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Thursday, 16 March 2000

The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 9.30 a.m., and read prayers.

PETITIONS

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

Goods and Services Tax

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

The Petition of the undersigned are gravely concerned that tampons and other sanitary products, which have not been subject to any taxes since 1948, will be subject to a 10% GST from July 1st.

Your Petitioners ask that the Senate insist the Health Minister include the abovementioned products in the GST free list.

The fact that half of the Australian population experience menstruation for 30-40 years of their life through no choice of their own means that these products should be included in the GST-free list.

by Senator Crossin (from 240 citizens).

Goods and Services Tax

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

The Petition of the undersigned shows that from July 1, 2000 a GST will apply to sanitary pads and tampons, items currently tax exempt. Your Petitioners request that the Senate call upon the Treasurer to exempt tampons and sanitary pads from the GST.

by Senator Stott Despoja (from 533 citizens).

Commonwealth Bank: Branch Closures

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

The humble petition of the undersigned citizens and residents of Australia respectfully showeth that:

The recently announced closure of Western Australian Commonwealth Bank branches in many Perth suburbs will have a deleterious effect on both residential and business communities in these areas, as will the further closure of any bank branches in Perth or regional areas.

Furthermore, the effects will be most acutely felt by the elderly and migrants; they will find it difficult to deal with a lack of face-to-face contact. Small business will experience a loss of patronage and/or productivity due to the need for travel to another branch for services only a local branch can offer. These include such things as change provision, and credit card voucher lodging.

The Commonwealth Bank, as the name implies, was set up in 1912 for the benefit of the community and was formerly 100% owned by the people of the Commonwealth of Australia. The sale of the bank was contrary to both the spirit of the Constitution and that of the bank's founders, who were patriotically motivated Australians; it was achieved without the full and direct permission of the Australian electorate.

Your petitioners most humbly request that the Senate in Parliament assembled should exercise the powers vested in it, as prescribed by Commonwealth of Australia Constitution Act (1900), Section 51 (xiii), which provides, The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to banking, ... the incorporation of banks, and the issue of paper money', to prevent the closures and thus stop further economic damage to the community it is elected to serve.

And your petitioners as in duty bound will ever pray.

by Senator Murray (from 409 citizens).

Goods and Services Tax

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 HealthCare 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 Senator Stott Despoja (from 60 citizens).

Petitions received.

NOTICES

Presentation

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

That the Senate—

(a) acknowledges the investment potential in the Hunter Valley which continues to grow despite the closure of BHP’s steel smelting operations;

(b) notes:

(i) the diversity of the region, including its tourism, education, wineries and horse breeding industries, where investment has flourished and could continue to grow, particularly with the region’s proximity to Sydney and the range of transport available, and

(ii) the success of the current investors, such as businessman Gerry Harvey, in the commercial industry in Newcastle and Maitland, who on 15 March 2000 told the Newcastle Herald that there was no evidence of any downturn in his business following the end of steel smelting and the potential for return was obvious;

(c) commends both the State and Federal governments for developing regionally specific packages to cushion the structural change in the Hunter economy; and

(d) urges governments at all levels to develop additional programs aimed at investment into the Hunter region, where the potential for further jobs growth is enormous.

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

That the Senate—

(a) notes:

(i) the current edition of Choice magazine contains the ‘Piggy Bank’ awards, setting out consumer satisfaction ratings with financial institutions,

(ii) that of the 5 670 readers who responded to the survey, only 10 per cent were satisfied with the service offered by the big four banks, despite those institutions recording a collective $29 billion in profit over the past 5 years, and

(iii) that survey respondents tended to record higher levels of customer satisfaction for smaller banks and financial institutions; and

(b) urges the Government to consider the ramifications of further mergers between financial institutions, particularly with regard to these institutions’ capacity to adequately service the needs of their customers.

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

That the Senate reaffirms its total opposition to the full sale of Telstra and calls on the Government to remove any assumed proceeds from the full sale of Telstra from both the May 2000 Budget and future budgets.

Withdrawal

Senator COONAN (New South Wales) (9.31 a.m.)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that, at the giving of notices on the next day of sitting, I shall withdraw business of the Senate notice of motion No. 1 standing in my name for five sitting days after today for the disallowance of the notice of approval of amendment No. 27 of the National Capital Plan made under section 21 of the Australian Capital Territory (Planning and Land Management) Act 1988. I seek leave to make a short statement.

Leave granted.

Senator COONAN—Yesterday I gave a notice of motion to disallow this amendment in order to give the committee sufficient time to properly consider the instrument. It did so at its meeting this morning and, with the assistance of a briefing from officers of the National Capital Authority, agreed that the notice be withdrawn.
Presentation

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

That the Senate notes that:

(a) it is 53 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 28 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 replacement for 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 Chris Evans to move, on the next day of sitting:

That there be laid on the table by the Minister representing the Minister for Aged Care (Senator Herron), no later than 4 pm on 4 April 2000, all records of communications between the Department of Health and Aged Care and the Minister for Aged Care and/or her office relating to the Riverside Nursing Home, from 14 February to 6 March 2000.

Senator CAL VERT (Tasmania) (9.33 a.m.)—On behalf of Senator Alston, I give notice that on the next day of sitting he will move:

That the Senate—

(a) notes that Senator Allison told the Senate on 9 March 2000 that ‘the customer service guarantee was not an initiative of the government, it was something that the Democrats put forward’;

(b) notes that:

(i) the Australian Democrats’ 1996 election policy supported the Coalition’s customer service guarantee scheme,

(ii) the Environment, Recreation, Communications and the Arts References Committee 1996 report Telstra: To sell or not to sell? chaired by Senator Lees acknowledged that the Telstra (Dilution of Public Ownership) Bill 1996 (the bill) would ‘introduce a new scheme for a customer service guarantee’, and

(iii) the first mention by Senator Allison in the Senate on this issue was on 17 October 1996 when she stated that ‘The bill promises a customer service guarantee to establish mandatory service levels in a number of areas’;

(c) notes that:

(i) the explanatory memorandum to the bill included a customer service guarantee, and

(ii) the Minister’s second reading speech relates the consumer safeguards to the Liberal Party’s 1996 pre-election document ‘Better Communications’;

(d) notes that Senator Allison in the Senate on 15 March 2000 asked the Minister to acknowledge that the consumer guarantee was in the Coalition policy but not put in the legislation, and to acknowledge publicly that it was the Democrats’ amendment which put it there;

(e) notes that Senator Allison not only acknowledged in the Senate on 11 December 1996 that the Government put the customer service guarantee in the sale bill in the first place, but also recorded her very serious reservations about the scheme; and

(f) calls on Senator Allison to clarify the situation.

The PRESIDENT—Senator Calvert, that is an extremely long notice of motion. I suspect it is out of order on a number of grounds. It contains quotations, which ought not to be included in notices of motions. It may not be acceptable.

Senator Chris Evans to move, on the next day of sitting:

That the following matters be referred to the Community Affairs References Committee for inquiry and report by 30 September 2000:

(a) the impact of the goods and services tax (GST) on charitable and non-profit organisations and the public health sector, including:
(i) the compliance costs associated with administering the GST; and
(ii) the impact on services that these new arrangements will have;
(b) the impact of the proposed capping of the fringe benefits tax concessions applying to charitable and non-profit organisations and the public health sector;
(c) the data and assumptions used by the Government in developing its policies covered in (a) and (b);
(d) the consultative input from the charitable and non-profit organisations and the public health sector into the ongoing processes of policy design, drafting of legislation and the administration of taxation;
(e) possible improvements in the administration and the accountability of the taxation authorities in relation to taxation of the charitable and non-profit organisations and the public health sector; and
(f) any other taxation matter that the committee considers relevant to the charitable, non-profit and public health sectors.

Withdrawal

Senator COONAN (New South Wales) (9.36 a.m.)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that, at the giving of notices on the next day of sitting, I shall withdraw business of the Senate notice of motion No. 1 standing in my name for 11 sitting days after today for the disallowance of the Northern Prawn Fishery Amendment Management Plan 1999 (No. NPF02) made under subsection 20(1) of the Fisheries Management Act 1991. This amendment to the Plan changes the method of controlling fishing in the Fishery from one based on boat dimensions to one based on catching capacity.

The Committee would appreciate your advice on the following matters:

. Whether it is more appropriate for this matter to be dealt with by parliamentary enactment rather than regulation. (see: Senate Standing Order 23(3)(d));
. The extent to which, as indicated in the Regulation Impact Statement, ‘some fishers will be more proportionally disadvantaged than others’ and the impact on the viability of their fishing operations; and
. The extent of the consultation process, including the participation of individual fishers; and
. Whether the Plan may trespass unduly on personal rights and liberties and, in particular, whether the instrument which affects a person’s livelihood and ability to carry on a business is fair. (see: Senate Standing Order 23(3)(b)).

The Committee would be grateful to receive your advice on the matters listed above. The Northern Prawn Fishery (QLD) Trawl Association Inc has written to the Committee on this instrument and I attach a copy of it for your consideration.

Yours sincerely
Helen Coonan
Chair
Standing Committee on Regulations and Ordinances
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Northern Prawn Fishery Amendment Management Plan 1999 (No. NPF 02) made under subsection 20(1) of the Fisheries Management Act 1991. This amendment to the Plan changes the method of controlling fishing in the Fishery from one based on boat dimensions to one based on catching capacity.

The Committee would be grateful to receive your advice on the following matters:

. Whether it is more appropriate for this matter to be dealt with by parliamentary enactment rather than regulation. (see: Senate Standing Order 23(3)(d));
. The extent to which, as indicated in the Regulation Impact Statement, ‘some fishers will be more proportionally disadvantaged than others’ and the impact on the viability of their fishing operations; and
. The extent of the consultation process, including the participation of individual fishers; and
. Whether the Plan may trespass unduly on personal rights and liberties and, in particular, whether the instrument which affects a person’s livelihood and ability to carry on a business is fair. (see: Senate Standing Order 23(3)(b)).

The Committee would be grateful to receive your advice on the matters listed above. The Northern Prawn Fishery (QLD) Trawl Association Inc has written to the Committee on this instrument and I attach a copy of it for your consideration.

Yours sincerely
Helen Coonan
Chair
Senator Helen Coonan
Chair
Standing Committee on Regulations and Ordinances
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Helen

I refer to your letter dated 9 December 1999 (Cttee/195/99) in which you sought advice on behalf of the Committee concerning certain aspects of the Northern Prawn Fishery Amendment Management Plan 1999 (No. NPF02). Your letter raised a number of specific issues on which I
have sought advice from the Australian Fisheries Management Authority (AFMA) in preparing this response.

A detailed response to the four matters you raised is attached. I trust that this response adequately addresses your concerns.

Yours sincerely

WARREN TRUSS

Response to SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES on Northern Prawn Fishery Amendment Management Plan 1999 (No. NPF02).

Request 1

Whether it is more appropriate for this matter (the amendment to the Management Plan) which changes the method of controlling fishing in the Fishery from one based on boat dimensions and power to one based on net size to be dealt with by parliamentary enactment rather than regulation.

Response

The Australian Fisheries Management Authority (AFMA) was established under the Fisheries Administration Act 1991 (the Administration Act) with functions and responsibilities relating to the management of fisheries on behalf of the Commonwealth (section 3 of the Administration Act).

The functions of AFMA as set out in section 7 of the Administration Act include:

devising management regimes in relation to Australian fisheries;

consulting and cooperating with the industry and members of the public generally; and

as provided under the Fisheries Management Act 1991 (the Management Act) establish and allocate fishing rights.

In its performance of these functions, AFMA must pursue the objectives set out in section 6 of the Administration Act which include objectives relating to ecologically sustainable development, economic efficiency and accountability to the fishing industry and to the Australian community.

Section 17 of the Management Act provides that AFMA must determine plans of management for all fisheries and before determining such plans there is a statutory requirement that AFMA consult with those engaged in fishing and submit a draft plan for public comment. Amongst other things, the plan is to set out the method by which fishing capacity in the Fishery is to be measured which may include a method based on a particular area, type and quantity of fish and/or a particular kind or size or quantity of fishing equipment. After determining a management plan, AFMA must submit the plan to the Minister for acceptance who may reject the plan if he/she is not satisfied that AFMA gave due consideration to any representations it received and conducted adequate consultations before determining the plan.

Section 20 of the Management Act provides that AFMA may at any time amend a management plan providing that it follows the same procedures as used in the determination of a plan including those relating to consultation and public representations.

Plans of management must set out the objectives of the management plan which must be consistent with AFMA's statutory objectives (subsection 17(5)). Plans of management may also:

provide for management of the Fishery by a system of statutory fishing rights; and

specify the kind and quantity of equipment that may be used in the Fishery.

The fisheries management structure established by Parliament under the Administration Act and the Management Act is a comprehensive and prescriptive package with provision for:

Specialist Tribunal (Statutory Fishing Rights Allocation Review Panel) review of allocation decisions made by AFMA or a Joint Authority pursuant relating to quantum of statutory fishing rights granted under a plan; merits review of certain decisions by the Administrative Appeals Tribunal; and decisions of AFMA are generally subject to judicial review by the Federal Court under the Administrative Decisions (Judicial Review) Act 1977.

AFMA's determination of management plans is subject to Executive scrutiny through the requirement that plans of management be accepted by the Minister before they can become law, and to Parliamentary scrutiny through the tabling and disallowance process.

In summary, Parliament has put in place legislation establishing a statutory authority, AFMA, to manage Commonwealth fisheries. The legislation includes comprehensive review rights and provides for Executive and Parliamentary scrutiny. It is appropriate therefore to use regulation rather than parliamentary enactment.

Request 2

The extent to which, as indicated in the Regulation Impact Statement, 'some fishers will be more proportionately disadvantaged than others’ and the impact on the viability of their fishing operations.
Response

Under the amendment, the management of the Fishery will move from a system where the Government attempts to restrict prawn catches to sustainable levels by controlling the size of boats in the Fishery and their engines, to a more direct system limiting the size of nets (headrope length) used. This change which involves changing from Class A Statutory Fishing Right (SFR) to gear SFR is consistent with AFMA's legislative objectives.

Each operator's net size is calculated by the number of gear SFRs which they hold in the Fishery. Gear SFRs will be granted on a one for one basis with the existing Class A SFRs to preserve operators current proportional share of the Fishery. The amount of current Class A units held largely reflects the level of investment individual operators have in the fishery. The amendment has also incorporated an overall approximate reduction of 15 percent in the amount of net used in the Fishery to reduce effort in the Fishery and provide some protection to over-exploited tiger prawn resources.

There are currently no limits of headrope length and operators can use any amount they choose regardless of the number of Class A SFRs they hold. While there will be a 15 percent reduction in the amount of net in the fleet, there is not a direct reduction by 15 percent in the size nets deployed by individual operators. Currently there are some operators who use proportionally large lengths of net (headrope) in relation to the number of Class A SFRs (vessel size and power) which they own. Conversely, there are a number of operators who use proportionally smaller lengths of net (headrope) in relation to their holding of SFRs, or who hold extra SFRs purchased over a period of time to offset any future reductions such as this. In many cases the differences in SFR holdings and net usage reflect an operator choosing to operate in another, or several other, fisheries where the management arrangements may impose limits on the maximum boat size (and therefore they need less Class A SFR to operate in the NPF).

After the reduction, each operator will be able to continue to fish in the Fishery and will be provided with the flexibility to manage their business. SFRs are fully transferable and they may buy or lease more SFRs from other operators to increase the size of their nets, retain the same number of SFRs and adjust their nets accordingly, or sell or lease some or all of their SFRs to others. Under the new arrangements, they can also alter other inputs into their business, such as the size of their boat, the number of crew they employ, the method of production or value adding, or the size or fuel efficiency of their engine to optimise their operations.

It is recognised that under the amendment very small operators (less than 300 Class A SFRs) will have their headrope length reduced by, on average, about 29 percent. To provide some opportunity for these operators to adjust their business operations over a period of time these very small operators will be provided with “top up” SFRs free of all charges for two years. These small operators will be issued with sufficient top up SFRs to enable them to tow 30 metres of headrope which is in line with their current fishing practices. A graphical representation of the reductions each individual holder will have in headrope including and excluding top up SFR are at Figures 1 and 2 respectively.

[The committee has resolved not to publish these figures as they identify specific operators and their commercial operations.]

Request 3

The extent of the consultation process, including the participation of individual fishers.

Response

Consultations started on this new system of management in 1991 and have been extensive. A summary table of consultations on gear based management is attached at Attachment A.

AFMA's management philosophy is based on a partnership approach to the management of fisheries under its jurisdiction. Co-operation with relevant stakeholders, in particular, the commercial fishing industry, government agencies, environmental groups, and others stakeholders with an interest in the management of the Commonwealth's fisheries resources, is a vital part of this approach.

The Northern Prawn Fishery Management Advisory Committee (NORMAC), established under Section 55 of the Administration Act, is AFMA's conduit for communicating with fishers in the NPF and for obtaining advice on the management of the NPF. In November 1991, NORMAC set up a Working Group to advise on options for managing the Fishery after the restructuring was complete. This Working Group submitted its report, Future Management Options for the Northern Prawn Fishery to NORMAC in November 1992. This report examined a number of options but identified a move to gear unit SFRs as the Working Group’s preferred management option.

Since that time, there has been a continuing debate, both in NORMAC and in industry, about the
future management of the Fishery. Because some fishers will be differentially impacted in the immediate transition to a gear unit SFR management system, there has been a fairly active campaign against the proposed changes. One element of this campaign has been the claim that AFMA has not adequately consulted with industry on the proposed amendment.

Contrary to this claim, the delay in implementing the Working Group’s 1992 recommendations has been due to attempts to satisfy the interests of all industry sectors in selecting the most appropriate translation arrangements to gear unit SFRs.

An understanding of the workings of NORMAC is essential to appreciate the extent of the consultation:

four of the nine members of NORMAC are drawn from industry. These members are appointed, by AFMA, from each of the four recognised industry sectors, after consultation with that sector. The four industry sectors are: the major fishing fleet operators; the Western Australian based operators; the Northern Territory based operators; and the Queensland based operators; and each of these sectors have their own organisation which meets prior to each NORMAC meeting to consider matters on the agenda and to advise the appropriate NORMAC member on the approach that that sector considers should be taken on each agenda item. Each SFR holder in the Fishery is eligible to be a member of at least one of these industry organisations. In addition, the four industry organisations caucus together immediately prior to each NORMAC meeting to endeavour to develop a common industry position with respect to each item on the agenda.

There have been a total of 19 NORMAC meetings held since November 1992 when the present proposal to move to gear unit SFRs was first discussed. The gear unit SFR proposal was a major item for discussion at these meetings. NORMAC meetings are generally open meetings and are well attended by individual fishermen. Fishermen are provided with an opportunity to speak at the meeting with the industry members and the Chair. Following each NORMAC meeting a Chairman’s Summary of the meeting and the outcome of matters discussed was sent to each SFR holder in the Fishery. NORMAC also holds annual public meetings.

All aspects of a possible change from Class A SFRs to gear unit SFRs were canvassed at three well-attended NPF Gear Unit Workshops which were held in 1996 (one in Perth on 7 February 1996 and two in Cairns, on 9 February 1996 and 2 July 1996 respectively). There have also been a number of pre-season workshops held which have enabled discussion of the topic.

Consultations were also conducted with independent experts. Professor Bob Lidner of Economic Research Associates Perth provided advice on economic aspects on the proposed management changes, and Mr Garry Downes AM QC and Mr Patrick Brazil AO (then of Allen, Allen and Hemsley) contributed advice on legal aspects of the proposed changes during the development period for the amendment. In addition, the draft amendment was reviewed by Mr Brazil prior to its release for public comment.

As required under Section 17 of the Management Act, AFMA invited public comment on the draft amendment during the period from 12 August 1998 until 14 September 1998. In addition to advertising the release of the draft amendment for comment in the Commonwealth Government Gazette and major daily newspapers, the amendment was provided to all NPF SFR holders and other interested persons contained on AFMA’s register of persons interested in Management Plans. Also, comments on the draft amendment were specifically sought from key non-government environmental organisations and from all Aboriginal Land Management Councils who represent northern coastal Aboriginal communities.

AFMA received 140 written submissions which were taken into consideration. These representations were summarised and subsequently considered by NORMAC on 17 November 1998 and the AFMA Board on 3 December 1998. AFMA responded to each individual representation.

Finally, in April 1999, AFMA established an independent Allocation Advisory Panel (AAP) to provide advice on the translation from Class A SFRs to gear unit SFRs. The AAP was composed of:

the Hon. John Toohey AC QC, a retired Justice of the High Court of Australia (Presiding Member);
Dr Julian Morison, an economist with Econ-Search Pty Ltd; and
Mr Horst Fischer, a fisher from Lakes Entrance in Victoria who is involved in the South East Non-Trawl and Southern Shark fisheries.

The AAP wrote to all operators and invited them to submit a written submission on the issue. The AAP also held three meetings in Cairns, Darwin and Perth which enabled the public to come and put their views to the Panel. The Panel then pro-
vided a report to the AFMA Board which recommended the translation formula be a one for one exchange of Class A SFRs for gear SFRs as is provided for in the draft amendment.

Request 4

Whether the Plan may trespass unduly on personal rights and liberties and, in particular, whether the instrument which affects a person’s livelihood and ability to carry on a business is fair.

Response

Perhaps the starting point should be to consider that Australian fisheries are a community owned resource to which the Commonwealth has given privileged access to certain persons and no charge, apart from annual management levies, is made to those persons for this access.

The access granted in the Northern Prawn Fishery is statutory fishing rights granted under the management plan made under the Management Act. These statutory fishing rights (SFRs), called Class A SFRs, are currently based on boat dimensions, but under amendments to the management plan will be based on net headrope length.

SFRs are created under the management plan and can be changed should AFMA consider it necessary. Such change would only occur if AFMA were of the opinion, after following the procedures of consultation and public comment required under the Management Act, that change would enable AFMA to better pursue the statutory objectives determined by Parliament in the Administration and the Management Acts. Fisheries management operates in a dynamic environment and it is appropriate that SFRs granted are subject to change in the plan.

AFMA has a duty to pursue the statutory objectives set out in the Administration and Management Acts and failure to pursue those objectives may result in legal proceedings against AFMA.

change of Class A SFRs for gear SFRs as is provided for in the draft amendment.

AFMA, after lengthy consideration and consultation, decided that gear based management better pursued its statutory objectives than the current Class A SFR (boat dimension based) management.

As access to the NPF is restricted, a person wanting to enter the Fishery must purchase the SFRs of an existing SFR holder. The evidence is that the value of access rights is based on the number of Class A SFRs that are held. The amendment proposes a one for one grant of gear based SFRs for each Class A SFR right owned and in so doing preserves current participants’ share of the fishing capacity of the Northern Prawn Fishery. If changes were made which altered the asset value of participants and such changes were not based on sound management reasons in pursuit of the objectives of the legislation, such action could attract a legal challenge as being an acquisition of property on other than just terms.

Associated with the change in the form of SFR “currency” is also a reduction by 15 percent in the amount of net which the fleet may be tow. This reduction in the amount of net, being the better measure of fishing effort, is necessary to address stock concerns and increases in the fleet efficiency. All operators may trade in SFR to adapt to this effort reduction with small operators having a two year period in which to adjust.

All fisheries management decisions restrict in some way a person’s rights and liberties. AFMA, in pursuing its statutory objectives and acting in accordance with the consultative procedures in its legislation, is ensuring that any such restriction is no more than was intended by Parliament in enacting the Administration and Management Acts.
# Consultation Between AFMA, NORMAC and NPF SFR Holders on Gear Units/Effort Reduction Proposals Between 1992 and 1998

<table>
<thead>
<tr>
<th>Date</th>
<th>Consultation Method</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991/92</td>
<td>Future Options Working Group</td>
<td>Future management options for the NPF examined. Options include boat units, time units, area units, gear units, competitive TAC, Individual Transferable Quota.</td>
</tr>
<tr>
<td>October 1992</td>
<td>AFMA Circular F92/0819</td>
<td>Advice to unit holders from NPF Manager summarising findings and conclusions of Future Options Working Group Report, including preferred future management option is gear units.</td>
</tr>
<tr>
<td>November 1992</td>
<td>NORMAC 29 Agenda</td>
<td>Includes Future Options Working Group Report for NORMAC and advice that preferred option is gear units.</td>
</tr>
<tr>
<td>November 1992</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports NORMAC noted findings and recommendations in Future Options Working Group Report on future management options; agreed report to be released to NPF industry but further consideration of report be deferred until after compulsory reduction on 1 April 1993; agreement to lift headrope restrictions and reduce daylight fishing ban by two hours on 1/4/93.</td>
</tr>
<tr>
<td>November 1992</td>
<td>Future Management Options for the Northern Prawn Fishery Report</td>
<td>Reports that Future Options Working Group preferred management option is gear units as it is a better measure of fishing effort than A units, is more responsive and more flexible when future adjustment is required.</td>
</tr>
<tr>
<td>February 1993</td>
<td>NORMAC 30 Agenda</td>
<td>Future Options Working Group seek direction from NORMAC on its future role after compulsory surrender on 1/4/93.</td>
</tr>
<tr>
<td>February 1993</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports that NORMAC 30 agreed Future Options Working Group to determine timetable and program for industry consultation on preferred management options following compulsory surrender on 1/4/93.</td>
</tr>
<tr>
<td>May 1993</td>
<td>NORMAC Special meeting Agenda</td>
<td>Future Options Working Group seek direction from NORMAC on recommendations of the Report and the conclusion that gear units are the preferred management regime for the NPF.</td>
</tr>
<tr>
<td>June 1993</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on special meeting of NORMAC -consideration given to the Future Options Report which raised issues relating to changes to gear, adjustment options and engine horsepower.</td>
</tr>
<tr>
<td>January 1994</td>
<td>AFMA Circular 3/94</td>
<td>Invitation to attend NPF Tiger Prawn on possible management strategies and research needs.</td>
</tr>
<tr>
<td>February 1994</td>
<td>Tiger Prawn Workshop Agenda</td>
<td>Agenda includes discussion papers on state of the stocks, closures, spawning and recruitment, effort creep, management options for tiger prawns.</td>
</tr>
<tr>
<td>February 1994</td>
<td>Co-ordinator’s Summary</td>
<td>Co-ordinator’s report on the NPF Tiger Prawn Workshop including reports on growth in effective fishing effort and need to reduce future fishing effort.</td>
</tr>
<tr>
<td>February 1994</td>
<td>NORMAC 33 Agenda</td>
<td>Includes discussion papers on ITQ study, the outcomes of the Tiger Prawn Workshop, ABARE report on economic implications of closures.</td>
</tr>
<tr>
<td>February 1994</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on outcomes of NORMAC 33 noting CSIRO advice to the Tiger Prawn Workshop and pre-season conference that an effective boat day of effort has risen by about 40% and was similar to 1986 levels; rejection by NORMAC of Individual Transferable Quotas as a management option for the NPF; NORMAC consideration of ABARE study on economic implications of closures.</td>
</tr>
<tr>
<td>March 1994</td>
<td>Letter from AFMA Chairman to NORMAC</td>
<td>Advises that AFMA Board is concerned about flaws in A unit system and increases in effort in the NPF. Seeks NORMAC/industry development of future management strategies to ensure long term biological and economic sustainability of the tiger prawn fishery.</td>
</tr>
<tr>
<td>July 1994</td>
<td>NORMAC 34 Agenda</td>
<td>Discussion paper on future management, role of Future Options Working Group.</td>
</tr>
<tr>
<td>Date</td>
<td>Consultation Method</td>
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<tr>
<td>July 1994</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on outcomes of NORMAC 34 including consideration of re-activating Future Options committee and its role in progressing gear unit debate with industry; agreement to defer further consideration of gear units option until after transition to 1991 Act; notes Boards concerns and the need for NORMAC to address the concerns. Notes CSIRO advice that continued effort creep would require 30% reduction in 1998, agrees to further investigate legal, administrative, allocation aspects of gear units for industry discussion in July 1996.</td>
</tr>
<tr>
<td>July 1995</td>
<td>NORMAC 36 Agenda</td>
<td>Discussion paper on gear units/future options report.</td>
</tr>
<tr>
<td>July 1995</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on outcomes of NORMAC 36 and NORMAC’s consideration of the report from the Future Management Options Working Group.</td>
</tr>
<tr>
<td>September 1995</td>
<td>AFMA Circular 6/95</td>
<td>Future management options for the NPF. NORMAC to hold special meeting to address the Future Options Working Group Report.</td>
</tr>
<tr>
<td>November 1995</td>
<td>NORMAC 37 Agenda</td>
<td>Discussion paper on gear unit management.</td>
</tr>
<tr>
<td>November 1995</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on outcomes of NORMAC 37 and agreement that gear units are more flexible and a better measure of effort than the A units system; agreement to further investigate the gear unit system.</td>
</tr>
<tr>
<td>January 1996</td>
<td>AFMA Circular 1/96</td>
<td>Background paper for industry consideration of gear units as alternative management measure for the NPF, notice of forthcoming meetings on gear unit management between industry and independent consultant, Ian Somers.</td>
</tr>
<tr>
<td>February 1996</td>
<td>Somers Report</td>
<td>Reports on meetings with industry on concept and detail of gear units management by Ian Somers; includes recommendations for progressing industry/NORMAC discussions on gear units</td>
</tr>
<tr>
<td>February 1996</td>
<td>AFMA Circular 2/96</td>
<td>Advises that gear unit meetings with industry were held in Perth and Cairns in February 1996—includes reports of the gear unit meetings.</td>
</tr>
<tr>
<td>February 1996</td>
<td>Discussion paper</td>
<td>Discussion paper on gear units proposal.</td>
</tr>
<tr>
<td>Undated</td>
<td>Letter from NPF Manager</td>
<td>Summary of Working Groups conclusions and recommendations on Future Management Options for the NPF; advice that preferred management option is gear units.</td>
</tr>
<tr>
<td>May 1996</td>
<td>Discussion Paper</td>
<td>Discussion paper circulated on options for surveillance of gear unit system.</td>
</tr>
<tr>
<td>June 1996</td>
<td>Gear Units Workshop Agenda/Mtng</td>
<td>Invitation, nomination form and agenda for the NORMAC Gear Units Workshop. Agenda items include benefits of gear unit management, proposals on transition formula, optimal amount of total gear in the fishery, surveillance options.</td>
</tr>
<tr>
<td>July 1996</td>
<td>NORMAC Public meeting</td>
<td>Reports on state of stocks, effort creep occurring, considerable time spent by NORMAC in 1995 and 1996 reviewing gear units as a future management option.</td>
</tr>
<tr>
<td>July 1996</td>
<td>NORMAC 38 Agenda</td>
<td>Outcomes of gear unit workshop and recommendation to progress gear unit discussions included in agenda.</td>
</tr>
<tr>
<td>July 1996</td>
<td>NORMAC Chairman’s Summary</td>
<td>Report on outcomes of NORMAC 38 including discussion on gear unit workshop outcomes and agreement to progress gear unit proposal with industry.</td>
</tr>
<tr>
<td>July 1996</td>
<td>Chairman’s Summary of NORMAC Public Meeting</td>
<td>Report on NORMAC Public Meeting included progress of industry/NORMAC consideration of gear unit proposal including in principle</td>
</tr>
<tr>
<td>Date</td>
<td>Consultation Method</td>
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<tr>
<td>July 1996</td>
<td>AFMA Annual Report</td>
<td>Agreement to gear units as an alternative management regime for the NPF. 1995/1996 Annual Report records considerable amount of time spent investigating the proposal to introduce a gear unit system; reports increases in effective fishing effort on tiger prawns.</td>
</tr>
<tr>
<td>November 1996</td>
<td>Independent advice on the economic implications of gear unit management</td>
<td>Report from Professor Bob Lindner, independent economist of Economic Research Associates and Dean at the University of Western Australia on the economic implications of gear unit versus A unit management in the NPF.</td>
</tr>
<tr>
<td>November 1996</td>
<td>Report on the impact of environmental factors and new technology on the NPF</td>
<td>CSIRO/FRDC project assessing the impact of environmental factors and new technology in the NPF indicates technological advances such as GPS causing increases in efficiency and effective fishing effort.</td>
</tr>
<tr>
<td>December 1996</td>
<td>Letter from NPF Manager</td>
<td>Includes discussion paper – Gear Unit versus A-units in the NPF.</td>
</tr>
<tr>
<td>December 1996</td>
<td>Gear Units Workshop Report</td>
<td>Report on Gear Units Workshop held in July 1996 “Summary of Proceedings and Conclusions” indicates in principle support gear unit management but conflicting views on the allocation formula, includes options for surveillance.</td>
</tr>
<tr>
<td>December 1996</td>
<td>NORMAC 39 Agenda</td>
<td>Includes Gear Units Workshop Report – “Summary of Proceedings &amp; Conclusions”; independent advice from Professor Bob Lindner, on economic implications of gear unit management versus A unit management in the NPF; legal advice on the gear unit proposal; scientific advice on the implications of moving to gear units for the NPF data base; options for surveillance of the gear unit system; performance indicators for the NPF.</td>
</tr>
<tr>
<td>December 1996</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports NORMAC consideration of outcomes of NORMAC 39 including report “NPF Gear Units Workshop - summary of Proceedings and Conclusions” and notes in principle support by industry for gear unit management but concerns exist regarding the transition formula. Reports NORMAC concern that 1995 stock assessment report indicates increases in fishing effort continue and effort levels higher than that required for maximum sustainable yield; reports CSIRO advice that continued effort creep would require a compulsory surrender of A units of 20-25% in 1999. Reports independent economic advice indicates there are no major negative economic implications of gear unit management; notes legal advice on gear units and the need for transition formula to be proportional; notes scientific advice on the implications of moving to gear units on the NPF data base and reports on surveillance options for gear units.</td>
</tr>
<tr>
<td>February 1997</td>
<td>NORMAC 40 Agenda</td>
<td>Discussion paper on gear unit versus A unit management/effort reduction.</td>
</tr>
<tr>
<td>February 1997</td>
<td>NORMAC Chairman’s Summary</td>
<td>Report on outcomes of NORMAC 40 including discussions on A units versus gear units and effort reduction measures.</td>
</tr>
<tr>
<td>February 1997</td>
<td>NORMAC 40A Agenda</td>
<td>Discussion papers from each industry organisation on preferred management option for NPF, effort reduction measures.</td>
</tr>
<tr>
<td>April 1997</td>
<td>NORMAC Chairman’s Summary</td>
<td>Report on outcomes of NORMAC 40(A) – including agreement to seek additional advice from the NPFAG on effort creep, state of stocks optimum level of effort required to achieve sustainable biological yield of tiger prawn stocks, options for reducing effort; agreement to a discussion paper on gear restrictions based on A units being submitted for consideration at NORMAC 41</td>
</tr>
<tr>
<td>June 1997</td>
<td>Report on status of tiger prawn stock at end of 1996</td>
<td>NPF Assessment Group report on Status of Tiger Prawn Stocks at the end of 1996 indicates excess effort on tiger prawns due to effort creep and effort approximately 10% higher than that required for maximum sustainable yield.</td>
</tr>
<tr>
<td>Date</td>
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<tr>
<td>June 1997</td>
<td>NORMAC Chairman</td>
<td>Includes discussion paper on implementing gear restrictions as interim measure, advised AFMA is investigating the most appropriate legislative mechanism for implementing gear restrictions.</td>
</tr>
<tr>
<td>June 1997</td>
<td>NORMAC 41 Agenda</td>
<td>Discussion papers on gear units/effort reduction including proposal to implement gear restrictions based on A units as interim measure; includes report on status of tiger prawn stocks at end of 1996 and NPFAG advice on optimal effort levels, state of stocks, effort creep, options for effort reduction.</td>
</tr>
<tr>
<td>July 1997</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on discussions at NORMAC 41 including NPFAG Report on Future Management Options based on stock status indicates effort creep continues, fishing effort on tiger prawns too high, recommends effort reduction. NORMAC notes FAG report validated by independent scientific expert. Reports NORMAC agreement to compulsory surrender of A units in 1999 if gear units were not agreed to; interim closures proposed to offset effort creep in 1997, decision on long term management required quickly.</td>
</tr>
<tr>
<td>July 1997</td>
<td>Open letter from AFMA Chairman to NPF Industry</td>
<td>Advises Board agreement to NORMAC recommendation to implement reduction in standardised fishing effort of 20-25% at beginning of 1999. Requests NORMAC advise AFMA Board on quantum and method of reduction by 21/11/97.</td>
</tr>
<tr>
<td>July 1997</td>
<td>AFMA 'News From the Board'</td>
<td>Advises of AFMA Board decision to implement reduction in fishing effort in 1999 to offset effort creep. Advises that Board is waiting for NORMAC advice on quantum and method of reduction.</td>
</tr>
<tr>
<td>September 1997</td>
<td>NORMAC/CSIRO/Industry Research Forum Agenda</td>
<td>Items for discussion between industry/NORMAC and CSIRO circulated – agenda items targeted at addressing industry concerns relating to validity of NPF data, effort increases, stock status and need for effort reduction.</td>
</tr>
<tr>
<td>October 1997</td>
<td>Letter from AFMA Chairman</td>
<td>Seeks industry consideration and advice to NORMAC of mechanism for adjustment in line with NORMAC recommendation/ AFMA Board decision to implement adjustment in fishing effort through A units or gear units at the start of 1999.</td>
</tr>
<tr>
<td>November 1997</td>
<td>CSIRO report on reducing standardised fishing effort</td>
<td>CSIRO advises on level of reduction required, and advice on reducing fishing effort through an A unit reduction rather than through gear units.</td>
</tr>
<tr>
<td>November 1997</td>
<td>NORMAC 42 Agenda</td>
<td>Discussion papers on A units or gear units, effort reduction. NPFAG recommendations on effort reduction, legal advice on transition formula from A units to gear units.</td>
</tr>
<tr>
<td>November 1997</td>
<td>Northern Prawn Fishery Industry Organisation open meeting</td>
<td>Industry meeting to discuss gear units/effort reduction facilitated by independent consultant David Trebeck of ACIL. Unanimous agreement by attendees to implement gear units, level of reduction, top up units for smaller operators reached. NPF (Qld) Trawl Association invited but did not attend.</td>
</tr>
<tr>
<td>November 1997</td>
<td>David Trebeck Report</td>
<td>Report by David Trebeck Independent Facilitator from ACIL of NPFIO discussions and recommendations to adopt gear units/effort reduction circulated to NORMAC/industry/AFMA Board.</td>
</tr>
<tr>
<td>November 1997</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on outcomes of NORMAC 42 including unanimous agreement by members to recommend implementation of gear units, level of effort reduction through reduced gear towed, proportional transition from A units to gear units, non-transferable top up units for small operators to AFMA Board for consideration.</td>
</tr>
<tr>
<td>December 1997</td>
<td>AFMA Circular</td>
<td>Advises that the AFMA Board approves in principle the NORMAC recommendation on the gear units/effort reduction package and is seeking further...</td>
</tr>
<tr>
<td>Date</td>
<td>Consultation Method</td>
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</tr>
<tr>
<td>February 1998</td>
<td>AFMA Circular 98/1</td>
<td>Advises that the AFMA Board formally approves the gear unit/effort reduction package following consideration of legal advice on top up units.</td>
</tr>
<tr>
<td>March 1998</td>
<td>NORMAC 43 Agenda</td>
<td>Discussion paper on rules proposed for gear units management, including transition formula and proposed total allowable gear towed with built-in effort reduction, surveillance options, additional interim closures for 1998.</td>
</tr>
<tr>
<td>March 1998</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on outcomes of NORMAC 43 that proposed gear unit rules, including transition formula, effort reduction and total gear to be towed unanimously endorsed by NORMAC members; consideration by NORMAC of draft surveillance options paper; agreement to boundaries for additional interim spatial closures to offset effort creep in 1998.</td>
</tr>
<tr>
<td>April 1998</td>
<td>AFMA Circular 98/3</td>
<td>AFMA advises that it does not support the results of the plebiscite instigated by NPF(Qld) Trawl Ass. as it was outside of the formal AFMA/MAC consultation process.</td>
</tr>
<tr>
<td>July 1998</td>
<td>CSIRO report on benefits of effort reduction package</td>
<td>CSIRO report on benefits of effort reduction package based on a combination of reduced gear towed and increased interim closures.</td>
</tr>
<tr>
<td>July 1998</td>
<td>NORMAC 44 Agenda</td>
<td>Discussion paper providing draft amendments to NPF Management Plan 1995 required to implement gear units and effort reduction, NPFAG paper on state of tiger prawn stocks at end of 1997, discussion paper by NPF(Qld) TA to abandon gear unit management and replace with a three tiered gear restriction, gear units surveillance discussion paper, advice on tax implications of moving to gear units.</td>
</tr>
<tr>
<td>August 1998</td>
<td>NORMAC Chairman’s Summary</td>
<td>Reports on outcomes of NORMAC 44 including approval of draft amendments by majority of NORMAC members, recommendation to AFMA Board to approve the draft amendments for public comment. Advises of rejection by majority of NORMAC members of the NPF (Qld) Trawl Association Inc proposal that the gear units system of management be discarded and replaced with a three tier gear restriction as majority of NORMAC did not consider the NPF (QLD) Trawl Association proposal to be legally defensible or meet AFMA’s legislative objectives to the same extent as the gear unit/effort reduction package adopted to at NORMAC 42 and 43. Reports on discussion on gear unit surveillance options and request for further refinement of the options for consideration by NORMAC 45; reports NPFAG advice that effort creep continued in 1997 and fishing level too high for long term sustainability of tiger prawns.</td>
</tr>
<tr>
<td>August 1998</td>
<td>AFMA Board meeting</td>
<td>AFMA Board approves draft amendment to NPF Management Plan 1995 for public comment. AFMA Board notes NORMAC advice that the NPF (Qld) Trawl Association proposal to replace the gear unit package with a three tiered system was rejected by the majority of NORMAC members as it was not considered to be legally defensible and did not meet AFMA’s legislative objectives to the same extent as the gear unit/effort reduction package adopted by NORMAC 42 and 43.</td>
</tr>
</tbody>
</table>
**BUSINESS**

