent issues that surround the debate.

I will turn to the issues at hand. The genesis of the committee was the private member’s bill, the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999. I will call it ‘the bill’ in my speech. A committee of inquiry was undertaken by the Senate Legal and Constitutional References Committee. The bill was structured to address a number of matters that are of concern. It is worth while going briefly to the terms of reference themselves. They give the direction that I am about to take some meaning and also provide a frame of reference for those persons listening to the debate as to what the committee of inquiry was charged to do. The committee of inquiry’s terms of reference were to look at:

- the legal, social and other aspects of mandatory sentencing;
- Australia’s international human rights obligations in regard to mandatory sentencing laws in Australia;
- the implications of mandatory sentencing for particular groups, including Australia’s indigenous people and people with disabilities; and
- the constitutional power of the Commonwealth Parliament to legislate with respect to existing laws affecting mandatory sentencing.

That was the breadth of the matters that the committee was required to look at. In participating in the inquiry, the submissions that were made travelled more broadly than that. If you look at some of the news reports, they also travelled broadly in looking at the particular issues. It is interesting then to go to the bill itself. The bill is a rather short document, and it was structured to address a number of matters that are of concern. Page 3 of the report encapsulates those issues well. Under ‘Background to the Bill’ at 1.12, there are a number of dot points. The concerns the bill was to address included:

- Whether children were being jailed, contrary to the Convention on the Rights of the Child, and whether other international obligations were being breached;
- The lack of relationship between the type of crime and the severity of the punishment;
- The limited options available to replace detention;
- The apparent discriminatory effect on indigenous people; and
- The broader social and legal effects of mandatory sentencing.

If you look at those in context and at the background of the bill, what the committee of inquiry was charged to do was focus on the legal implications that might arise, the conventions and the whole range of matters that then are thrown up, some to confuse and some to perplex. We then distilled it all the way down. The focus of the committee was therefore the application of mandatory sentencing on juveniles in the Northern Territory and Western Australia. The four elements in the terms of reference provided only limited scope to go outside and examine some of the other issues that we had an opportunity to look at. Those included both the effect of mandatory sentencing on adults and other broader issues. Clearly, however, the emphasis of the inquiry has been on children or juveniles in detention. The terms are better kept to children, because that is who we are talking about.

The operations of mandatory sentencing legislation in the Northern Territory and Western Australia are summarised in chapter 2 of the report. I hope those people listening to the broadcast are able to obtain the report either online, on the web, or from one of their senators’ or members’ offices. It is certainly worth poring over some of the issues that are distilled within that report. For the purposes of the debate tonight, it is necessary to go briefly to the report to gain an appreciation of both the Northern Territory and WA legislation concerning mandatory sentencing. I will not go through the total range of mandatory
sentencing provisions; I will just take the short form approach. Page 12 of the report deals with the Criminal Code (Western Australia) relating to the mandatory detention or imprisonment of young persons. The report then deals with adults in respect of the Northern Territory legislation and then goes on, on page 15, to deal with juveniles or children.

However, the quick reference guide provides a short form summary of the effects, and in truth that is what we are talking about—the effects of mandatory sentencing. Under Western Australia’s regime for property offences it talks about, for offences of home burglary, young persons of 16 and 17 with a third or subsequent offence looking at 12 months imprisonment or detention or an intensive youth supervision order. In respect of the Northern Territory’s mandatory sentencing regime, for those who are 17 years old, who are called adults, there is a very broad range of property offences; it is not limited simply to home burglary. For their first sentencing appearance, the penalty is a minimum of 14 days in jail and the court does not have to impose mandatory sentencing in special circumstances—I will touch on that later. With the second sentencing we are looking at a minimum of 90 days jail and for the third and subsequent sentencing a minimum of 12 months jail. For juveniles, 15 and 16 years old, we are looking at a wide range of property offences. Again, for a first appearance the court has a range of sentencing options and for a second appearance it is a minimum of 28 days detention or the juveniles must join a special program. If the program is completed, the court may discharge without penalty but, if the juvenile fails to complete the program, the court must order 28 days detention. The court may also impose punitive work orders. For a third or subsequent appearance, it is a minimum of 28 days detention. When I had the opportunity of listening to the various submissions that were put to the committee of inquiry, there was not a lot of talk about alternatives or programs. Where you would expect to have a range of significant material put to you about alternative options, they appeared lacking. In fact, you wondered whether or not they were out there at all.

There has been considerable debate about the Commonwealth enacting laws, particularly in the case of the Northern Territory, in reliance on its plenary power under section 122 of the Constitution and, in respect of Western Australia, on the use of its external affairs powers in reliance on already agreed treaties or conventions. Clearly, it is a well-established proposition that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. Of course, that statute is proposed to be, in this instance, the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999.

In essence, there is scope to argue about whether the laws breach our international obligations or whether the bills will then give effect to, or are capable of being supported by, the treaty or convention. That is, whether the proposed law is one of a variety of means that might be thought appropriate and adapted to achieve the ideal encapsulated in the convention or treaty. The committee was provided with much information on these aspects. As would be expected, given terms of reference (d), the debate about whether the Commonwealth should override state laws is part of this same debate, though distinctly different mechanisms might be employed in respect of the Northern Territory and WA, as I have earlier alluded to.

It is therefore not with an easy stroke of my pen or keyboard that I come to the conclusion that the important matter here is not the state’s versus the commonwealth’s use of power; nor, in essence, is it the legal mechanisms that would need to be employed and relied on to give effect to the intention of removing mandatory sentencing laws against juveniles from the statute books; nor is it even the concern of the legal profession that the removal of sentencing discretion is of great importance and needs to be done. In truth, when it boils all the way down, when it is distilled, you are left with the residue: the crux of the matter is not in looking at the legal argument—there is certainly plenty of that on both sides and the report itself touches on all of those matters in some depth—but is the fact that, in the end, the
The report gives a green light. It says, in essence, that the power certainly exists within the Commonwealth. Therefore, the greatest mover is not the dry legal discourse but how these laws operate on the people who are subject to them that is of true concern to me.

I guess the moral persuasion of the correctness of this report is the cogent factor. It is not enough to carefully tread amongst the bulrushes on this issue; we should stomp the bulrushes down. It is not enough to simply say, ‘I will hide behind the legal discourse; I will hide behind the legal mumbo jumbo that exists.’ It is necessary to look at the heart of the matter and ask yourself: is mandatory sentencing something that you would like your children subject to in a decent society? At the end of the day you have to come down on one side or the other and, in this instance, I think I have come down on the right side. Mandatory sentencing cannot be justified from a moral nor, in my humble view, from a legal perspective. Clearly, in my view, we should not be drawn down the middle path. This is clearly a case where emphasis should not be allowed to shift from early intervention and diversionary programs to retribution against children.

There were a number of gems that stood out amongst the paper warfare that was provided to the committee. At the heart of those gems was the fact that there are other models available such as restorative justice and community conferencing. People are generating ideas, people are developing models and people are looking at this issue in depth. It is heartening to find like-minded people who believe there are alternatives out there that are available. Amongst a whole range of matters that were presented to the committee of inquiry, the committee was provided with a paper called *Restorative Justice and Community Conferencing: summary of findings from a pilot study*. It is noted from the report that juvenile justice is a matter that is being seriously looked at in Queensland and, I am informed, in other states like New South Wales.