**Government Business**

Motion (by Senator Heffernan) agreed to:

That the following government business orders of the day be considered from 12.45 p.m. till not later than 2 p.m. today:

No. 7—Census Information Legislation Amendment Bill 2000,

No. 8—Timor Gap Treaty (Transitional Arrangements) Bill 2000,

No. 9—Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 1999, and

No. 5—Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 2000.

**General Business**

Motion (by Senator Heffernan) agreed to:

That the order of general business for consideration today be as follows:

(1) general business notice of motion no. 477 standing in the name of Senator Quirke, relating to the Workplace Relations Act; and

(2) consideration of government documents.

**NOTICES**

**Postponement**

Items of business were postponed as follows:

General business notice of motion no. 444 standing in the name of Senator Stott Despoja for today, relating to genetic privacy, postponed till 3 April 2000.

General business notice of motion no. 474 standing in the name of Senator Stott Despoja for today, relating to the Advertising Standards Board, postponed till 3 April 2000.

**COMMITTEES**

**Foreign Affairs, Defence and Trade References Committee**

**Extension of Time**

Motion (by Senator Hogg) agreed to:

That the time for the presentation of the reports of the Foreign Affairs, Defence and Trade References Committee on:

(a) the examination of developments in contemporary Japan and the implications for Australia be extended to 17 August 2000; and

(b) the economic, social and political conditions in East Timor be extended to 8 June 2000.
Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee
Extension of time
Motion (by Senator O'Brien, at the request of Senator McLucas) agreed to:
That the time for the presentation of the report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the consistency of the Native Title Amendment Act 1998 with Australia’s international obligations under the Convention on the Elimination of All Forms of Racial Discrimination be extended to 7 June 2000.

Scrutiny of Bills Committee
Extension of Time
Motion (by Senator Cooney) agreed to:
That the time for the presentation of the report of the Standing Committee for the Scrutiny of Bills on search and entry provisions in Commonwealth legislation be extended to 6 April 2000.

OK TEDI COPPER MINE: PAPUA NEW GUINEA
Senator BROWN (Tasmania) (9.41 a.m.)—I seek leave to have general business notice of motion No. 468, standing in my name and relating to BHP abandoning responsibility for the Ok Tedi copper mine in Papua New Guinea, taken as a formal motion.
Leave not granted.

Suspension of Standing Orders
Senator BROWN (Tasmania) (9.41 a.m.)—Pursuant to contingent notice, I move:
That so much of the standing orders be suspended as would prevent Senator Brown moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to General Business notice of motion No. 468.
The motion relates to news in the financial press that BHP has publicly noted that it is about to sell off or abandon its responsibility for the Ok Tedi copper mine in Papua New Guinea. BHP has a half share in the mine with the Papua New Guinea government. The world was rocked with the news of the disastrous effects on the environment and therefore on the social integrity of the Papua New Guinea people living in the vicinity when the sediment from the mine went down the river. It has effectively poisoned the river for hundreds of kilometres, it has killed the ecosystem below Ok Tedi and it has destroyed the agricultural and fishing potential in that region for the people who have based their livelihoods on it for thousands of years.
There have been moves through the courts for reparation for the people, but there is now a recognition by BHP, the Papua New Guinea government and everybody else who looks at this issue that a great deal of money would need to be spent not only to contain tailings from future mining operations but also to ameliorate the damage that has occurred to the magnificent Fly River ecosystem. We have here a situation which is not dissimilar to the recent cyanide spill from a Romanian mine that involved the Australian company Esmeralda, which I hear is now going into liquidation and is unable to meet its responsibilities there. BHP is a much bigger corporation and has the ability to shed its responsibilities and leave it to somebody else. I think this parliament has to face the impact on the nation’s reputation from mining corporations which create, wittingly or otherwise, enormous environmental and social devastation—whether it be domestically or elsewhere—and then leave it to somebody else to clean up. BHP, the Big Australian, has an international responsibility here to show the lead. It is not going to do that by abandoning that responsibility. Even if it gives half of the copper mine to Papua New Guinea, it is leaving it to a government which does not have the resources of this big multinational corporation to fix up, as best as is scientifically and technologically possible, the damage that has been done. That is an expensive task.
Where corporations are involved in activities that cause environmental damage, whatever they might be, those corporations are charged with the task of defraying that damage. It is their responsibility. The solution is not to abandon that responsibility and move out and leave it to somebody else.
One news report that I have seen this week—I think it was in the Financial Review—says that BHP has two other corporations lined up wanting to take its share in Ok Tedi. That in itself is not good enough. When you get transition of ownership, what hap-
pens is that the new owners take responsibility for what they do but take no responsibility for the past, and the past owners take no responsibility for what they have done either. So who is left to carry the tab for this? It is the indigenous people in and downstream from Ok Tedi and the environment. We are talking here not just about the locality; we are talking about hundreds of kilometres of a major river system upon which thousands of people have been dependent for their livelihood.

There is no doubt in my mind that BHP sees that this is more damaging to it than it is worth. But BHP went into this with its eyes open. It has made an enormous amount of money out of it. We, as a parliament, need to be in the business of persuading BHP to shoulder its responsibilities in the name of Australia as well as in the interests of the Papua New Guinea people.

Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (9.46 a.m.)—The government will be opposing this motion. Clearly, the shareholders of the Ok Tedi mine are the people involved with the decision making about the future of that mine. Clearly, it is the government’s position that we are not a shareholder and have no say in the matter.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.46 a.m.)—I thought that was a rather poor and inadequate contribution from Senator Heffernan in trying to explain to the Senate what the position of the government is in relation to urgency on this important question. But let me say—through you, Madam President—to Senator Brown that the opposition does share the concerns of Senator Brown and many other Australians about the environmental impact of the Ok Tedi copper mine in Papua New Guinea. There is no doubt that there are very serious and significant environmental issues that have arisen at Ok Tedi, and this is a matter that I think should be of concern to responsible Australians and to the Australian parliament.

One of the difficulties in matters like this is that Senator Brown has put down a motion before the Senate and the opposition finds itself in a position where, while it agrees with the thrust of the motion and the general sentiments that have been expressed by Senator Brown in both the motion and the contribution he has made, it does believe the motion in its current form ought not to be supported. If it moved to a debate, then the opposition would propose a range of amendments that it believes would significantly improve the motion.

I do not know—as you would understand, Madam President—because of the logistical difficulties we have in this place, whether the opposition amendments have actually been provided to Senator Brown. I do not know whether Senator Brown has had an opportunity to see those yet. Perhaps Senator Brown might be able to assist me with whether he has seen those amendments or not.

Senator Brown—Yes, and the amendments have been incorporated.

Senator FAULKNER—This is what we are not clear on. Senator Brown says to me that the amendments have been incorporated. But—through you, Madam President—Senator Brown asks for formality for this motion; he did not ask for formality of a motion on the Notice Paper as amended but the one that actually appeared on the Notice Paper. In this circumstance, I am not going to commit the opposition to supporting a suspension of standing orders on this matter. I do believe, however, it is a matter that can be worked through, and I hope that we might be able to reach some agreement on this issue and on wording. But at the moment, we have before us a request for formality for a motion to which the opposition has indicated an intention to move a significant number of amendments. So the balance becomes: do we spend a great deal of time in debate now, working these amendments through before the chair after a suspension of standing orders, or do we try the alternative approach of seeing whether we can get a motion for which formality can be granted and to which a majority agreement can be reached in the chamber? I think on this particular occasion it is worth pursuing that second course.

Senator Brown—Madam President, perhaps I could help the Senate through a point
of order; I would like to do so. Senator Faulkner is quite right. I ought to have sought leave for the motion to go forward as amended, as circulated. I would seek leave of the Senate to be able to do that so that we can then proceed with the motion as amended.

The PRESIDENT—There is no point of order. It is a matter for negotiation.

Senator FAULKNER—On this basis, Madam President, so that we can get some clarity about it, I think the course of action that I am counselling is correct. I think that we should defeat this proposal for a suspension of standing orders before the chair, have a quick look at what proposal is coming before the chair and, if it can be done today—I do not know what the government’s position on this is—as far as the opposition are concerned, we would be happy to give leave for Senator Brown to deal with this a little later on if there has been some misunderstanding.

But the problem is that it is the original question that is before the chair. I do not know and my colleague the Opposition Whip does not know what has been incorporated and what has not. There is no alternative here but to defeat this suspension of standing orders and to start this process again. I can indicate in good faith to Senator Brown that, if we can get some agreement, as far as we are concerned we will facilitate this. That is the spirit in which I make the contribution.

Senator BARTLETT (Queensland) (9.52 a.m.)—I will briefly put the Democrats position on the record. As I understand it, the motion we are considering is the one on the Notice Paper which has been amended pursuant to standing order 77. That is certainly the one I am speaking to. It reads to me as though the amendments have already been made. Regardless, I put on the record that the Democrats support the substantive motion.

The issues are certainly serious. I have spoken in recent times about the Esmeralda issue in Romania and Hungary and some issues relating to the perceptions of the operations and responsibilities of Australian companies operating overseas. That is an important issue that was acknowledged by all sides at the time. This is one where the environmental consequences are not in any doubt at all and are far more significant and serious than those that have been alleged to have occurred in relation to the mining operation that Esmeralda had some involvement in. The Ok Tedi situation stands as a monument to the worst-case scenario of operations of mining companies—in this case BHP. It does not reflect well on Australia to have that smear on the country’s reputation, because there are clearly a lot of operations that have Australian involvement that act responsibly. In terms of environmental safeguards with mining operations, I would say that there is a lot of expertise in Australian companies that other countries in the world would find quite valuable. It is certainly not a matter of trying to oppose any form of involvement of Australian companies in overseas mining operations. To some extent it is to the contrary.

That is why Ok Tedi needs to be addressed as strongly as possible. We need to show that Australia and Australian companies are serious about their environmental responsibilities and are serious about dealing with the consequences of failings in how they have operated in the past. It is not just Australia as a nation but all Australian corporations and investors being serious about meeting their responsibilities, whether that is in terms of future operations or in admitting past mistakes and taking responsibility for remedial action in those situations. It is an important issue. Whether you are talking about Ok Tedi specifically or some of the broader principles that I have touched on briefly, the Democrats support the motion as amended in the Notice Paper.

Senator BROWN (Tasmania) (9.55 a.m.)—I ask the leave of the Senate to withdraw the motion with a view to having leave to bring the amended motion before the Senate later in the proceedings.

Leave granted.

COMMITTEES

Superannuation and Financial Services Committee

Extension of Time

Motion (by Senator Calvert, at the request of Senator Watson) agreed to:

That the time for the presentation of the report of the Select Committee on Superannuation and
Financial Services on the provisions of the Superannuation (Entitlements of same sex couples) Bill 2000 be extended to 6 April 2000.

WOODCHIP EXPORTS
Motion (by Senator Brown) put:
That the Senate—
(a) notes that Wesfarmers Limited of Western Australia will reduce woodchip exports from native forests by 60 per cent in the next 2 years and increase exports from existing plantations by 1 500 per cent over the same period;
(b) observes that the transition can, in fact, happen now;
(c) calls on the Government to abandon the Regional Forest Agreement process before any more money is wasted and to stop all exports of woodchips from native forests immediately; and
(d) notes nationwide forest protests planned for 14 March 2000 in Perth and for 31 March 2000 in Sydney, Canberra, Melbourne and Hobart to support the transition option for the nation’s forests.

The Senate divided. [10.01 a.m.]
(The President—Senator the Hon. Margaret Reid)

Ayes………… 11
Noes………… 46
Majority……… 35

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

NOES
Abetz, E.  Bishop, M.
Brownhill, D.G.  Calvert, P.H *
Campbell, G.  Carr, K.
Chapman, H.G.P.  Collins, J.M.A.
Conroy, S.M.  Cook, P.F.S.
Coonan, H.  Cooney, B.
Crane, A.W.  Crossin, P.M.
Crowley, R.A.  Denman, K.J.
Eggleston, A.  Ferguson, A.B.
Ferris, J.  Forshaw, M.G.
Gibbs, B.  Heffernan, W.
Hill, R.  Hogg, J.
Hutchins, S.  Knowles, S.C.
Lightfoot, P.R.  Ludwig, J.
Mackay, S.  Mason, B.
McGauran, J.J.  McKiernan, J.
McLucas, J.  O’Brien, K.
Payne, M.A.  Quirke, J.A.
Ray, R.F.  Reid, M.E.
Schacht, C.  Sherry, N.
Tambling, G.E.  Tchen, T.
Tierney, J.W.  Troeth, J.M.
Watson, J.O.W.  West, S.M.

* denotes teller

Question so resolved in the negative.

OK TEDI COPPER MINE: PAPUA NEW GUINEA

Motion (by Senator Brown) agreed to:
That the Senate—
(a) notes the recent World Bank report which concludes that Ok Tedi copper mine, Papua New Guinea (PNG), needs on purely environmental grounds to be moving towards closure as soon as possible and which urges the PNG Government to consult the Ok Tedi community, non-government organisations and other stakeholders to draft a closure plan for the mine without delay;
(b) deplores reported moves by BHP to abandon responsibility for its environmental liabilities by handing control of the Ok Tedi mine to the PNG Government; and
(c) calls on the Australian and PNG Governments to cooperate in ensuring BHP fully meets its liabilities to address environmental damage at and downstream of the mine and to mitigate the socio-economic impacts of mine closure.

COMMITTEES

Publications Committee
Report
Senator CALVERT (Tasmania) (12.00 a.m.)—On behalf of Senator Lightfoot, I present the 12th report of the Publications Committee.
Ordered that the report be adopted.

Information Technologies Committee
Report
Senator FERRIS (South Australia) (10.05 a.m.)—I present the report of the Senate Select Committee on Information Technologies entitled Netbets: A review of online gambling in Australia, together with the Hansard rec-
Ordered that the report be printed.

Senator FERRIS—I move:

That the Senate take note of the report.

On behalf of the Senate Select Committee on Information Technologies, I present the committee’s report entitled *Netbets: A review of online gambling in Australia*. As chair of the committee, I would first like to acknowledge the cooperative support of the members of the committee, particularly the deputy chair, Senator Mark Bishop, and my colleagues Senator Paul Calvert, Senator John Tierney, Senator Brian Harradine Senator Kate Lundy, Senator Julian McGauran and Senator Stott Despoja. I would also like to express my gratitude to the secretary of the committee, Andrea Griffiths, and the research officer, George Kosmas, for the considerable efforts they have made in presenting this report today.

The report represents a crucial step in shaping the emerging online gambling industry in Australia. Online gambling is still in its infancy in this country but is developing rapidly into an established industry that brings together interactive entertainment and e-commerce. The industry standards and regulations that currently apply are open to significant reforms. This report recommends a number of reforms, particularly with respect to problem gambling and consumer protection measures.

Our inquiry was established on 25 June 1999 to examine the nature, extent and impact of online gambling in Australia; the feasibility of controlling access to online gambling by minors; the adequacy of state and territory regulations in relation to online gambling; and the need for federal legislation. Public hearings were held in Canberra, Sydney, Alice Springs and Melbourne. During its Alice Springs hearing, the committee conducted site inspections of the online gaming casino. Lasseters Online, housed within the Lasseters Casino, and the Internet sports betting operation, Centrebet, owned by Jupiters Ltd, located at the Alice Springs racecourse. A total of 45 witnesses gave evidence, which included representatives from the major online gambling service providers, casinos, academics, industry regulators and church and welfare organisations. In fact, Hansard recorded over 300 pages of evidence of the committee’s hearings.

On 16 December 1999, the Prime Minister established a Ministerial Council on Gambling, which will focus on various aspects of Australia’s gaming industries, including Internet gambling. In this report, the committee recommends a number of tough consumer protection policies that the council should facilitate with respect to online gambling. It recommends that, through the council, the federal, state and territory governments should cooperate to develop uniform and strict regulatory controls for online gambling. These controls should include responsible harm minimisation policies which reflect existing community standards and which will be applied by all states and territories.

The policy initiative should include clear procedures to assist problem gamblers, such as outlawing direct credit card online gambling, self and third party exclusions, pre-determined betting amounts, limited gambling times with a regular cooling-off period and a permanent screen display of financial losses and gains. We have recommended the prohibition of any form of game manipulation, specifically the ‘near miss’ signal, which gives gamblers the idea that they may just have missed out on a jackpot, thereby inducing them to gamble further. We have recommended the provision of personal electronic security passwords, challenge questions and PIN numbers to ensure that gambling sites cannot be accessed by any other family member.

The recommendations also include the need for strict privacy arrangements to protect consumers’ financial details, including gambling accounts, credit card identification and, importantly, exclusion arrangements, and legislation to ensure that all online winnings are paid by non-negotiable cheques posted to the registered gambling account holder. Credit card accounts should not be used to receive automatic payment for online gambling wins. We have acknowledged the
need to work with international agencies, the National Crime Authority and the Australian Transaction Reports and Analysis Centre, AUSTRAC, to stop Australian gambling online being used to launder large amounts of illegally acquired money. Very importantly, pending the implementation of these consumer protection policies, the committee has recommended that no further online gambling licences be granted in Australia until the protection measures have been put in place. This moratorium should be implemented by the Ministerial Council on Gambling with the assistance of federal, state and territory governments or, as a last resort, through the Commonwealth’s power to regulate communications.

The committee believes that information about the risks of gambling abuse need to be effectively communicated to all Australians. It, therefore, recommends that all registered online gambling operators be required to provide information on assistance available for problem gambling and contact numbers for immediate telephone counselling. This information will be a condition of the secure pathway for gamblers to log on to these sites. Additionally, each online casino must establish a chat room so that players can speak directly with a casino employee to obtain information on odds applying to games on offer.

To further address the worrying increase in problem gambling, the committee has recommended that state and territory governments contribute a fixed percentage of their gambling revenue to a national education campaign on gambling and also to agencies that assist and rehabilitate problem gamblers. The education campaign should be approved by the Advertising Standards Board and include a particular emphasis on the potential dangers posed by regular gambling.

The committee also recommends that a national code of conduct for advertising online casinos should be developed in conjunction with the gambling industry and approved by the Advertising Standards Board. This code of conduct should impose limitations on the advertising of online gambling and include warnings about the potential financial impact of problem gambling using material which is already in the community similar to those used in smoking, alcohol and road safety campaigns. Because of the potential dangers to consumers of this rapidly expanding industry, the committee believes that the Senate should promptly review again the recommended policy changes in this sector to measure the effectiveness of these recommendations and, importantly, to examine the effect on the community of any further online gambling opportunities, including the developing interactive television market.

In conclusion, this report establishes a very strong framework for the regulation of Australia’s online gambling industry to promote safe and responsible gambling. The ongoing role of the newly established Ministerial Council on Gambling, under the chair of the Hon. Jocelyn Newman, and its commitment to developing and implementing harm minimisation policies will also assist the industry to set the higher standards in consumer protection. I commend the report to the Senate.

Senator MARK BISHOP (Western Australia) (10.13 a.m.)—The Senate Select Committee on Information Technologies has received a large amount of evidence from industry groups and individual firms; consumer groups; church, welfare and social groups; a range of state and territory governments; a range of regulatory institutions; academic bodies; and enforcement agencies. The evidence is quite clear: in recent years, particularly in the last four or five years, significant social problems attached to and derived from gambling have become common along the east coast of Australia and in South Australia. These social problems affect individuals, families, children and communities. Indeed, it is not an exaggeration to say these social problems are beginning to affect entire regions. They affect, and are more prevalent in, low income or high welfare dependent areas.

The social problems that the committee has identified include total loss of family income, breakdown of family structures, increasing dependence and reliance on assistance from various church and welfare groups and the social dislocation derived from wasted lives and barren opportunities. It
is clear that the adverse social impact is directly related to the huge growth of gambling facilities and gambling machines. These machines and facilities are now so common in Victoria, New South Wales and South Australia that local residents barely notice their presence. Visitors to these areas comment regularly on how gambling has become a major social activity for large sectors of our community.

Again, it is clear to the opposition that the increasing volume of social problems in these states is related to increased accessibility and availability of these facilities. This point needs to be made and understood. The huge growth of gambling, the social abuses and the social problems relate to existing land based facilities. All of these land based facilities are controlled, regulated or licensed by various state or territory governments. Indeed, the various state and territory governments have profited from and become dependent on the various taxes or levies on gambling providers, gambling facilities and gamblers generally.

It is clear that the various state and territory governments have been less than attentive to the various real social problems that exist in their communities, which social problems directly relate to the accessibility and proliferation of gambling services. It is almost as though the various state and territory governments have deliberately chosen to ignore these problems. However, it is equally illogical and similarly incorrect to blame online gambling for current social problems related almost exclusively to land based gambling.

Having said that at the outset, the opposition is not so naive to believe increased accessibility of Internet gambling and soon interactive media delivery systems in every shop, home and workplace in Australia may not generate additional or new social problems. Accordingly, the community demands and the government must decide which of three options it might pursue. Those three options are: a ban on Internet gambling, a laissez-faire approach or do nothing about Internet gambling, or effective regulation of Internet gambling.

Turning to the first option, a ban: the opposition considered this approach in detail and finally came to the conclusion to reject the option of a ban on Internet gambling. We did so primarily because of the real competition offered by offshore sites compared to Australian hosted sites and the relative ease with which gamblers could avoid a ban. We do not believe a ban or prohibition is a sound policy option because it would be ineffective.

The second option, of a laissez-faire approach, or let the market rip, is an approach rejected by nearly all participants in the inquiry. In this case, the opposition does not believe the market is an effective or efficient determinant of social outcomes. In this case, unrestrained market forces hurt people and communities. The opposition cannot encourage such practices to continue.

The third option is one of effective regulation. Effective regulation involves the legalisation of online gambling within a national regulatory framework addressing harm minimisation, consumer protection and criminal issues. It is a whole of industry approach and necessitates active government involvement, coordination, regulation and scrutiny. Effective regulation goes to more than consumer protection issues, important as they may be. It means bringing the online gambling industry squarely under the aegis of public policy.

The online gambling industry has the potential for huge growth in revenues, significant access by entire new markets of consumers, additional access by higher income and upwardly mobile younger consumers, infiltration by criminal or undesirable elements for improper or illegal purposes, abuses to harm consumers and users by undesirable or dishonest operators, the creation of huge databases of information which track and analyse consumer behaviour, and massive intrusion into the private lives of thousands of individuals.

On its own, single state or territory legislation will be inadequate and is proving so already in respect of land based gambling. On their own, codes of practice are open to breach or violation or being simply ignored by a range of operators. On their own, advertising councils, privacy agencies or a range of
tribunals are proving inadequate to address a
totality of the industry or all of its problems.
They can address individual abuses but not
the whole problem. Witness the broadcasting
inquiry findings into radio industry self-
regulation. On their own, various enforce-
ment agencies cannot work effectively with-
out additional resources and further legisla-
tive backing. On their own, welfare and
church groups apply only a bandaid to a very
real problem.

Accordingly, the opposition believes the
appropriate public policy response must ad-
dress all of the issues identified in the minor-
ity report. This means a high powered min-
isterial council to drive the issue. This means
a well resourced advisory committee to do
serious research and provide policy options.
This means legislative backing to enforce-
ment agencies. This means minimising social
problems before they arise. This is achieved
by limiting access, ensuring probity and ac-
countability in operations, guaranteeing con-
sumer protections and privacies, and ensuring
legitimate operating practices.

It is clear that as Internet gambling and
interactive media come into shops, homes
and workplaces existing land based firms will
want to shift into this new market. Already
many of the league clubs in New South
Wales and other gambling providers are do-
ing extensive preparatory work to go into
Internet gambling. It is a logical extension of
current businesses. These existing clubs and
facilities are licensed and regulated by state
agencies. Conditions that apply in these li-
cences and regulations are the absolute
minimum that should apply to Internet gam-
bling as well as additional or new regulations
that should apply because of the peculiarity
of the medium. Already 20 such licences
have been issued by various state or territory
governments to permit online gambling. A
significant number of new applications are
part processed.

The opposition is opposed to a ban
through the front door of Internet gambling.
The opposition is opposed to a ban through
the back door of a moratorium of new li-
cences. The moratorium option supported by
some government and Democrat senators is a
de facto attempt to ban Internet gambling. It
will not address the real problems in this in-
dustry because of easy access to offshore
sites. The gambling genie is out of the bottle;
it cannot be put back in. The solution to so-
cial problems, albeit at this stage potential
social problems, attached to Internet gam-
bling may be found in the whole of industry
approach recommended in the opposition
senators’ minority report.

In conclusion, the opposition by and large
accepts the text of the report. It has been ac-
curately put together by the secretariat under
the directions of the chair. We also acknowl-
edge the significant amount of work done by
Ms Griffiths and her staff in preparing the
report, and we thank the chair for her conduct
of the inquiry.

**Senator STOTT DESPOJA** (South Aus-
tralia—Deputy Leader of the Australian
Democrats) (10.23 a.m.)—I begin by also
commending the work of the secretariat: An-
drea Griffiths, George Kosmas and Mr Mi-
chael Gallagher. I also commend the chair,
Senator Jeannie Ferris, and acknowledge the
work of all the committee members in pre-
paring the report before us today: *Netbets: a
review of online gambling in Australia*. The
Democrats also agree with the evidence as
presented in the report. We have made some
supplementary comments in relation to that
report. Most clearly—we have stated quite
categorically—the Democrats do not support
the prohibition regulatory option for online
gambling. That is clear in our commendation
of the chair’s report and also in our supple-
mentary remarks.

The Internet distributes information in the
way of packets which, once sent, disperse
through the network to find the fastest and
most efficient route and reunites to form the
original message. The prohibition of Internet
content therefore is ineffective as the Internet
‘interprets censorship as damage and routes
around it’. Prohibition of unlicensed Aus-
tralian sites is a possibly more effective appli-
cation of such regulation, though prohibition
measures will not have any impact on unli-
censed sites based overseas. The Democrats
support a multifaceted harm minimisation
approach and education campaign to com-
plement a managed liberalisation regulative
system. Education, information provision,
and support and counselling services are all essential to the responsible operation of the online gambling industry in Australia. The Democrats support the use of tax revenue to fund non-regulatory provisions, including education, information, and counselling and support services.

The Democrats support the argument that, over time, consumers will gravitate toward online gambling sites with reputations for quality and fairness. In this capacity, consumers are the most effective regulators of all, being initially cautious of new technologies, such as Internet gambling services. The potential for fraud and money laundering, however, disallows self-regulation as a viable option for online gambling. The Democrats support a multifaceted regulatory approach to online gambling, including managed liberalisation regulatory measures as advocated by the Productivity Commission’s report *Australia’s Gambling Industries*—a report that we drew on heavily in discussions and debate in this committee, as it is also committed to harm minimisation and consumer protection.

The Labor recommendation of effective regulation of gambling online, including restricting the criminal harm and maximising the benefits that will flow to consumers in the gambling and IT industries, which is in the executive summary of the ALP’s minority report, is actually in keeping with that of the Democrats’ and the committee’s recommendations. I find there is not a great deal of difference between the Democrats’, the opposition’s and the chair’s reports. I am sorry that we were not able to perhaps get a more consensual weighted chair’s report as a result, but I actually think many of the recommendations are completely the same. The Democrats support the use of government revenue to fund consumer education and information as part of a multifaceted approach to online gambling. As I said, there appears to be a remarkably large amount of common ground on preferred online gambling regulation between the majority report—the chair’s report—and that of the so-called minority recommendations from the opposition. The Democrats recognise the need for a federally coordinated regulatory approach to address the varying concerns and issues surrounding online gambling operations in Australia.

We have a long-held concern about and policy on privacy. That is one aspect of the online gambling regulation which must be emphasised, and we believe it must be examined thoroughly. Privacy of both transactions and communications remain significant concerns to Internet users, though it is yet to be adequately addressed by this government. Privacy of player information and credit card details are something that certainly the chair outlined in her statements this morning and is contained in both our report and the chair’s report. We believe that strong user privacy provisions are a principle regulatory priority—they are certainly a priority of ours.

Access by minors to Internet gambling, while of concern, is not considered a problem of the same gravity as access to other sensitive Internet material. We support the Productivity Commission’s observation that there is modest motivation and capacity for unsupervised and regular gambling by minors. Certainly this was an ongoing concern of the committee, and we were very conscious of it in the recommendations we made.

The Democrats believe that the areas of main concern briefly outlined in our supplementary comments are best addressed by a multifaceted regulation opposition for domestic Internet gambling operations. Regulation must take into account the diversity of the Internet, the global characteristics of the medium and the legitimate and responsible use of that medium by adults. The Democrats register our concern regarding the transparency of online gambling licence applications. We recognise that accountability and transparency of licence applications, assessment and approval have not been extensively examined, and perhaps that is something we should pursue also in future. Transparent approval and review mechanisms are needed to ensure user confidence and a fair and equitable domestic industry.

As I have said on a number of times in relation to reports brought down by this committee, it does have a wide range of interests as an IT committee and as a select committee. The Democrats recognise the need for further examination of the wider relating is-
We certainly support the further examination of transparency, privacy and finance issues in the global Internet environment and, of course, the potential of e-commerce. I hope we will see some recommendations or some terms of reference relating to those issues before the IT committee before long.

Mr Acting Deputy President, there is a remarkably large amount of common ground in the reports before you today. I think it was a very constructive and cooperative committee process, one that I was glad to be a part of. Certainly, the chair in her comments today has outlined in the breadth and depth of those committee considerations and the subsequent recommendations. I certainly commend the report to the chamber and, in doing so, obviously specify the Democrats' supplementary comments as outlining our views quite specifically.

Senator HARRADINE (Tasmania) (10.30 a.m.)—Before I make my remarks, I would like to commend the work that has been done by the committee chair, Senator Ferris, by the deputy chair, Senator Bishop, and by my colleagues on the committee, Senator Tierney, Senator Stott Despoja, Senator McGauran, Senator Calvert and Senator Lundy. I would also like to support my colleagues in their commendation of the work done by the secretariat.

Having said that, I would like to indicate to the chamber that, whilst very substantial recommendations have been made in the majority report—and they are very useful recommendations to minimise harm—they are based on a view that a complete prohibition of online gambling is difficult to implement. We are in a crisis in respect of problem gamblers and we have to consider that very thoroughly and take action. I do not believe that the action that is recommended will do that. I do not share the view that a complete prohibition of online gambling is difficult to implement. I do not share that view. We had evidence of suicides that result from problem gambling.

It is important to note that proximity and access to gambling seems on the evidence to be a key factor in driving the expansion of gambling in Australia. For example, in Australia following the introduction of pokies in pubs in 1995, gambling expenditure rose from $7.6 billion to $11 billion in a four-year period. A significant fact is that at the same time, the population of women who were problem gamblers rose from two per cent to 50 per cent. It is greater accessibility, and this will be in the home where there are very few limitations. For example, a person could get up at night because they cannot sleep. They are tired and depressed. They may even be half drunk and they get onto Internet gam-
bling. There are very few restrictions. Although I commend what has been recommended thus far, I do not think that it goes far enough. The Labor Party has just said that there is an ease of access to overseas sites, and to say that is a cop-out.

Are we going to have our policies determined by the international moguls and money makers who are operating out of the Antilles, the Caribbean or wherever? Certainly, sensible gamblers would not access those particular sites because of the uncertainty of it all. But should we not see what the United States are doing? The United States are attempting to overcome what they see as a worldwide problem. Instead of us pursuing the United States market in defiance really of United States laws, we should accept the invitation that has been offered by the United States for international cooperation to overcome this international problem of problem gambling. We should sit down with the United States and see what can be done. Where there is a will, there is a way.

It is interesting to note the evidence we received about our current gambling facility, which is open to persons in the United States. The evidence we were given was that those people who run online gambling operations in Australia which are accessible in the United States had better not go to the United States. I quote from the managing director and principal consultant of Global Gaming Services Pty Ltd when he commented on the United States law:

America have their own laws and we have ours. I do not know that they have issued a warrant for Peter Bridge, Chief Executive Officer of Lasseters Casino, but the Justice Department has made a clear statement that he is not welcome in America. They have certainly made that very clear.

Indeed, in a recent case, another overseas operator went back to America and was found guilty of infringing American law. In summary, I put to the Senate that we have to meet this crisis. We have to take all steps to do so. I believe that the committee has gone some of the way. I certainly believe there should be a moratorium. (Time expired)

Senator CHAPMAN (South Australia) (10.40 a.m.)—I welcome this Select Committee on Information Technologies report on online or what is termed Internet or interactive gambling. The evidence it presents should be another nail in the coffin of the continuing legality of this new, insidious form of gambling. I first became involved in this issue of Internet gambling about two years ago and, over subsequent months, conducted my own detailed research on the issue. That initial interest developed out of a proposed inquiry by the corporations and securities committee into e-commerce. It was in the early stages of that inquiry that I became aware of the development of Internet gambling. From my research I produced a paper on the issue which I presented at a gambling conference in May 1998. Subsequently, I have updated that paper on several occasions and presented it to other gambling conferences. I also put it in the form of a submission to the Productivity Commission inquiry into gambling in 1998 and gave evidence to the Productivity Commission inquiry. I seek leave to incorporate in Hansard the most recent version of that paper.

Leave granted.

The paper read as follows—

HOME GAMBLING
AN AUSTRALIAN PERSPECTIVE
SETTING THE SCENE
Let me take you forward to December 2001, and the Test Cricket Match at the world’s premier cricket ground, the Adelaide Oval. Shane Warne ambles back to his bowling mark, tossing the ball from hand to hand, contemplating how best to bamboozle the batsman with his next ball. Should it be a leg spinner, top spinner, wrongun, flipper or zooter, he muses?

Now let me take you to a suburban home where a young cricket fanatic is watching this Test on the Channel 9 telecast. With a click of the television remote or the press of a couple of buttons, instantaneously he bets, just prior to its delivery, that Warne’s next delivery will be a wrongun. Warne delivers the ball but sadly for the young fan it turns out to be a standard leg spinner and his money is gone. Never mind. He can try again next ball, or the one after that.

Let me assure you that the scene I have just painted is not far fetched. Technological developments relating to interactive television and the Internet will make exactly this scenario quite feasible in the very near future.
Do we want our young people, or for that matter even adults, exposed to these types of gambling opportunities. I say we do not. Urgent action is required if we are to nip in the bud the potentially horrific consequences of allowing interactive and internet gambling to develop.

I therefore welcome the opportunity to address some of the important issues relating to this phenomenon. My interest in this field arose from my role as Chairman of the Joint Parliamentary Statutory Committee on Corporations and Securities, when I initiated an inquiry into the potential impact of electronic commerce on the securities and investment industry. In the early stages of that inquiry I learnt, with concern, of the application of this leading edge communications technology to gambling and have spent the past few months examining its potential development and impact.

It is unarguable that placing a bet is as Australian as meat pies, kangaroos and Holden cars but I put it to you that bookmaking on horse racing and other sports, lotto, casinos and the pokies, not to mention the inevitable fly crawling up a wall, provide more than enough gambling opportunities for even the most dedicated punter. We now know only too well that these established forms of gambling have created significant economic and social problems.

We can do without the additional problems which interactive and internet gambling undoubtedly will cause. For the balance of my presentation I will describe this technology by the general term “home gambling”.

GAMBLING STRIPS THE ECONOMY

In his book “On a Roll: A History of Gambling and Lotteries in New Zealand”, D. Grant says “There has been a revolution of legal gambling in the last two decades, one which has become frantic in the last seven years.

This description applies no less to Australia than it does to New Zealand.

Australians already spend more dollars per capita on gambling than any other nation. We outrank the second place getter, the United States, by three to one. That is, for every dollar Americans siphon into the gambling market, Australians pledge three dollars.

The growth in gambling is having significant social and economic impacts which are not limited to the Gambling participants. A recent South Australian survey has attributed, to poker machines, a decline in small business turnover, ranging between 6 percent and 25 percent. A number of small business closures have been directly blamed on the introduction of poker machines. American studies have shown that gambling does not deliver its promised economic benefits. Indeed, money used for gambling is being diverted from spending on other goods and services.

That is because gambling is a zero sum game. Whatever someone wins, someone else loses. It is not an economic activity that creates real wealth. The only sense in which wealth creation might occur for Australia's domestic economy is if people from offshore, either visiting Australia physically or on the Internet, gamble and their money, being lost stays here. However, I believe the gain from this does not offset the detrimental affect of domestic gambling on the economy and our society. Certainly, in terms of Australia's domestic population, it is a zero sum game. It is simply a transfer of wealth from one person to another, usually from those who can ill afford it to those who can better afford it.

With home gambling, the internet page could be established in the Cayman Islands, with profits electronically whisked to bank accounts in any part of the world. The flow-on effect of Australian gambling dollars disappearing into Swiss bank accounts would be a further massive drain on our economy, with drastic social consequences.

The most recent report of the Tasmanian Gaming Commission has found that in 1996/97, Australians wagered some $80 billion and lost $10 billion of that, an average loss of $737 for every adult Australian. We know that gambling expenditure grew by 53 percent during the first two years that poker machines operated in South Australia.

We also know, from the work of the Australian Tax Research Foundation, that gambling taxes provided $3.5 billion to the states and territories in 1996/97, with more than $1 billion of that contributed by some 200,000 hard core gamblers.

State and territory governments are hooked on gambling, main-lining, on its tax dollars. With the further explosion in gambling, opportunities, which home gambling technology provides, there is a real danger that social concerns will take second place to revenue considerations, even more than currently appears to be the case, in determining policy. This must not be allowed to happen.

NORTHERN TERRITORY - BLISSFULLY BLASE

If anyone believes I am overstating this danger, may I simply refer them to the April 1996 report of the Northern Territory Legislative Assembly Select Committee on Interactive Gaming, which appears blissfully blase about the potentially detrimental social impact of home gambling.
Listen to this conclusion. “It is likely that expenditure incurred through gambling at home will be largely in substitution for other gambling expenditure”. This completely ignores that whenever a new form of gambling is introduced it attracts an extra group of customers or extra spending on gambling, as witnessed by the 53 percent gambling expenditure growth in South Australia after the pokies arrived. It also ignores the Report’s own finding that the launching of pay television racing channel Trackside in New Zealand is credited with providing a significant increase in the volume of wagering in New Zealand.

My view, which contradicts that of the Northern Territory Committee, is reinforced by none other than Access Systems, a world leading on-line Internet gaming systems operator and apologist for Internet Gambling, which argues, in a submission to the Productivity Commission’s public inquiry into gambling, that “Internet gaming makes gambling more accessible to new groups of people and will represent the only means available to some, especially those in remote locations or housebound...”. This clearly means an increase in the number of people who will have access to and will become involved in gambling.

Other findings of the Northern Territory Committee include:

Home sports betting has the capacity for a steep growth curve because of the underlying popularity with younger generations of the sports upon which it will rely.

The free to air televising of South Australia’s Easter Oakbank race meeting resulted in betting increasing by 17 percent on the Saturday and 33 percent on the Monday.

The Federal Government’s Broadband Services Expert Group has assumed that the gambling industry is expected to continue 10 percent per annum growth in the short term and has also concluded that home Gambling is the second highest item of potential business income from interactive/internet home services, second only to home shopping and ranking ahead of pay TV and video on demand.

The private enterprise model for the ownership and promotion of poker machines in clubs and hotels in Victoria is accelerating the propensity to gamble at a rapid rate, exemplifying how commercialism in gaming provisions can expand the product.

Despite all of these findings, regarding expansion of gambling, the Report blithely accepts that the Australian gambling market will stabilise at 3 percent of household disposable income. The Committee seems unaware of the apparent contradiction between this conclusion and their raft of findings to the contrary. However, even it qualifies the 3 percent prediction, by acknowledging the tendency of some problem gamblers to use their savings, rather than showing to others a reduction in their standard of living.

It is beyond me how a Report could contain such inconsistencies. It is also beyond me how a Report, which clearly identifies so many opportunities for the expansion of gambling activities through home services could so readily conclude that gambling overall will not increase as a consequence. It concerns me that the Committee has become a barracker for the introduction of these services by recommending government support for “the expansion of competitive gaming product”.

HOME GAMBLING - LEGITIMATE FEARS

With the rapid development and growth of new and modern technology, it is easier to gamble now than ever before. Australia is renowned for its high take-up rate of new technology.

Undoubtedly, this will lead to home gambling gaining quicker acceptance. My Shane Warne example is but one of many options, opportunities and temptations.

Interactive television of the future could see a television channel selling lottery style games and displaying results, with lottery style transactions charged directly to the customers’ accounts with the telecommunications carrier. Scratchies would be well suited to technology where players simply use a touch screen. The ensuing on-screen fanfare would enhance the excitement of winning and encourage reinvestment of those winnings. Televising live or transmitting virtual casino related games, such as roulette with customers betting on each spin, or card games with customers betting against the dealer or other live or virtual players, will all be possible without leaving the comfort of your own armchair.

Managers of physical gambling venues have become highly skilled in building information bases about their customers and understanding their psyche, to apply more effective marketing techniques. Interactive technologies will multiply these exploitive techniques, to lure the unsuspecting home gambler. Access Systems have explained how internet gambling systems are much more able to closely monitor a player’s activity and habits than is possible in traditional gambling activities, for example by collecting data by player on what games are played, when, how many times, for how long and with what results.

Experience with the marketing techniques used by providers of other forms of gambling show this
data is more likely to be used for intense, targeted marketing of interactive gambling to vulnerable clients.

Therefore, home gambling is more significantly frightening than any other form of betting. Players can use their personal computers to enter a virtual casino to bet on simulated card and dice games as well as poker machines, playing for fun, money or prizes.

I’ve examined some of the existing sites and they are very attractive. They are dressed up very fashionably with a strong marketing influence. These sites are not just there and if you find them you might participate or not, they actually make an active attempt to entice people into the system. A quick perusal of the internet exposes home gambling for what it really is. An insidious and destructive method of separating people from their money, while making gambling look glamorous.

Speaking out against ordinary poker machines recently, Debbie, a member of Pokies Anonymous, said “Pokies hook you so quickly. They get into your head. The music is subliminal and comes back to you at any time during the day and all of a sudden you have the urge to play and head off in the direction of the closest machines.”

More people like Debbie will succumb to this urge more often, when they can simply switch their television or computer on-line to the gambling pages which offer “all the glitter you can squeeze into a modem”, “sneak previews”, “free trial periods”, “a universe of casino gaming fun, including blackjack, poker, roulette, craps and slot machines right on your desk top ... ... you can play for real winnings or just for fun.”

This technology readily lends itself to the application of Solonsch's theory that for a gambling product to be successful it must provide some added value, such as excitement, entertainment or social appeal. It will be much easier to update the software providing home gambling opportunities to create new forms of excitement and entertainment than to replace the hardware at traditional gambling venues, thereby enhancing the relative attractiveness of home gambling.

There are currently some 2,108,634 web pages for on-line gambling on the internet, as displayed under Yahoo Search Results. While most of these are information pages, rather than gambling sites, including the American based Gamblers Anonymous International Service Office, gambling sites are a significant component. More than 200 dedicated Internet gambling facilities have been identified worldwide and the sites are growing steadily. A guide to on-line gambling sites notes that on-line gambling, is just getting started on the Net. More than two million sites and its just getting started?

Home betting is up and running. Players are offered a choice of playing for real money or for fun. Playing for fun provides the initial hook. Note that many gambling pages open with the warning “caveat emptor” - (let the buyer beware). That may be a deterrent for those proficient in Latin!

Home gambling is already occurring in an unregulated manner throughout the world and with the advent of increasingly secure on-line financial transactions, Internet casino-style gambling is on the increase. Many gambling providers are located in countries with relaxed or non-existent gaming and tax laws such as Liechtenstein, Antigua, the Cook Islands, the Dominican Republic and Costa Rica, which are places that apply different standards to probity, regulation and privacy than we are used to in Australia. The physical location of the gambling operation does not affect the punters' access to that operation.

Some overseas operators are even trying to pass themselves off as being Australian-based operators, when clearly they are not. One of the more interesting sites is called Casino Australia dot com. It has a picture of a Koala bear and an Australian flag and a Sydney backdrop on the front and is clearly trying to pass itself off as an Australian site. In fact, it is based in the Dutch Antilles and run by a nominee company so you cannot get to the bottom of who owns it.

I find it abhorrent that even airlines are considering introducing in-air interactive gambling facilities through the internet and interactive audio and video systems. Qantas proudly announced that it would be the first international carrier to offer in-flight gambling as interactive on-board entertainment.

They have since shelved that idea, possibly as a result of social conscience. However, I am informed that British Airways is still looking at the idea.

YOUNG PEOPLE - PROBLEM GAMBLERS TODAY OR TOMORROW?

The potential home gambling affords for new forms of sports betting is obvious-not just Shane Warne's next ball but who will kick the next goal or take the next mark in a football match - only the imagination limits the potential. Sport is already a major element of television. Combined with technology, it can be tailored readily to suck in the next generation of gamblers. Do we want
Evidence abounds of children obtaining access to internet and related technologies. It is therefore highly likely that this age group will be attracted to this gambling technology.

We have all seen young teens hunched over machines in video parlours, oblivious to their surroundings. This behaviour, in itself, mirrors gambling addiction.

While age rules apply in the more formal gambling outlets, I defy any computer, no matter how smart, to be able to detect if a minor is placing bets using their parents' credit facilities. Most gambling and pornographic internet pages have authorisation warnings asking the proposed player to state whether they are over 18 and we have technology like Net Nanny, capable of restricting access but the success of such controls is essentially dependent on adequate parental supervision. Evidence abounds of children obtaining access to inappropriate internet sites without their parents' permission.

PROBLEM GAMBLING - ENOUGH IS ENOUGH!

While we must deal with the significant social problems arising from traditional forms of gambling, it will be difficult to unscramble the eggs by removing long established gambling opportunities.

However, we can and must act urgently to ban home gambling while it is in its infancy, before it becomes well-established and too prolific. The Little Report for the Broadband Services Expert Group concluded that interactive television gambling alone will account for 25 percent of all gambling in Australia, let alone the impact of the internet and related technologies.

Enough is enough! There are already too many overt forms of gambling without allowing the development of covert gambling, where people sit in their own homes and enter virtual casinos, on personal computer or the television screen.

Australia is already rife with problem gamblers. In a recent Australian survey, 94 percent of those questioned said gambling is causing serious problems within the community.

All addictions have a domino effect on the people around them. Much like the heroin addict who has to steal for his next fix, the gambling addict will forgo the weekly grocery shopping in the hope that today their luck will come good. Up to 60 percent of problem gamblers commit crimes to support their habits, with 20 percent of those ending up before the courts.

No one can deny the social problems which are evident already from the Australian psyche's propensity for gambling. Admittedly, some people do win, their smiling faces splashed across the nation's newspapers but we rarely see the other side - the marriage breakdowns, the forced sale of the family home, the denigration of families. Occasionally we are exposed, via the media, to the pathetic sight of the aftermath of the gambling addiction, when some hapless soul has resorted to crime to fuel their gambling lust and has ended up in court.

At least with traditional forms of gambling, with the exception of TAB telephone betting, participants have to be present, physically, at the gambling venue. Despite that relative inconvenience of access, substantial gambling problems have emerged.

Gloria, another member of Pokies Anonymous, said recently with regard to poker machines, “They are too available and there are too many of them. They're on every corner”.

At least poker machines and gambling venues generally have some restrictions on hours of operation. Home gambling will be unrestricted, twenty four hours a day, seven days a week, 365 days a year. I dread to think how much more severe the problem will be when we never see the public face of the gambler, when they are hidden away in their lounge rooms, feeding their gambling appetites and losing the family home.

While those who come to recognise their problem may seek to bar themselves from home gambling, just as some do from physical gambling venues, do we have any guarantee that interactive operators will honour these bars any more than some physical venue operators do? More than likely, the experience of Sharon Willman with the Staiton Casino in Missouri, which continued to solicit her custom despite her being legally barred, will occur again and again with home gamblers.

Just as with the mooted success of home shopping, the easy availability of home gambling will create strong impulse buying pressure for every one to participate and will be a big factor causing gambling growth. Although there is no proven link, various studies confirm the wide-spread belief that the level of gambling and of problem...
gambling increases in proportion to the availability of gambling opportunities. That is sufficient to convince me that the increased access to and range of gambling becoming available through interactive/internet technologies will inevitably lead to more gambling and greater problems.

Problem gamblers, like all addicts, are very adept at hiding their problem in the early stages of its manifestation. Those with or developing a problem will be able to seek out the opportunities for gambling that will be offered through their television or computer screen, while their families remain tragically unaware - until the serious financial implications become evident.

There is also a very real risk that those with a gambling predisposition and who spend a lot of time alone at home could become problem gamblers, when ordinarily they would not have the opportunity to gamble.

This is the real cost of gambling, not the “I only put in five bucks” mentality. It’s the desperation of those who have lost almost everything putting their last dollar through the computer in the hope that the big win will be theirs with the next turn of the cards.

I am not saying that every person who will bet, through this new technology, will be a problem gambler. However, a percentage of people experience problems with gambling. This ranges from three per cent to ten per cent, depending on whose statistics are preferred.

What I am saying, is that if this new gambling technology is allowed then that percentage will inevitably rise, as 1989 and 1995 surveys in the American state of Iowa, relating to the expansion of forms of betting, clearly showed.

The potential for credit betting is an aspect of home gambling which is absolute anathema. People say you can institute controls on that but we’ve already seen, particularly young people, getting around those controls in relation to other matters on the Internet and using their parents credit card facilities. There are examples where people have self-imposed restrictions or attempted to apply self-imposed restrictions which casinos have simply ignored in their quest to entice people back into the system Again, that would be even more of a danger with Internet availability.

Those who have a vested interest in promoting Internet gambling maintain such credit transactions would be secure, with the primary method being the use of an electronic purse which has to be funded prior to the player being able to gamble - these same people also admit that to create “watertight, infallible security is impossible”. Which evidence are we supposed to place credit on?

I am also concerned that internet cash schemes, including anonymous payment forms like e-cash, can allow users to authorise automatic payments to gambling providers. Problems will arise with automatic payments being used in conjunction with gambling activities, particularly in repetitive activities such as virtual gaming machines. In this situation it could be possible for the gaming provider to request more payments than due for games played.

I doubt, even if records could be provided, that the average punter operating a pokie in the pub can tell you how many spins he or she has had, even though they actively have to put in coins.

How much easier to get ripped off on a virtual pokie, where money is automatically deducted from your account. It would be unlikely that the punter would know they have been duped, even when the account records a nil balance.

ACT NOW OR REACT IN SHOCK!
We have an opportunity to prevent further damage stemming from home gambling. We must recognise the potential for problems and act now rather than react too late, when the problem is entrenched.

Let me reinforce the importance of acting now, rather than in the future regretting our failure to protect the Australian community from this potential economic and social scourge, by quoting the South Australian Premier, John Olsen, in the South Australian Parliament, last December in relation to poker machines.

He said, ‘We made a mistake with poker machines in South Australia and I think it is time we admitted if. Five years ago the Gaming Machines Bill ... was a mistake ... It was ill-conceived and ill considered ... it is fact that easy access to gaming machines has led to a level of gambling in this state that no-one foresaw; it is fact that easy access to the machines has led to a level of compulsive gambling that was not and could not have been foreseen and that has certainly shocked me.

‘Even those who rail against the concept of the nanny state which legislates to protect people from themselves must be shocked at what this gambling freedom has in fact created within our economy and our society...It is fact that easy access to poker machines ... has destroyed individuals, families and businesses.....poker machines can turn the most unlikely people into gambling addicts ... The devastation that poker machines have caused in this state has reached a level where we have to say enough is enough’.

My only disagreement with Premier Olsen is his suggestion that this devastation could not have been foreseen. Those South Australian politicians
who voted for poker machines were warned strongly about the likely consequences by a wide range of concerned members of the community. Just as it was claimed that no one knew what would happen with the introduction of poker machines, Internet gambling operators now say “No one really knows what effect Internet gambling will have...” I give this same warning about allowing the development of home gambling. If it is allowed, the problems engendered by poker machines will be insignificant by comparison. As with poker machines, in five years time it will be too late to stem the tide. Action is needed now.

AUSTRALIAN GOVERNMENTS’ RESPONSES INADEQUATE

Sadly, as has been the case with gambling generally, the response of all Australian governments to the dangers of this new technology has been grossly inadequate.

We all know that gambling facilities and venues proliferate under Labor governments, governments so fiscally weak that they have to institute a wider range of tax grab solutions to shore up their empty coffers, heedless of the damage they are doing to the community they profess to protect.

The previous Federal Labor Government was content to leave the exponential growth of gambling and its associated problems, in the hands of the states and territories.

It was therefore a welcome change of attitude to see the Federal Liberal Treasurer, Peter Costello, announce last week that the Productivity Commission has been directed to inquire into the social and economic impact of the explosion in gambling. While pre-empting the outcome of an investigation may be fraught with danger, I have no doubt that the prediction of small business and economic impact of the explosion in gambling, the Government has rushed to embrace gambling and its associated problems, in the hands of the states and territories.

When the South Australian Government announced a move to legislate to legalise Internet gambling, I wrote to Premier, John Olsen to express my concern. In essence, the response was that if the Commonwealth Government initiated a ban it would be accepted by SA but the State Government is not prepared to go it alone while the other states and territories are reaping the revenue.

Mr Olsen wrote “I am not prepared to sit back and watch South Australian dollars flow out of the state if other states and territories permit interactive home gambling.”

Hence, revenue implications have weighed very heavily on state governments’ decisions. The introduction of a Goods and Services Tax, with revenue going to the states, should help alleviate their dependence on gambling revenue.

The states’ priorities are clearly demonstrated in the “Legislative Objectives” spelt out for proposed legislation under the Draft Regulatory Control Model for New Forms of Interactive Home Gambling. The primary objective is to “Facilitate the offering of interactive home gambling products”. The potential problems arising from home gambling are completely ignored in these “Legislative Objectives” and only receive a passing mention in relation to “harm minimisation” under “Legislative Principles.”

I find this document a grossly disappointing cop-out as a response to this issue, although at least it recognises that “In the longer term it is still possible that a compelling public interest argument will be put for requiring internet connection providers to filter the content that their clients access. Should this occur then unlicensed gambling products will be included in the content to be filtered out”. I say, that compelling public interest already exists and all gambling products should be filtered from the internet.

One may assume that New South Wales is considering the Draft Model but thus far its recent gambling initiatives have been limited to proposing warning signs on poker machines and scratchies and seem to ignore home gambling. In South Australia, where at least 10,000 residents have a gambling addiction and despite the Premier’s recognition of the problems the introduction of poker machines has created for individuals and small business, the Government has rushed to embrace the Draft Model, fearing a loss of revenue.

In March, the Queensland Parliament passed the Interactive Gambling (Player Protection) Act 1998 which appears to be based on the Draft Model. The Act aims to protect internet gamblers by a system of licences which will be issued to
service providers after stringent integrity and probity checks. Queensland Treasurer Joan Sheldon, in introducing the Bill said the legislation was designed to 'protect players from unscrupulous operators...Net folklore is full of stories of players who never received their own stakes back, let alone their winnings'.

The Select Committee Report to which I referred earlier, is indicative of the attitude of the Northern Territory. The principle concern seems to be the effect home gambling is going to have on the revenue the government currently pulls in through their Centrebet system and their two casinos. Hence, the policy response thus far in Australia seems limited to accepting the inevitability of home gambling, seeking to regulate it for probity and cashing in on the tax dollars. This contrasts markedly with the approach of several overseas countries with which we must draw comparison.

GLOBAL REACTION

The United States of America has maintained a much stricter attitude to gambling generally, with it being legal in only a few states. Furthermore, it is illegal to place wagers (bets) by way of telecommunications networks or wires. A similar law exists in Canada.

Current internet gambling pages operated by Antigua-based Starnet Communications are prefixed with the warning "Americans Stay Out". Starnet operates World Gaming Services, which has configured its system to detect a customer's origin and actively decline wagers from the US and Canada. This demonstrates that through international codes and agreements, overseas gambling page providers could be discouraged from putting their product into Australia.

Another international gaming page, The Internet Casino, operates with the following disclaimer: 'If the activities on this service are illegal in your country, state or province, we advise you not to enter as you will be breaking your area's laws. Proceed at your own risk. Notice to Americans: At this time you may not gamble at this casino site. Call and complain to your senators, congressmen and attorneys-general! Democracy does not exist in America. Your constitutional rights have been taken away. Take action now'!

It is patently obvious that this plea is falling on deaf ears and instead that the voices of those concerned about the dangers of home gambling are being heard loud and clear.

In March 1997, Republican Senator Jon Kyl introduced the Internet Gambling Prohibition Act of 1997, warning that 'anyone with a computer and a modem has access to a casino and virtual casinos make it easier for those with gambling addictions to sink deeper into debt and despair'.

The Kyl Bill provides for fines of at least $20,000 and four years imprisonment for people operating internet casinos and for six month prison terms and at least $2,500 fines for those betting on internet casinos. It also requires telephone companies and internet service providers to terminate service to whoever is operating the site. The Bill also requires the Secretary of State to seek international agreements to enforce this law in relation to off-shore, on-line casinos.

In October 1997, the Bill was unanimously approved by the Senate Judiciary Committee but made even more stringent with an amendment which also prevents state legislatures permitting internet gambling within their respective states. In my most recent discussions with Senator Kyl, he indicated that the Bill and a companion Bill in the House are expected to be debated within the next session. He is confident they will pass. Despite its strong opposition to the Kyl Bill, the gambling industry acknowledges that this Bill is likely to become United States law.

Until now, only computer gambling on sports events has been prohibited, so the Kyl Bill blanket prohibition is a significant advance. Under the current law, on 4 March this year, the United States Department of Justice indicted fourteen executives from international sportsbook companies for accepting wagers from Americans. The charges were laid under the Interstate Wire Act which prohibits the use of telephone lines (telephone and internet) to operate an interstate or foreign gambling business.

In Austria, home gambling has been banned through legislation requiring gamblers to be physically present at the gaming site in order to place a bet.

Singapore, although it has not yet banned home gambling, has made illegal material which compromises public security and the national defence, which causes racial or religious disharmony, or which offends public morals. Internet service providers are required to comply with the laws of Singapore at all times.

The Internet Code of Practice has been established under the Singapore Broadcasting Authority Act to ensure that material which contravenes Singaporean legislation is not disseminated over the internet. The Singapore Broadcasting Authority has the power to impose sanctions, including fines, on licensees who contravene the Code of Practice. That is "a licensee shall use his best efforts to ensure that prohibited material is not broadcast via the internet to users in Singapore".
An Internet Content Provider shall deny access to material considered by the Authority to be prohibited material if directed to do so by the Authority. Internet Service Providers commonly use Proxy Servers worldwide to store popular pages so that information can be downloaded quickly. Singapore uses these Proxy Servers to block sites which contravene its legislation. It therefore provides a model which could be adapted to enforce a ban on home gambling.

In the Cook Islands, it is illegal for local on-line casino operators to accept bets from the island’s residents. This further demonstrates that prohibition is possible.

BAN HOME GAMBLING

My examination of all of the issues surrounding the development of home gambling leads me to but one conclusion, that it should be banned. Certainly there will be some illegal operators. I would be surprised if there would be many illegal operators in Australia but you may find some of the off-shore sites do not deny Australians access. Making Internet gambling illegal will restrict that to a large degree.

Many civil and perhaps even economic libertarians may argue that this is simply an issue of personal morality. However, it is much more than that. I believe the detrimental economic and social consequences from existing forms of gambling are sufficiently evident to warrant a complete ban on any further expansion of gambling opportunities. Home gambling is the most obvious and potentially pervasive example of these.

If the bastion of liberty and free enterprise, United States, feels compelled to proceed with a ban, then I proffer that we can have little philosophical objection to such a proposal.

A year ago, Prime Minister John Howard made plain his concern about the proliferation of gambling in Australia, saying it had reached “saturation point”.

I therefore differ markedly with Mr Steve Toneguzzo of Global Gaming Services, who argues that gambling law should be independent of the gambling medium. This includes looking at the potential of filtering software and blocking devices. I asked Senator Alston to ensure that the consultants examine the technological feasibility of blocking home gambling service providers.

Earlier this year, the Minister for Communications, Arts and the Information Economy, Senator Richard Alston asked the CSIRO to undertake a consultancy to advise on relevant technology for internet content regulation. This includes looking at the potential of filtering software and blocking devices. I asked Senator Alston to ensure that the consultants examine the technological feasibility of blocking home gambling service providers.

To the extent that technology causes compliance and enforcement difficulties with regard to banning home gambling, it seems to me that those difficulties will be greater with regard to off-shore sources of gambling, than with onshore sources. Nevertheless, it is the off-shore sources which the Northern Territory Parliament advocates banning.

For me, the welfare of all Australians is the main game and hence my focus on banning all home gambling, whether from sources off-shore or on-shore. Enforcing compliance with regulation will require dealing with exactly the same technical limitations as imposing a ban will require. In short, I would say, if you can regulate effectively you can ban but if you cannot ban then to say that you can regulate is humbug.

A PLAN FOR ACTION

Earlier this year, the Minister for Communications, Arts and the Information Economy, Senator Richard Alston asked the CSIRO to undertake a consultancy to advise on relevant technology for internet content regulation. This includes looking at the potential of filtering software and blocking devices. I asked Senator Alston to ensure that the consultants examine the technological feasibility of blocking home gambling service providers.

It is claimed that filters, such as Proxy Servers, slow down access to the internet for all users. However, Singapore refutes this and its experience may be directly relevant.

The McRae Report, arising from the consultancy, concludes that it is technically possible to block internationally delivered Internet content at two distinct levels, at the application level and at the packet level but concludes that both of these alternatives would be ineffective and should not be mandated.
Two different solutions are proposed by the McRae Report—either of which would be acceptable—one is relevant to the short term and the other for consideration for development in the longer term.

The Report offers two options for the short term:

1. A ‘clean’ service: the filter includes a list of permitted Uniform Resource Locaters (URLs) only; requests to all URLs outside this list are refused. Several such proxy-based filtering schemes are currently available, providing access to a universe of thousands of permitted pages.

2. A ‘best effort’ service: the proxy filter blocks a set of known sites, rated according to prescribed criteria. The result is based on a best-effort approach by an Internet Service Provider (ISP) and cannot be guaranteed. Best filtering software, claims to have a black list of ‘hundreds of thousands of pages’.

The McRae Report’s longer term solution is that Australia should participate in an international forum to create the necessary infrastructure to formulate international regulation to ensure that organisations which host content would be able to determine the jurisdiction of the client, and having determined the jurisdiction, for example Australia, the Internet service provider can find out whether the requested content is legal in that jurisdiction. Therefore, by international agreement, each host country would in effect legislate to make it illegal to deliver material to another country, if that material is illegal in that other country.

Content from Internet service providers within Australia should not be handled by blocking techniques but by law. If locally hosted material is illegal, then the hosting organisation, which can be identified easily, should be required by law to remove it. Within Australia that can be done under the Broadcasting Act or the Telecommunications Act. There would be similar capacities in overseas countries to do that also.

The Federal Government has the constitutional capacity to legislate against home gambling and could do so through the Broadcasting Act 1992 and the Telecommunications Act 1991. This contrasts markedly with its relative lack of power to deal with traditional forms of gambling, which are under state jurisdiction.

In July last year, Minister Alston and the Attorney General, Daryl Williams announced, for public comment, legislative principles for the regulation of on-line services in Australia. These principles stem from a report by the Australian Broadcasting Authority into on-line services. In 1996, the Federal and State Ministers responsible for censorship put in place co-operative arrangements for complementary legislation, creating specific criminal offence provisions relating to material which fitted the Refused Classification category under the National Classification Code. In addition to material already identified as coming under the Refused Classification category, home gambling should also be included.

States and territories will argue that this is not a Commonwealth matter. They are wrong. The internet does not recognise state boundaries, time zones or international limits.

While I recognise that technology may make compliance and enforcement of a total ban on home gambling difficult, I do not accept that it is impossible. It simply requires for us to have adequate moral fortitude and political will.