At a government lawyers conference held at Parliament House in Sydney on 4 August last year, Jenny Bargen, Director of Youth Justice Conferencing, delivered a paper on the Young Offenders Act 1997 in New South Wales, a blueprint for restorative organisational reform in juvenile justice in New South Wales. It is interesting to go to some of the opening paragraphs of that paper and, if I may, I will quote parts of it. It states:

It is now just over twelve months since the first youth justice conference was held in New South Wales in accordance with the provisions of the Young Offenders Act 1997 (the Act). It is now just over 14 months since the Act first became law and police commenced cautioning in accordance with the Act. The Act is arguably the most ambitious and radical legislative attempt in the last ten years to reshape juvenile justice in Australia. There are better models available and there are qualitatively better governments that implement better models—governments that take a different perspective and decide that there is no point in trying to use punitive measures or very simplistic models to effect justice. There are governments, both in Queensland and New South Wales, that are prepared to step out and examine models that can be used to effect a fair outcome—not simply shorthand methods such as the ‘three strikes and you’re in’ legislation, but simple pieces of legislation designed to provide outcomes.

Continuing to quote from that paper, at page 4 it states that the general principle or the guiding provisions that are put are:

... that children are entitled to the least restrictive form of sanction that is appropriate in the circumstances, to legal advice, and to the use of alternatives to criminal proceedings wherever possible. There is a prohibition on the use of criminal proceedings solely to address welfare needs or provide services to the child or their family ...

It goes on further to state:

Parents are recognised as primarily responsible for raising their children and must be included in justice processes involving their children. Finally, victims are entitled to be kept fully informed about their potential involvement in actions taken under the Act and the progress of such actions.

As a concluding paragraph it states:

These principles draw from the provisions of the UN Convention on the Rights of the Child (CROC), the Beijing rules and other relevant international instruments.

When you then compare and contrast the efforts both of the writer of that report and the
piece of legislation that the report writer is referring to, it seems that you get the distinct impression that both Western Australia and the Northern Territory have let us down badly as a nation. In the end, mandatory sentencing is supposed to have a deterrent effect. It assumes that people are rational and act according to the costs or benefits of committing a crime prior to deciding to commit it. The world we live in, at least from my perspective, does not function according to these laws.

Mandatory sentencing regimes in the Northern Territory and Western Australia are unjust and seem to gather in their net the vulnerable and disadvantaged groups. The laws have existed for some time and the number of reports that criticise them have grown—in fact, they have grown to a crescendo. It is no longer acceptable for Australia to accept, either overtly or tacitly, the existence of these laws. The international community is looking at us very critically in respect of these matters. It was reported in the *Sydney Morning Herald* on Monday, 13 February 2000 that the Prime Minister, Mr John Howard, has already indicated that the government will not override the laws. Mr Howard’s view remains blinkered.

In summary, it is clearly time to fall on one side or other of the fence. The weight, the moral high ground, the rational position, the right side lies with the recommendation of the passage of the bill. I do not need to wait for any further reports or inquiries to convince me. It is a matter that I have formed my view on after listening to the participants in the inquiry and reading the submissions. I think anyone squarely looking at the report would come to the conclusion very early that it is time to act. It is not a case of taking the middle ground by saying that perhaps we could look at more models, perhaps we could look at providing more funds to see if we could fix it. What I am proposing effectively is that, if you take the proper course and the laws are invalidated, you have only one option—that is, you then must look at alternatives, you must look at some of the better models, you must look at the restorative justice model. You must then proceed down a track of examining programs, early interven-

In the final analysis—I can see that my white light, as they say, has come on—I do not feel alone in my view. An article based on an interview with Jeff Shaw in the *Sunday Telegraph* of 12 March 2000 has the heading ‘NT mandatory sentence laws “brutal, bizarre”’. *(Time expired)*

**Senator GREIG (Western Australia) (9.05 p.m.)—**Most of my views on this important issue I really expressed during my talk to the tabling of the report itself. However, I would like to add just a number of further points concerning what I see as being the essential moral and practical issues involved here and with the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999. As a nation that has traditionally valued the role of law and as a nation that continues to assert itself in international fora as a champion of human rights, we cannot succumb to arguments about what should properly be referred to as parochial jurisprudence. When I refer to ‘parochial jurisprudence’, I mean the arguments in this place sometimes offered as a justification for avoiding this nation’s international human rights treaty obligations.

I wish to place firmly on the record the position of the Australian Democrats on Australia’s international treaty obligations, particularly its international human rights obligations. International human rights is not an optional system. If Australian governments do not intend to be bound by international treaties, then they should not sign them—it is that simple. The long history of successive governments signing treaties and then avoiding their obligations domestically is now well documented. When the High Court dared to identify and modify this hypocrisy in the Teoh case a number of years ago, both the opposition and the government rushed to draft legislation to reinstate that hypocrisy. In short, it is not good enough, as I have said
many times and will continue to say. States and territories do not have rights; people do.

The committee report into this bill, specifically at chapter 6, gives a good analysis of the international treaty obligations. At the beginning of the chapter, it is clear that the Convention on the Elimination of All Forms of Discrimination Against Women, which was signed by Australia on 17 July 1980, is offended by the existence of mandatory sentencing. More particularly, articles 1, 2(f), 2(g) and 15(1) all apply to instances which impact on women in a mandatory sentencing regime. In a submission from Australian Women Lawyers, it was claimed:

The dramatic and disproportionate increase in the rate of imprisonment of women, particularly indigenous women, raises questions as to whether the effect of the Northern Territory’s mandatory sentencing legislation is discriminatory on the basis of both gender and race and therefore placing Australia in breach of its international obligations.

In his submission on behalf of the Northern Territory government, the Acting Chief Executive Officer of the Attorney-General’s Department admitted that government statistics revealed that there had been an increase in the number of women who had been incarcerated from the time prior to the commencement of mandatory sentencing. In addition, he stated that the majority of sentenced females received into custody—65 per cent in 1996-97 and 76 per cent in 1998-99—were due to nothing more than fine defaults. Once again I quote from the report and from the Northern Territory’s own Attorney-General’s Department:

Females sentenced solely on the basis of mandatory sentencing increased from 2 in 1996-1997 to 22 in 1998-1999. So we had a 20 person increase solely due to mandatory sentencing of 182 females. These are adult women.

Mandatory sentencing is always wrong. It is fundamentally wrong because it denies judges and magistrates from exercising compassion and mercy by preventing them from looking at all the extenuating circumstances of a particular case. It amounts to political interference in the proper process of the functioning of the courts. The very reason we have judges and magistrates is so that they can make reasonable decisions based on a reasonable consideration of all the circumstances. It is not the job of politicians to tell judges and magistrates what must be done for each and every case. But when this does happen, when laws so clearly breach international human rights conventions, particularly as they relate to children, we must respond as a nation through our federal parliament. It is not only proper that we respond with federal intervention; it is our humanitarian duty.