Technology is an issue which has been raised by people who say “We’re sympathetic to your view that you should ban internet gambling because of its potentially detrimental consequences” but they believe, because of the way the Internet operates, that this is virtually impossible to do, so we must, therefore, accept it but regulate and control it.

I do not accept this argument—as I have previously stated, if you have the technology to control and regulate the Internet, you have got the technology to ban it. The same technological means to regulate and control can prevent Internet gambling all together. It may also be possible to provide incentives to Internet service providers, in return for compliance with the recommendations of the McRae Report, which notes that Internet service providers would incur some costs in setting up either of the McRae alternatives. Whatever the costs or compensation, they would be negligible in respect of the long-term social detriment of Internet/Home gambling.

There are five initiatives that I have proposed to the Commonwealth Government.

To ensure maximum compliance and the most effective enforcement of this ban, I advocate that relevant Commonwealth constitutional heads of power should be used to make it illegal for interactive and internet content providers to make available any gambling products, including games of skill, using telecommunications.

Secondly, it should be made illegal for service providers to transmit such gambling products by telecommunications.

Thirdly, it should be made illegal for consumers to engage in gambling through these services.

Fourthly, that it be made illegal for financial institutions to facilitate payment by users of this form of gambling.
I acknowledge that long-standing traditions relating to traditional TAB telephone betting and traditional products offered under bookmakers licences, together with authorised trade promotions and closed network games should be excluded from these provisions.

In other words, the ban should apply to those items identified for the proposed “Scope of Legislation” under the “Draft Model” of regulation.

These four domestic initiatives should be taken along with my fifth initiative that the Federal Government should initiate negotiations with off-shore home gambling service providers and their host governments for compliance with this ban in Australia, as provided in the Kyl Bill in the United States. This would involve an international co-operative effort rather than international law.

However, in the longer term this international effort should be given legal status, which is the long term solution recommended in the McRae Report.

If the four domestic initiatives are taken, a reasonably effective ban could be instituted. You are never going to be able to stop someone who is absolutely determined to gamble through this medium, because they will obtain illegal access to an international site and gamble.

However, I believe the average Australian does take cognisance of the law, and does not wilfully seek to flout the law. If they know, through these four mechanisms, that it is illegal to gamble on the Internet, I believe the majority of Australians would abide by these strictures.

The fourth proposal to make it illegal for financial institutions to facilitate payment would make it extremely difficult, even for determined people, to gamble through this medium, because they will obtain illegal access to an international site and gamble.

However, I believe the average Australian does take cognisance of the law, and does not wilfully seek to flout the law. If they know, through these four mechanisms, that it is illegal to gamble on the Internet, I believe the majority of Australians would abide by these strictures.

The fourth proposal to make it illegal for financial institutions to facilitate payment would make it extremely difficult, even for determined people, to gamble through this medium, because they will obtain illegal access to an international site and gamble.

Certainly, these legislative initiatives would restrict interactive home gambling to a minimum and prevent the emergence of a significant new group of problem gamblers.

I am confident that the law retains both an educative affect and a moral imperative for the overwhelming majority of Australians.

I can well understand why the Federal Government may not wish to implement my proposals immediately. As the Productivity Commission Inquiry is still in its submissions and hearings stage, the Government would not wish to pre-empt its findings.

It was pleasing, that the Federal Treasurer, Peter Costello, agreed to my request to include in the terms of reference, the issues I have raised in relation to home gambling.

However, pending the outcome of the Inquiry, the Federal Government should immediately initiate a moratorium on the establishment of any additional home gambling sites in Australia, while warning current site operators contemplating additional development of existing sites that in the future they may be made illegal and have to be abandoned.

CONCLUSION

Legalised gambling, particularly poker machines and now internet gambling, I believe, is destroying the Australian ethos of a fair day’s work for a fair day’s pay as people place more misguided reliance on gambling for a quick buck. The issue of home gambling must have a high priority. Once you widen the Net, you deepen the problem.

Referral to that paper will indicate that, while I welcome the report of the Senate committee, I believe its recommendations certainly do not go far enough. Indeed, I believe that only a total ban on Internet gambling is an adequate response. Therefore, I certainly welcome the additional recommendations of Senators Tierney and Harradine that are part of the report. I am still very strongly of the view that only a total ban is an adequate response to this new, insidious form of gambling.

You only need to look at the various studies that have been done on this form of gambling to reach that conclusion. The Productivity Commission, in the context of its overall investigation of gambling in 1998, undertook some significant work on Internet gambling. Although it concluded that the current use of Internet gambling was negligible—I think its figure was 0.6 per cent of Australian adults using Internet gambling—its use was expected to grow strongly in the future. It concluded that it posed significant new risks for problem gambling, represented a quantum leap in accessibility to gambling and would involve new groups of people in gambling activity. Of course, accessibility is the major problem of Internet gambling. It is available 24 hours a day, seven days a week, 365 days a year, and therefore is quite unlike any other form of gambling currently in operation. The Productivity Commission con-
cluded quite clearly that the prohibition of online gambling would reduce gambling problems associated with the Internet. Another problem which has been highlighted with respect to Internet gambling is the relatively young age of people involved in it, with 52 per cent of Internet gamblers aged between 18 and 24 years. That of course highlights a very significant problem. So the evidence produced by the Productivity Commission leads to the conclusion that a ban should be implemented.

In the course of my own research I looked at a number of the sites. This is just one example of the sort of insidious attitude that is adopted by those promoting Internet gambling. Grand Online Casino offered the following inducement to me some months after I clicked onto their site. It said: 'For four days only, we will compensate you $100 when you make an initial deposit of just $50. Simply follow the link. Just click here to claim your compensation.' So that is the sort of promotion that is being undertaken in relation to Internet gambling to get people involved in it.

In the United States there has been a significant study on Internet gambling conducted by the National Gambling Impact Study Commission, the report of which was presented in June 1999. That commission recommended a total ban on Internet gambling in the United States. So, without question, the detailed work done by that commission reached that very solid conclusion. Of course, the other initiative that has been taken in the United States is the so-called Kyl bill in the United States Senate, which would effect a complete ban on Internet gambling. That passed the Senate on 19 November 1999 and is now being considered by the House of Representatives. Very recently, the House of Representatives Committee on the Judiciary’s report on this proposed act stated that the ban and the act are:

... a necessary and appropriate Federal response to a growing problem—

... no single State, or collection of States, can adequately address.

Gambling businesses around the country—and around the world—have turned to the Internet in a clear ... attempt to circumvent the existing provisions on gambling—

that apply in America, that is—

... many gambling organizations now provide betting opportunities over the Internet from offshore locations to avoid or complicate effective Federal or State law enforcement.

They are a number of the bodies and organisations—and of course the United States Senate itself—that have proposed a ban on Internet gambling. I believe there is strong evidence that that is the only appropriate response to this new and insidious form of gambling. And, while I welcome the report of the committee, I believe it does not go far enough. I support the additional recommendations of Senators Tierney and Harradine, but I believe that ultimately the only proper response to this is to implement a total ban. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

FISHERIES LEGISLATION AMENDMENT BILL (NO. 2) 1999

A NEW TAX SYSTEM (TAX ADMINISTRATION) BILL (NO. 1) 2000

First Reading

Bills received from the House of Representatives.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.47 a.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 ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.47 a.m.)—I table a revised explanatory memorandum to the A New Tax System (Tax Administration) Bill (No. 1) 2000 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—*

**FISHERIES LEGISLATION AMENDMENT BILL (No 2) 1999**

This Bill proposes amendments to the Fisheries Management Act 1991 and the Fisheries Administration Act 1991. These amendments will introduce new measures for control, monitoring and enforcement of foreign and domestic fishing operations to increase management effectiveness of the Australian Fisheries Management Authority (AFMA) and support sustainable use of Australia’s fisheries resources.

The Australian Bureau of Agricultural and Resource Economics has calculated that the total Gross Value of Production of the Australian fishing industry for 1998-99 was $1.98 billion.

The amendments are the result of the ongoing refinement of fisheries management practices and changing circumstances in Australian fisheries management. The amendments also complement the fisheries enforcement, forfeiture and detention measures already included in the Fisheries Legislation Amendment Act (No 1) 1999 and the Border Protection Legislation Amendment Bill (No 1) 1999.

As a package they will enhance AFMA’s management effectiveness and significantly increase Australia’s ability to ensure the sustainable use of its fisheries resources.

The Fisheries Legislation Amendment Act (No 1) 1999 dealt with strengthening enforcement action against foreign fishing boats making incursions into the Australian fishing zone (AFZ) and strengthening fisheries management controls on the high seas. This Bill will further add to Australia’s enforcement and management controls, for both foreign and domestic fishing boats.

Key elements include changing the definition of foreign fishing boat to enable control over port access for a boat that may be equipped and capable of fishing but may not have been originally designed for fishing. This amendment will also clarify that control and denial of port access can be exercised over a foreign boat which is being used, or intended to be used to resupply foreign fishing vessels. Denial of port access is a mechanism to deter fishing that may be undermining agreed regional conservation measures and also to reduce the risk of illegal foreign fishing in our AFZ.

Currently port access is being denied to Japanese tuna long line boats fishing for southern bluefin tuna outside agreed regional fisheries management arrangements. Control over supply vessels will preclude any future attempts to undermine this measure through use of a bunkering ship using Australian ports to resupply vessels on high seas fishing grounds.

A further element provides AFMA with the authority to place observers on foreign boats outside the AFZ. This would enable regulations to be made that would allow the placing of observers on foreign fishing boats outside the AFZ. Observers on foreign boats would enable the gathering of data on the boat’s fishing operations for research and compliance purposes. If Australia had been able to agree with Japan on a scientifically sound joint experimental fishing program it would have involved participation of Australian observers on Japanese tuna long line boats fishing on the high seas.

The Bill will also increase deterrence to providing false or misleading information. These amendments would address cases where false or misleading information has been furnished in an attempt to conceal the actual amount of fish taken, processed or carried; the species of fish taken, processed or carried; or the location of a fishing boat. There will be an increase in the monetary penalty from $6,600 to 250 penalty units (currently a value of $27,500) on conviction for providing information that is false or misleading. There will also be provision for a court, upon conviction for providing false or misleading information, to order the forfeiture of a boat, fishing equipment, or catch relevant to the offence or the specific proceeds gained as a result of the commission of that offence.

These provisions recognise fisheries management is highly reliant on accurate information being provided by commercial operators on which to base stock assessment and management decisions. Not only is the Government concerned to ensure that Australia has a strong capability to enforce its rights over our fisheries resources, but this Bill also provides for more effective management by AFMA and better monitoring of our marine resources.

This Bill introduces new measures to collect data essential to assess the impacts of fishing on the marine environment. In particular data may be collected on by-catch incidentally caught in fishing operations. This is consistent with the initiative to move fisheries management to ecosystem management. This data will assist in the development of by-catch action plans to minimise incidental catch. As such, it supports the recent release by the Commonwealth of the National Policy on Fisheries By-catch. This Policy provides options by which each Australian jurisdiction can
manage by-catch according to its situation in a nationally coherent and consistent manner. As a result, waste should be reduced and all components of the marine environment better conserved.

The Government is also clarifying the need for Fishery Plans of management to include provisions, e.g. mitigation measures, directed at reducing to a minimum incidental catches of fish and non-fish species which are not authorised by that plan. AFMA’s efficiency and effectiveness will be enhanced through widening the types of offences for which a penalty infringement notice may be issued. This provides flexibility by allowing an alternative to prosecution for minor transgressions. It is proposed to amend AFMA’s functions to remove the limitation on the Authority which prevented it from managing and carrying out adjustment, restructuring, exploratory and feasibility programs which had been devised by other agencies or within Government. Finally, it is proposed to amend the present tax exemptions of the Authority to make it liable for Fringe Benefits Tax.

With the introduction of this Bill, the Government completes a major commitment to ensuring that Australia’s fisheries resources are better managed and that their use is more effectively enforced.

I commend the Bill to the Chamber.

A NEW TAX SYSTEM (TAX ADMINISTRATION) BILL (NO. 1) 2000

This Bill contains a number of measures relating to the Government’s reform of tax administration, and in particular the rules for the collection and payment of tax and other liabilities under the Pay As You Go (PAYG) system.

The Bill will complete the PAYG arrangements for certain trustees, by specifying how their PAYG instalments are to be calculated. It will also ensure that PAYG instalments paid by life assurance companies and other organisations with superannuation business, are calculated on the same basis as the instalments paid by superannuation funds.

The Bill will provide for loan repayments under the Student Financial Supplement Scheme and ABSTUDY to be collected under PAYG. This will align the collection arrangements for these loan repayments with the arrangements for the Higher Education Contribution Scheme.

A number of minor technical and consequential amendments will also be made by this Bill to facilitate the introduction of the new PAYG system.

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

I commend the Bill.

Debate (on motion by Senator Quirke) adjourned.

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

CORPORATIONS LAW AMENDMENT (EMPLOYEE ENTITLEMENTS) BILL 2000

First Reading

Bill received from the House of Representatives.

Motion (by Senator Alston) agreed to:

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

Bill read a first time.

Second Reading

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.48 a.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—

Introduction – Objects of the Bill

This Bill will amend the Corporations Law to increase protection for employee entitlements. It will send a very clear message to corporate employers that deliberate avoidance of obligations to their employees is not acceptable. It is not expected that the Bill will have a financial impact on the Commonwealth.

Background

At present, employee entitlements receive a priority under the Corporations Law. The entitlements that are protected include wages, superannuation contributions, leave and retrenchment payments.

Under the priority, employees are paid in full after the expenses of the winding up, to the extent of the company’s available unsecured assets. As a result, employees are paid before the debts of other unsecured creditors, but not out of assets secured under a fixed charge, such as a mortgage. Employees are, however, paid out in priority to certain floating charge holders.

In the wake of a number of high-profile failures of corporate employers in late 1998 and 1999, the Government examined a number of options for increasing the protection for employee entitlements.
In July last year, the Government put proposals for the amendment of the Corporations Law to the States and Territories at the Ministerial Council for Corporations. The Ministerial Council gave its in-principle approval to the proposals.

Draft provisions were prepared to give effect to the proposals and were forwarded to the Ministerial Council for approval in November 1999, in accordance with the requirements of the Corporations Agreement.

Earlier this year, Ministerial Council members gave the necessary approval for introduction of the Bill into Parliament, allowing the Government to proceed with the Bill at the earliest available opportunity.

**Content**

The Bill will increase the protection for employee entitlements in two ways. First, by extending the existing duty on directors to ensure that their company does not engage in insolvent trading.

Second, by introducing a new offence which targets agreements and transactions entered into for the purpose of avoiding payment of employee entitlements. A breach of the new offence provision may lead to court-ordered payment of compensation by those involved.

Further, serious breaches can result in criminal penalties.

**Uncommercial transactions and insolvent trading**

The Corporations Law already contains a prohibition on insolvent trading by directors. However, the existing duty may not cover a situation where a company confers a financial benefit on another party that is not a debt.

The first limb of the Bill extends the current duty on directors not to engage in insolvent trading to include uncommercial transactions. Civil penalties and criminal sanctions may flow from a breach of this duty. Further, directors may be personally liable for losses suffered by creditors.

It would not be appropriate for directors to be personally liable for a transaction required of a company by order of a court. For this reason, court-ordered transactions do not fall within the scope of the expanded duty, even though such transactions could be voidable under other provisions of the Corporations Law.

This amendment has implications for the protection of employee entitlements. It also impacts on the prosecution of directors involved in ‘phoenix’ activity and recovery actions by liquidators for the benefit of all creditors generally.

Directors who breach the duty knowingly, intentionally or recklessly could be prosecuted under existing provisions of the Corporations Law.

Further, they could be subject to a court order to pay compensation to the company for their breach.

This compensation would be available to be distributed amongst all the company’s creditors on liquidation, including its employees.

**New Part 5.8A: Employee entitlements**

The second limb of the Bill inserts a new Part 5.8A into the Corporations Law. The new Part targets agreements and transactions entered into to prevent the recovery of employee entitlements.

The entitlements that are protected are those that receive preferential payment on winding up under the Corporations Law – that is: wages, superannuation contributions, injury compensation, leave entitlements and retrenchment payments.

The Bill makes it clear that the entitlements need not be owed to the employee; for example, they could be owed to a dependant.

The Bill prohibits a person from entering into arrangements or transactions with the intention of avoiding the payment of employee entitlements, or of significantly reducing the amount of entitlements that employees can recover. The object of this offence is to deter the misuse of company structures and other schemes to avoid the payment of entitlements to employees.

Persons who breach the new offence can be prosecuted. They could be subject to a fine and imprisonment of up to 10 years. Under the general principles of criminal law, a penalty may be imposed on people who aid or abet a breach of the provision.

There is no requirement that the person be a director of the company or related party. Therefore, the provisions of Part 5.8A have a very wide effect. They cannot be avoided by arranging the prohibited transactions through non-related parties.

**Court-ordered compensation for employees**

There are existing provisions in the Corporations Law that allow creditors to recover compensation. However, they are limited to instances where the company was trading when insolvent, or more generally where a court has ordered damages in addition to, or in substitution for, the grant of an injunction.

To increase the scope for recovery of entitlements by employees, the Bill provides that a person in breach of the new offence provision can be ordered to pay compensation to employees. The amount of compensation is the loss or damage arising from the breach that the employees have suffered.
The Bill includes safeguards to ensure that an orderly winding up of a company is not hampered by actions to recover employee entitlements. The measures include notice to the liquidator of action under the new provisions and time limits to give the liquidator time to consider whether he or she will take action against a company’s directors for alleged breaches of the Corporations Law.

These measures will enable the liquidator to maintain control of the settlement arrangements associated with liquidations. The Bill also limits the exposure of persons in breach, to ensure that they are not subject to multiple penalties in respect of the same action.

Conclusion

The Government is serious about protecting employee entitlements and assisting employees who have been short-changed by their employer. This Bill will help prevent corporate employers from avoiding their obligations to their employees and will provide employees with greater confidence that the entitlements they earn will be paid to them.

In conjunction with other Government initiatives in this area, this Bill reflects the Government’s commitment to assist the employees of failed companies to receive their due entitlements.

I commend the Bill to the Senate.

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

COMMITTEES

Employment, Workplace Relations, Small Business and Education References Committee

Report

Senator JACINTA COLLINS (Victoria) (10.49 a.m.)—I present the report of the Employment, Workplace Relations, Small Business and Education References Committee on its inquiry into the effectiveness of education and training programs for indigenous Australians, together with the Hansard record of the committee’s proceedings, submissions, additional information and documents presented to the committee.

Ordered that the report be printed.

Senator JACINTA COLLINS—by leave—I move:

That the Senate take note of the report.

I am pleased to table the report, Katukalpa, with respect to the serious problem of indigenous education. The inquiry was first referred to the committee on 9 March 1998. Progress has been delayed as a result of considerable work pressure within the committee secretariat over the past two years. It was not until halfway through last year that public hearings and inspections were able to be scheduled.

When the committee first discussed the terms of reference for this inquiry it was thought to be appropriate to review the recommendations of the large number of reports commissioned by governments over the previous decade or more, to find out which recommendations had been implemented and those which had not been, and the reason for the lack of action where this was apparent. Over the course of the inquiry, however, it became clear that indigenous education is an issue in perpetual motion, affected by political and social change at all levels as well as by evolution on educational thinking. Hunting through the archives came to be regarded as a less useful activity for a Senate committee than placing on record a fresh set of observations, reflections and recommendations. Nonetheless, the report does cover in some detail the reports of the past 15 years which have guided policy makers in indigenous education.

Indigenous education is a shared responsibility of the states and territories and the Commonwealth. Given that the states and territories each have their own traditions, priorities and curriculum cultures there are some differences and some disparities across the country in the delivery of indigenous education. Differences are to be expected, but the committee has some concern about the disparities evidenced by pockets of neglect across the country. My colleague Senator Crossin may have something to say about the Northern Territory schools in this regard.

The committee has recommended that MCEETYA, as the national policy clearing house, look at best practice in each state and replicate that across the country to avoid such neglect. In the course of its travels and investigations the committee heard from a large number of dedicated people, some with success stories to relate and others indicating to
us the extent to which challenges are still to be met. Despite the best endeavours of many educators, the goal of equity of achievement between indigenous and non-indigenous students appears to be far distant. The most recent record of indigenous education shows that participation levels in post-school vocational education are by far the most useful and encouraging indicators of success, while the rate of participation in secondary schools indicates the most intractable and serious problem.

The committee takes the view that much can still be done by governments and their agencies and by educational institutions to accelerate the slow progress in indigenous education. The committee has made a number of recommendations calling for better targeting of resources and the concentration of funds and efforts in ways that will make a difference. Finding solutions to the educational underachievement of indigenous youth should concentrate our minds on priorities. Clearly evident to the committee was the interconnection between low school achievement and dislocated family life and poor health. Low literacy rates, high drop-out rates—particularly for boys—evidence of poor nutrition standards and a very high incidence of otitis media are well documented in the report. The committee believes that the best way to come to grips with the health and nutrition problems is to train sufficient numbers of indigenous health workers, and this should be a priority. Another priority should be improving the quality of teacher education in universities to equip teachers with the skills to handle health and literacy problems with more assurance. The supply of good teachers to remote areas and to schools which have a high enrolment of indigenous students is dependent not only on improved teacher education but on more attractive incentives and improved living conditions. It should be acknowledged that some states, particularly Western Australia, provide better incentives and conditions of unemployment than others, especially in standards of accommodation. The committee has recommended that MCEETYA look into this matter of professional incentives and living conditions.

In the course of its inquiry the committee travelled to four states and the Northern Territory. It visited a number of schools and received valuable evidence and advice from a large number of educational practitioners in the field. The appendix to the report lists all of these people. I would like to thank my colleagues on the committee—in particular, Senator Crossin—for their work and their interest, and also commend the work of all the members of our committee secretariat, noting in particular the efforts of David Redway in pulling together the draft report and Kerrie Nelson for her valuable insights into indigenous education. These members of the committee secretariat are in the chamber now and I would like to acknowledge their presence.

As a final point, it is noteworthy that the committee has produced a unanimous report. This is in part a recognition of the issues we have encountered and dealt with—that they are of fundamental importance. No government, at either Commonwealth or state level, will be able to claim now or in retrospect that indigenous education has been as well looked after as it could have been. Some governments have been able to show more commitment than others and some may lay claim to more success than others, but measurement of success is always problematic. The committee hopes that this report will drive progress somewhat further and much faster.

Senator CROSSIN (Northern Territory)

At 10.56 a.m.—It is timely, I think, that the front page of the Australian yesterday reported on national literacy levels across this country. It is unfortunate that we see that indigenous students have only reached a reading benchmark of 66.7 per cent in Queensland and a staggering, very low 29.7 per cent in the Northern Territory. Yet we can see that in places like South Australia, Western Australia, Victoria, the ACT and New South Wales the rate of success is well above 80 per cent. So it is timely that today the Senate produces its report, Katukalpa, which is a result of our inquiry into the effectiveness of education and training programs for indigenous Australians. Let me say something about the title of this report. I think it is quite impressive and reflects a sentiment that the
committee gained from Papunya School. The translation of the title means ‘reaching to go higher and further with your whole body and spirit’. I think this title is significant because it is a reflection of the commitment of indigenous people in their communities to wanting their children to achieve and their ongoing struggle but firm belief and hope that they will be able to achieve that. Despite the many years of disadvantage, the inequities and the lack of commitment from some governments around this country, particularly in the Northern Territory, these people still have firm hopes for their children and their future.

I want to take this time to personally thank David Redway and Kerrie Nelson, who I also acknowledge are here today, for their writing of the report and for the many hours that we spent trying to shape this report into the kind of document I think the federal parliament should be proud to send around this country. In terms of indigenous education, if you stand still on a day for too long you will find that the next day the issues are different and some of the threads are hard to pick up. I think one of the main things about this report is that it was important to actually close the chapters and to move on because if you do not do that you are going to find yourself facing a whole new set of problems. I also want to pay tribute to Senator John Tierney for his work on the committee. I think it is an outstanding achievement that on an issue, such as indigenous education, where there can be a number of conflicts of interest and different political points, the committee did not use this as an opportunity to do that. There is a genuine commitment, I think, from all sides of politics to progress this issue, to recognise it as a major national problem and to genuinely want to do something about this together. For that, Senator Tierney, I thank you for your input and for your commitment in producing what we now have before us—a majority report.

It is important that people note the very first recommendation of the report. It is important in the light of the figures that were released yesterday nationally that the raising of literacy and numeracy skills of indigenous students remains not only a national priority but, as the report says, an urgent national priority. There are many problems in indigenous education. I do not think any one of us has quite got it right yet. Millions of dollars have been spent on indigenous education over the last 12 years, with the AEP and now IESIP funding, and yet we still saw results yesterday of only 29 per cent in the NT and 66 per cent in Queensland. We must surely be wondering where that money has gone and what we have actually achieved. But I do not think it is proper for us to dwell too much on some of those failings. We need to recognise them, but we also need to recognise where gains and improvements have been made, and we need to move on.

It is important to draw people’s attention to the fact that this report covers a broad spectrum of indigenous education issues. One of the most important, in my mind, is the interaction between health and education outcomes. We know health outcomes in Aboriginal communities are not good, and we know that significantly impacts on learning ability. It is important that this report recognises that the next step is to link health and education outcomes. Government departments across a broad range of areas must start to talk to one another and have priorities and outcomes that complement each other and do not work in opposition to each other. You cannot expect a child to sit down and comfortably learn a skill while that child has an earache, is hungry or has scabies. It is very important that this report recognises the interaction between those two areas.

The other important thing that this report recognises is the enormous input that Aboriginal parents and communities must have, and must be encouraged to have in the future, in determining their children’s learning outcomes and curriculum content. I remember the argument we had many years ago about devolution of funds to schools. It started in New South Wales, and it has now flowed to schools around the country. But this report asks governments to seriously look at devolving funding completely to the school source to give communities and parents the responsibility of controlling funds which impact on their children’s education and the way their school operates. It also encourages
further participation by Aboriginal parents in driving policy outcomes in the schools. That is an important element of this report that I would hope not only MCEETYA but also all state and territory governments take into consideration.

The report makes a suggestion that MCEETYA set up a consultative body that would particularly advise them on indigenous education, comprising representatives from ATSIC and indigenous education consultative bodies. I would urge MCEETYA to take on that recommendation and I sincerely hope that they do. They need to take indigenous education much more seriously than they are now. That is not to say that they do not take it seriously, but they need to push it up the ladder a few rungs in terms of priorities. They need to set up a structure through which those priorities can be monitored, they can be provided with some feedback and they can set policy directions. To do that, it is important that they get advice from an independent indigenous group.

In conclusion, I want to raise a number of issues pertinent to the Northern Territory. There are some very strong statements in this report about bilingual education, as well there should be—in particular, the recommendation that where bilingual programs are maintained in indigenous communities they are seen as appropriate and necessary by the communities. So this report does not accept that bilingual education is irrelevant in this country. This report accepts that it is an integral part of some communities. Where those communities actually want bilingual education and where it is appropriate, they should be encouraged to continue it. This report comments on the lack of preschool education in remote communities and the significant lack of access to secondary education in remote communities—particularly, and no less shamefully, in the Northern Territory.

The report comments on the important role of indigenous education workers and again makes a recommendation about the need to have a proper salary structure and a career structure for these people and, more particularly, to give them a final incentive to get their teacher qualifications. It is no use having Aboriginal education workers who are seen to be assistant teachers without encouraging them to take the next step to become teachers and to take control of their school in all ways. The report also looks at providing incentives for teachers in remote schools—for getting them there and keeping them there—and for improving teacher education in universities. I sincerely hope that, after this report has been tabled today, it does not sit on the shelf. I hope government members can encourage their minister to make a very prompt reply to these recommendations. I hope MCEETYA pick up each and every recommendation and that those recommendations become a national priority. This report is a means to achieving further progress in indigenous education in this country.

Senator TIERNEY (New South Wales) (11.06 a.m.)—Having set up the terms of reference for this inquiry, I am very proud of the fact that we have produced a unanimous report. I am somewhat distressed that, because of the program, I do not have an opportunity to speak on the report today. I would like to thank in particular Senator Crossin for her remarks, and I will speak in more detail on this report at a later time. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
sue in the context of what the opposition said in Hansard yesterday. If, as we say, there are inequities and anomalies which appear able to be addressed either through changing the ministerial order process documentation or perhaps even by requiring a subsequent amendment to the Dairy Industry Adjustment Bill, the government are minded to follow that process. In an attempt to short-circuit this process, it might be useful if the parliamentary secretary could confirm that or otherwise for the committee.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (11.08 a.m.—With regard to the remarks that Senator O’Brien has just made, I do wish to convey to him that the government position is as I put it yesterday: we believe that the principles of the Dairy Industry Adjustment Bill 2000 are fair and just and that the bill delivers structural adjustment to those most adversely affected. As I said yesterday, the government will look at any apparent unusual circumstances to see if solutions can be found, but this can only be within the principles and framework laid down in the bill.

I think I covered some of this ground yesterday but, for Senator O’Brien’s information, I will go over it again. The lessors of the land are the landlords and a high value property with well-maintained facilities will receive a good rent; a lower value, poorly maintained property, a lower rent. Most dairying is in high value country and will have alternative uses. It is very unlikely that the rent value will decline, and we do not see that the lessor will be put in a disadvantaged position. In fact, the lessors of the land are not going to face structural adjustment pressure anywhere near as severe as the pressure the lessees will face. However, and this might seem odd to some people, they will receive a part of the entitlement even though rent values are unlikely to decline.

With the example that some senators referred to yesterday of a lessor being on a farm for only a few weeks then ‘walking away’—I think that was the term that was used—with an entitlement, can I pose several questions: how do we know that that person has not moved to a new farm or purchased a farm—that is, they are continuing in dairying; what would you do to a new lessee who had been on the farm for only three weeks and who was firmly committed to staying in dairying; and how do we know whether or not there is, right now, a new lessee with an entitlement working on the property of the lessor? Are you suggesting that we should create two classes of people and treat them differently?

This package, as I outlined yesterday, is about structural adjustment. Lessors and lessees may move, change their businesses and leave dairying, or they may well stay in dairying. The package assists them to do this. As I said yesterday to Senator O’Brien, I am sure he can come up with a thousand different scenarios to test the boundaries of the government package. Each of those scenarios will have a different ratio of entitlements by a lessor or lessee, but we believe that the package enables everybody to make their own choice as to what they are going to do. Those business decisions are up to the people involved. The government cannot tell them what to do, and it will not be doing so.

Senator O’BRIEN (Tasmania) (11.11 a.m.)—I thank the parliamentary secretary for that response. I think what the government are saying is that they are going to be looking at this issue. They are not minded at present to change the legislation—neither are we asking them to—and they are not minded at present to vary the drafting instructions. We are simply asking that it be looked at closely in the context of what I believe even Senator Crane has conceded are some anomalies which arise. We have been at pains to say that we are not wishing to pursue amendments to the legislation precipitously because we are conscious of the possibility for unintended consequences; neither are we, in a general sense, asking for the general principles that are being applied to the package to be varied. However, we believe we have made the case that there are potential inequities and anomalies that need to be looked at. If, as I understand the parliamentary secretary, the government are prepared to look at those, and are in the position that, if they are persuaded that action is needed, they will take it, then that seems to address in a sub-
Senator FORSHAW (New South Wales) (11.13 a.m.)—I will add some comments to those of my colleague Senator O’Brien. I think all of us have been made aware of these concerns directly by the industry. Certainly the committee was made aware of them the other day in our hearings. I received calls this morning from concerned dairy farmers—lessors—about this situation. It is a real concern.

It has been put to me, and I understand it has also been put to the government in a variety of ways, including through the hearings, that in some regions the lessors, the owners of the farms, have already been made aware that many lessees will be seeking the entitlement, collecting the entitlement and departing. That is of major concern because that does not suggest to me that they will depart, go to some other enterprise and seek to continue in the industry. It does not make a lot of sense and it does not seem logical—as you would suggest, Parliamentary Secretary—that a person would take the entitlement, leave a property and then go to another property and start dairy farming again. What is the value of doing that? If they want to continue in the industry, the more likely scenario would be that they would collect the entitlement with respect to the enterprise that they are currently involved in and would seek to continue in the industry at that enterprise.

So I think this suggestion that they will pick up the entitlement and then find another dairy farm to go and lease is a little bit of a red herring. I do not think the real world operates quite that way. The more likely scenario is that, if it is in their personal financial interest to take the entitlement and get out of the industry because they see their potential income in the future being seriously affected—according to, say, the figures that Senator Woodley has put forward—that is what they would be more likely to do. I am being told that the lessors, the farm owners, are already aware that significant numbers of farms will be affected in this way with the lessees leaving. It seems to me also that that makes a bit of a mockery of the exit package.

We know that this exit package is a tax-free amount of $45,000 that is available for any person who wishes to exit the industry. That payment is subject to the provisions of the relevant scheme under which it operates and is capped by a means test. The indications that we have are that there would be very few farmers who really would be in a position to take up that exit payment, that $45,000, because of the means test. They are better off if they can access the structural adjustment entitlement, which in some cases—in many cases, one would assume, given the average figures that we have been given—would be more than the exit package payment; they would take that option.

I reiterate the comments of Senator O’Brien. I gather from what you are saying, Parliamentary Secretary, that the government does not believe that these issues are as serious as we make them out to be; that they are not really likely to occur; and that all sorts of other factors, such as potential improvements in the value of the properties, will occur—and we dispute that as well. The government should be prepared to take notice of what we and this section of the industry are saying. The government should look at that, see how it works out over the next few months and, if a real problem with lessors does eventuate, as has been argued, it should be prepared to come back and address it.

As we have said before, this is a difficult choice. We are not able to put forward amendments that could deal with this specific problem without undermining the essential character and fabric of the package itself. That is because of the difficulties in trying to introduce a regime for a discrete group of people where you might take into account asset values and capital contributions, et cetera, to the enterprise as well as the impact upon income when, as we know, the whole package is founded on compensation or structural adjustment payments—if you want to use that term—for the loss of income that will occur through deregulation.

But I would seriously urge the parliamentary secretary to give a commitment on behalf of the government that it will consider this issue and, if in the future problems arise that are not able to be fixed by the dairy industry authority that is to be established under this act and people and their interests are
seriously affected—because those interests will be interests in the dairy industry and we do want to see a better, more efficient, more productive industry—address those problems. If such issues and problems are not addressed, clearly we will be leaving some sectors of the industry in perhaps a worse position than they are currently in.

Senator WOODLEY (Queensland) (11.20 a.m.)—I want to extend this debate because, while I recognise that Senator O’Brien and Senator Forshaw at this point are willing to trust the government, I am not—and I will say that up front. I think they are correct though in that, at the end of the day, the government will have to sort this out. I really believe the government has to give us the commitment that Senator Forshaw is asking for, but I think that commitment needs a fair bit more content. At this stage I am not prepared to simply support the comment that Senator Forshaw is making. I just do not think it is good enough that, if we discover problems along the road, the government might look at this issue. I want some commitment from the government that there is a process that will enable that to happen. I have been talking again to the people involved this morning, and it is not an insignificant number of people. That is the first point I want to make.

The second point is that, if we use the processes of appeal, tribunals or whatever to solve this problem, what we are really saying to these people is, ‘The only recourse you are going to have will be a long, expensive and legal one.’ I do not think that is good enough. It has been shown very clearly—at least to the rural and regional affairs committee when it met—that there is a significant problem. I believe that we ought to be getting from the government a proper process for resolving that problem.

Let me underline this issue by quoting from the Hansard of the Senate hearing on Friday, 10 March. It reads:

Senator McGAURAN—I think you have articulated a case clearly for us all. Can you confirm whether the greater majority of sharefarmer lessee/lessee relationships reside in the state of Victoria?

Mrs George—I think they do.

Mr Mynard—Absolutely. There are nearly five times the number of sharefarmers and lessees in Victoria than in other states, yes. The answer is yes.

Senator McGAURAN—Do you happen to have a figure of how many you would represent?

Mrs George—Not personally. I had a lot of faxes sent through to Senator Harris’s office. We have access to those. They are somewhere around here. They just give you a few different cases. Different people have written in just to voice their opinion and to give their personal particulars of what is happening. They are free for you to read too.

Mrs Wilson—I would say it would be in the vicinity of 300 and 500 farmers.

Senator McGAURAN—Significant.

Mrs Wilson—Yes.

I support what I said yesterday, I want to put on the record a further question that Senator McGauran asked. It reads:

Senator McGAURAN—Therefore, if that is the case, you represent a significant number—a greater majority reside in the state of Victoria. What then—in a nutshell, if you can, because we are always pressed for time—is your representative body, the United Dairy Farmers, telling you about your case?

Mrs George—I have been to meetings and I have spoken with Alan Burgess and Max Fehring. I am aware that those people are present in the gallery. I want them to know that this was the evidence given to us. Mrs George continues:

They seem sympathetic to me personally, but they really say, ‘There’s always going to be a few that slip through. There’s nothing you can do. You’ll have to wait and appeal at the end.’ They are basically saying that I am an odd person, that I am just one. But, from the response to our advertisement in the paper, we are not a minority. There are a lot of us out there, and I think we are going to be flooding the tribunal in the end. Surely they cannot cope with the amount of people who will be doing this.

Senator McGAURAN—So the UDF is not representing your particular point of view?

Mrs George—No, we feel that they are not interested in us. That is the feeling I get from speaking to them. I am a member too. We pay our fees.
I put this on the record to show you that the evidence given to our committee was significant.

There is a real problem here. People are feeling that there must be some way in which this issue can be resolved. While I respect greatly what Senator O’Brien and Senator Forshaw are saying, I believe that the government must give us more assurances than simply saying, ‘At the end of the road there will be a process. You will be able to go to tribunals,’ and all the rest of it, which is time consuming, usually involves legal representatives, usually is expensive and will mean that there will be a long drawn out process before people can get any justice. I believe that is not good enough and that the government must do more while we have the bill before us. As we all know, good intentions are expressed by everybody but once we pass legislation they are often forgotten. What we must have is a commitment on the record from the government that there will be a proper process to resolve this issue.

While I am on my feet, I point out that Senator Boswell entered this debate at this very point yesterday and slurred me significantly. I want to answer that slur.

Senator Murphy—Senator Boswell!

Senator WOODLEY—Yes, Senator Boswell. The Hansard states:

Senator BOSWELL—I can do my sums as well as you can, Senator, but I do not run around in the pretence of being the chairman of a Senate committee and build up expectation and hope. You know very well that this is a very generous package.

This kind of slur has been made against me regularly—and I say quite clearly—by members of the UDV and others. I have ignored them up to this point. I have simply allowed them to go. Senator Boswell was not at any meeting that I was at. So he is repeating things that have been repeated over and over again in these debates. I went as chairman of the committee, at the invitation of a number of branches of the UDV and the New South Wales authority, to explain the details of the report. I must say that there was total ignorance of what the report contained, even from those who said that they accepted that the report said that deregulation is inevitable.

That is the only part of the report most of them read.

I put on the record in those meetings what the report actually said. Then I clearly said, ‘As a Democrat senator, I am against deregulation.’ I made that very clear. Surely I am able to do that. As the chairman I presented what the report said. Senator Boswell was not at any of those meetings. I could add a few more of the slurs which were made against me which have come back to me. For instance, that I am a minister of a small religious sect in Queensland and therefore anything I say should be discounted. The Uniting Church is fairly large and is a mainstream church, last time I checked. One can let these things go, but when they are repeated in this chamber by the Leader of the National Party because that is what he was told—he was not at any of the meetings—I do start to get a little annoyed. I believe I have the right to correct the record in the same place in which the slur was repeated.

Senator Forshaw—He is the leader of a small sect.

Senator WOODLEY—It is getting smaller. At one of the meetings also, it was said to me that my position could be respected if I had written a minority report. That is a ridiculous assertion because there was no need to write a minority report; I accepted and put my name to that report. It was a unanimous report, because I believed in every word of it. The fact that deregulation is inevitable is quite correct, and the reason it is inevitable is that there is no political will to do anything about it. That is the problem. I could expand on that at great length but I will not. Let me say where the lack of political will is coming from; I think if I whistle you can point. I will not expand on that.

I just wanted to put on the record that that was a slur. It was a slur that was simply repeated because it parallels many other slurs that have been made. While I have not answered them before because I did not think it was worth it, let me now place on the record that it is a slur and it is incorrect.

Senator MURPHY (Tasmania) (11.30 a.m.)—I want to ask a question of the parliamentary secretary. I was listening to the de-
bate on the monitor, and there are a whole range of possibilities that we will not be able to identify up-front. Even with regard to the lessor-lessee circumstance, a whole range of situations could develop. Is it envisaged that the DAA will have the capacity to consider some of these potential anomalies if they arise? If it will, what will the process be for it to deal with them?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (11.31 a.m.)—I think I already indicated in my remarks at the end of the second reading debate that the DAA, in considering the rights to entitlement of lessors, lessees and other people in the dairy industry, will make a decision on what the entitlement for that individual will be. If that individual does not agree with the amount that has been decided, they then have the capacity to appeal to the DAA itself, and there is a capacity for review of that. This will partly answer, I hope, Senator Woodley's comments as well. That is the process.

If the person or persons are then not happy with the review that has been done by the Dairy Adjustment Authority, they can then make a further appeal to the Administrative Appeals Tribunal. So there is that double-edged capacity for review of the decision, and that is the process that occurs. The government has built this into the legislation and, unlike some of the inferences which have been made by Senator Woodley, we do have a process for dealing with it and that is the way in which it will operate.

Senator HARRIS (Queensland) (11.32 a.m.)—I would like to place on record some further information that was drawn to my attention last night, and I would like to read from a letter that I addressed to each of the senators. It is from a constituent in Victoria, and it states:

I wish to inform you that I have been talking to one of the Victorian constituents who has just won the title of Large Herd Australian Business of the Year 2000, a prestigious Australian wide recognition of his outstanding work in the dairy industry. He also took out the most profitable award.

He informs me that, under the deregulation package, he will no longer be profitable and plans to exit the industry. He also informs me that the farmers in England are tipping their milk down the drain for three days this week to try to get across to their parliamentarians that deregulation has been a failure and they are now reduced to peasant farming standards.

I am concerned with the process and the options that the parliamentary secretary is putting before this committee—that is, if any person within this process is aggrieved, their only means of proceeding with that issue under the government's proposal is to go to court. Senator Troeth also said that, if they discover things along the road, they will put in place measures to cope with those situations. But it is very, very clear that the problems have been put before the government already. We do not have to wait until we get down the road; we already know what some of the problems are.

I would like to quote the particular situation of a New South Wales constituent. I have the lady's permission to name her; Mrs Joy Boucher. The Bouchers purchased their dairy farm in 1984, operated it themselves for a period of years and leased it in 1987. They have no quota milk at all and, under the government's legislation, the entire package is going to go to their lessee. The lessee has already put Mr and Mrs Boucher on notice that, as of July, they intend to exit the industry. They will take with them the entire package, approximately $90,000, that would be attributed to their production from manufacturing milk.

Here we have a classic example of what Senator Troeth is saying: that the only option these people have is to go to court. I believe that we would be erring as senators in this chamber if we did not address the issue now. It is not a case of getting down the road, finding the problem and then putting an issue in place that will remedy it. We know what the problems are. I am not saying that this is not a complex issue; it is extremely complex, and it is going to be difficult to find a situation that will in actuality give fairness to all.

I would like to move on to some of the outcomes of the dairy adjustment package. If we look at the market milk that is produced on a state by state basis, the production in
New South Wales, in actuality, far outstrips the production in Victoria. New South Wales produces 597 million litres of market milk in a year, Victoria produces 508 million, Queensland produces 391 million, South Australia produces 186 million, Western Australia produces 192 million and Tasmania produces 58 million. So the area that, I believe, will be worst hit in relation to losses in the price of market milk is New South Wales.

When we look at the adjustment package and the share state by state, New South Wales actually loses 504.61 million and Victoria loses only 429 million. But, when you look at the net difference in those two states, New South Wales ends up losing 167 million overall, while Victoria actually gains 335 million. So it is very, very clear that the predominant funding for the dairy adjustment package will come out of New South Wales and end up in Victoria. This is as a result of the way the package is structured. We can go on and list a considerable number of cases. In New South Wales alone, there are over 100 dairies who operate without a quota. So, if there is a lessee-lessee arrangement, every one of those will have no option other than to go to court to sort out the issue.

I believe that the amendments that I will move at a later stage in this debate will address the issue. Concerns have been raised that it may, in actuality, restrict the ability of people to exit the industry. If the package is attached to the property, I believe that it will be equitable whether those people wish to leave the property or not. In real terms, if the property is offered for sale under the government’s proposal whereby the person can exit the industry and take the adjustment package with them, that will reflect in the price of the property. If they choose to leave it there, or it is tied to the property, they will gain the same amount that they would have by selling the property without the adjustment package, taking the lower price and walking away with the package. I believe that this will have the effect of placing the adjustment package where it should fairly sit. I believe it is totally inequitable to put a package up that is paid by the producers who are staying in the industry to support somebody who wishes to leave that industry and start in a different area.

In conclusion, I would like to place on record very clearly that we will not be opposing the adjustment package legislation, and again I reiterate very clearly that the dairy industry finds itself in this situation as a result of the undesirable and relentless pursuit by successive governments of the national competition policy. I believe that the only way that it is possible for large companies and multinational corporations to get their hands on the primary industries in Australia is to remove the cooperative system, and this has been done through the national competition policy, which then exposes all of those industries to large mergers and takeovers. That, I believe, is the base of the problem that we have in the industry and through other industries within Australia. In closing, I reiterate that we will support the bill but believe that the bill will be far more equitable to the industry if the amendments that I will propose at the appropriate time are carried.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (11.43 a.m.)—I will reply to some of those remarks very briefly. In the first instance, both Senator Woodley and Senator Harris have indicated that there is no process, that once this event occurs all dairy farmers will be plunged into an absolute morass of not knowing, of having no certainty about what their entitlements are going to be and of having no recourse if they do not agree with their entitlements. I have said, and I will say again for the record, that the Dairy Adjustment Authority has been set up to deal with what people’s entitlements should be. If the individuals or persons do not agree with the amount that is decided for them, they then have the recourse of appealing to the Dairy Adjustment Authority for a review. Then, if they do not agree with that, they can go on further to the Administrative Appeals Tribunal. That is the process that we have set in place, and that is the process that we believe will fit the purpose.

In response to Senator Woodley’s remarks that every lessee in Victoria or people who lease again will be thrown into uncertainty,
the information I have been given is that most of the 390 leasing farms in Tasmania and Victoria are on a three- to five-year contract, which will override the period of this adjustment. So they have every expectation, unless they choose to break it, of what the arrangements are going to be. To insinuate that the entire dairy industry is going to be thrown into uncertainty as a result of this bill is very wrong indeed.

Lastly, with regard to the case of the Bouchers cited by Senator Harris, the Bouchers do not have any quota milk, Senator Harris. They produce totally manufacturing milk. The price will not change and is not affected by deregulation.

Senator Boswell—It will probably go up.

Senator TROETH—It will probably go up, as my colleague Senator Boswell says. So for you to draw the conclusions that you have from that case is totally unwarranted. To all senators I simply say that my remarks as of before still apply. The government will, of course, look at any apparent unusual circumstances and will undertake to see if solutions can be found. I do not propose to add any more to that.

Senator WOODLEY (Queensland) (11.45 a.m.)—I will check the Hansard record, but I do not think I said the whole industry would be thrown into chaos. I very carefully read the evidence from the committee report. I was talking about the problem for lessees and lessors. I also do not think I said there was no process. If I did, I apologise to the parliamentary secretary. I certainly did not mean to say there was no process. The emphasis I put on it was that the process will involve people in lengthy, time consuming, probably requiring legal assistance and costly involvement in order to get the issue resolved for them.

That is the concern I have, that the process itself is not going to give a quick or cheap answer to these people, and the problem is being created by the legislation. I do believe that the problem should be solved in either a legislative way or by a commitment from the government which is not the one that has been given. I am not going to delay the Senate any longer, but that is the concern I have. Although the parliamentary secretary is doing her best, I still believe the process she has spelt out is one that will create problems for those people involved. I will not say any more because I do not want to hold up the Senate any longer.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (11.47 a.m.)—by leave—I move government amendments (1) and (2) to schedule 1, item 17:

(1) Schedule 1, item 17, page 38 (line 26), omit “subclause (3)”, substitute “paragraph (3)(a), (b) or (e)”.

(2) Schedule 1, item 17, page 38 (after line 26), after subclause (3), insert:

(3A) Despite subsection 13.3(3) of the Criminal Code, the defendant does not bear an evidential burden in relation to a matter in paragraph (3)(c) or (d) of this clause.

These technical amendments provide for the protection of confidentiality of information and bring this bill into line with the criminal law policy that the prosecution should be required to prove every element of an offence, except for those that would be peculiarly within a defendant’s knowledge and hence sufficiently more difficult and costly for the prosecution to prove or the defendant to disprove.

Senator FORSHAW (New South Wales) (11.48 a.m.)—I indicate on behalf of the opposition that we will support these amendments.

Amendments agreed to.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (11.48 a.m.)—by leave—I move government amendments (3) to (5):

(3) Schedule 1, item 17, page 59 (line 6), omit “(which deals with dairy adjustment levy).”, substitute “(which deals with dairy adjustment levy); and”.

(4) Schedule 1, item 17, page 59 (after line 6), at the end of clause 78, add:

(q)in making payments under the Dairy Regional Assistance Programme; and

(r) in meeting the expenses of the Commonwealth incurred in relation to the
administration of the Dairy Regional Assistance Programme.

Note: For the Dairy Regional Assistance Programme, see clause 84A.

(5) Schedule 1, item 17, page 60 (after line 19), after clause 84, insert:

84A Dairy Regional Assistance Programme

(1) For the purposes of this Part, the Dairy Regional Assistance Programme is a part of the Regional Assistance Programme, being the part known as the Dairy Regional Assistance Programme.

(2) To avoid doubt, the Department of Employment, Workplace Relations and Small Business is responsible for administering the Dairy Regional Assistance Programme. This includes (but is not limited to) responsibility for determining:

(a) the recipients of payments; and
(b) the amounts of payments; and
(c) the timing of payments; and
(d) the terms and conditions of payments.

(3) Payments under the Dairy Regional Assistance Programme may only be made during the 3-year period beginning on 1 July 2000.

(4) The total amount paid out of the Dairy Structural Adjustment Fund:

(a) in making payments under the Dairy Regional Assistance Programme; and
(b) in meeting the expenses of the Commonwealth incurred in relation to the administration of the Dairy Regional Assistance Programme;

must not exceed $45 million.

(5) The total amount paid out of the Dairy Structural Adjustment Fund in a particular financial year:

(a) in making payments under the Dairy Regional Assistance Programme; and
(b) in meeting the expenses of the Commonwealth incurred in relation to the administration of the Dairy Regional Assistance Programme;

must not exceed $15 million.

(6) In this clause:

Regional Assistance Programme means the Programme administered by the Commonwealth and known as the Regional Assistance Programme.

These amendments provide for a $45 million Dairy Regional Assistance Program to assist dairy dependent communities and members of dairy dependent communities to adjust to the deregulation of the dairy industry.

Senator FORSHAW (New South Wales) (11.49 a.m.)—I indicate on behalf of the opposition that we will support these amendments. They reflect the belated concern of this government, dragged kicking and screaming to accept the recommendations of the Senate committee’s report that there should be a package of assistance for the impact that deregulation will have upon regional communities. We could probably stand here and talk for some time about that issue. We did deal with it extensively in our report last October. I am sure Senator Woodley will add some further remarks. It was clear to us as we travelled around the country that there would be an impact upon towns in dairying regions. We urged the government in our recommendations that they needed to look at the implications and the impact of deregulation upon those communities.

It is at the eleventh hour that they have come to the table with this proposal for $45 million. It would have been far more helpful and constructive if the government had given us that indication some time ago, because we would then have been given an opportunity to consider whether or not that was a sufficient amount. I have my doubts. Again, to some extent we are having to consider things that will occur in the future. We know they will occur, but it would have been helpful for the committee when it was examining this bill earlier this week to have had before it the information that the government was prepared to do this, to give us the opportunity to consider whether this was an effective and adequate amount.

We will certainly be monitoring this situation, as indeed we monitor the impact of this government’s policies on rural and regional Australia. I spoke about that yesterday in the matters of public interest debate. We have seen the serious impact of many government decisions, whether it be in education, health, Telstra and so on, upon rural and regional Australia. This situation also calls for specific targeted assistance in those communities. We are happy to support these amendments because at least the government have finally
woken up and realised that they have to do something.

Senator Boswell interjecting—

Senator WOODLEY (Queensland) (11.52 a.m.)—I will ignore interjections, otherwise we will extend this debate. I indicate to Senator Boswell that he will extend the debate quite considerably if he interjects.

Senator Boswell—Are you threatening the dairy industry?

Senator WOODLEY—I will respond to that interjection—it may have been directed at Senator Forshaw, but I am not sure. Apart from Senator McGauran, whom I commend for his attention to this issue, the National Party have been absolutely absent from this debate. I think that is a threat to the dairy industry, because they are the ones who always claim that they represent farmers. That is my reply to that interjection.

The Democrats welcome these amendments from the government. While we are talking about state governments, let me pay tribute to the state government of Queensland. Minister Palaszczuk put together a very extensive package along these lines and took it to the ARMCANZ meeting, where it was not accepted, but there was a high level task group of state ministers set up in order to monitor the effects of deregulation in regional areas. I certainly believe that his action in doing that was part of the catalyst—along with the Senate report which recommended that this particular action be taken—for the government to finally put in place these particular amendments.

I had half finished getting amendments drafted along exactly the same lines myself, but once the government indicated they would be moving these amendments, I ceased having those amendments drafted, because obviously it is much more effective if the government move amendments such as these themselves. Those were some of the motivations for these amendments to be brought forward. I commend the government for them. I believe they will go some of the way to addressing the recommendation which the Senate committee made in its report.

However, I have several questions. It will be a lot quicker if I ask them all together. I direct them to the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry. One of the issues that was raised with me—and was raised by Minister Palaszczuk’s submission to the ARMCANZ meeting—was the involvement of the state ministers task group in this issue. In my amendments, I was trying to get them involved, but realised we are dealing with money that the Commonwealth is handling so it is appropriate to channel it through a Commonwealth department, but state ministers are obviously very close to the impacts in regional areas. Could the Commonwealth give some assurance that it may also be involved in at least indicating to the states where these impacts are occurring? I think it would be very useful if that could be done. I realise that this has come late to the Senate so it is not possible to spell out all of the details—I trust the government on that point—but under paragraphs (2)(a), (b), (c) and (d) we have an indication of the kinds of guidelines which will be drawn up. I imagine the government has not yet had any indication of what those might be. But does the government have in mind who the recipients of payments might be and whom they will be directed at? Are there any limits on the amounts of the payments? The timing is covered, because it is within the next three years. Are there any terms and conditions yet in the government’s mind that may be applied to these payments? Those are my questions.

Senator HARRIS (Queensland) (11.57 a.m.)—I rise to put on record One Nation support for the government amendments and, in doing so, to reflect on the issue of the quotas. I realise this does not go to quotas, but I will make the linkage. The states themselves have the powers to deregulate and, therefore, in doing that, to do away with the quotas. The milk quotas do have a market monetary value. They are used as security against loans when approaching banks, so they definitely have a market monetary value. I believe that the states should kick into this process as well in a meaningful way. In doing that, they would also be adding a considerable amount of finance into this restructuring package, and that would go directly into the relevant areas; that is, relevant to what we are speaking about.
I indicate to the chamber that I will be moving an amendment to one of the government’s amendments in relation to the rural restructuring package, and I will speak to that at the appropriate time.

The TEMPORARY CHAIRMAN—Now is the appropriate time to move your amendment, Senator Harris, and you may speak as well.

Senator HARRIS—I move the following amendment:

(1) At the end of subclause 84A(2), add:

; provided that all payments must be made with the object of providing assistance only to those regions where entities which produced market milk and/or manufacturing milk were located at the commencement of this programme.

In moving the revised amendment on running sheet 1741, I draw the chamber’s attention to the intent of the amendment. The intention of the amendment is to ensure that the money that is actually disbursed under the rural adjustment package goes into those areas where the dairy products are actually produced. Initially, the original amendment that we circulated used the terminology ‘where the payment of the levy was initiated’. In actuality, we have been correctly shown that that is paid by the consumer, so that is the reason for the change to the amendment.

The amendment primarily seeks to ensure that the package goes into those regions and districts where the dairy industry is operating, so that it will effectively assist those people whose livelihood— and there are a considerable number of them—depends on the provision of services for the dairy industry. We could very easily become so tied up in the enormous potential of the impact of the adjustment program by focusing on the dairy producers, lessors, lessees and owner-operators, that we could overlook the potential effect that this will have on the rural regions that primarily exist because of the dairy industry. In conclusion, I commend the amendment to the Senate. It does not take away from anything that the government is setting out to do. It adds clarity as to where the rural adjustment package will actually end up.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.02 p.m.)—Could I briefly say in response to Senator Woodley’s questions that the program is based on the recommendation of the regional advisory committees. So we have taken that into account. With regard to the state government commitments, obviously it is up to each state government to give their own responses to this, and certainly we have yet to see any response from Queensland on this, and that is out of the federal government’s hands.

Could I also indicate to Senator Harris that the government will not be supporting his amendment because I have already said that our package is specifically targeted to those dairy dependent communities and it is obviously targeted at the dairy industry. We believe that whatever your amendment does is already encompassed in ours. We will not be supporting your amendment, Senator Harris.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (12.03 p.m.)—I will take very little time, but I wish to pick up a remark made by Senator Woodley who said that the National Party was not interested in the debate. I received a deputation from the dairy industry today in my office who asked me to get this legislation through as soon as possible. It is going to cause some concern if it is not through today. That is the reason why I have not joined in the debate either yesterday or today. I want that very much on the record.

Senator Woodley—Were you here yesterday?

Senator BOSWELL—I was here yesterday. I was sitting in here yesterday monitoring what you said.

Senator FORSHAW (New South Wales) (12.04 p.m.)—Can I just indicate on behalf of the opposition that we will not be supporting this amendment. I recognise the good intentions of Senator Harris in his remarks, but the parliamentary secretary covered the issues adequately in her response. Clearly, we would be expecting that the announcement
from the government will be targeted at the appropriate communities and regions, and be handled through the appropriate scheme that exists. We do not really think that it needs this amendment to achieve the intent.

Whilst I am on my feet, the issues raised by Senator Woodley are, of course, important issues and no doubt we will have an opportunity through the estimates process in the future to further examine just how and where this money is ultimately spent to ensure it is appropriately spent for the assistance of those is intended to assist.

Senator WOODLEY (Queensland) (12.05 p.m.)—The Democrats will not support Senator Harris’ amendment. I hear what he says and I think it is very well intentioned. He is really trying to make sure that we deliver what we are saying, but I am confident that this particular amendment moved by the government to the package does cover everything that we were concerned about.

Amendment not agreed to.

Senator Harris—Could the record note that mine was the single vote in favour of the amendment.

The TEMPORARY CHAIRMAN—It shall so occur, Senator Harris.

Amendments (by Senator Troeth) agreed to.

Senator WOODLEY (Queensland) (12.07 p.m.)—by leave—I move amendments (1) to (12) on sheet 1740:

(1) Schedule 1, item 17, page 7 (line 9), omit the definition DAA Chairman, substitute:
DAA Chair means the Chair of the DAA.
Note: Section 18B of the Acts Interpretation Act 1901 deals with how chairs may be referred to.

(2) Schedule 1, item 17, page 47 (line 1), omit “Chairman”, substitute “Chair”.

(3) Schedule 1, item 17, page 47 (line 11), omit “Chairman”, substitute “Chair”.

(4) Schedule 1, item 17, page 47 (line 31), omit “Chairman”, substitute “Chair”.

(5) Schedule 1, item 17, page 49 (line 4), omit “Chairman”, substitute “Chair”.

(6) Schedule 1, item 17, page 52 (line 11), omit “Chairman”, substitute “Chair”.

(7) Schedule 1, item 17, page 54 (line 16), omit “Chairman”, substitute “Chair”.

(8) Schedule 1, item 18, page 99 (line 11), omit “Chairman”, substitute “Chair”.

(9) Schedule 1, item 18, page 99 (line 16), omit “Chairman”, substitute “Chair”.

(10) Schedule 1, item 18, page 99 (line 35), omit “Chairman”, substitute “Chair”.

(11) Schedule 1, item 18, page 100 (line 1), omit “Chairman”, substitute “Chair”.

(12) Schedule 1, item 18, page 100 (line 9), omit “Chairman’s”, substitute “Chair’s”.

These are amendments that the Democrats move regularly. They are simply to tidy up the language. I will not be calling for a division or anything, but I believe it is important to do this in each case.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.07 p.m.)—I would like to express to Senator Woodley that I am only deeply disappointed that he has succumbed to the tides of political correctness by moving these amendments. The government believe that the correct term should be ‘Chairman’, and I indicate that we will not be supporting these amendments.

Senator FORSHAW (New South Wales) (12.07 p.m.)—Thank you, Mr Temporary Chairman. The opposition will be supporting these amendments.

Amendments agreed to.

Senator HARRIS (Queensland) (12.07 p.m.)—by leave—I move:

(1) Schedule 1, item 17, page 9 (after line 27), after the definition of premium component insert:

qualifying enterprise means an enterprise referred to in paragraph 13(2)(a).

(2) Schedule 1, item 17, page 15 (after line 7), after the definition of premium component insert:

qualifying enterprise means an enterprise referred to in paragraph 13(2)(a).

(3) Schedule 1, item 17, page 18 (line 9), at the end of subclause (5), add:

; (d) whether the entry has supplied a significant proportion of the labour required to carry on the eligible dairy farm enterprise.
(4) Schedule 1, item 17, page 20 (after line 3), after paragraph 15 (2)(b), insert:

(ba) the entity continues to hold an eligible interest in the enterprise mentioned in paragraph (b); and

(5) Schedule 1, item 17, page 25 (line 30) to page 26 (line 3), omit paragraphs (4)(a) and (b), substitute:

(a) the transferee is an eligible entity and has an interest in the qualifying enterprise in respect of which the units were issued; or

(b) the transferee gives the DAA a written undertaking to assign the unit to an eligible entity with an interest in the qualifying enterprise in respect of which the units were issued, within 60 days after the transfer is registered.

(6) Schedule 1, item 17, page 29 (line 8), omit “first day”, substitute “first and last days”.

(7) Schedule 1, item 17, page 29 (line 23), omit “first”, substitute “last”.

(8) Schedule 1, item 17, page 30 (after line 2), at the end of clause 23, add:

DSAP payments only payable in respect of ongoing dairy farm enterprises

(9) The eighth objective is that a DSAP payment is payable only if an entity continues to hold an eligible interest in, and carry on, the qualifying enterprise.

I would like to briefly go through and speak to each of the amendments, just to clarify the intention of them. The purpose of amendment (1) is to insert a new definition into the definitions setting out a ‘qualifying enterprise’. The intention, broadly speaking, of all of the amendments is to tie the package to the property. From my consultation with the dairy producers, the overwhelming concern that has been expressed by them is that under the government’s proposal people can exit the industry, walk away and leave a property owner with a defunct dairy and no ability to attract somebody to come back in and rework it. So all of these amendments are structured to achieve that purpose. So amendment (1) would insert the ‘qualifying enterprise’, and that means an enterprise referred to in paragraph 13(2)(a).

Amendment No. 2 makes another insertion on the standard payment right. That requires the entity to continue to hold an interest in that enterprise to receive that right. Amendment No. 3 requires the authority to take into account the labour content of the lessee in an effort to put a balance between the lessor and the lessee, particularly in some of the cases where the major input from the lessee is the labour content. An example is: where the lessor has the property, the buildings and the herd, operates the enterprise and manages and looks after the pastures, the larger percentage of their input is in a labour content. So if they were working in a dairy that had a large percentage of market milk, then their input, if it is assessed purely on an economic basis, would be disproportionately disadvantaged to them. So amendment No. 3 on running sheet 1740 is there so that the committee would take into consideration that labour content of the lessee.

Amendment No. 4 is to apply and require the enterprise that is successful in putting up a case for an anomaly payment to also remain attached to that entity to continue to be eligible for that anomaly payment. Amendment No. 5 omits the existing paragraph that refers to the transferral of the registered units and substitutes that the units must be returned to the entity within 60 days after the transfer has been registered. Amendment No. 6 then moves to transfer the actual payment of the levy from the first day of the quarter to the last day of the quarter. The purpose of doing that is so that the levy then becomes payable in the period that the recipient has actually worked within the industry rather than having it paid on the first day. Amendment No. 7 is in the same vein of changing the dates.

Amendment (8) adds an additional clause. That requires the entity to stay in the industry to continue receiving those payments. As I said in my earlier remarks, I believe that the major problem that has been indicated to me from the producers themselves is the concern that people will be actually leaving the industry and taking the package and moving into another industry and leaving those who are battling on and soldiering on in the industry to actually provide that finance.

One question that I would like to put to the parliamentary secretary is: has the government actually structured the payment in this way to encourage people to leave the industry
and, therefore, reduce the number of producers in the industry? Because, if it was not their intention, it certainly will become the outcome of this legislation. I believe that is grossly unjust for the people who are going to stay in the industry. I understand that the government will put the argument that it is the consumer who is going to pay the price of the levy. I think really if the government believe that they also believe in the tooth fairy. The industry is indicating to me very clearly—they are crying out—that they believe the 11c levy is already being reflected in the prices that they themselves are receiving.

To sum up, the intention is to ensure that this money that is being generated within the industry will stay within the industry and will be there to support those who intend to stay there and continue to produce the dairy products.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) 12.17 p.m.—Just very briefly in response to Senator Harris, the government will not be supporting these amendments. We believe that to tie the entitlement to the farm and not the individuals negates the intent of this legislation. Senator Harris, the government’s intention is to facilitate individuals in their life choices in what they want to do, whether they want to stay in the industry, move on in the industry or move out of the industry. That is why we have structured the package as it is. To move on these amendments as proposed by Senator Harris means that the package would be unworkable and so inflexible as to make a nonsense of the government’s intention and, indeed, I believe the work that has been put by the whole of the dairy industry into this package to move the dairy industry on. Therefore, the government will not be supporting these amendments.

Senator WOODLEY (Queensland) 12.18 p.m.—I need to indicate the Democrats will support these amendments, but for a particular reason. The reason is that we believe the government response on this issue has been inadequate. Senator Harris has tried to do the work for the government. Whether there are unintended consequences in these amendments or not I do not know, but at least what they do is move the debate and, I would hope, focus the government’s attention on the fact that we believe this issue is more serious than the government’s response has indicated.

Can I also just point out that in the drafting there is one word that probably needs changing. I think amendment No. 3(d) should read ‘entity’ not ‘entry’.

Senator Harris—Yes.

Senator WOODLEY—Anyway, I indicate that we will support these. I do not think there is any need for a division, because I understand the Labor Party will not support them, and I can count.

Senator FORSHAW (New South Wales) 12.19 p.m.—I indicate on behalf of the opposition that we will not be supporting these amendments. But by saying that does not mean that we do not recognise—as we have said earlier on countless occasions in this debate and in the hearings—that there are some potential problems. We all know that. But we do not believe that this is the way to fix those problems. Indeed, we are concerned that if these amendments were to be accepted you would change the essential nature—indeed, the whole fabric—of the package from one which has clearly been developed to, as I said, compensate or provide an adjustment payment to reflect the fact that incomes will be affected, will be reduced, to one which was based upon the value of the enterprise, the capital contribution, the asset value and so on. That would be a substantial change in the package. In order to try to fix a potential problem with a discrete group of people that have been identified—in this case lessors—it could and would, we believe, seriously affect the many thousands of other persons in the industry who will receive an entitlement under the package. We are not prepared to do that. We are not prepared to destroy this package in that way.

The times have been set. We know that it is due to commence on 1 April. The DMS ends on 1 July. This is effectively the last sitting day that we can get this legislation through this parliament—indeed, I think we probably have about 20 minutes left—other-
wise there will be no package. If these amendments were to be carried there would not be a package, in our view. That would mean that deregulation would occur with no package at all. This was something the committee considered last year. The choice was between a package or deregulation by cold turkey. I think, as Senator Woodley indicated—and I reject his assertion that there is a lack of political will—there is a political reality; we know that the Commonwealth and each of the states have now accepted deregulation. It is not within the power of this parliament to stop that. We are not about to abandon the rights and entitlements of everybody in the industry by supporting these amendments. I think, as Senator Woodley indicated—and I reject his assertion that there is a lack of political will—there is a political reality: we know that the Commonwealth and each of the states have now accepted deregulation. It is not within the power of this parliament to stop that. We are not about to abandon the rights and entitlements of everybody in the industry by supporting these amendments. I understand where Senator Harris is coming from. He is attempting to try to solve some problems that we have indicated could occur, but the advice we have is that these amendments will not do that and indeed that we would jeopardise the entire package. So we cannot support these amendments.

Amendments not agreed to.

Bill, as amended, agreed to.

DAIRY ADJUSTMENT LEVY (EXCISE) BILL 2000
DAIRY ADJUSTMENT LEVY (CUSTOMS) BILL 2000
DAIRY ADJUSTMENT LEVY (GENERAL) BILL 2000

The bills.

Senator HARRIS (Queensland) (12.24 p.m.)—I would like to seek clarification from the parliamentary secretary on section 6.2, which I understand is there for the purpose of picking up dairy products that are reconstructed from powdered milk and then sold in liquid form—and I have no problems with that whatsoever. Would the parliamentary secretary like to bring to the chamber’s attention the possibility of that section picks up all liquid milk—was whether the government could, if they had the intent through section 6.2, apply the levy to imports of powdered milk placed on the supermarket shelf. Very quickly, my reason for raising this is that I am concerned that we may see imports of powdered milk rise. I believe it would be prudent to have a process where the government could capture that as well and also have the funds contribute to the adjustment levy.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.28 p.m.)—The levy implicit in this bill applies to fresh milk only, so it does not encompass powdered milk. The government does not have the capacity to apply a levy to imports.

Bills agreed to.

Dairy Industry Adjustment Bill 2000 reported with amendments; Dairy Adjustment Levy (Excise) Bill 2000, Dairy Adjustment Levy (Customs) Bill 2000 and Dairy Adjustment Levy (General) Bill 2000 agreed to without requests; report adopted.

Third Reading
Bills (on motion by Senator Troeth) read a third time.