As I said earlier in this debate, mandatory sentencing in the Northern Territory and Western Australia must be repealed. This is not a popular position to hold but it is the right one. It is worth noting the great weight of learned opinion against the practice of mandatory sentencing. Only today, Monday the 13th, I see from the West Australian newspaper—my home state and the state with mandatory sentencing laws—that the WA Chief Justice, Mr David Malcolm, has again come out strongly in opposition to these laws. Justice Malcolm condemned mandatory sentencing as a quick fix to buy votes that will make WA’s crime problem worse. He said:

Unless our community can settle on an alternative method of addressing crime and the rehabilitation of offenders, WA will continue to see an increase in the number of alcohol and other drug dependent offenders. Yet as a community we persist with such illusionary solutions as mandatory sentencing which is only a short term quick fix solution to impress constituents from one election to the next. I have already acknowledged that there are differences between the Western Australian and Northern Territory mandatory sentencing regimes—largely by virtue of the fact that the Western Australian legislation applies after three strikes and only after break and enter offences. However, this can range from stealing a biscuit from a fridge to bashing the occupants, and there is no judicial review.

But in terms of regrettable and further evidence of this law and order tub thumping, we see its re-emergence in the Country Liberal Party in the Territory’s recent by-election. It is a syndrome that I have witnessed many times as a Western Australian, and I note with great sadness that both the Labor and coalition parties in that state continue to support mandatory sentencing at a state level and
have both at various times been complicit in fanning the fears of the electorate by tapping into the very real concerns about crime in that state. It is worth noting that this view is not universal amongst Western Australian MPs and that the Australian Democrats have introduced a mandatory sentencing repeal bill in Western Australia’s upper house that, if nothing else, will generate debate in the community—hopefully, more reasoned debate—on the matter.

We heard much during the process of the inquiry about the need to educate those people most likely to come under the effect of these laws—that is, to give people a better understanding of the laws themselves as well as their rights and responsibilities. That was a common theme. But as the evidence against mandatory sentencing continues to mount, I have come to the conclusion that those electorates which support mandatory sentencing are also in need of education—education about the facts of mandatory sentencing and education about the evidence that it does not work.

I am very conscious in saying this that I may sound paternalistic or arrogant, but my suspicions on this are supported by the considerable number of emails and phone calls that my office has taken on the matter of mandatory sentencing which have illustrated the many general misconceptions about mandatory sentencing and its effect. On more than one occasion, I have had cause to speak to people or to reply to an email where it soon became apparent to that constituent that they had misunderstood the reality of mandatory sentencing and now, having been challenged on their beliefs and assumptions about it, were prepared to reconsider. If only the parliament in total held the same view.

The chorus of eminent people now opposed to mandatory sentencing was recently recognised here in the Senate. Only today I was able to get this chamber to unanimously agree to take heed of the words of former Chief Justice of the High Court, Sir Gerard Brennan; former High Court judge, Sir Daryl Dawson; former High Court judge, John Toohey; and former prime ministers, the Rt Hon. Malcolm Fraser and the Rt Hon. Edward Gough Whitlam.

This motion also called on the government to give serious consideration to the views of these eminent Australians, who were all implacably opposed to mandatory sentencing. While the views of these men—and they were all men—may be open to some possibility of interpretation, I fear that their contribution to the debate may have fallen on deaf ears. Yet the key issue, it seems to me, in this sometimes emotive debate is the immense gulf between the reality of crime and law and order and its perception. This is where we find the clash between judges, magistrates and academics on the one hand and a genuinely concerned electorate on the other, which is why it is so important that people with real expertise and expertise in these areas continue to speak out on the issue.

I realise that many people, including the Prime Minister, have said that the issue of mandatory sentencing is not a moral one but a simple matter of criminal laws for the states and territories to determine for themselves. However, as I said earlier today, it is beyond my comprehension how the compulsory jailing of a 15-year-old orphaned Aboriginal child for stealing textas cannot be viewed as a moral question, particularly when this child later took his life while in detention. Of course, this is only one example of mandatory sentencing from recent media reports which is to be found quite staggering.

As a Western Australian, I am acutely aware that mandatory sentencing first evolved and became legislated in my home state before it did in the Northern Territory. While the design and application of mandatory sentencing laws in that state are not as draconian as those in the Northern Territory, there is no question in my mind that the laws in Western Australia and the Northern Territory breach the Convention on the Rights of the Child to the same extent. But whether or not these laws breach international treaties does not seem such an important question to me as, ‘Do these laws work?’ As Colleen Egan and Monica Videnieks wrote in the
Australian newspaper on 19 February, ‘The Northern Territory and Western Australia—the two jurisdictions under intense pressure to repeal their mandatory sentencing laws—have the highest crime rates in the country.’ Again, this comes back to my earlier comments about the great difference between the myth and reality of mandatory sentencing.

As I have said previously, being a Western Australian I am also very aware of the sustained popular support for mandatory sentencing laws, and I understand this to be true also in the Northern Territory. Being opposed to mandatory sentencing is not a popular position to hold, but good laws and a just society mean that members of parliament must do what is right, not what is popular. This issue, more than any other to come before the federal parliament in recent years, requires leadership. This leadership to date has come not from the Prime Minister but from community leaders such as the deputy chair of the reconciliation council, Gustav Nossal. It is entirely fitting that this issue should be seen in light of reconciliation. I think we all agree that an important aspect of reconciliation is the notion that practical outcomes must accompany the more feel good but perhaps intangible component of reconciliation in action. The repeal of mandatory sentencing laws in Western Australia and the Northern Territory is nothing if not a matter for reconciliation, and my colleague Senator Ridgeway spoke on this earlier tonight.

Dr Hughes, President of the Law Council of Australia, recently told members of the parliament that laws allowing the jailing of children without the right to appeal breached the International Covenant on Civil and Political Rights and the International Convention on the Rights of the Child. But he also went on to say that the Law Council opposed mandatory sentencing because it robbed the courts of discretion with individual cases, its effectiveness was doubtful and it had a particularly adverse effect on indigenous people.

Following today’s release of the report of the Senate Legal and Constitutional References Committee into mandatory sentencing, the Law Council welcomed the majority report and urged the federal government to heed the report’s findings and recommendations and to urgently pass this private member’s bill, which seeks to override and prevent any mandatory sentencing laws relating to juveniles operating in any state or territory of Australia. Specifically, Dr Hughes said that ‘mandatory sentencing laws are draconian and unfair, and they do not have a place in a civilised society’. The reaction to this argument, all too commonly, comes down to the cry from some supporters of mandatory sentencing that this is a question of states rights. Let me state clearly for the record that the Democrats do not believe that states have rights; only people have rights. This is a debate this chamber has been through many times, and the one which most springs to mind is the Human Rights (Sexual Conduct) Act 1994.

I listened earlier tonight to Senator Grant Tambling, the only representative in here from the Northern Territory’s Country Liberal Party. He argued strongly but falsely, in my view, that the people of the Northern Territory have a democratically elected parliament which must impose its own views in accordance with the wishes of its constituents. To support this argument, Senator Tambling referred to the recent by-election in the Northern Territory which was fought, in part, on the issue of mandatory sentencing and which was won by the ruling party in the Northern Territory. But the more telling poll in the Northern Territory, and more pertinent, I believe, to this debate, was the referendum in the Northern Territory—held, I think, in conjunction with the last federal election—which resulted in the people of the Northern Territory voting no to self-government and statehood and yes to ultimate Commonwealth control and responsibility.

We must also remember that the Commonwealth’s treaty obligations were in place before the Northern Territory introduced its mandatory sentencing laws. In other words, the Territory chose to ignore and override existing legislation, not the other way around. Any objective look at the role and failure of mandatory sentencing can only conclude that such laws must be repealed. As I have said before today, ideally, I would genuinely prefer the state of Western Australia and the Northern Territory to reform their own laws,
but clearly this is not going to happen. It will just not happen. That being the case, it is imperative that we as federal parliamentarians act to resolve this with federal intervention. The Australian Democrats fully support this proposition and believe that now is the time to act.

Senator MURRAY (Western Australia) (9.22 p.m.)—The Northern Territory’s Chief Minister, Denis Burke, has claimed that the Country Liberal Party’s by-election victory on the weekend represents ‘overwhelming support’ for the Territory’s mandatory sentencing laws. That the voters in the CLP safe seat of Port Darwin support Mr Burke is not surprising. That he therefore believes the whole Territory overwhelmingly supports them defies belief. Even if the polls in the Northern Territory show support for mandatory sentencing for adults, do they also show it for juveniles? I think not.

The CLP received 51 per cent of the primary vote, which represented an eight per cent swing against the CLP government. However, I remind you of the fact of majoritarian wins—if 51 per cent get their man in, 49 per cent do not and are therefore unrepresented. That is a critical issue when you are talking about a unicameral house, which is what they have in the Northern Territory. To claim this electoral win as a resounding endorsement is to indulge in fanciful extrapolation. Back to reality. There is considerable opposition out there to mandatory sentencing, not only in the rest of Australia but also in the Territory.

But where does the real fault lie? Not with the people but with the electoral system. If the Territory had proportional representation, not a majoritarian electoral system, I venture to suggest that mandatory sentencing would never have seen the light of day. A unicameral majoritarian system with a party entrenched in power for several decades results in a bullying, arrogant style. That is how it always is, and the Territory is no different.

One would have thought that the failure of the 1998 October statehood referendum would have acted as a wake-up call for the CLP. It appears not so. Former Chief Minister, Shane Stone, found that his attempt to railroad Territorians into his grand vision for statehood proved also to be his political noose, because when the votes of every Territorian counted, CLP policy failed. It is only in a majoritarian parliament, where so many Territorians are unrepresented, that CLP policy can prevail unchecked.

The parliamentary process in the Territory, democracy in the Territory, is fundamentally flawed. It lacks legitimacy because it does not have the checks and balances of proportional representation. In short, if you have poor democratic institutions and an electoral system that unacceptably discriminates against a large number of voters, it is not surprising that bad laws, such as mandatory sentencing, are the logical outcome. It is also not surprising that bad administration occurs and that arrogant government occurs.

If concepts like justice and equity are the hallmarks of liberal representative democracies such as Australia—which, by and large, they are—then the Northern Territory has much to answer for. Australia either has two-house parliaments, bicameral parliaments, or it has proportional representation or it has a mix of both, with the exception of only three parliaments—Northern Territory, the ACT and Queensland. How can any reasonable person argue that to have one political party in power for just over a quarter of a century embodies democracy in practice? And that would be so regardless of the party that is in power. It would be wrong, in my view, for any system to entrench the Democrats for 25 years or the Labor Party for 25 years, as it has the CLP for 25 years, because that is the case in the Territory. The CLP has been politically dominant for over 25 years—in fact, for the entire life of the Legislative Assembly.

That situation is unhealthy in any democracy and raises two important questions. Firstly, does this situation not represent an elected dictatorship in the Northern Territory, rather than a truly democratic representative parliament? Secondly, is this situation not responsible for what has culminated in the Territory, that is, a uni-directional government in which, to quote from a previous speech by me on 26 June 1997, ‘a few arrogant and tired government members run to
their own agenda and ride roughshod over people in the Territory’?

Undoubtedly, there are some fundamental problems with the parliamentary system in the Northern Territory, not the least of which is a unicameral parliament elected under the majoritarian electoral system. Despite the ameliorating effects of the preferential vote—and it is ameliorating—majoritarianism fails to deliver democracy for most Territorians. For the most part, the needs and aspirations of large numbers of ordinary Territorians are ignored in their parliament because they are not represented. We have just had that very thing happen in the by-election at Port Darwin—51 per cent got their member elected and 49 per cent did not. That 49 per cent are not represented by that person.

I do not make these remarks lightly, because these views are shared by many in the Territory. There has been substantial research into the parliamentary process of the Northern Territory. In this respect, I will quote from one piece of research which immediately stands out. In October 1997, a comprehensive paper which was entitled Initial proposal for a national debate on the need for a Commonwealth royal commission of inquiry into the governance of the Northern Territory was written by Mr Andrew Coward, who had served 10 years as a CLP political adviser, first from 1978 to 1981 and then again from 1988 to 1995. The substance of this paper was the urgent need for a review of government institutions in the Territory. Given that there had been no review or scrutiny by the Commonwealth involving Territorians since the granting of self-government in 1978, Mr Coward’s document called for a royal commission into Northern Territory governance. In this respect, I would like to quote his concluding and pertinent remarks: Twenty years of self rule has created in the Northern Territory dilemmas for Australian democracy—a parliament dominated by a strong executive, a weak opposition, non-representative governance for one quarter of the population, an urban voting majority resistant to the aspirations of the disadvantaged … and a split system of land control that is fraught with the potential to maintain the Territory’s social political and economic divide.

These remarks, and indeed his report, should not be discounted. They come from a former political staffer of the CLP who has first-hand knowledge and experience of the runnings of government institutions in the Territory. Not only do the majority of Territorians deserve an inquiry but the federal government has its obligations and responsibilities under certain international treaties, as well as the constitutional power to instigate such an inquiry. Maybe some government one day will take up that challenge. Nonetheless, and in keeping with the overbearing tactics normally adopted by the CLP, the Commonwealth is being told to butt out of Territorian affairs. We must remember this is a territory, not a state, and the Commonwealth has direct constitutional power.

To add even more weight to the claims of Mr Coward expressed in his report, the Democrats found his concerns replicated in a 1998 survey. In the context of former Chief Minister Shane Stone’s authoritarian approach to achieving statehood for the Territory, we sent a survey to all 56,000 Territorian households to gauge their opinions. This survey included questions not only on statehood but also on the more basic issues of constitutional change, the electoral system and the way the Northern Territory is governed. Of particular interest from these respondents was a clear and obvious disappointment, if not cynicism, with the incumbent CLP government. Essentially, from the findings of this survey as well as other research, it seems an assumption can be made. Anyone utilising any form of logic would not have to expend too much energy to conclude that indeed the Commonwealth should hold an inquiry into governance in the Northern Territory, unless the Northern Territory is prepared to do it itself.