ROAD TRANSPORT CHARGES (AUSTRALIAN CAPITAL TERRITORY) AMENDMENT BILL 2000
INTERSTATE ROAD TRANSPORT CHARGE AMENDMENT BILL 2000

First Reading
Bills received from the House of Representatives.

Motion (by Senator Troeth) agreed to:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Bills read a first time.

Second Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.30 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—

ROAD TRANSPORT CHARGES (AUSTRALIAN CAPITAL TERRITORY) AMENDMENT BILL 2000

I take pleasure in introducing the Road Transport Charges (Australian Capital Territory) Amendment Bill 2000, which updates annual heavy vehicle registration charges for the Australian Capital Territory and provides a model for consistent national charges, by amending the Road Transport Charges (Australian Capital Territory) Act 1993. These amendments also include a number of changes in definitions for charging purposes.

It is fortuitous that the opportunity for the Commonwealth to play its part in ensuring that heavy vehicles pay a fair level of charges reflecting their road costs coincides with the substantial benefits that will be delivered through the New Tax System and the Diesel and Alternative Fuels Grants Scheme.

Nationally consistent heavy vehicle charges is an essential component of the road transport law reforms being put in place by Commonwealth, State and Territory Governments and the National Road Transport Commission (the NRTC) under the intergovernmental Heavy and Light Vehicles Agreements. Major differences in charges between States and Territories put a straightjacket on efficiency and competition in the road transport industry, a vital sector of the economy, and were one of the key issues that Governments recognised needed to be fixed through a cooperative reform process.

The current charges for heavy vehicles were calculated by the NRTC in 1992, and put into place by all States and Territories and the Commonwealth between July 1995 and October 1996. They have not been updated since then. The Road Transport Charges (Australian Capital Territory) Act 1993 (the Act) gave effect to the national charges in the ACT from 1 July 1995 and set the model for other jurisdictions.

The Victorian and Northern Territory Governments reference the charging regime in the Act in their own legislation. Other States and the Commonwealth reproduce the system and level of charges in their own legislation.

The passage of this Bill will give the ACT Government the ability to adopt the updated national registration charges and will provide other jurisdictions with a model to ensure national consistency. The other Bills in this package implement these updated charges for Federally registered vehicles, for which the new charges are intended to come into effect from 1 July 2000. The States and Territories are also targeting that date, dependent on their own legislative and administrative processes.

Since the current charges were calculated in 1992, levels of both road use and road expenditure have changed, and the understanding of the relationship between road use and road wear has improved. The current national charges no longer fully recover the costs of heavy vehicle road use, estimated to have grown to $1280 million annually.

The fact that heavy vehicles pay fuel excise is recognised by the NRTC in calculating the level of registration charges. A portion of the fuel excise is nominally counted as representing a contribution towards the cost of heavy vehicle road use. The updated charges assume this contribution to be 20 cents per litre—under the current charges it is nominally 18 cents per litre. This excise component is notional only, and is not the subject of this legislation. It has no impact on the price of fuel at the pump or on road funding.

This Bill deals with the levy of annual registration charges, which are calculated according to the number of axles and mass of the vehicle. It increases the annual charges for some vehicles, and simplifies and clarifies the definitions of some classes of vehicles, to ensure that heavy vehicles meet their share of the costs of using Australia's roads. The NRTC advises, however, that for 80% of heavy vehicles, charges will not rise.

There is a simpler charging structure for road trains, to remove the need for road train operators to indicate how many trailers they will haul. This will provide greater flexibility for these operators, who service the remotest areas of Australia, and reduce administrative costs for registration authorities.

The amendments to definitions will also introduce a simpler, more consistent administration of charges, particularly for specialist vehicles and equipment.
These simplifications and improvements have been developed by the NRTC in response to issues raised by registration authorities and vehicle operators following the implementation of the current national heavy vehicle charges.

The charges are logical, simple and based on the principles set out in the NRTC’s legislation. The charges, when combined with the nominal excise component, will achieve full cost recovery in total and for most vehicle classes.

The updated charges will result in additional registration revenues for State and Territory Governments – an estimated 5.5% increase to $424 million. The Bill will allow the ACT Government to recover an additional $115,000 dollars from heavy vehicles in the Territory. However, the associated increases in charges represent a very small changes in the costs of operating vehicles (typically less than 1 per cent of total operating costs), and are small in relation to the anticipated reductions in operating costs flowing from the Government’s taxation reforms.

The road transport industry supports the concept, encapsulated in these updated charges, of paying a fair charge for their road use, and they were extensively consulted by the NRTC in 1998 and 1999.

In the vote by the Australian Transport Council, all State and Territory Transport Ministers, and the Commonwealth, supported the national application of the updated charges and revisions to definitions.

This Bill has widespread support and I urge States and Territories to implement the charges underpinned by the legislation as quickly as possible to provide a consistent and fair update to the national heavy vehicle charging regime.

INTERSTATE ROAD TRANSPORT CHARGE AMENDMENT BILL 2000

The second Bill—the Interstate Road Transport Charge Amendment Bill 2000, is essential to the Commonwealth’s commitment to the co-operative national road transport reform program.

The Bill implements the updated annual heavy vehicle registration charges for Federally registered vehicles, by amending the Interstate Road Transport Charge Act 1985.

The Interstate Road Transport Charge Act 1985 applies the existing national charges to vehicles registered under the Federal Interstate Registration Scheme. The Scheme is administered by States and Territories, on the Commonwealth’s behalf, under the Interstate Road Transport Act 1985. As the Interstate Road Transport Act does not provide for the registration and operation of Special Purpose vehicles, charges for these do not appear in the Bill.

The new charges for Federally registered vehicles are intended to come into effect from 1 July 2000, with States and Territories also targeting that date, dependant on their own legislative and administrative processes. This Bill will ensure that Federally registered heavy vehicles continue to be subject to the same charges as State and Territory registered vehicles.

INTERSTATE ROAD TRANSPORT AMENDMENT BILL 2000

The third Bill—the Interstate Road Transport Amendment Bill 2000—is the final step in implementing the updated charges for Federally registered vehicles.

While the Interstate Road Transport Charge Act 1985 contains a range of definitions, it also relies on terms defined in the Interstate Road Transport Act 1985. The definition of ‘trailer’ is one of these, and its amendment as part of these reforms requires an amendment to the Interstate Road Transport Act 1985.

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

TELECOMMUNICATIONS (CONSUMER PROTECTION AND SERVICE STANDARDS) AMENDMENT BILL 1999

Second Reading

Debate resumed from 15 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator ALLISON (Victoria) (12.31 p.m.)—The adult telephone service industry employs around 3,000 people, and most of these are women. There are sensible options for achieving a balanced outcome in terms of keeping children off adult phone services, protecting jobs and allowing adults to choose whether to use those services or not. It is difficult to get precise figures, but we know a number of callers are now taking advantage of overseas telephone sex lines, so we are essentially shifting this industry offshore.

The amendment I will move today when we reach the committee stage is identical to the amendment I moved in May last year. This amendment supports the freedom of expression of Australian citizens. It allows
for the education of telephone account holders so that they can choose what they and their households may access. This amendment protects the access choice rights of telecommunications consumers. In short, our amendment goes to allowing people to opt out of adult phone services if they so wish by simply making one phone call. In the same way that all Australians can now bar STD and international phone calls, they would have the same option—if they so choose—with adult phone services. We think that is a very balanced approach. It will make the present unworkable system workable and, more importantly, it will preserve another 3,000 jobs in a telecommunications industry about to be decimated by the short-sightedness of a privatised national communications carrier.

We are now witnessing a very substantial climate of censorship in this country. It fair to say that the Democrats have consistently stood for those kinds of liberties and for moving governments away from the role of being the arbiter of morals and censoring what people can say to one another. That is essentially what this legislation is about: what people can say to one another. For those who are concerned that our action in moving this amendment might delay the passage of the Telecommunications (Consumer Protection and Service Standards) Amendment Bill 1999, I make it clear that I am informed that any delay in the progression of the bill will not impact in any way on the users of the national relay service. I look forward to moving the amendment that I have foreshadowed when we get to the committee stage.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.34 p.m.)—In the interests of saving time, I simply acknowledge the contributions of those to date.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Amendment (by Senator Allison) proposed:

(1) Schedule 1, page 3 (after line 13), after item 3, insert:

3A Part 9

Repeal the Part, substitute:

Part 9A—Telephone sex services

158A Simplified outline

The following is a simplified outline of this Part.

- This Part prohibits unacceptable conduct by telephone sex service providers and carriage service providers in relation to telephone sex services.
- Conduct is unacceptable if telephone sex services are supplied otherwise than by means of a voice call to a number with an approved prefix.
- A customer who chooses not to have access to such services exercises access choice rights. A carriage service provider must comply with a request by a customer to exercise those rights.
- Information about access choice rights must be included on all bills sent to customers by or on behalf of a carriage service provider.
- A carriage service provider must notify all new customers of their access choice rights.

158B Unacceptable conduct in relation to a telephone sex service

(1) A telephone sex service provider or a carriage service provider must not engage in unacceptable conduct in relation to a telephone sex service (within the meaning of subsection (2)).

Note: Telephone sex service provider is defined by section 158G.

(2) For the purposes of this Part, if:
(a) a telephone sex service provider uses a standard telephone service to supply a telephone sex service to an end-user in Australia; and
(b) the supply is by way of a voice call; and
(c) a person (the **relevant customer**) is a customer of a carriage service provider in relation to the voice call; and
(d) a charge for the supply of the telephone sex service is expected to be included in a bill sent by or on behalf of the carriage service provider to the relevant customer;
the telephone sex service provider and the carriage service provider are taken to have **engaged in unacceptable conduct** in relation to the telephone sex service unless the voice call is made to a number with an approved prefix.

**Note 1:** Telephone sex service is defined by section 158F.

**Note 2:** Approved prefix is defined by section 158E.

(3) Subsection (1) is a **civil penalty provision**.

Note: Part 31 of the **Telecommunications Act 1997** provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.

**Charge for supply of telephone sex service not to be included in bill**

(4) If a carriage service provider engages in unacceptable conduct in relation to a telephone sex service (within the meaning of subsection (2)), a charge for the supply of the telephone sex service must not be included in a bill sent by or on behalf of the carriage service provider to the relevant customer.

(5) Subsection (4) is a **civil penalty provision**.

Note: Part 31 of the **Telecommunications Act 1997** provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (4) is a civil penalty provision for the purposes of that Act.

**Defence**

(6) In any proceedings against a carriage service provider under Part 31 of the **Telecommunications Act 1997** that arise out of this section and relate to a telephone sex service supplied using a standard telephone service supplied by the carriage service provider, it is a defence if the carriage service provider establishes:
(a) that it did not know; and
(b) that it could not, with reasonable diligence, have ascertained;
that the standard telephone service was, or was to be, used by a telephone sex service provider to supply the telephone sex service.

(7) For the purposes of subsection (6), in determining whether a carriage service provider could, with reasonable diligence, have ascertained whether a standard telephone service supplied by the carriage service provider was, or was to be, used by a telephone sex service provider to supply a telephone sex service, the following matters are to be taken into account:
(a) whether any inquiries were made of persons who proposed to use standard telephone services to supply commercial services by way of voice calls;
(b) whether persons who use standard telephone services to supply commercial services by way of voice calls are under any contractual obligation to notify the carriage service provider of the nature of those commercial services;
(c) whether the carriage service provider monitors, or arranges for the monitoring, of advertisements that are:
(i) for commercial services supplied by way of voice calls; and
(ii) published in mass-circulation newspapers or mass-circulation magazines circulated in Australia;
(d) any other relevant matters.

**158C Aiding, abetting etc.**

(1) A person must not:
(a) aid, abet, counsel or procure a contravention of subsection 158B(1) or (4); or
(b) induce, whether by threats or promises or otherwise, a contravention of subsection 158B(1) or (4); or
(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection 158B(1) or (4); or
(d) conspire with others to effect a contravention of subsection 158B(1) or (4).

(2) Subsection (1) is a **civil penalty provision**.
Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.

158D Evidentiary certificate—telephone sex service

(1) The Australian Broadcasting Authority may issue a written certificate stating that a specified service is, or was, a telephone sex service.

(2) In any proceedings under the *Telecommunications Act 1997* that relate to this Part, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.

(3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.

158E Approved prefix

(1) For the purposes of this Part, an approved prefix is a prefix specified in a written determination made by the Minister or the ACA.

(2) A determination under subsection (1) must provide for:

(a) the specification of at least 2 approved prefixes to be used to identify different classifications of telephone sex services;

(b) the classification of telephone sex services;

(c) the allocation of prefixes to particular classes of telephone sex services based on their classification.

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

158F Telephone sex service

(1) For the purposes of this Part, a telephone sex service is a commercial service supplied using a standard telephone service, where:

(a) the supply is by way of a voice call made using the standard telephone service; and

(b) having regard to:

(i) the way in which the service is advertised or promoted; and

(ii) the content of the service;

it would be concluded that a majority of persons who call the service are likely to do so with the sole or principal object of deriving sexual gratification from the call.

(2) However, a service is not a telephone sex service if it is a therapeutic or counselling service provided by a person registered or licensed as a medical practitioner, or as a psychologist, under a law of a State or Territory.

158G Telephone sex service provider

For the purposes of this Part, if a person uses, or proposes to use, a standard telephone service to supply one or more telephone sex services, the person is a telephone sex service provider.

158H Voice call

(1) To avoid doubt, a reference in this Part to a voice call includes a reference to a call that involves a recorded or synthetic voice.

(2) In determining the meaning of a provision of the *Telecommunications Act 1997*, or a provision of this Act other than this Part, subsection (1) is to be disregarded.

158J Access choice rights

(1) A customer who chooses not to have access to telephone sex services, or a class of telephone sex services accessed through a specified approved prefix, exercises his or her access choice rights.

(2) A carriage service provider must comply with a request by a customer to exercise his or her access choice rights.

(3) Subsection (2) is a civil penalty provision.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (2) is a civil penalty provision for the purposes of that Act.

158K Notification of access choice rights

(1) A carriage service provider must provide information about a customer’s access choice rights:

(a) in any bill for the supply of a standard telephone service sent by or on behalf of the carriage service provider to the customer; and

(b) to all new customers within 7 days after connection to a standard telephone service supplied by the carriage service provider.

(2) Subsection (1) is a civil penalty provision.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions.
provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.

158L Savings of other laws

This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

158M Transitional

This Part does not apply to a telephone sex service that is supplied before the end of the period of 6 months beginning on the date of commencement of this section.

Senator O'BRIEN (Tasmania) (12.35 p.m.)—I want to ask Senator Allison to explain the amendment she has moved to the Telecommunications (Consumer Protection and Service Standards) Amendment Bill 1999 so that the opposition can properly consider it.

Senator ALLISON (Victoria) (12.36 p.m.)—I think I have adequately explained what this amendment does. We did have this debate last time the Telecommunications (Consumer Protection and Service Standards) Amendment Bill 1999 was before us. As I said in the second reading debate, in order to ban the use of the telephone in a household, it is simply a matter of a telephone call being made indicating that that ban is required. This is instead of the current arrangement, which requires that a notice be given in writing to the telecommunications carrier in order to establish a PIN. This is a much simpler system which overcomes the problems that I outlined in my speech in the second reading debate.

Senator MARK BISHOP (Western Australia) (12.37 p.m.)—Last time I was here I made a few comments in my second reading contribution. At the conclusion of those comments, I left a question for the Minister for Communications, Information Technology and the Arts to respond to as to whether the government was going to accept the Democrats’ amendment. I ask now for that response.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.38 p.m.)—No, we do not accept the Democrats’ amendment. I will briefly explain why. The first proposal in relation to an opt-out requirement would simply mean that the great bulk of parents would not be aware that these telephone lines had been used for these purposes until after the event; in other words, until after not only charges had been made but also their children had been exposed to what most parents—I think overwhelmingly all parents—I think would regard as very unsavoury practices. In the real world, parents would not be out there carefully weighing up options and deciding whether to opt out or not.

The fact is that this regime that the Democrats are proposing is the ultimate in laissez faire. It is pandering to the sleaze industry. It clearly has no regard for the concerns of parents; it has regard for, firstly, the sleaze industry and, secondly, jobs. Of course, the notion that because some jobs might go offshore we should therefore not be concerned about the social and moral implications of an issue is tantamount to saying that we might as well encourage heroin farms in this country because it is a job creation exercise. We do not accept that proposition for a moment.

Indeed, the Democrats’ approach would not prevent carriers from charging for opt-out, so you would be hit for a double whammy. You could find after the event that you had incurred very substantial costs and then, deciding that you did want to take action, you would find that you were liable for an additional charge that the carriers might levy—in other words, all designed to keep you exposed to these services. I just thought it might be useful to give one example: a letter to me from Con Sciacca, the federal member for Bowman, in which he writes that his constituent was recently subjected to his home being vandalised by two juveniles. These young offenders actually occupied the home for three days, and during that time they logged up $9,329 in telephone calls to 1900 sex lines. According to the contract arrangements with the carriers, on the face of it, that householder was strictly liable for calls not only over which he had no control but of which he clearly would not have approved. That goes beyond the point of simply wanting to have concerns for children; it addresses very much the question of whether you want these services to be available on your telephone lines.
I would have thought, given the nature of these services, that if people really want them they can decide that consciously and they can opt in. The Democrats’ approach is effectively to say, ‘Everyone should be exposed to these but, somehow, it is good enough after the event for parents whose children have run up these charges or taken advantage of these services to then opt out.’ We just do not think that would work; we also think it is quite wrong and is a dereliction of duty. It is simply designed to cater for one particular segment of society that prefers to earn its money from low-life activities. We do not regard that as an industry deserving of preference ahead of the interests of families and their children.

As I understand it, the Democrats were claiming at one stage that they simply wanted to put Optus back into the game, because Optus had withdrawn from this business and this was the way to do it. My information is that Optus made a decision on strictly commercial lines. They do not want to be part of this, and I can well understand why. Therefore, the only people agitating for this particular amendment are those in the sleaze industry. I would be very interested if Senator Allison could indicate anyone else who thinks this is a good idea.

The second part of the amendment involves the removal of the prohibition on tying the supply of goods and services to the supply of telephone sex services. This amendment would remove that key provision which prevents tying arrangements. It would allow a telephone company to offer services or discounts only on the condition that the customer does not opt out. We think that, again, is a very unfair practice. It is highly undesirable. We do not want people put in a position of saying, ‘Do I save a bit of money in the short term and take the discount price? But the quid pro quo for that is that I don’t opt out. In other words, I expose the rest of the family to these sorts of services.’ Again, we think it should be a stand-alone decision: if someone wants to consciously opt in, well, they can. But to even go so far as to allow telephone companies to charge for opting out just seems to underline the very misguided nature of these proposals.

The Democrats’ proposed amendment removes the regulation making power on telephone sex services, and again this is likely to have a number of adverse impacts. Firstly, the intention of including the regulation making powers is to provide a greater degree of flexibility to deal with the supply of telephone sex services into Australia from overseas. Secondly, the regulations provide flexibility to respond quickly to schemes or arrangements that might be developed to circumvent the intention of the legislation. Thirdly, the regulation making power would provide the government with the ability to take action to deal with inappropriate advertising of telephone sex services. For example, there have been some instances where newspapers have published telephone sex services on the children’s pages or pages where children’s sports results are published. The press have generally been responsible in this matter, but the power to make regulations provides an indication to the industry that the government would act if they began inappropriate advertising of telephone sex services.

The Democrats simply want to remove any of that flexibility and utterly constrain the government’s power to respond speedily. At best, they would argue that you could always come back to the parliament later on and make changes. That is a very clumsy and unnecessary solution to the problem. If their alternative is that you should not be able to make any regulations full stop, that you should not address any of the issues I have just raised, again that just underlines the fact that they are in the business of trying to encourage and promote an industry that most Australians regard as very unsavoury.

Progress reported.

TIMOR GAP TREATY (TRANSITIONAL ARRANGEMENTS) BILL 2000

Second Reading

Debate resumed from 13 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator CROSSIN (Northern Territory) (12.46 p.m.)—Let me begin by saying that the Timor Gap Treaty (Transitional Arrangements) Bill 2000 has a major impact on
the Northern Territory and its involvement in the changes we have seen in Indonesia with the establishment now of East Timor as a country in its own right. So, as a senator for the Northern Territory, I am pleased to be able to stand here today and support the bill.

The purpose of this bill is to amend the Petroleum (Australia-Indonesia Zone of Co-operation) Act 1990 and related acts to reflect the fact that the United Nations Transitional Administration in East Timor—UNTAET, as it is commonly known now—has replaced Indonesia as Australia’s partner in the operation of the Timor Gap Treaty. As we know, on 26 October 1999 UNTAET was established by resolution 1272 of the United Nations Security Council as the interim administrative and legal authority for East Timor. From that time on, Indonesia ceased to exercise any sovereign rights in the area covered by the Timor Gap Treaty.

The bill is consistent with the Labor Party’s approach to the future of the Timor Gap, specifically that an independent East Timor could and should be encouraged to replace Indonesia in respect of the operation of the Timor Gap Treaty. That policy was first enunciated by the ALP in September 1998. In Dili, on 10 February, diplomatic notes were exchanged between the United Nations Transitional Administrator in East Timor and Australia’s diplomatic representative in East Timor on the interim arrangements for the Timor Gap Treaty. So UNTAET, acting on behalf of East Timor, becomes Australia’s partner in the treaty, and the terms of the treaty will continue to apply in the transitional period until East Timor’s full independence as a country.

It is a matter of public record that this agreement was negotiated in consultation with East Timorese representatives and, in a press release on 10 February announcing the agreement between Australia and UNTAET, Foreign Minister Downer and the Minister for Industry, Science and Resources, Senator Minchin, indicated:

In talks in Jakarta last week—

that is, of course, the first week of February—

Indonesian representatives agreed that following the separation of East Timor from Indonesia, the area covered by the Treaty was now outside Indonesia’s jurisdiction and that the Treaty ceased to be in force as between Australia and Indonesia when Indonesian authority over East Timor transferred to the United Nations.

The agreement between Australia and UNTAET, the exchange of notes on 10 February, provides that UNTAET accepts all of the rights and obligations previously exercised by Indonesia under the Timor Gap Treaty. Speaking on 10 February, UNTAET Administrator de Mello rightly said that the agreement comes at ‘a very important moment for East Timor’—and he is right—as it will guarantee potentially valuable revenues for the territory as it recovers from last year’s violence and outbreak of anti-independence action on behalf of Indonesia. The agreement with UNTAET applies retrospectively from the establishment of UNTAET, thereby achieving a seamless transition between Indonesia’s exit from the Timor Gap Treaty and UNTAET’s entry into that relationship with Australia. This interim agreement is without prejudice to the position of the future government of an independent East Timor.

Long-term arrangements for the Timor Gap will need to be concluded between Australia and an independent East Timor after the departure of UNTAET. There will no doubt be ongoing discussions between Australia and East Timor’s political leadership on this issue. It is a matter of public record that East Timorese leaders have expressed a range of views on possible future arrangements for the Timor Gap and have raised the possibility of renegotiation. Our ALP shadow minister for foreign affairs, Mr Laurie Brereton, has stated he is confident that Australia and an independent East Timor should be able to conclude arrangements which ensure continuity, give security to the companies operating in the Timor Gap and ensure that East Timor will derive significant economic benefits from the Timor Gap.

It is an important historical landmark for our country to come to terms with our responsibilities as a neighbour to East Timor now. As a nation, we have become involved and committed to East Timor in a very positive way—in particular, no doubt, in the last
12 months. These actions have been recognised and acknowledged not only by Australians but also most importantly by the East Timorese community. Through our leadership under Major General Cosgrove and INTERFET, we have repaid an enormous debt in the form of the relationship we historically had with East Timor as a result of the Second World War, and we have now recognised the importance of the East Timorese being self-determining in their relationship with us.

The enactment of this bill could contribute to investor certainty in the Timor Gap. Over $US700 million has been spent on petroleum exploration and development of area A of the Timor Gap zone of cooperation since the treaty entered into force in 1991. The first commercial oil production commenced in July 1998 with the development of the small Elang-Kakatua field, which currently produces about 16,000 barrels a day and generates revenues to both Australia and East Timor at a rate of approximately $US3 million per annum.

Development of other projects in the zone of cooperation, notably the Bayu-Undan and Sunrise gas condensate fields, could involve capital expenditures of $US15 billion, including major onshore facilities in the vicinity of Darwin. The development of the Bayu-Undan liquids project, a world-class project by a Phillips Petroleum led consortium, has the potential to 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 2004. The Bayu-Undan project has the potential to make a very significant contribution to the economic development and stability of an independent East Timor. Development of the second LNG production phase of the project has even greater potential for both East Timor and the Northern Territory.

In the Northern Territory we are well placed to take advantage of the benefits that will flow from the development of the Timor Gap. We already know of the plans by Phillips Petroleum—and now we hear of Woodside and Shell—for the future development of the resources which will come out of the Timor Gap through plants developed in the Northern Territory near Darwin. Those are very important to our economy and I do not think we should underestimate their importance to our economy or the fact that they will provide significant benefits to the people of the Northern Territory.

The changes contained in this bill should provide continuity in the arrangements under the terms of the Timor Gap Treaty to reflect the change in Australia’s treaty partner from Indonesia to UNTAET and to validate the actions of the Timor Gap Ministerial Council and Joint Authority since October of last year. They 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. They should not have any direct financial impact on companies or individuals or on the Australian government. Finally, let me say in finishing that this bill has the Labor Party’s strong bipartisan support. On behalf of the people of the Northern Territory, and in particular those in Darwin, I commend the bill to the Senate.

Senator BOURNE (New South Wales) (12.55 p.m.)—On behalf of the Democrats, I say that we agree with what both Senator Crossin has said on behalf of the Labor Party and the minister has said in the second reading speech on the Timor Gap Treaty (Transitional Arrangements) Bill 2000, which was tabled a few weeks ago. I cannot help myself; I have to draw to the attention of senators a few of the more ironic aspects of this bill. We are going through this bill during what is commonly known, amongst the whips at any rate, as the time for non-controversial legislation. The reason for that is that this is non-controversial legislation. Everybody agrees with it. I am sure a lot of senators in this place will remember when the original bill went through this place. It was anything but non-controversial. It was one of the most controversial pieces of legislation that we had throughout that whole parliament. I am so pleased to see that this has changed well and truly for the better and especially that it is considered non-controversial by all parties in the Senate.

The explanatory memorandum makes quite amusing reading if you look at a few of
the things contained in it. I will go through a
couple. I will not take much of the time of the
Senate. Firstly, the definition of ‘Indonesia’
has been removed from several places within
the bill because the definition of Indonesia
that included East Timor is now redundant.
Many of us thought that the definition of In-
donesia which included East Timor was
pretty redundant when the bill went through
in the first place. I am pleased to see that that
has been changed.

Secondly, in the future under this legisla-
tion, the minister will be allowed to adjust
the definition of ‘East Timor’ in the regula-
tions. Normally, that sort of thing would
worry me and I would look closely at what
power that conferred upon the minister. In the
case of this bill, I must say that it does not
worry me at all. I am quite pleased that the
minister has the flexibility to redefine ‘East
Timor’ in regulations. I see that East Timor is
now heading inexorably towards being a self-
governing nation.

Thirdly—and this is my personal favour-
ite—in item 4, paragraphs 9A(2)(b) and (c)
the definition of ‘East Timor’ has been de-
finied with particular reference to the Mac-
quarie Dictionary, second revision, reprinted
in 1989. The Macquarie Dictionary and the
explanatory memorandum define ‘nation’ as
‘a body of people associated with a particular
territory who are sufficiently conscious of
their unity to seek or to possess a government
peculiarly of their own’. I would have
thought that that could have applied to East
Timor well and truly when the first bill went
through. It certainly does apply now. With a
little more imagination perhaps we could
have come to this conclusion a long time ago
and avoided all the ruction that that first bill
caused.

I acknowledge the foreign policy objec-
tives of Australia at the time of the first bill,
Senlator ELLISON (Western Australia—
Special Minister of State) (12.59 p.m.)—I
thank the opposition and other senators who
have spoken for their support for this impor-
tant bill, the Timor Gap Treaty (Transitional
Arrangements) Bill 2000. It does give effect
under Australian legislation to the new treaty
arrangements for the Timor Gap zone of co-
operation. I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time, and passed
through its remaining stages without amend-
ment or debate.

ABORIGINAL LAND RIGHTS
(NORTHERN TERRITORY)
AMENDMENT BILL (NO. 3) 1999
Second Reading

Debate resumed from 13 March, on mo-
tion by Senator Ian Campbell:

That this bill be now read a second time.

Senator CROSSIN (Northern Territory)
(1.00 p.m.)—The Labor Party supports the
Aboriginal Land Rights (Northern Territory)
Amendment Bill (No. 3) 1999. This bill pro-
vides for the scheduling under the act of three
parcels of land associated with the Waru-
mungu and Frewena land claims. It arises
out of a negotiated settlement between the
Central Land Council, acting on behalf of
the traditional land owners, and the Northern
Territory government and pastoralists. The
Warumungu land claim has been described
by the Central Land Council as one of
the longest and most bitterly fought land
claims in the history of the Land Rights Act.
It was first lodged in November 1978 to an
area east of Tennant Creek, but it did not
come before the Aboriginal Land Commis-
sioner until 1985 due to a number of legal
attempts to block it. The then Aboriginal
Land Commissioner, Mr Justice Maurice,
recommended in 1988 a grant of fee simple
to most of the area covered by the land claim.
A significant part of this land has been re-
turned to its traditional Aboriginal owners
since then.

Part of the recommendation included land
that contained a stock route and a travelling
stock reserve used by the adjoining pastoral
interests. Negotiations continued over this
part of the recommendation until a land swap
was agreed upon. In return for giving up their claim to the stock route, the traditional owners received land of better configuration for their needs. It is the land subject to this land swap that will be scheduled under the act in this bill, along with the Frewena land claim, which lies adjacent to the south. As a result of these negotiations, only one part of the original Warumungu claim has yet to be dealt with—that part involving the Brunchilly pastoral lease. If and when this is resolved, the Warumungu land claim will finally have been settled 20 years after its initiation.

It is interesting to note that, when Mr Justice Maurice delivered his report, as required by the act, to the minister in July 1988 he included a short history of the Warumungu. He described the Warumungu in 1901 as a flourishing nation. He went on to make the comment that, after a matter of years, they were a group of people that had been completely dispossessed. In his report, he went on to say:

Astonishingly, perhaps, much of the Warumungu identity remains, and even today the sense of belonging to the land is a powerful influence in the lives of these people of the Barkly Region.

The Warumungu were, and still are, the custodians of a specific area of land with an organised form of government—a ‘flourishing nation’ in the words of the Land Commissioner who conducted a lengthy and thorough investigation into the claim. They are words which in simple language unequivocally designate the Warumungu as custodians of their traditional lands; words that many people in Australia, including the Prime Minister, do not seem willing to acknowledge. Stories such as that of the Warumungu clearly illustrate the longevity of indigenous history and culture, the pride of indigenous people in their land and their resilient spirit.

The story of the Warumungu also illustrates the ongoing success of the Aboriginal Land Rights (Northern Territory) Act 1976. Several of the claims that have been scheduled under the act have resulted from negotiation. This has often been a difficult and protracted process, as in the case of the Warumungu claim, yet it is negotiation that has ended in results—results which, at the end of the day, as we have seen in this legislation, indigenous Australians, pastoralists, miners and even the Northern Territory government have been able to live with. The Northern Territory land rights act is the most successful legislation involving indigenous Australians in terms of these results. Once this bill has received royal assent, I understand that 64 parcels of land will be returned to their Aboriginal traditional owners. This land has provided and will continue to provide its traditional owners with a sense of connection, a sense of pride and a place where they can enrich and celebrate their culture in traditional ways. The involvement and support of indigenous Australians is the primary reason for the success of this legislation.

This government is intent on destroying the very foundation that has enabled this success to occur. I understand that this federal government is on a mission to destroy the very fabric of the land rights act and to amend it in a way which is opposed by traditional landowners in the Northern Territory. You can be assured that the Australian Labor Party will also oppose this action. I remind the Senate of the first recommendation in the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report Unlocking the future. This central and core recommendation—indeed, the recommendation which qualifies every other recommendation in that document—reads:

The Aboriginal Land Rights (Northern Territory) Act 1976 ... not be amended without:

- traditional Aboriginal owners in the Northern Territory first understanding the nature and purpose of any amendments and as a group giving their consent; and
- any Aboriginal communities or groups that may be affected having been consulted and given adequate opportunity to express their views.

Unless the federal government meets this objective and unless we can see very transparently that in any attempt to amend the land rights act it has first had the informed consent of these people, then we will oppose it. And I expect that my colleagues on the government side of the house who were part of this committee’s report will take the same position. After all, the committee reported
unanimously with members from all sides, including the government side, supporting the recommendation.

The government has a number of proposals which I understand are the subject of a cabinet submission at this point in time. I want to take this opportunity to raise what I understand are the subject of this document. These proposals deal with, among other things, amendments to the objects of the Northern Territory land rights act. There has been no attempt thus far to negotiate with Aboriginal people in the Northern Territory or to inform them about these issues. There has been no attempt to sit down with the traditional owners in the Northern Territory and inform them. No-one from this government, as I understand it, has gone to any of the four land councils in the Territory—the Northern, Central, Tiwi or Anindilyakwa Land Councils—with a set of proposals and said to them, ‘We would like to discuss these with your membership.’ The collective membership of these four land councils covers every Aboriginal person throughout the Northern Territory. These proposals have, as I understand it, been put to ATSIC but they have not been discussed with the indigenous people of the Northern Territory. It is a bit like Kemp’s secret cabinet document in relation to higher education last year which nobody knew about until it was well and truly aired in public.

As well as the proposal to amend the objects, I understand there is a proposal to break up the major land councils in a way this government says is in some part in accordance with the recommendation of this report. It proposes to form an assessment process for the formation of new land councils. As well there is to be a plebiscite conducted by the Australian Electoral Commission requiring a majority of 55 per cent of the formal vote. This is the informed consent of an absolute majority; it is not the informed consent of traditional owners. Let me take this chamber to recommendation 7 of the House of Representatives Standing Committee’s report, which says:

Section 21(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* ... be amended to:

1. define ‘substantial majority’ as at least 60% of those Aboriginal people living in the area; and

require the Minister to be satisfied that the appropriate traditional Aboriginal owners have given their informed consent to the setting up of a new land council in accordance with section 77A of the Act.

The current proposal being put forward by this federal government—being discussed by the cabinet, I understand—to have informed consent of those traditional owners says 55 per cent. How does 55 per cent equate to the substantial majority under anyone’s definition? I put to the Senate that this is a very cute trick by the government on this issue.

I understand there is also a proposal to deal with the issue of sacred sites. The proposal is to exclude, in large part, the land councils from their current roles under section 69 of the land rights act, which gives them a role in relation to sacred sites. The government needs to understand that this will be a particularly contentious issue among Aboriginal people in the Northern Territory. The government again should go back to recommendation No. 1 in the House of Representatives report—informed consent—before seeking to impose these laws upon the Aboriginal community of the Northern Territory. The government would be well served to look at the two reports produced by Royal Commissioner Justice Woodward and the subsequent review reports done by Justice Toohey in relation to amending the land rights act. The government would be well served to look at the two reports produced by Royal Commissioner Justice Woodward and the subsequent review reports done by Justice Toohey in relation to amending the land rights act.