Let me now summarise the findings of the survey to which over two per cent of households responded. Two per cent in terms of market research is regarded as a very good percentage, but of course I, like anyone else, must recognise that those who responded would obviously have an interest in the matter. Firstly, while 72 per cent of respondents wish to maintain compulsory voting, 60 per cent would like to see a change in the current
majoritarian electoral system to proportional representation. This figure, I would argue, reflects an expressed need for electoral reform for those Territorians who feel estranged from the political process in the Territory. Although there is some residual disdain for proportional representation from some people in Australia, that disdain generally speaking represents more a preference for unadulterated power rather than a sustainable argument that proportional representation returns unstable governments. In fact, such an argument shuns the fact that PR electoral systems are well established in Europe and have been a feature of long and stable governments, governments in which consensual, not domineering, politics prevails—a far less adversarial system.

Secondly, a staggering 85 per cent of respondents want a new constitutional convention to be held to work through the constitutional options available for attaining statehood. Moreover, 96 per cent wanted convention delegates to be popularly elected rather than appointed by the CLP. On the one hand, while this figure clearly indicates support for statehood, it also reveals the urgent need for a more inclusive and democratic parliamentary process on the other.

Thirdly, the majority of respondents—almost 60 per cent—rated the CLP government as unfair. Additionally, just on 74 per cent indicated they would like to see a review of the way the Northern Territory is governed. Interestingly, of the 40 per cent that wished to retain the current majoritarian system, over half of these—or just on 52 per cent—also specified their preference for a government review to be held.

Fourthly, they wanted the following to be included in a new constitution: 73 per cent of respondents wanted a bill of rights; 70 per cent wanted guaranteed environmental protection; 85 per cent wanted a strict separation of powers; and just over 51 per cent favoured the guaranteed protection of land rights. Overall, I would strongly argue that these results send a clear message to the CLP government: that is, the majority of Territorians would like to see a more participatory process happening in the Territory. Moreover, it is apparent they would like to see a more open and accountable government put in place.

In the wake of the defeat of the 1998 statehood referendum, these findings were then encapsulated in an Australian Democrats’ submission to the Northern Territory Standing Committee on Legal and Constitutional Affairs on their Report into appropriate measures to facilitate statehood for the Northern Territory by 2001. The report came out in April 1999. In August 1999, Chief Minister Burke once again announced that statehood was back on the agenda. Essentially, the CLP was setting in motion yet another attempt to fast-track the statehood issue before the fundamental process of constitutional reform had been realised. It was as if Chief Minister Burke had failed to heed, or even read, the report. This report was an outcome of numerous submissions that conveyed an overwhelming message from all over the Territory. This message was that, while Territorians do support statehood, they want the process of constitutional development to proceed first through extensive community consultation and participation. And they do not want the old ways to continue.

This reality is revealed in the report’s following recommendations: that a new people’s constitutional convention be held; that all, or at least the majority, of delegates to the convention be popularly elected; that sufficient time and resources be allocated so that the convention is able to fully debate the issues in formulating a constitution; and that the draft constitution be approved by the convention and put to the people for acceptance. But, true to form, Chief Minister Burke had the temerity to claim that to hold another convention is to, ‘Run the risk of letting the process dominate, and the whole issue to become bogged down in meetings, committees and arguments about the detail.’ Considering the former CLP’s draft minimalist constitution incorporates the devil in its detail, this is precisely why it is so vital that the whole process recommence. To deny a more inclusive process is fundamentally undemocratic and reveals a very supercilious kind of politics. Even more, such an arrogant stance can only be interpreted as representing the CLP’s
intent to maintain its parliamentary dominance to the detriment of advancing equity, fairness and accessibility for all Territorians in this new century.

That concern was put forward by the *Age* newspaper back in 1998 in an article called ‘Statehood’s fine but...’ when the following question was posed:

Will Australia through lack of interest, admit a state, which, at its core, disenfranchises a quarter of its people and at its heart, relies on racial division for its legitimacy?

To exclude the majority of Territorians from the whole statehood process again, and in deference to the many findings of the report, only accentuates the need for the federal parliament to intervene. Not only do the majority of Territorians deserve it, from the research undertaken I would argue that they should welcome federal intervention. Without federal intervention, the flaws in their system cannot be addressed. It is just because the Territory parliament is so unrepresentative that the federal parliament should intervene. I would go further and suggest that if a properly elected constitutional convention is not put together in the Northern Territory the federal government should do a Tony Blair and close them down—because they are not properly representative. So when you get fundamentally bad law such as the Territory’s mandatory sentencing law the least the government should do is use its constitutional powers to override such unjust and undemocratic legislation.

Let us repeat the message. Unless the Northern Territory fixes itself, the federal government has an obligation to fix it. Additionally, I would argue that the federal government’s obligations under certain international treaties is alone a strong enough reason—even a responsibility—to intervene. Not only is this crucial for enhancing Australia’s reputation in the field of human rights; it is also crucial for ensuring justice for all Territorians.

In concluding, I would like to reiterate the urgent need for real democratic electoral reform in the Northern Territory. Given that so many Territorians are excluded from the parliamentary process, it is only fair that they be given the right to shape their future. You might ask why somebody who is addressing a second reading speech on mandatory sentencing spends so much time on constitutional matters and electoral reform. The reason is that I believe these laws are not an aberration; these laws are a reflection of a flawed parliamentary environment. My belief is that the only form of government which is practical in the Northern Territory is a unicameral situation. You cannot have 200,000 people with two houses of parliament. It would be far too expensive and very difficult to manage. If you are then going to have a unicameral situation, then the only possible representative form of government which delivers full equity and justice to the entire community is proportional representation. At the heart of this thesis is my belief that if you had all Territorians fully represented in that parliament you would not end up with laws as flawed as the mandatory sentencing laws are. I do not accept that Territorians throughout the Territory support mandatory sentencing for juveniles, for children. I just do not accept it. It is that wrong, that proposition, that the bill—sponsored by the Australian Labor Party, the Australian Democrats and the Australian Greens—and the Commonwealth should be addressing.

Senator LIGHTFOOT (Western Australia) (9.41 p.m.)—I rise to speak in the second reading debate on the Brown-Greig bill, the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999. Before I delve into the area that I wish to contribute to tonight with respect to the debate, I just want to say that Senator Murray’s contribution was somewhat perplexing. I can understand that he sees the change in an electoral system to be one that would deliver perhaps a couple of seats in the Territory to the Democrats and that, perhaps with the Labor Party, they may be able to control the government that has been returned there time after time after time. I hasten to say to Senator Murray that it is not the electoral system that is flawed when the people of the Northern Territory keep on putting the CLP government back. May I also say to Senator Murray that there are two other unicameral houses within the Commonwealth of Australia. They are not just in the Northern Territory and Queensland; there is also the Australian Capital
Territory and of course Norfolk Island—and they function reasonably well, if expensively. But what price can you put on democracy, Senator Murray?

Those who criticise the bill before the house, like I do, do so for a multiplicity of reasons. It is not necessarily that the sentencing laws are harsh or that they are not harsh, that they are targeted at the wrong people or that they are in any way unjust. It could be because most states do not want to see interference by a centralist government. This indissoluble federation of six states was formed over a period of 10 years and brought into being almost 100 years ago on 1 January 1901. It is an indissoluble federation of states. There is provision of course in the federal Constitution for any state to have a referendum on whether to continue in a certain way—whether you wish to be affiliated or whether you do not wish to be affiliated with the federation at all. I am not suggesting that Western Australia wants to do that, although we were a reluctant party to the federation when New Zealand withdrew—some people would say in the nick of time, at the latter part of the 19th century. I am rather surprised that two Democrat senators here tonight want to overturn Western Australian law. Although they spoke predominantly with respect to the law in the Northern Territory they want to overturn this law in Western Australia. That will certainly be brought out when Western Australia goes to the polls some time later this year or early in 2001.

In relation to the recent by-election in the Northern Territory, which so many speakers have mentioned tonight, I do not know how you can distort, overturn or convolute statistics for your own benefit. However, if I were looking at the results of the recent by-election in the Northern Territory dispassionately, as an outside observer, I would have thought that the CLP would have bolted in, would have bolted away from its nearest competitor. It is well known that people take the opportunity to kick an incumbent government in the britches at by-elections. Did that happen in the Northern Territory? Did that happen when the subject of mandatory sentencing was in the media, had the splash and had the most prominent position on lead news items in the Northern Territory? Did that happen when everyone who voted in that particular by-election would have had the opportunity of telling the government they were wrong? It did not.

What actually happened in the by-election was that the CLP drew 51 per cent of the vote. But that is not just the story; it is not just that the CLP drew 50 per cent plus one per cent of the vote—a resounding victory if you took that particular statistic alone. The story is that a CLP Independent received 16 per cent of the vote.

Senator Crossin—A CLP Independent?

Senator LIGHTFOOT—So there you have got the conservative group in the Northern Territory receiving something like 66 per cent of the vote—a full two-thirds of the vote.

Senator Crossin—Did your mob put her up, did you?

Senator LIGHTFOOT—What did the ALP get? If I can get some quiet for a moment, I will tell you what the ALP got. The ALP got absolutely thrashed. The ALP got a flogging like they have never had before. The ALP have been flogged and kicked around at quite a few ballots, but on this occasion the people of the Northern Territory are obviously doing something right because the ALP stayed down at 26 per cent.

And you have got representatives in this chamber castigating the Northern Territory government for getting it so wrong, for getting mandatory sentencing so wrong. And in a unicameral house? Well, wow! I sincerely hope that, when my Premier of Western Australia goes to the polls later this year or early next year—and he can go as late as 22 May in 2001, the anniversary of Queen Victoria’s birthday, if he wishes to—he gets it wrong too, he gets flogged by the people who are getting it so wrong and he gets 66 per cent of the vote with the conservative parties there.

What a great victory. I do congratulate the Northern Territory CLP government on calling it right, on getting it right. They got it right because they did not want to have interference. They did not want people in here interfering with the running of the Northern
Territory with respect to its laws for the people. There are times when I believe the federal government should interfere. They are very rare. There is constitutional provision for that. There is provision under the federal Constitution for this government to overturn states’ and territories’ laws, but this is not one of those occasions.

Those people in the Labor Party here who purport to represent the Northern Territory got it so wrong. They got it so wrong I cannot believe it. Just for the record, I want to read what the actual votes were: the CLP, 1,650; the ALP, 840; the Independent, which was a CLP member, 534; and the poor old Green got 200 votes. What a disgraceful performance by the Australian Labor Party in the Territory.

That is where we should have some centralist interference. I think the governing body, the central party of the ALP, should interfere in the Territory and get it back on track. The best governments are the ones with strong opposition. There is no opposition at all in the Northern Territory when they turn in an abysmal and appalling performance like that. It is an absolute disgrace.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Murphy)—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Na Bangardi

Senator CROSSIN (Northern Territory) (9.51 p.m.)—I rise tonight to pay tribute and to acknowledge a Murumburr senior traditional owner of Kakadu National Park who died a number of weeks ago. His commitment to his people, his land and the environment is widely recognised and admired. Tonight I would like to outline the events of his life and pay tribute to his work and commitment to the Territory. The man I am speaking about is Mick Alderson, but I would prefer to refer to him by his skin name—na bangardi—as is generally the custom in Aboriginal culture now that this person has deceased.

Na bangardi was born at Ngurrkdu—Spring Peak, in other words—in Kakadu National Park, in November 1948. He was the first child of a Murumburr man—Yorky Billy Alderson, a legendary prospector, dogger and buffalo hunter—and a Marrirn woman, Minnie Alderson, from the Liverpool River near Maningrida. His mother survives him and she continues to this day to live in the area.

Na bangardi took his name from his grandfather, Yorky Mick (William) Alderson, a prospector originally from Yorkshire in England who came to the Territory in the late 1800s. The lives of both his grandfather and father are the stuff of legend, with tales of his father’s exploits featuring in many books and films produced in the 1960s and 1970s describing the adventurous life of Top End Bushmen. Na bangardi was enormously proud of his heritage and continued his family tradition of fine bushmanship and peerless buffalo hunting skills.

As a young boy he left home to attend the Catholic mission for half-caste children at Garden Point, Melville Island. He did not enjoy remembering this time, and as he got older he spoke of his great regret that his removal from his family and country disrupted his planned passage through ceremony—business—with his childhood friends. As a young man na bangardi returned to his country and worked as a hunting guide at the Patonga Lodge safari camp on Jim Creek, established in the early 1960s by the Macgregor brothers. Later Patonga Lodge was acquired by the Commonwealth to be a ranger station for the Alligator Rivers Wildlife Sanctuary, established in 1972. As a consequence, na bangardi joined the staff of the Forestry, Fisheries and Wildlife Branch of the then Department of the Interior. Na bangardi sometimes spoke of his feelings that there were times when he felt he was little more than a Patonga chattel, transferred to the government along with the other Patonga assets.

Later, at the time of NT self-government, he transferred with other sanctuary staff to the Territory Parks and Wildlife Commission. In the mid 1970s—1975 to 1978—na bangardi became increasingly involved in decision making about the future of the Kakadu region. This was the period of the development of Aboriginal land rights legislation and the beginning of the ongoing debate about the
future of uranium mining and the protection of the great natural and cultural values of the Kakadu region.

It was during this time that the idea of a great joint managed national park involving co-management by a park management agency and indigenous landowners was proposed as part of the vision for the future of that region. Na bangardi shared in this vision and committed to both developing and implementing a workable model of joint management for the future of Kakadu National Park. His concern to plan for the future and his strong bi-cultural communication skills led to his ongoing and high profile involvement in the establishment of the Kakadu National Park, both as a member of the inaugural Northern Land Council in 1977 and of the Territory Parks and Wildlife Advisory Committee.

For the rest of his life na bangardi spent almost every day of the week involved in critical decision making in the Kakadu region. He was the first chair of the Gurudju Association and, with a senior Mirrar man—in fact, Yvonne Margarula’s father—as his friend and mentor, steered the development of the Gurudju Association through its early formative years. He was a key member of the Gurudju Association executive that took the decision to invest uranium mining royalties in local tourism properties, including the acquisition and rebuilding of the Crooinda Lodge and the design and construction of the well known and infamous Crocodile Hotel in Jabiru. Na bangardi was instrumental in encouraging the development of the world famous Yellow Waters wetland cruises as a prime tourism business for Kakadu’s traditional owners. More recently he had again been elected as chair of the Gurudju Association, assisting the association to trade out of recent financial troubles.