I understand there is another proposal being put forward by the government about the application of Northern Territory laws. They are proposing to amend the act to provide that certain Northern Territory laws, such as those related to environmental protection and conservation, public health and safety, the supply of essential services, and maintenance of law and order or the administration of justice—and there are others—shall apply to Aboriginal land. The House of Representatives committee looked at this issue and could find no evidence that there was any difficulty with the application of Territory laws in relation to Aboriginal land. The committee recommended that the Minister for Aboriginal and Torres Strait Islander Affairs consider whether the powers need to be
extended, but then go through a process of consultation, discussion and negotiation. In fact, on page 136 under ‘Core Principles’ of the committee’s recommendations, paragraph 8.40 says:

As stated in the previous chapter, the Committee believes that negotiation and consultation are the best methods of achieving mutually satisfactory outcomes and a productive partnership between Aboriginal people, non Aboriginal people and the Northern Territory Government.

This does not propose that at all. There is also a proposition for compulsory acquisition of Aboriginal land in the Northern Territory. There is no case for the compulsory acquisition of Aboriginal land in the Northern Territory. Again, this issue was looked at seriously by the House of Representatives committee and they unanimously came down with the view that there was no case for this proposal, yet it is a proposal which is being picked up by the current minister for Aboriginal affairs and, presumably, by the cabinet. They are putting this proposal forward knowing full well that there has been a process, the Reeves report, and then the House of Representatives standing committee came down with a unanimous report rejecting this proposal.

I have very serious concerns about what is behind these ideas. There are proposals in the government’s submission to deal with the Aboriginal benefits trust account and to deal with mining provisions of the act. I am sure there has been no attempt to have any process of discussion or negotiation with those people who are affected by these issues. There are a range of other issues which the government’s proposals address. The bottom line is that, unless these proposals have the support of Aboriginal people, unless they have their informed consent, they will be opposed by the Labor Party.

We have heard a great deal recently from the Prime Minister about the need for reconciliation. I say to the Prime Minister, this parliament and the Senate that, if they believe reconciliation is going to be achieved by seeking to divide the community against Aboriginal Australians, if it is going to be poll driven or if it is going to be enhanced by secret cabinet documents that seek to discard the recommendations of a House of Representatives report based on the Reeves review, then they are wrong.

Shane Stone, the previous Chief Minister of the Northern Territory and now the President of the Australian Liberal Party, saw this as a real attempt by the government to ensure that there is divisive political debate over the issue of land rights in the Northern Territory and in Australia generally. I believe this government will try to capitalise politically on this issue over time as we lead up to the next federal election. That is their intent. If they believe we are going to be cowered by these sorts of attempts to intimidate the Australian community and vilify Aboriginal Australians, then they are sadly mistaken.

There will be a great deal of discussion about these issues in the weeks to come, I have no doubt. Among these issues there will be attempts to attack the way in which the Northern Territory land councils work. Let me say that these organisations are not beyond reproach, these organisations are not beyond improvement and they must be accountable. Again, these are questions which were examined in detail by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. They are questions on which the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs made specific comment.

The context of the way in which this government is dealing with Aboriginal issues and indigenous issues generally must be put on notice. The way the federal government is dealing with these issues is not good enough. We have had the sorry sight of this parliament gagging the Leader of the Opposition for seeking to take up with the Prime Minister the issue of reconciliation and his lack of leadership on this issue. We have seen the Prime Minister gag his own party on the issue of mandatory sentencing laws in the Northern Territory this week. We are seeing another example of a lack of leadership by this government over these attempts that we will see no doubt in the form of draft legislation very shortly to amend the Aboriginal Land Rights (Northern Territory) Act.
What this government is about is eroding rights. It is about taking away the rights of indigenous Australians. I want to say to this chamber and to the members opposite that, if this is the case, then they will have a fight on their hands. I do not believe any proposals that they put in accordance with this will get through the parliament.

But let me say in finishing that I commend the Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) to the Senate for endorsement. It is a fine example of the success of the current land rights act in the Northern Territory, an act which should stay as it is. If there is an intent to change or amend this act, then it must be done as the report recommends—with consent, but with informed consent, of the Aboriginal people in the Northern Territory.

Senator ELLISON (Western Australia—Special Minister of State) (1.16 p.m.)—I thank the opposition for the support of this bill and I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

CUSTOMS LEGISLATION AMENDMENT (CRIMINAL SANCTIONS AND OTHER MEASURES) BILL 2000

Second Reading

Debate resumed from 13 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator QUIRKE (South Australia) (1.18 p.m.)—As Senator Bolkus, I seek leave to incorporate the remainder of my remarks!

Leave granted.

Senator Bolkus’s speech read as follows—

The passage of this legislation through both Houses of Parliament has not been smooth. The Bill was introduced towards the end of the sitting period of last year. At the last moment, Government attempted to rush this Bill, which amounts to a grab bag of a number of unrelated amendments through the Parliament.

This was not and could not be supported. The Parliament has a real and important role to fulfil with respect to legislation—it must be given time to scrutinise every Bill before it is passed.

While there was no dispute over the importance of doing all that we can to ensure that the Sydney Olympics are drug free, this was not a good enough reason to expedite the passage of this Bill through the Parliament without appropriate scrutiny. The Opposition repeatedly voiced its support for the principle that international sporting events should be drug free. However, the Opposition was not willing to abrogate its responsibility to ensure that all legislation contains reasonable and responsible legislative responses to principles.

The Bill was therefore referred to the Senate Legal and Constitutional committee for review. This review was dominated solely by consideration of the need to prevent performance enhancing drugs from following into the country. Unfortunately, there was no discussion about the appropriateness of the increase in penalties for the importation of non sports drugs; nor was there any general discussion about the appropriateness of bringing sports drugs into the criminal law regime. Many of the other provisions in the Bill were given no or only cursory scrutiny.

Following the report of the Senate Committee, the Opposition was determined that the provisions of the Bill which had the potential to impinge upon civil liberties were both looked at and addressed. The particular concerns were brought to the attention of the Minister’s office, which led to a number of ultimately constructive and productive meetings between the Minister’s office and that of the Shadow Minister.

The Opposition and the Government were able to agree on a number of amendments to the Bill. The bulk of these amendments were supported by the Opposition through the House. However, there was one point of disagreement between the Government and the Opposition in the House which has now been resolved, and which will result in the Government moving and the Opposition supporting an additional amendment today.

The Opposition has been particularly concerned about, and adamant in our opposition to, provisions of the Bill which increased the allowed Customs officers to open private mail unsupervised.

Currently, section 90S of the Australian Postal Corporation Act 1989 allows an authorised officer to open an article in the presence of a customs officer if there are reasonable grounds for suspecting that the article contains anything on which customs duty or sales tax is payable, or which is being carried in contravention of a law of the
Commonwealth relating to the importation or exportation of that thing.

The Bill seeks to insert a new s90T into the Postal Act, so as to introduce a different regime for the opening of articles which are reasonably believed to contain or consist of drugs or other chemical compounds. The Bill allows Customs officers to remove the article; to open and examine the article and the goods contained; and to either confiscate the article or to return it to the normal course of carriage, marked as opened; all in the absence of an authorised Australia Post official.

The Bill therefore allows for Customs officers to remove and open postal articles without any outside supervision whatsoever. As the Postal Act currently reads, Customs officers may not open articles without the presence of an Australia Post officer. While not an infallible regime, the current requirement that an Australia Post officer opens the mail in the presence of a Customs officer provides some overview of the actions of Customs officers.

Customs has argued that the amendments in the Bill are necessary to allow for controlled operations. Customs has suggested that there may be some circumstances where an Australia Post officer is suspected of being involved in some way in the importation of drugs. Customs claimed that it would increase the security and effectiveness of controlled operations if they were not forced to ask an Australia Post officer to open the mail.

Labor has taken a strong and responsible stance on this issue. The regime which was proposed in the Bill is not acceptable, as it would mean that a Customs officer would be free to open mail on their own inclination, without either seeking authority or being monitored. Allowing individuals to open mail without any one else present is providing the potential for mail to be tampered with, for narcotics to be planted, or for merely mischievous opening of private mail.

In the House, the Shadow Minister for Justice argued against these provisions at length. However, the Government could not see its way to amending the Bill in that place so as to protect the civil liberties of any one sending a private letter through the international post. The Opposition moved amendments which would have allowed Customs officers to request that either an AFP or and Australia Post officer open the mail. This was intended to address the concerns voiced by Customs about the need for controlled operations, while also preventing the situation where a single Customs officer could open the mail on their own initiative, without any supervision whatsoever.

Following debate in the House, Customs came to the Shadow Minister with amendments to the Bill, which would ensure that at no time would a Customs officer be able to open private mail without supervision. The amendments alter the scheme proposed by the Bill to provide for the safeguards which the Shadow Minister for Justice and Customs argued so vehemently for. The Government’s amendments exclude all mail under 25 grams, which covers private letters, from the new regime. They will also mandate that no mail article is to be opened by a lone Customs officer, and that any article must be opened by a superior of the officer who identified the article as suspect.

The Opposition is satisfied that the amendments which will be moved by the Government will address the concerns which we have raised. It is gratifying to see that Customs and the Ministers office have taken note of the concerns raised by the Opposition, and have come to us with a suggestion aimed at addressing these concerns. As such we will be supporting the amendment.

Senator MURRAY (Western Australia) (1.19 p.m.)—I must say that when I looked into the provisions of this bill, I had some serious qualms about it, the reason being that the bill introduces some fairly intrusive provisions into what may be regarded as civil liberties. It increases the power of Customs and of its officers and it increases some penalties quite drastically. I draw attention to the fact that one set of penalties, for instance, increases from, I think, $5,000 to $250,000. I draw attention to the fact that certain new forms of equipment to identify whether people are carrying prohibited substances are introduced and greater powers are given to Customs.

However, having said that, this bill was looked at by the Senate Legal and Constitutional Legislation Committee, on which Senator Greig from my party sits. He did not provide a minority report, but I noted that Senator Schacht did, which I thought was a very useful and helpful minority report. I am really standing here to record a general unease about this bill. I do hope that my unease is not justified at some future date when we find that the provisions of this bill end up being used to excess and in a way which is detrimental to good order and good conduct in the exercise of civil liberties and the proper enforcement of Customs legislation.
Having expressed my views of general unease, I nevertheless indicate my party’s position, which is that we will support the bill; and I indicate my party’s position that we will support the proposed government amendments as put forward.

I wish to take the opportunity to briefly mention two specific aspects of the bill. The first is a substantial increase in the penalties for illegal importation and exportation that the bill introduces. I would like to lend my support to comments made by Senator Schacht. In his minority report he said:

While the principle of introducing tougher penalties for the importation of performance enhancing drugs is supported, it must be noted that these penalties form an element of a much broader criminal and civil regime. It is important that the legislative approach to the importation of illicit drugs is consistent and appropriate.

The minority report from Senator Schacht recommends that the appropriateness and effectiveness of the increased penalties be reviewed after the Olympic Games, and I am not aware of what the government’s position is on that. Perhaps the minister will tell us in his closing remarks.

The Australian Democrats do support the call for a review in due course of penalties of this sort for their consistency, appropriateness and effectiveness, and we regard such a review as essentially encompassing state legislation as well. One of the unhappy features of our federation is that there are differing standards of civil liberties throughout Australia, and I have always held the belief that, as far as possible, Australians should experience similar laws as regards their rights and obligations in every state. We do not have a preconceived idea that the current or the proposed penalties are too high or too low but, as an example, the increase in the maximum penalty for importing 100 grams of cannabis, which is not very much, from $4,000 to $250,000 needs to be substantiated as a fair and reasonable penalty rather than an arbitrary figure.

The second issue to which I wish to turn briefly is the opening of international mail articles. I understand that, at present, articles may only be opened by Australia Post officers at the request of a Customs officer. In its original form, the bill abolished the need for articles to be opened by Australia Post officers and allowed for Customs officers to open and examine articles. That provision was of concern to us to the extent that the opening of articles by a single Customs officer could lead to a perception of an ability to plant illegal substances. That is not an inference that that is what Customs officers like to do, normally do or would do; nevertheless, you always have to take cognisance of the fact that you can have rogue elements in any organisation. In my absence, my staff met with the minister’s office and the Australia Customs Service to discuss the issue, and the Australian Democrats were supportive of a Labor Party suggestion to require that articles be opened by either Australia Post officers or officers of the Australian Federal Police in the presence of a Customs officer. But we were advised by the government that, due to AFP resource constraints, that would simply not be a practical solution.

The government then negotiated with the Labor Party and arrived at the amended proposal, which involves identification of articles for inspection by one Customs officer and their opening by another more senior Customs officer in the presence of a third Customs officer. The proposed amendment in relation to opening mail articles is by no means perfect, but it is a great improvement. We would prefer that an independent third party conduct, or at least witness, the opening of mail, but we understand that there is the potential for that to compromise the integrity of Customs investigations, and there are also practical difficulties with implementing such a regime.

I would like to conclude by repeating that we will support the bill and the government’s amendments but also repeat that I think the increase in penalties, the new equipment aspects and the question of greater rights being given to Customs officers with respect to ordinary persons’ rights and liberties will need future review and future attention, which I think is a legitimate request from us.

Senator COONEY (Victoria) (1.26 p.m.)—I was in my room and heard Senator Murray talking on this bill, and I thought I would come in and make some comments as
well. I notice that the minister, Minister Ellison, understands what I am going to say here, that is, I think what Senator Murray said is right. There is always a matter of balance, and I want to hear from your fellow Western Australian on this when he gets up, Mr Acting Deputy President Lightfoot, because he is a man that understands these arguments, having listened to them over the years. As far as he is concerned, there is probably no point in me speaking; I do so for other people who might want to listen.

What Senator Murray said is correct. There is always that balance between trying to see that wrongdoing is detected and properly punished once detected, and the ability of us all to walk free and even to do wrong to some extent. I might be the only person that has done a wrong thing during his life, but I rather doubt it. There is always a balance to be struck where you say, ‘Yes, things have got to be investigated, and we need this new equipment,’ which is correct—you cannot set aside technology: for example, DNA tests—but there does come a point when the whole process becomes intrusive. What I mean by that is that the technology or methods used to go around investigating tend to demean a person and diminish that sense we have of being a person of some significance in the world—and that is how we all ought to feel because we all are that—that feeling of self-worth and that sense of being able to walk abroad in the streets and to meet your neighbour, as you will, to say hallo and all. That is diminished if people can intrude upon the person, and that is what this is all about. On the other hand, if you have got facts which you can establish as truth—and technology tends to be able to do that—or if there is a fact that can be established through an X-ray screen properly used, then that is a matter that should be used in the balance.

I was listening to Senator Murray; and I am not sure what the position is of the ability of Customs officers to open letters. I know that Australia Post is able to do that at the moment. Again, that is a great intrusion but an intrusion that the community has, up until now, accepted as reasonable for people in Australia Post to carry out in the interests of seeing society properly administered. But, as we investigate mail, as we investigate telephone calls and as we investigate all the electronic equipment, it shrinks the ability of us all to exchange communications as we would like to. You, Mr Acting Deputy President, should be able to go around Western Australia and talk, do things freely, express your opinion, have a joke and exchange pleasantries with others without there being an interference.

The other thing I want to say before I sit down is that you can tend to get onto a law and order binge almost. The witch-hunt syndrome comes along in many different forms, and this law and order binge, this witch-hunt syndrome, has to be watched so that we do not get to the point where law and order is so overwhelming that it starts to diminish us as persons. It is proper that, with the Olympic Games coming on, people should not be allowed to bring in drugs but, on the other hand, we should not be having people come into this country and treat them as regimes of the past may have treated people. To some extent, Australia is a long way away from being totalitarian but, now that the Cold War has gone, there is a tendency right around the world to use measures which may not have been used in Western countries during the Cold War because we wanted to distinguish ourselves from those totalitarian regimes. Now that those totalitarian regimes have gone, there is no longer that incentive to keep ourselves as distinct from them as we might otherwise have done, so we start to fall into the ways that they had. So, Mr Acting Deputy President, with those rather random remarks, I sit down.

**Senator ELLISON** (Western Australia—Special Minister of State) (1.34 p.m.)—Mr Acting President, I thank at the outset the opposition and the Democrats for their support of this bill and acknowledge the useful contributions from Senators Murray and Cooney and also note their longstanding interest in matters which touch on individual rights, perhaps particularly so when a state and the individual might come into conflict. I think that this is an important aspect to bear in mind, and the government does believe that this balance has been achieved.
As to a review mentioned, I think, by Senator Murray, the Attorney has not determined as yet whether there should be a review at any particular time, but I do not see that as posing any problem. In any event, this very chamber has committees which from time to time review legislation such as this. I might even mention the Scrutiny of Bills Committee as one such excellent committee which stands as a watchdog at the portals of the Senate in relation to any legislation which might be wayward and trespassing unduly upon the rights of the individual.

Having said that, though, I commend this bill to the Senate as a bill which is an effective means of deterring trafficking in drugs, illicit substances and particularly performance enhancing drugs, which of course are now more in the spotlight because of the forthcoming Olympics.

There are amendments the government will be moving in the committee stage. They came about as a result of debate in the other place and also, I think, as a result of the Senate Legal and Constitutional Committee making some recommendations—and a very good committee that is, too. So I will deal with those when we come to the committee stage, but suffice it to say this is a bill which does, I think, an excellent job in relation to law enforcement but also keeps the balance in relation to individual rights as opposed to the state.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator ELLISON (Western Australia—Special Minister of State) (1.35 p.m.)—Madam Chair, I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 14 March this year. I seek leave to move both amendments standing in the name of the government, amendments (1) and (2) on sheet EH208.

Leave granted.

Senator ELLISON—I move:

(1) Schedule 1, item 3, page 3 (line 14), after “any article”, insert “weighing 25 grams or more”.

(2) Schedule 1, item 3, page 3 (lines 22 to 28), omit subsections (2) and (3), substitute:

(2) The Customs officer may remove the article to which this section applies from the normal course of carriage and give it to a second Customs officer, following the procedures (if any) that are prescribed for the purposes of this section.

(2A) That second Customs officer may open the article if:

(a) the second Customs officer performs duties at a higher classification than the first Customs officer; and

(b) the second Customs officer reasonably believes that the article consists of, or contains, drugs or other chemical compounds that are being carried in contravention of a law of the Commonwealth relating to their importation into, or exportation from, Australia; and

(c) the opening takes place in the presence of a third Customs officer.

(3) Having opened the article, that second Customs officer may, in the presence of that third Customs officer, examine the article to check whether it consists of, or contains, such drugs or other chemical compounds.

Amendments agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Bill (on motion by Senator Ellison) read a third time.

Sitting suspended from 1.37 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Small Business: Incubator Scheme

Senator FORSHAW (2.00 p.m.)—My question is directed to Senator Alston, the Minister representing the Minister for Employment, Workplace Relations and Small Business. What action has the government taken to give effect to the recommendation of
the PricewaterhouseCoopers review of the small business incubator scheme to improve reporting, accountability and monitoring standards for all incubators? What mechanisms are used by the government to assure itself that taxpayer investments in small business incubators actually achieve their objectives of assisting the development and expansion of the small business sector and creating economic and employment opportunities?

Senator ALSTON—I do not know that I have any specific information in relation to the PricewaterhouseCoopers survey, but I certainly am aware of some of the issues that have been looked at in the context of small business. I can say that, under the government’s BITS program—Building on IT Strengths—we have $78 million set aside for incubators. As a result of that program, there have been applications considered by the BITS advisory panel, which I think concluded its deliberations last week, and we hope to be in a position to make announcements fairly shortly. That is a direct result of the social bonus initiatives arising out of the sale of the second tranche of Telstra.

Incubators are a very important mechanism for ensuring that there are opportunities for start-up companies and that they do have access to the right technical, technological, legal and accounting advice. That applies very much to small businesses, because virtually all of those who enter into incubator programs are small business operators. They might not realise it, they might just be a couple of kids with a good idea, but they are hoping to become small businesses and then progress to larger scale businesses.

Clearly, the whole concept of incubators is a hot topic around the world. The Israeli model, I have to say, is probably one of the leading ones, but we do have some very good success stories in this country as well. I expect that that PricewaterhouseCoopers survey and the government’s response to it will add an additional dimension. Certainly, from my perspective in the IT space, I think we are on the verge of doing some very exciting things.

Senator ALSTON—I think the stimulation of the private sector we have in mind is much broader than your focus, Senator Forshaw. I am glad you share our distaste for those sorts of activities. They do not normally need direct government funding or encouragement. I obviously do not know the circumstances in which they came to be a tenant of that incubator program. It may be that their initial business case was not quite as explicit as their current proposal.

Senator Forshaw interjecting—

Senator ALSTON—I am sure Senator Forshaw would be more than happy to organise a visiting task force and to study the matter in great detail. I will simply content myself by—

Senator Carr—I hear they’re running a cover charge for the National Party these days.

The PRESIDENT—Order! You are shouting, Senator. Your time for answering has expired, Senator Alston.

Education: Youth Allowance

Senator COONAN—My question is to the Minister for Family and Community Services, Senator Newman. The youth allowance was introduced in July 1998 aimed at providing more assistance and incentives for young people to remain in study or training. Will the minister provide details on the success of the measure, particularly on incentives for young people to study?

Senator NEWMAN—I thank Senator Coonan, because this is a very important initiative that this government introduced, without the support of the opposition, I might say.
Youth allowance was introduced in July 1998 as a major change in the way that youth payments are structured. I would remind the Senate that the introduction of youth allowance was not designed to be a savings measure, despite misinformation that has been put about. In fact, it will cost the government an extra $256 million in its first four years.

When I introduced the new measure, I outlined the process for an evaluation report into youth allowance. This evaluation is being conducted over three years. The interim report that I have released today assessed the impact of youth allowance over its first full year of operation. The final report will be completed by the end of 2001, enabling an assessment over a longer period.

The evaluation draws information from a wide range of sources, most notably from commissioned surveys, community consultations and collection and analysis of ABS and Centrelink administrative data. In addition, a community reference group has also been established to provide input to the evaluation. Over 2000-01 the department will be continuing the evaluation but also focusing on the impact of youth allowance in rural and remote Australia and issues surrounding young people in blended families.

Senator Stott Despoja—Assets test. Discounting farming families with the assets test.

Senator Newman—I am delighted to advise the Senate that the government’s policies are clearly working. If Senator Stott Despoja, the advocate for the student union, would listen she would learn something useful. Since youth allowance was introduced, there has been a clear shift in young people’s activities towards study. Overall, the number of income support customers in full-time study rose by 14.6 per cent, an increase of almost 40,000 people in 12 months. At the same time, the number of income support customers who were non-students dropped by 20 per cent, or around 24,000.

A key aim of the government in introducing youth allowance is to encourage young people to study. The evaluation of youth allowance has shown that, since the introduction of youth allowance, more families from low to middle incomes are getting help for their student children under youth allowance than under the previous Austudy scheme. The proportion of 16- to 24-year-old full-time students receiving income support rose from 29.4 per cent of all students in June 1998 to 32.2 per cent in June 1999. By June 1999, 87.6 per cent of youth allowance customers aged under 18 were in full-time study. That is an increase from 82.2 per cent in June 1998, just before youth allowance was introduced, that is, there was a five per cent increase in under 18-year-olds remaining in full-time study.

There was a significant decline, by 28 per cent, in the number of income support customers aged under 18 who were not in full-time study, and of course that was a very important element. The success of the measure demonstrates our welfare reform credentials. The principles involved in youth allowance, such as skills acquisition and greater incentives for study and training to become more job ready, will be an important indicator to any future government welfare reforms. The extension of rent assistance to students has been well received, with around 65,000 full-time students receiving rent assistance; and about 22,000 of these students are in rural and remote Australia, with many more studying in larger centres also being provided assistance through rent assistance. That clearly underlines our government’s commitment to assisting families and, particularly, young people from rural Australia. It also clearly demonstrates the opportunism of those opposite, who are opposed to the introduction of youth allowance. (Time expired)

Australian Business Number: Applications

Senator Sherry (2.09 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Can the minister inform the Senate why the ATO has rejected some 40,000 applications for the Australian Business Number?

Senator Kemp—Senator Sherry, thank you for the question. As you are aware, this government has put in process a system which requires people to register for their ABNs. Let me just now direct myself to the detail, Senator, of your question.
Senator Cook—You've got the good book.

Senator KEMP—It is important that I state this to the Senate, and I am prepared to do so. The tax commissioner has assured me of his absolute confidence that the new tax system is being, and will be, delivered according to plan. Some 2.5 million application packages for the business number—they are the ABNs we refer to—have been mailed out to Australian business since November last year. As expected, since the beginning of February this year the applications for ABNs have increased steadily. The ATO expects that applications to register will increase exponentially in the coming weeks as businesses and entities gear up for implementation of the new tax arrangements. As at 3 March—these are the latest figures I have—around 23 per cent of those sent application packages had responded.

Let me make it clear that the ATO is stepping up the information campaign to ensure that businesses are aware of the need to register for the new tax system by 31 May, and letters from the tax commissioner will be sent to all businesses progressively over the coming weeks outlining the possible consequences of failing to register. The tax office is very concerned to make sure that people have the information on hand and to make clear to business that it is very important to register by 31 May, and this is precisely what is occurring.

Senator Sherry—Madam President, I rise on a point of order, and it goes to relevance. My question went to the 40,000 applications that have been rejected. The minister has been answering for 2½ minutes and has not got to the point of the question.

The PRESIDENT—There is no point of order.

Senator KEMP—We now have 2½ minutes to go. You have a chance to ask a supplementary question, which we always welcome from you, Senator.

Senator Sherry—What about the 40,000?

Senator KEMP—Just hold on. We are coming to that. Don’t get impatient. Let me make it clear that the ATO has not excluded 40,000 from registration. That is the advice that I have. In the initial mail-out of registration packages in November, which I referred to, certain entities—about 40,000—were not included in the mail-out on the basis that there was insufficient information for the ATO to determine that they were carrying on an enterprise. An example of this category would include hobby farmers.

Entities in this category still have the option of applying for an ABN if they consider that they are carrying on an enterprise. At the application stage, the ATO will usually register these entities, but they may expect contact from the ATO after registration to establish that they are entitled to an ABN. For your information, Senator, the contact may be in the form of a self-assessment checklist. So I think that deals with the substance of Senator Sherry’s question. But, as always, if Senator Sherry needs any further information, I would encourage him to ask a supplementary question.

Senator Sherry—Madam President, I ask a supplementary question. Is it not the case, Minister, that a primary reason for these 40,000 ABN applications being rejected was that they lacked requisite information? In light of this, does the minister still stand by his statement to the parliament on 8 March that the ABN application form is ‘quite clear and the information that is required is clear’? If the forms are quite clear—and I have both of them here: one is 49 pages long and the other is an eight-page application—as the minister has claimed, why are business people unable to provide sufficient information for them to receive their ABNs?

Senator KEMP—I think we have made it clear that we will assist business in any way we can. My understanding is that the application form was market tested to make sure that people were able to understand the questions which were being asked. It is quite obvious the tax office will need certain information in order to register a business for an ABN. A lot of businesses are successfully able to fill in those forms. They are the facts of the matter.

I am not sure what Senator Sherry is precisely concerned about. We are concerned that people do register, and we are conducting a campaign to inform business of the
need to register. As I said, we will be ready to assist people who have any questions on this issue. This is what one would expect. This is a very big and important exercise. (Time expired)

**DISTINGUISHED VISITORS**

The PRESIDENT—I draw the attention of honourable senators to the presence in the President’s Gallery of Colonel Shawkat Ali, a member of the National Assembly of Bangladesh. On behalf of senators, I welcome you to the chamber and trust that your visit here will be informative and enjoyable.

Honourable senators—Hear, hear!

**QUESTIONS WITHOUT NOTICE**

**Car Industry: Exports**

Senator CHAPMAN (2.15 p.m.)—My question is directed to the Minister for Industry, Science and Resources. The minister would be aware of the coalition government’s $2.2 billion car industry support program which is coupled with the government’s automotive trade strategy and the way in which they are underpinning an internationally competitive motor vehicle industry. I ask the minister: what is the government doing to boost our successful car export performance?

Senator MINCHIN—I thank Senator Chapman, who is a keen supporter of the Australian car industry. I think it would come as a surprise to many Australians that vehicle and vehicle components are a major Australian export. Automotive exports from Australia last year rose by an incredible 23 per cent to a record $3.2 billion, bigger than beef or wool and three times bigger than our wine exports. More than 45 per cent of that was actually automotive components.

Over 73,000 cars are exported worldwide and another 9,000 knock down car kits were exported. Passenger vehicles were Australia’s fastest growing export to the Middle East—almost 46,000 cars valued at over $760 million last year. Australian-built Capris, made in Melbourne, are now the largest selling car in Saudi Arabia with 23,000 units shipped last year. In the area of car components and automotive products, the US continues to be our leading export market with sales up 24 per cent last year to $712 million. I think these results do prove that we are building a truly world-class car industry. As Senator Chapman says, our $2 billion car industry support program and our automotive trade strategy will further boost our car exports.

Today I announced that a major automotive exhibition and symposium will be held in Detroit next week at the prestigious Ford Technology Review Centre. That exhibition is being equally funded by industry and my department through the Automotive Market Access and Development Fund. This exhibition is a unique opportunity to showcase our automotive innovations in what is the world capital of the car industry. There will be up to 3,000 car industry representatives attending this exhibition.

I want to record the government’s thanks to Mr Jac Nasser, the Australian born President and CEO of Ford, for his role in hosting this presentation by leading Australian automotive suppliers. The Prime Minister’s Special Automotive Envoy, Ian Grigg, will lead this mission that focuses on Australian excellence in the components, tooling, services and development sectors. There will be 36 Australian car and car component companies participating and displaying their latest innovations. This showcase will build on the huge success of the original Australian concept car, the Australian aXcess car, and features Ford’s latest XR Falcon utility and a luxury version of the Holden Statesman.

We are assisting the vehicle industry in a number of other ways. I remind you that the automotive industry will be a huge beneficiary of the government’s tax reforms. The tax on a car will fall by $2,000 for the average automobile and the total Australian market is forecast to grow to nearly one million units by the year 2003. Of course, on the export front, we have the admission from my shadow minister, Mr Bob McMullan, that the GST is good for exports. The GST will be very good for automotive exports, which are growing at a rapid rate.

Through our programs we have provided a very strong foundation for the car industry. Car sales in February 2000, just last month, were the highest ever recorded in the history of the Australian industry for that month of the year—an outstanding result. The car industry has had its three best ever years during
our four years in office. I think the Howard government’s economic and industry policies are instrumental in building a world-class internationally competitive Australian car industry.

Goods and Services Tax: Petrol Prices

Senator MURPHY (2.19 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. The minister would be aware of a statement by the Automobile Association Executive Director, Mr McIntosh, that the GST will add 2c a litre to the retail price of petrol. With petrol already at $1 a litre in some areas, what is the government’s estimate of the impact of the GST on petrol prices?

Senator KEMP—Senator, we have made it very clear that we will deliver on our election promise that petrol prices need not rise as a result of the GST.

Senator MURPHY—Madam President, I ask a supplementary question. I remind the minister that the Prime Minister and the Treasurer said that petrol prices will not increase as a result of the introduction of the GST. Minister, given that the GST will clearly drive up the price of petrol, isn’t that a breach of this promise?

Senator KEMP—Senator, I do not think you listened to the answer I gave. We have had this debate in Senate estimates. We have been through it at almost tedious length. To be quite frank, I think you were there. I am amazed that you get up and ask the same question. The government’s position has always been clear on this issue. If we have stated it once, we have stated it 100 times: petrol prices need not rise as a result of the GST. That is the point I am making and that is the comment that we have made previously.

Australian Business Number: Applications

Senator MURRAY (2.21 p.m.)—My question is to the Assistant Treasurer and it follows the earlier question on ABNs. Is the minister aware that businesses which applied for ABNs in December and January, despite the fact that application numbers were then low, have still not received advice of their registration? If the tax office is having difficulty with the rapid turnaround from December to March, how many weeks or months will it take to turn around the deluge of applications expected by the end of May? Is the minister aware that Bill Powell, the tax office’s national business manager, has advised that the tax office is expected to process all applications received by 31 May in time for the GST start on 1 July? Does the minister realise that, in terms of organising stationery, software and making appropriate business arrangements, it would be desirable for all late registered ABN numbers to be advised to businesses by the middle of June, not the end of June? Is that feasible?

Senator KEMP—Thank you for the question. The taxation commissioner has advised me that the registration for the new tax system will be delivered according to plan.

Senator Robert Ray—Can you guarantee that?

Senator KEMP—Senator Ray, the taxation commissioner is charged with the administration of the tax system. As a former minister, you would understand that—not that you were a very good minister, Senator Ray—but for the purposes of this debate I do not want enter into that at this stage. The trouble with you, Senator Ray, is that you have a bit form—that is the problem—you have form.

The PRESIDENT—Senator Kemp, your remarks should not be directed across the chamber.

Senator KEMP—Thank you, Madam President. I was being provoked, and Senator Ray knows exactly what I am talking about. Let me make it clear to Senator Murray that the tax office is allocating significant resources to ensure that applications for ABN registration are completed on time. The ATO in fact expects that applications will increase exponentially in the coming weeks. Here are some statistics that you sought: at present, there are some 335 staff allocated to the task of performing ABN registrations; the number will increase progressively to around 545 staff by the end of March. I am advised also that more and more applications for ABNs are being lodged electronically. Registration can occur within seven days if the application is lodged electronically through the business
entry point website or through business tax agents through the electronic lodgment system. The more applications that are lodged in this manner, the shorter the turnaround time. I am advised that the majority of applications are now lodged in an electronic form, which indicates, I am pleased to say, a growing trend towards a quicker turnaround of applications.

Let me make it clear to Senator Murray that the tax office is very conscious of this challenge. No-one denies this is a very big change in the tax system—no-one denies that. It is a change which will produce very substantial benefits for businesses. I think that is widely recognised now, despite the scare campaign by the Labor Party. My judgment is that, when this system is working and comes into effect after 1 July, it will reveal the bankruptcy of the Labor Party and their behaviour on tax reform over the last year and a half. In fairness, I can see now the Labor Party have signed on to the GST.

Senator Robert Ray—Bring it back for a vote. Come on.

Senator KEMP—I think you should stay out of policy, Senator Ray.

The PRESIDENT—Senator Kemp, you should not be responding to interjections.

Senator KEMP—Thank you, Madam President. Senator Ray is relentlessly provoking me. My advice to the Labor Party is to keep Senator Ray clear of policy; do not allow him near it. We have seen what has happened in the past with Senator Ray—just keep him clear. Senator Murray, I think this is a very important question. Let me assure you that the Liberal Party, with the resources available and its commitment, is determined to make sure that this new system based on the ABN is delivered effectively and on time.

Senator MURRAY—I note the minister’s assurances are on the record; however, we all know things can go wrong. Madam President, I ask a supplementary question. Minister, if businesses which have applied for the ABN by the government’s deadline do not have ABNs advised to them in time, will the government provide any amnesty, leniency or system for dealing with that eventuality?

Senator KEMP—I think the important point to make is that there is at present plenty of time for businesses to register. There is a great deal of advertising and a great deal of material has been put out encouraging people to register. The advice that I would be giving to businesses—and I am sure you would be giving to businesses—is to encourage them to register and to put their forms in. They have plenty of time to do it, and they should do it now. The comfort I give you is that, if they can send in their applications via the electronic system, there is a very rapid turnaround. The systems are in place to make sure that people can register. We are determined to deliver.