From the first days of the establishment of Kakadu National Park in 1979 he was employed as a cultural adviser to the traditional owners’ preferred joint management partner—the Commonwealth’s Australian National Parks and Wildlife Service, later known as Parks Australia—and from 1996 was the chair of the Kakadu Board of Management. In the mid 1990s he oversaw the development of the Kakadu Board of Management—with a strong majority of traditional owners as members—into the key policy setting and decision-making body for the park. As the board’s chair he also had a key role in overseeing the development of the most recent plan of management for the park, a plan that aims to clearly set out the need for Aboriginal people to benefit from the management of their land as national park.

While na bangardi enthusiastically engaged in doing business with balanda, it was always on the basis that traditional owners’ rights and interests had to be understood and protected. In particular, he worried that control over decision making in the region was drifting away from traditional owners, and he was increasingly concerned that traditional owners were not benefiting as they should from regional development.

All who knew him will remember his charm, his enjoyment of life, his care for his country and his commitment to protecting the country and traditions important to the Murumburr people. He was a warm and happy man whose warm smile and infectious laugh will long be remembered in Kakadu. He was a great Murumburr man, bushman, park manager, leader and teacher. He was just 51, and leaves a young family—his wife Anna, 32; his daughter Frear, 13; his sons William, 11, Jordan, five; and daughter Ayisha, three.

He was a man with great vision and passion for the Kakadu region. He saw the Ranger uranium environmental inquiry come and go and was a central figure in developing the concept of joint management for Kakadu National Park. He will always be the man with the broad and friendly smile who worked tirelessly for Bininj throughout Kakadu, through both the work of the Gurudju Association and too many other committees to mention. A unique member of the Kakadu family, he was a protector of Aboriginal interests, park manager, adviser and mentor to all who came to know him. My deepest sympathies are with his family, and I am sure that the Gurudju and Kakadu regions will mourn his loss for many years to come.
Schools: Bullying

Senator ALLISON (Victoria) (9.58 p.m.)—I rise tonight to speak about the issue of bullying in schools. Of late we have seen parents, notably in New South Wales and Victoria, increasingly turning to the law to resolve bullying. Schools find themselves retaining lawyers, and departments and system authorities are increasingly nervous about the prospect of fighting expensive court actions. This trend to litigation is hitting public and private schools alike—the affluent as well as the disadvantaged are being affected. Bullying is being seen less as human nature or a rite of passage and more often now as criminal behaviour. This is an interesting and welcome development in a society that is largely fuelled by competition, but it does mean that schools are having to take this matter far more seriously than they might have done some years ago. More than a third of 4,000 New South Wales students surveyed by Professor Adrian Bauman reported being bullied during the previous term. Half the respondents also admitted that they themselves had bullied others. Professor Bauman’s findings, published in the *British Medical Journal*, were that the long-term consequences of bullying included anxiety, low self-esteem, bed-wetting, sleep problems, headaches and abdominal pains. Professor Bauman cited a study from Finland which found that suicidal thoughts were highest among students who bullied.

Bullying generates the most complaints and inquiries to the National Children and Youth Law Centre, and the number of Queensland children calling Kids Helpline about bullying has risen by 70 per cent over the last two years. Time and again you hear the truism that, where the family has failed, school is the next best place for kids to learn about how to make their way in life. We could do nothing and let the schoolyard bullies reinforce what may well be going on at home, or schools could be proactive and teach children about conflict resolution and how they might navigate the roller-coaster of life’s relationships. These skills are not learned by osmosis. Even kids from the best of homes have things to learn about getting along with others. All of us are lifelong learners in this respect.

Teachers, understandably, groan at being expected to deal with every social phenomenon that arises—from drugs through to divorce, sexual abuse, death, depression, attention deficit disorder, truancy and homelessness. How do we equip our kids with the emotional tools to deal with these issues without putting an inordinate strain on our teachers? A couple of weeks ago I visited a Bendigo school and I witnessed a program in action there that I think satisfies those demands and that I was very impressed with. Named by the children at the school ‘Solving the Jigsaw’, this program has now been taken up in 20 schools in the general region. It began three years ago after a local community organisation called Emergency Accommodation and Support Enterprise—or EASE—approached Quarry Hill Primary School. This organisation deals with domestic violence, so it reasoned that a good place to start to solve the problems within that community would be to start with the children.

Solving the Jigsaw is targeted at kids in upper primary at this school. With a social worker from EASE, students and their teachers take an hour or two every week to talk about a wide range of issues affecting them, and that is mostly handled in the classroom. The social worker facilitates the sessions and there are also professional development sessions for teachers and sessions for parents. The issues they deal with include physical and verbal violence, role models, drug abuse, grieving and relationships. Most of all, they teach children to articulate what the issue is and help them to solve their problems in terms of relationships. I was told about one session where the social worker had just returned after a death in her family. The children knew that her brother had died and they were very keen to talk about it when she returned to the classroom the following week. The class talked about the death of family members and even the death of family pets. The program is normally pre-planned, but the beauty of it is that there is plenty of scope for flexibility and for children to lead the course of the discussion. Children who have had someone close to them die are very often
isolated within their own families. As each family member tries to come to terms with their own grief, there is sometimes very little emotional energy left over to take on a child's grief as well. Often these matters are simply not discussed within a family.

That was just one example of where a supportive class can ease the burden on families and teachers. Some children talked about very painful aspects of family life, leading their peers to a newer and deeper understanding of their classmates. I also learned that in these sessions some children had confronted their own bullying behaviour, admitting that they deliberately excluded other students. Again, being able to name that behaviour was an important part of the program. But any program, I think, that encourages children to be conscious of how they conduct their relationships and that encourages this amount of frankness certainly has my support.

The children from Quarry Hill Primary School who have gone on to the local secondary school are now being noticed. Three years on, those children who had been in the program are now entering secondary school. They are being noticed for the ease with which they make that difficult transition from primary to secondary school; they are being noticed because they are turning into the leaders of their peer groups; and they are being noticed for their skills in conflict resolution and articulating their feelings appropriately. Teachers have reported that their own behaviour and their own method of teaching in the classroom have changed as a result of witnessing the program in action. There is nothing magical about the good communication skills and goodwill that these kids are now showing. The secret, say the organisers and the teachers, is that the kids develop a relationship of trust with each other and with the facilitators. It is the safe environment in which this program is conducted. The contract from the outset is that whatever is discussed does not go any further.

Quarry Hill Primary School has what you would call a normal mix of kids with a normal mix of problems and joys. The beauty of Solving the Jigsaw is that these kids are being exposed to issues well before adolescence, when defensiveness, hostility and destructive behaviours often become entrenched. The funding for Solving the Jigsaw is cobbled together from a mix of state government sources. It receives approximately $90,000 in funding and this takes the program to 20 schools in the region. There is also a parents program. Although EASE has been approached by schools outside the Bendigo region, lack of funding prevents staff from travelling more than an hour away from Bendigo.

As a member of parliament, I have often been approached to support quick fixes. Some initiatives see the organisation of one-off visits to schools by celebrities to talk about self-esteem issues. I cannot, unfortunately, see much value in one-offs, no matter how articulate and sensitive the celebrity might be. Kids, it seems to me, need ongoing, supportive relationships with people who are there to listen—not just once but on many occasions. So I suggest that we start from inside the kids’ lives and experiences rather than outside them. The Democrats support the work of the Australian Council of State School Organisations on bullying and I hope that ACSSO’s forthcoming discussions with DETYA are fruitful. We need to see more counsellors in schools, and professional development for teachers and school communities to learn how to handle bullying. I commend to the Senate programs such as Solving the Jigsaw. It is a program that I think deserves very strong federal support and that could be developed in other regions too.

Goods and Services Tax: Agricultural Show Societies

Senator GIBBS (Queensland) (10.07 p.m.)—I rise tonight to speak on something that is going to hit the Australian bush pretty hard, and that is the impact of the GST on country show societies in Queensland and around Australia. Each year, the Gatton Show Society in Queensland and around Australia. Each year, the Gatton Show Society in Queensland puts on an agricultural show that is one of the largest in the region between Ipswich and Toowoomba. Recently, the show society asked the Australian Taxation Office to explain how the GST would impact on them. Two Australian taxation officers visited the show society and told them that they were going to have to pay tax on
donated trophies, complimentary passes and entry fees to the show competitions.

The Gatton Show Society is a member of the West Moreton and Brisbane Valley Show Societies Association, which also represents societies in Boonah, Esk, Ipswich, Kalbar, Laidley, Lowood, Marburg, Rosewood and Toogoolawah. These societies are community based associations that exist on contributions, sponsorships and trophy donations from individuals and businesses in their local areas. They do not take enough money on gate entry fees to be able to pay for their show the following year without receiving donations of goods, money and time. Because in this day and age families have a variety of options for spending their entertainment dollars, the small country shows face an uphill battle for survival, even without the GST. Most of the show societies have an annual turnover of less than $50,000 per year and have had to register for an Australian business number to allow their sponsors and site holders who register to claim a tax credit back on their sponsorship and site fees.

As it is currently set up, the show societies must pay the GST on sponsorships and the value of the trophies which they receive, gate entry fees, membership, site fees and side-show ground rent. The show societies will also have to pay GST on the entry fees for the competitions that they run. The fees for some of these can be as low as 5c for school children. The changes will severely affect the ability of the various show societies to continue to be able to hold an annual show and continue to be a vital part of rural and regional communities. Most of the show societies exist in the murky waters between charities and non-profit organisations and businesses. They believe that they are not going to see any of the advantages that the government keeps telling us that big business and small business will receive from the GST.

Like many ventures these days, agricultural shows get an important part of their income from sponsorships. Many businesses in rural and regional areas have acted as partners to help provide their communities with a viable show. A very small percentage of show society sponsorships come from companies who will be able to claim them back as a tax credit. The largest percentage comes from private individuals who do not have an Australian business number and will not be able to claim the sponsorships back. The show societies are concerned that this will severely reduce the income they receive in this area. Further to this, the past few years have seen a significant drop in the number of show sponsors. The show societies report that they have had a hard time keeping sponsors and an even harder time finding new ones to replace those that have dropped off. In short, the show societies are already feeling the pinch.

One of the major parts of any show, especially in rural areas, is the competitions. The entry fees in each competition section go towards the cost of running them. Those costs include ribbons, champion sashes and occasionally prize money. Paying a GST on these items will mean an increase in running costs. Some section entry fees for children are as low as 5c. With the abolition of one and two cent coins, putting a 10 per cent GST on a 5c entry fee will effectively result in a 100 per cent increase. Now the government might laugh and say, ‘What’s the big deal about 5c?’ It is probably a big deal to families in rural areas whose children could be entering a number of competitions. The school work sections of many of the shows include competitions in writing, drawing, building and construction, painting, design and printing, carving and textile art. What does this tax turn out to be? The GST turns out to be a tax on rural and regional children’s art, a tax on their creativity and ultimately a tax on their involvement with their community. I am told that it is not uncommon for a whole family to submit entries to various sections. Mum and dad might put entries in various sections to show how good their farm and kitchen produce is, and the kids might put in a few entries each to show how creative they are. If entry fees become too expensive, families will be discouraged from entering, and so will begin a vicious cycle of fewer entries and higher costs for the show societies. The winners of some competitions receive a trophy. It is mainly ordinary individuals who donate trophies for the different sections. The tax office told the Gatton Show Society that
it would have to pay the GST on the value of each donated trophy.

Rounding will mean the entry fees to some of the shows will have to increase by more than 10 per cent. This small increase, indeed any increase, will be enough to prevent some struggling rural families from attending the show. Also, the majority of sites at each show are used by businesses that will claim a tax credit for the fee paid. There are, however, a number of non-profit organisations that also take out sites to promote their objectives. The tax office told the Gatton Show Society that it will have to pay the GST on behalf of any non-profit organisations it gives a free site to.

One of the more high profile and certainly most enjoyable aspects of going to any show is the sideshow. Members of the Showmen’s Guild run the sideshow, and the fees they pay are negotiated well in advance. The fees for this year are already in place. Shows that take place after 1 July will be disadvantaged, because they will have to pay the GST for the sites in sideshow alley out of the fees themselves. All show societies issue complimentary passes. These passes are given to a number of different sorts of people. They go to executives in other show societies, large companies who sponsor the show, judges, volunteer workers, some trophy donors and dog exhibitors. The cost of an adult ticket to the Gatton Show last year was $7. The Gatton Show Society issued 1,000 complimentary passes for their 1999 show. If they give out the same number of passes for their show on 21 and 22 July this year, they will pay $700 GST to the government. It will cost the Gatton Show Society $700 for the common courtesy of giving out complimentary passes to judges, volunteers and sponsors.

These are not just problems for Gatton. They are not just problems for Queensland. They are problems for most nonprofit show societies around Australia. Ultimately, these issues are going to prove a problem for the rural and regional communities that these show societies service. They are a problem, because it is going to be harder and harder for the show societies to run the shows. On top of all of this is the GST on fairy floss, soft drinks, show bags and any fast food. The GST is going to make it harder for the societies to put on a good show for the community, and it is going to make it harder for families to enjoy themselves. In country areas, the local show is a time for catching up with neighbours and friends and is regarded as a pleasant social event. As every day passes it becomes more and more obvious to me, and more and more obvious to the people of Australia, that the government has not thought out the implications of the GST.

There is serious concern among the show societies about how viable they will be after the introduction of the GST. Four of the show societies in the West Moreton and Brisbane Valley Show Societies Association are seriously concerned about whether they can afford to keep running their shows because of the financial burden of the GST. The Laidley Show starts two weeks after the start of the GST. The Gatton Show is a week later. The two show societies that run these events will be at the forefront of the GST impact. They, and the communities they service, will bear the brunt of the Howard-Lees GST misadventure. I hope the government will be watching so they see the damage this insidious tax is doing. (Time expired)

Senate adjourned at 10.17 p.m.