Senator George Campbell—That is absolute nonsense.

Senator KEMP—Yes, the usual negative, carping attitudes from the Labor Party, a party that has produced no reform and has transacted the greatest backflip in Australian history. (Time expired)

Rural and Regional Australia: Services

Senator MACKay (12.16 p.m.)—My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts and the Minister representing the Minister for Agriculture, Fisheries and Forestry. Does the minister agree with his Liberal Party colleague the member for Parramatta when he says that country people should not expect the same access to services as city dwellers? Or does the minister share the view of his colleague Senator Crane that Mr Cameron should be disregarded as ‘a spoilt brat’?

Senator ALSTON—The short answer is that I do not agree with either of those statements. There are different perspectives held by people depending upon where they reside and those they represent.

Senator Robert Ray—It is called working both sides of the street.

Senator ALSTON—If Senator Ray thinks it is an either/or, I would like to know which side the Labor Party propose to come down on: is it on the side of the bush or is it on the side of the city? One assumes it is on the side of the city, because the good old western suburbs have been where they draw all their
support from. Essentially, they disregarded the bush in spades last time around. They were not interested in supporting our social bonus initiatives. They opposed Networking the Nation every inch of the way. Senator Schacht even achieved that immortal hype during the campaign of actually announcing that they would freeze Networking the Nation but not telling us what he was going to do with the proceeds—in other words, they were going to knock off about $150 million, put it in the back pocket and presumably spend it on shoring up a few suburban seats.

I find it very helpful indeed for Senator Ray to announce to the chamber today that you cannot please both city and country, because we take a diametrically opposed view. We certainly believe that people outside the metropolitan areas are entitled to have access to all of the range of services that are available to their city cousins. Indeed, the whole concept of the universal service obligation is to require the provision of a standard telephone service so that all Australians—business and residential consumers—have access on an equitable basis. That is a very important commitment. What Senator Ray is effectively telling the chamber today is that they have ripped that up because it costs a bit too much money. They are not particularly interested in delivering services to rural Australia. Well, we are. We think that you can have world's best practice in both. That is really what it is all about. You will always find people expressing a view that reflects their own perspective and that of their constituents. Quite understandably, people in metropolitan areas take the view that they should not be left behind or discriminated against, and, of course, the contrary is quite valid; people in rural areas do not want to be left behind either. What Senator Ray is telling us is that you cannot have it both ways; you simply cannot have across the board equitable access.

If this bloke just happened to be a backbencher with no particular interest in Labor Party policy, I suppose we could dismiss it as the grumblings of a tired old man, but that is not the case. Senator Ray still takes a very keen interest in the politics—not the policies—of where the Labor Party is going. Effectively what he is announcing today is, ‘We’ve written off the bush.’ That is a very important concession. We are grateful to him for that. We understand they will be wanting to concentrate their resources in metropolitan areas. As far as they are concerned, just shore up what you have got and just hang onto it as much as you can.

Senator Robert Ray—What about Geelong, Rippon, Ballarat East, Ballarat West—

Senator ALSTON—But they are all down the drain now. You have just cast them adrift. All those hard-won gains from the last election Senator Ray has just thrown out the window. He has told them, ‘I’m sorry. If we’re going to deliver world-class telecommunication services in the city, you can’t have it in the bush.’ That is what he has told them. That is very sad for the Labor Party, but it is very good news for us.

Senator MACKAY—Madam President, I ask a supplementary question. I thank the minister for that somewhat tangential answer. As he represents the Minister for Agriculture, Fisheries and Forestry, does the minister also condone the further gratuitous advice from the member for Parramatta when he advised Australian farmers to stop complaining about depressed commodity prices and natural disasters? Would the minister condone the following statement by Ross Cameron:

You can go into an industry which is totally dependent on world commodity prices and on the weather; now if you do that you take a risk and you ought not to expect the rest of the economy to underwrite that risk.

Does the minister agree with that?

Senator ALSTON—that supplementary question is quite misconceived. It was in expressed in terms of my also condoning, when I have not condoned anything to this point in time. I have simply made it plain that people in rural areas are entitled to have access to the same services as those provided in metropolitan areas. They are actually entitled to the benefits of historic tax reform proposals, once again opposed by Labor in opposition prior to the 1998 election but thankfully now supported by the Labor Party in opposition since the 1998 election. Who knows where they will end up by the time they get to the next election?
Senator Robert Ray—You will be in Paris by then.

Senator ALSTON—If there was one good reason why I would never take the Paris option it is that I would not want to be associated with Paul Keating in any shape or form. He gave the Paris option a very bad name and I can assure you that there are much greater challenges in this country. One of them is making sure the Labor Party—

(Time expired)

Petrol: Fuel Substitution

Senator RIDGEWAY (2.35 p.m.)—My question without notice is to the Minister for Industry, Science and Resources, Senator Minchin. Concerns with petroleum product standards were raised last week when it was found that some petroleum outlets were adding toluene to fuel supplies. Given that you have now had time to consider a solution to the problem, what proposal are you considering to ensure that the quality of petrol products is maintained? Will you consider the relatively simple step of mandating a standard for petrol products to ensure that the standard and safety of petroleum products can be guaranteed to customers?

Senator MINCHIN—I must confess this matter is not within my bailiwick. The substitution issue which arose last week, as you know, is being handled by other ministers in the government. It is not a responsibility of mine.

Senator RIDGEWAY—Madam President, I ask a supplementary question. I wonder whether the minister could take that question on notice? Can I add to that: is the minister aware that last night the Australian Competition and Consumer Commission gave evidence to the Senate Economics References Committee to the effect that they were unable to legally pursue uncompetitive activities of unscrupulous operators who were adulterating fuels with toluene because the standard was not strong enough to enable them to be charged? Will he take it on notice to pursue that?

Senator MINCHIN—I am happy to refer it to the responsible minister.

Nursing Homes: Riverside

Senator WEST (2.36 p.m.)—My question is to Senator Herron, representing the Minister for Aged Care. I ask: given that the Minister for Aged Care claims she first became aware of the deaths of Riverside residents on 23 February, why didn’t she immediately refer the matter to the coroner? Why did she refuse to explain why she left it to the Victorian coroner to take up the investigation on his own motion on 9 March?

Senator HERRON—The Minister for Aged Care made a very detailed statement the day before yesterday in the House. I refer Senator West to the answer given by the minister.

Senator WEST—Madam President, I ask a supplementary question. Given that the minister refuses to provide the details of that here, does the minister agree with Mrs Bishop’s view that ‘if the GPs consider the matter serious relating to the death of a resident then they should report it to the coroner’? That was from Hansard of 13 March. If so, how does he explain that Mrs Bishop failed to follow her own advice and report the Riverside deaths to the Victorian coroner as soon as she became aware of them—and that was on 22 February?

Senator HERRON—I understand that the correct procedure was followed.

Telstra: Services

Senator CRANE (2.37 p.m.)—My question is to the Minister for Communications, Information Technologies and the Arts, Senator Alston. Minister, it was the coalition government that introduced the historic telecommunications customer service guarantee after 13 years of hopeless neglect by Labor. Will the minister inform the Senate of any recent government actions to strengthen the customer service guarantee? Is the minister aware of any alternative policy approaches and what the impact would be if these were ever implemented?

Senator ALSTON—That is an excellent question, because it highlights the enormous gulf there is between the two approaches by the major political parties in this country. The customer service guarantee of course is a very important element in a range of con-
sumer safeguards that this coalition government introduced without any help from others in this chamber. I should make it plain that from time to time we have felt it necessary to actually go further—in other words, we took the view at one stage that the level of payments by way of rebates was not high enough; we tightened the screws on that score. We also decided to go further again and, as a result, the ACA have announced today that they are releasing the draft proposals to take effect from 1 July. This will reduce the time frame for connections of an in-place telephone service from three to two working days and guarantee improved time frames for important areas of customer service. For new telephone service connections in rural and remote locations close to telecommunications the waiting time will be down from 40 days to 30 days and, in the second year, 15 days. So there is a great deal happening on this front. We are very proud of the fact that we put consumers first.

The contrast to that is that for 13 years you had absolutely no guarantee of service at all. Under Labor, you got what Telstra gave you. There was no customer service guarantee. There was no concern for the rights of consumers. Consumers were simply at the mercy of carriers. It is very interesting to hear what has been said by the Labor Party in recent days about customer service because, if one goes back to the 1990 special national conference of the ALP, when Mr Beazley was the minister for communications and this was the only game in town that was the subject matter of their discussions, he said:

The historic nature of this debate lies not so much in the content of our debate here but where it positions us in relation to our political opponents. That has to be at the forefront of our minds every time we address a political issue. There is one fight on which we will be confronting our opponents, and that is the privatisation of Telecom.

And just listen to this for sheer unadulterated political brazenness:

All the demonising in the world about what will happen to community service obligations, which is occasionally used in the context of this debate, will be able to be used with knobs on as far as Liberal Party policy is concerned. In other words, the Labor Party’s grand strategy is that you use community service obligations as a weapon in the fight against privatisation. In other words, the customers are mere pawns in a power play. This is all about a grand strategy of politics, not of policies. Everything is subordinate to getting back on the ministerial benches. That is what this is all about. It is a tragic dereliction of duty, it is a total abdication of responsibility for consumers. Who is in charge of privatisation in the Labor Party? The shadow minister for finance. This is what he said 12 months ago:

Part private ownership of Telstra creates internal tensions and contradictions and inhibits the extent to which social value can be obtained.

In other words, he is in favour of privatisation. Who was there when Mr Keating called John Prescott in six months before the 1996 election and offered to sell Telstra to BHP? My information is that it was Kim Beazley, the then Deputy Prime Minister of Australia. That simply tells you that Labor has no commitment at all to consumers. They are only interested in using privatisation as a battering ram to win a few votes out there on the back of a scare campaign. When you got into government, you would do what Senator Kernot said you would do, and that is flog it off as quickly as you can. (Time expired)

Nursing Homes: Riverside

Senator CHRIS EVANS (2.42 p.m.)—My question is directed to Senator Herron in his capacity representing the Minister for Aged Care. Can the minister confirm that the government was discounting the care subsidies to the Riverside Nursing Home in order to recover an $800,000 debt? If so, by how much was the government discounting the care subsidies? What measures were put in place to ensure that this action by the government did not force the provider to cut staff and reduce the quality of care to its residents?

Senator HERRON—The saga of Riverside is a very complex one. I am not in the position to answer that question without notice and I will take it through to the minister and get back to Senator Evans. But, once again, I congratulate him on using the egg-beater to keep the issue going. It is very commendable on his part, because he is trying to make a name for himself. I can understand that, when you consider the fiasco that the Labor Party left us with, the 10,000
places that were a problem to us, the deficiencies that occurred and the fact that we have increased funding by 42 per cent over what the Labor Party did in their time. I commend Senator Evans for keeping the issue going. I will get back to him when I get a response from the minister.

Senator CHRIS EVANS—Madam President, I ask a supplementary question. I appreciate the minister agreeing to take that on notice, and I would appreciate it if he could get back as soon as possible as to what level of discounting occurred in the care subsidies paid to the Riverside provider.

Senator HERRON—That was not a supplementary question; that was a statement. I can add nothing further to what I said previously.

National Capital: Government Policies

Senator LIGHTFOOT (2.44 p.m.)—My question is addressed to the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald. I ask: will the minister outline to the Senate recent evidence of the Howard government’s continuing commitment to Canberra in its role as the national capital? In particular, how have the government’s policies benefited the Australian Capital Territory’s economy?

Senator IAN MACDONALD—I thank Senator Lightfoot for that question and acknowledge his interest as Chairman of the Joint Standing Committee on the National Capital and External Territories. All Australians I think are proud of Canberra as the national capital of Australia. I know you are, Madam President, and you represent it very well. But the parliamentary zone, which is perhaps the most visited part of the national capital, was said by visitors and locals alike to be a little bit cold. So a year ago I set up a review committee of significant Australians to look at ways of making the parliamentary zone more user-friendly, more encouraging to visitors and locals alike. It was appropriate that we did that at the time of the centenary of our federation, at the commencement of the new millennium. Jim Birrell, a distinguished Australian, headed a committee that had a look at it, and yesterday I was very pleased to launch the Parliamentary Zone Review and I will table that in the parliament. That review gives a vision, a plan for Canberra, for the next 20, 30, 50 years. It re-examines Walter Burley Griffin’s plans. It refreshes our nation’s ideas of our national capital. That review had input from all Australians. The review panel looked right around Australia, got the opinions of people in all the states and territories, and of the indigenous people as well. It is a great design, and I am very grateful to that panel. Arising out of that I announced yesterday a competition for the design of a public place in the parliamentary zone, and that will be in the area between the High Court and the National Library on the shores of Lake Burley Griffin. It will be a place for public events and performances, coffee shops and restaurants. It will bring life into that area. And you, Madam President, will play a major role in that competition as one of the judges—in fact, chairing the judging panel for that competition in your role as President of the Senate.

That is only part of the commitment the Howard government has to the national capital. In addition to that, we have committed a great deal of money to the National Museum. We have established the Australian nurses memorial and the veterans of the Korean War memorial. We have refurbished Old Parliament House. We have contributed $25 million to refurbishing our assets. We are providing $5 million to the National Centre for Christianity and Culture. The list goes on. There are significant contributions to the road system coming into and out of Canberra. The National Capital Exhibition was recently extended—and you, Madam President, were part of that, for which I am very grateful. Our commitment to the national capital is unlike the Labor Party’s. It has no policy at all in relation to the national capital—none at all.

Senator Faulkner—If it’s so good why doesn’t John Howard live in the Lodge?

The PRESIDENT—Order! There are too many interjections.

Senator IAN MACDONALD—In fact, the Labor Party show their hypocrisy on the national capital, as they show it everywhere else. Yesterday, the shadow minister for the territory, Senator Mackay, issued a press re-
lease more or less saying that Canberra departments, public servants, should be moved out of Canberra. That is the implication of the press release that Senator Mackay issued yesterday. But, lo and behold, such is the lack of leadership in the Labor Party that we find that on the very same day Senator Faulkner is out there saying that they should not be moved and that it was a disgrace to even suggest it. That is the hypocrisy of the Labor Party. Senator Mackay sends one message to regional Australia; Senator Faulkner sends a completely different message to Canberra. It is so typical of the paucity of leadership in Labor that you have these differences of opinion and this sort of hypocrisy. (Time expired)

Nursing Homes: Inspections

Senator McKIERNAN (2.49 p.m.)—My question is directed to Senator Herron, the Minister representing the Minister for Aged Care. Can the minister confirm that a coronial inquest was ordered into the suspicious death in 1998 of a woman in the Canberra Nursing Home? Is the minister aware that the Aged Care Standards and Accreditation Agency did not undertake a surprise check or review audit into this nursing home following this death or the inquest? Can the minister also confirm that this nursing home was inspected by the agency last week and that this was only ordered on the basis that the Canberra Nursing Home is licensed to the same provider who operated the Riverside Nursing Home?

Senator HERRON—I predicted this question yesterday. I said the Labor Party were going to go through the 3,000 nursing homes and hostels in this country looking for problems so that they could come to the Senate, and get some sort of complaint from somebody there so that they will keep the issue going for Senator Evans and his friends in the gallery, so the egg-beater can be applied. I am confident that we could go to all the nursing homes in Australia and find a deficiency that will be used by the Labor Party to come in here and ask questions with. That is what they are trying to do. In relation to the Canberra institution that you mentioned, I do not have a brief in front of me here, but I am happy to take that through to the minister and inquire for you. But I would think the Labor Party could do a lot better with their time by trying to develop some policy, any policy. I would ask the Labor Party what is their policy in relation to nursing homes? Are they going to do the same as they are doing with the GST? Are they going to accept our policy? Are they going to continue the complaints mechanisms which we put in place? I suppose in a sense it is rebounding now, because we are getting these complaints. We established the agency so that they could be made, even anonymously. We put in place a complaints mechanism. I suppose in a sense you could commend the Labor Party, but are we going to occupy the time of the Senate with questions that could be easily asked of the department rather than take up our time for discussing matters of moment in relation to policy?

Senator Robert Ray interjecting—

The PRESIDENT—Order! Senator Ray, you have been persistently interjecting in this question.

Senator HERRON—What is the Labor Party’s policy in relation to health? What is it in relation to nursing homes?

Opposition senators interjecting—

The PRESIDENT—Order! The behaviour in the chamber is disorderly, and there are several senators shouting persistently. They know they are in breach of the standing orders.

Senator HERRON—I am pleased to see they are awake, because one would think from their development of policy that those on the other side are all asleep. We have been waiting for some constructive suggestion—any constructive suggestion—in relation to policy. They have rolled over on our tax reform policy, and they are to be commended for that. It is up to them to come up with some alternatives. What about an alternative in relation to nursing home policy?

The PRESIDENT—Senator Herron, you have strayed considerably from the question.

Senator HERRON—I have said that in relation to this specific institution I will take it through to the minister and get back to Senator McKiernan when the information is available.
Senator MCKIERNAN—Madam President, I ask a supplementary question. I thank the minister for taking the matter raised in my previous question on notice and for taking it over to the minister. However, I would have expected a more serious response to a serious question. In light of the facts that this home in Canberra was operated by the same licence as at Riverside, that there had been no random checks until last week and that at least one coronal inquest has been held into a death at the home, will the government request that the Aged Care Standards and Accreditation Agency conduct a comprehensive review of the coroner’s report into this death, as well as any other coroner’s report into deaths at the Canberra Nursing Home?

Senator HERRON—I am sure that the Aged Care Standards and Accreditation Agency take every complaint seriously and that they will follow through in relation to any aspect that develops through that inquiry or any other inquiry, because that was the brief they were given when they were established.

Tax Reform: Education Campaign

Senator CALVERT (2.54 p.m.)—My question is to the Special Minister of State, Senator Chris Ellison. The minister would be aware of the government’s obligation to communicate major reforms to the Australian people. Will the minister, in his role as the Chairman of the Ministerial Committee on Government Communications, update the Senate on the public education campaign being undertaken by the government, particularly in relation to the tax system?

Senator ELLISON—It is important that all Australians know about the benefits the new tax system is going to bring them, and of course the opposition does not want Australians to know about that. As Chairman of the Ministerial Committee on Government Communications, I oversee the communication of government policy and it is very important that this government tell the people of Australia about its policies. People want information about the new tax system and, importantly, they want to know about the benefits the new tax system will bring them. In February I advised the Senate of the tax reform business education campaign to encourage people to obtain an ABN. That is working very well, and there is more to come.

Senator Conroy—But 62 per cent hate it.

The PRESIDENT—Senator Conroy, stop shouting.

Senator ELLISON—Yesterday, my good colleague Senator Kemp mentioned the launch of a booklet, Essentials, dealing with the new tax system. Yesterday, advertisements started on the television dealing with that booklet, advising people that it is in the mail—it is coming their way—and that it will be in the Sunday papers. The booklet will contain information about the new tax system. But there is more. We have the GST start-up assistance campaign. This involves informing and encouraging small and medium businesses, the community sector and educational bodies about assistance they can access via the GST Start-Up Assistance Office. The opposition do not like this because they do not want people to know about the benefits of the tax system. They do not want Australians to know about the GST assistance scheme that we have to help people to come on board with the new tax system. We will be advertising from 19 March in relation to this campaign. We will also, in the week starting 19 March, have advertisements in the capital city dailies and, importantly, in suburban and regional newspapers so that we can get to people in the bush and tell them about this great scheme. There is also the family and community services tax reform campaign. This targets the mums and dads, self-funded retirees and pensioners and it tells them about the benefits this new tax system will bring them. This campaign will commence with advertisements in the capital city dailies on Sunday 19 March, and advertisements in suburban and regional newspapers will follow. Of course we are also including non-English-speaking publications and indigenous publications as well. There will also be television advertisements commencing on 20 March. This is very important—

Senator Robert Ray—Will you authorise it this time?

Senator ELLISON—I would remind Senator Ray, who does not want the people of Australia to know about this new tax sys-
tem—he does not want them to know how to obtain the information they are seeking or about the benefits of the new system—that these advertisements will tell pensioners and self-funded retirees about the new tax system. It will give them important information and also detail as to where they can obtain further information, if they so require it. There is also the rural tax reform campaign. This campaign advises farmers and other small and medium businesses in the country about the introduction of the GST, and this will start on 19 March. We are leaving no stone unturned in telling the people of Australia about the benefits of the new tax system.

Nursing Homes: Riverside Residents

Senator CHRISt EVANS (2.58 p.m.)—My question is directed to Senator Herron in his capacity representing the Minister for Aged Care. Can the minister confirm media reports that the former residents of the Riverside Nursing Home are to be moved from St Vincent's Hospital to Mercy Hospital before being moved again into permanent accommodation? Can the minister inform those residents and their families just when and where they will be given permanent accommodation? Can the minister confirm that the job of finding beds for the former residents of Riverside has been made more difficult by the significant shortfall of Commonwealth-funded aged care beds in Melbourne?

Senator HERRON—Senator Evans has referred to the Riverside Nursing Home. I think it is important to put on record that St Vincent's has done an extraordinarily good job in providing excellent care to the former residents of Riverside. The department is providing assistance to ensure their loved ones are not financially hurt by having to travel to the city to see their relatives. The minister expects the residents to be moved back into homes near their families as places become available over the coming weeks, and that was always the plan. Indeed, the department had, before settling on St Vincent's, explored an option for direct relocation from Riverside to a facility within the Mornington Peninsula area, but that option fell through. The department is now working with each resident and their family on their preferences and how they can best be met. Some have already indicated a desire to move somewhere other than around the Mornington Peninsula to be closer to loved ones. The Minister for Aged Care understands that permanent arrangements in other aged care facilities have been made for two residents. There are still 53 residents at St Vincent's Home to be relocated.

Drugs: Strategies

Senator PAYNE (3.00 p.m.)—My question is to the Minister for Justice and Customs, Senator Vanstone. Will the minister inform the Senate of the findings contained in the Australian illicit drug report 1998-99 and, more importantly, their implications for law enforcement in Australia?

Senator VANSTONE—I thank Senator Payne for her question and her longstanding interest in this policy area. The report that was released yesterday by the Australian Bureau of Criminal Intelligence confirms what this government believed when we came to office in 1996—namely, that drug addiction is an entrenched problem in Australia. It was that belief that committed the government to a Tough on Drugs strategy, which is a three-part strategy involving demand reduction, supply reduction and harm minimisation.

Drug addiction and drug related crime obviously require a long-term solution. The previous government had only a passing interest in this issue. They were interested in protecting the Australian community from drugs and criminals for a limited period of time. Under Prime Minister Hawke, the Australian government ran a Drug Offensive, and it was generally regarded as being very successful. But Labor got bored with the issue and dropped it. Generally, they have a short-term approach to policy. They simply dropped the issue. This is a long-term problem, and it will require long-term solutions. It is typical of Labor to say one thing one day and something else the next, as we well know. In fact, it is not uncommon for them to do it on the same day. This government is prepared to make the difficult decisions and put the long-term effort in in Australia's interest. Tough on Drugs is just one of those long-term commitments. It is a balanced approach to the drug problem.
I have responsibility for the law enforcement component of Tough on Drugs, and we have been very successful. I recall giving Senator Stott Despoja some time ago a portion of a Carol Bayer-Sager song: 'We must be doing something right'. I gave it to her because I did not think she thought that we were. But in fact we are, and the drug report released yesterday absolutely confirms that.

In the supply reduction part of the strategy, we are having enormous successes. The honourable senators opposite need reminding that last week we were able to burn off some cocaine seized just this year. In that one burn off, we burnt twice as much drugs as was seized by Labor in the four years before the Tough on Drugs strategy.

All Labor can do is do their very best to keep this issue in the paper, presumably in some way trying to assist the defence attorneys in this matter. But they will not be successful. I can assure them that the DPP is no more apprehensive about the prosecution that they are referring to than any other. The basic facts are these: since we have had the Tough on Drugs strategy, seizures of cocaine have gone up dramatically, seizures of heroin have gone up dramatically and seizures of performance enhancing substances have gone up dramatically. Why is this so? You only need to turn to what Commissioner Palmer, the Commissioner of the Australian Federal Police, said, which was that the Australian police have never been better funded in their history. This government is prepared to put the money in to give them the manpower and to give them the equipment they need to do the job that they are very capable of doing. So, in summary, the drug report confirms we have a problem. It is a long-term problem. This government will be working on it long term. We will not be dropping the ball as Labor did.

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

ANSWERS TO QUESTIONS WITHOUT NOTICE

Aged Care

Senator HERRON (3.03 p.m.)—Yesterday, I was asked questions in my capacity as Minister representing the Minister for Aged Care. I have responses for Senator Collins, Senator Faulkner, Senator Evans and Senator Ludwig. I seek to leave to incorporate the responses in the Hansard.

Leave granted.

The documents read as follows—

AGED CARE

Senator COLLINS - My question is to Senator Herron, the Minister representing the Minister for Aged Care. Is the Minister aware that last year the owners of the Templestowe Private Nursing Home in Victoria closed the facility owing tens of thousands of dollars to staff, including superannuation entitlements. Isn't it also the case that the government then allowed the same operators to take over another nursing home while their former employees continued to pursue them over their lost entitlements? Why did the Howard government reject last year Labor's amendment to protect aged care worker's entitlements? Isn't this another example of the government's ad hoc approach on the issue of protecting workers' entitlements? Would nursing home workers' rights be protected only if the Prime Minister's brother had an interest in nursing homes as well as textile companies.

SENATOR HERRON - The Minister for Aged Care has provided the following answer to the honourable senator's question:

The owner of the Templestowe Private Nursing Home in Victoria sold the facility to another provider in May 1999. It did not close, as suggested by Senator Jacinta Collins, on 15 March 2000. I have received a letter from the Australian Nurses Federation, setting out a detailed list of claims, which my Department has been investigating and will continue to investigate.

I note that the vendor of the nursing home disputes these claims.

AGED CARE: SENIOR EXECUTIVE PERFORMANCE PAY

Senator FAULKNER - My question is to Senator Herron, the Minister representing the Minister for Aged Care. Can the Minister confirm that the Minister for Aged Care has severely criticised her department for failing to remedy the many defects that have been brought to light in the nursing home sector? What steps has the minister taken to restructure her department, given her view that the department has comprehensively failed to achieve the government's objectives in the nursing home sector? How many SES officers working in the
aged care section of the department received performance pay in the financial year 1998-99?

Senator FAULKNER - Madam President, I ask a specific supplementary question. Will the Minister for Aged Care be requesting the Secretary of the Department of Prime Minister and Cabinet to take into account of her department’s alleged failures in the nursing home area when evaluating the performance agreement for the Secretary of the department? If it transpires that the Secretary of the department receives his performance bonus, won’t this indicate that the department is not in fact at fault, but it is Mrs Bishop who should get a pink slip?

SENATOR HERRON - The Minister for Aged Care has provided the following answer to the honourable senator’s question:

The Minister for Aged Care has made no decision to restructure the Department. The management of the Department and any performance payments for Senior Executive staff are a matter for the Secretary.

The distribution of performance pay is set out in the Department’s Annual Report each year. For privacy reasons, the distribution is not disaggregated to each program area as this could reveal individual performance assessments.

Departmental Secretaries’ annual performance assessment is a matter for the Prime Minister on the advice of the Secretary of the Department of Prime Minister and Cabinet and the Public Service Commissioner, following consultation with the Portfolio Ministers.

AGED CARE: KENSINGTON PARK NURSING HOME

Senator CHRIS EVANS - My question is directed to Senator Herron in his capacity as the Minister representing the Minister for Aged Care. Can the Minister confirm that the Perth nursing home involved in the allegation of maggots in a bandaged foot, as reported in the West Australian today, is the Kensington Park Nursing Home? Can the Minister advise whether there have been any spot checks carried out on this home since 1998? Can the Minister advise whether there have been any accreditation or review audit reports on Kensington Park in the last two years? If there have been reports, why are they not publicly available?

Senator CHRIS EVANS - Madam President, I ask a supplementary question. Can the minister also investigate allegations that nurses have resigned from that particular nursing home because of their concerns over management’s decision to roster only one qualified nurse on night shift to care for 60 residents? Would the Minister consider that this staff to patient ratio would be adequate to provide adequate patient care?

SENATOR HERRON - The Minister for Aged Care has provided the following answer to the honourable senator’s question:

The proprietor of Kensington Park released a media statement yesterday (Wednesday 15 March 2000) confirming that Kensington Park is the home in question.

There have been no spot checks on Kensington Park since 1998.

There have been no accreditation or review audits in the last two years, consequently no reports are available.

In his media statement, the proprietor has advised that overnight care provided at Kensington Park is in line with industry standards.

The Aged Care Standards and Accreditation Agency commenced a review audit today (Thursday 16 March 2000) - which will examine the adequacy of care provided at Kensington Park.

AGED CARE: SURPRISE INSPECTIONS

Senator LUDWIG - My question is to Senator Herron, the Minister representing the Minister for Aged Care. Can the Minister confirm that prior to 15 February this year, there had been no surprise inspections of nursing homes under the government’s new system? Can the Minister inform the Senate how many surprise inspections have been carried out since 15 February?

Senator LUDWIG - Madam President, I ask a supplementary question. I understand the minister’s answer but, to be sure, can he take it on notice and get back to me about the two parts of the question in respect of the number of inspections?

SENATOR HERRON - The Minister for Aged Care has provided the following answer to the honourable senator’s question:

a) Yes
b) 7

Privacy

Senator VANSTONE (3.03 p.m.)—In December, Senator Stott Despoja asked me a question on privacy. I have a reply and I seek leave to incorporate it in the Hansard.

Leave granted.

The document read as follows—

Senator Amanda Vanstone - On 7 December 1999 (Hansard Page 10987), Senator Natasha Stott Despoja asked me as the Minister representing the Attorney-General the following question without notice:
I ask a supplementary question. I am wondering if the minister would describe the regime that she has just outlined as ‘light touch’ as others in the community and, indeed, her own government, have described it. And, given this so-called commitment to privacy, could the minister enlighten us as to whether or not this government is committed to securing communications privacy in Australia? Is it the case that despite the rapid advances in monitoring and surveillance technologies, it is still the policy of the government to restrict access to encryption technologies and secure communications more generally? Does this government really believe that the information economy, which Senator Ellison was boasting about in answer to a previous question, can develop? How can that develop without increased privacy protection and security for transactions.

The Attorney-General has provided the following answer to the honourable senator’s question:

1. The proposed private sector legislation is accurately described as ‘light touch’ in that it allows private sector organisations to develop privacy codes that meet national privacy benchmarks. However, this does not mean that the legislation will be ineffectual. A privacy code must be approved by the Privacy Commissioner and must incorporate or provide equivalent privacy protections as those provided by the National Principles for the Fair Handling of Personal Information (‘the National Principles’). Where a code does not apply to a private sector organisation, the National Principles will operate as the default rules.

2. By taking this approach, the Government is appropriately balancing its policy to allow business to adopt privacy codes tailored to their business with its policy that national privacy benchmarks, as set out in the National Principles, are adhered to by the private sector.

3. The proposed private sector privacy legislation will be technology neutral, applying to personal information held by the private sector whether in paper or electronic form. The proposed legislation and the Electronic Transactions Act 1999, which was introduced and passed in 1999, represent the Government’s commitment to provide a legislative framework which promotes consumer confidence in online transactions and further develops the information economy.

4. The Government is committed to increasing the confidence of Australian businesses and consumers in the security and authenticity of their online transactions and activity. It will do this by facilitating their use of and access to authentication and encryption technologies. It is not Government policy to restrict the access, use or importation of encryption technologies generally. There are, however, restrictions on the export of encryption technologies in certain circumstances.

**Mandatory Sentencing**

Senator VANSTONE (3.04 p.m.)—On 15 February, Senator Lees asked me a question on mandatory sentencing. I have a reply to that and seek leave to incorporate it in the *Hansard*.

Leave granted.

The document read as follows—

On 15 February 2000 Senator Meg Lees asked me as the Minister representing the Attorney-General a question without notice concerning the Northern Territory mandatory sentencing laws. In my reply I undertook to seek further information from the Attorney-General in relation to this matter, and in particular whether these laws are contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

The Attorney-General has provided the following answer to the honourable senator’s question:

The Royal Commission report and recommendations do not refer explicitly to mandatory sentencing. However, the Royal Commission did recommend that imprisonment should be utilised only as a sanction of last resort (recommendation 92) and that State and Territory Governments examine a range of non-custodial sentencing options to ensure that an appropriate range of options are available (recommendation 109).

The Royal Commission report stated:

When finally all the procedures which may divert an Aboriginal person away from the sentencing process have been exhausted and the person faces a judge, magistrate or justice of the peace for sentencing, the most critical factor in the sentencing process will be the range of options available to the sentencer. In recent years that range of options has been greatly expanded by a series of legislative initiatives which recognise the principle of imprisonment as a last resort and provide further alternatives to imprisonment (para22.1.11)

By definition, mandatory sentencing restricts the range of options and prescribes imprisonment as the only option in certain cases. In the Northern Territory and Western Australia, a repeat offender may be imprisoned irrespective of the circumstances and the range of alternative sentencing options available.

The Government does place real importance on these recommendations and while sentencing is essentially a State or Territory matter the Government remains concerned about the potential adverse impact of mandatory sentencing laws on
young people. As the Attorney-General has already announced, he will be writing to the relevant State and Territory in relation to this matter.

National Textiles: Audit

Senator VANSTONE (South Australia—Minister for Justice and Customs) (3.04 p.m.)—On 9 March, Senator Schacht asked me a question on National Textiles. I have further information in relation to that and seek leave to have it incorporated in the Hansard.

Leave granted.

The document read as follows—

On 9 March 2000, Senator Schacht asked me as the Minister for Justice and Customs a number of questions without notice concerning National Textiles: Audit. In my reply, I undertook to seek further information from the Australian Customs Service in relation to this matter.

The Australian Customs Service has provided the following answers to the honourable senator's questions:

Question: The difference between a systems audit and a spot check?
Answer: Customs compliance improvement strategy seeks to lift the focus of Customs audit activity from the verification of individual transactions, to the systems and procedures of a company, and the internal controls over those systems and procedures, which are responsible for producing those transactions.

A Customs systems based audit involves a formalised 7-stage process and the methodology is contained in the Australian Customs Service Manual Volume 24 Company Audit Methodology. The manual covers initial planning, audit management, evidence collection and working papers, systems documentation requirements and techniques, sampling concepts/guidelines, use of computer based audit techniques and threat models and reporting.

A systems based audit also involves the testing of internal controls along with an appropriate number of transactions and gives a greater assurance about the likelihood of future compliance than the testing of transactions alone. However, there are still situations and certain types of operations that will not be suited to a systems based approach, and in these cases auditors will revert to a transaction or spot check approach.

In addition Customs still monitors and reviews transactions (the spot check) as part of assessing and managing risk for an industry or a single company. This assessment of risk is then used as a means to focus future Customs audit activity.

Depending on complexity, a normal Customs systems based audit will take between two to four months to complete whereas a spot check would usually take somewhere between ½-1 day.

Question: What investigations has the Minister ordered into the use of import credit scheme by National Textile and associated companies such as Bartex?
Answer: I have not ordered audit activity or compliance checks into National Textiles or Bartex because Customs has advised me they monitor the activities of those companies to date and either found only minor or readily adjusted errors and no issues of ongoing concern.

Question: There was a discrepancy on an export shipment. What are the details?
Answer: In 1997, seven (7) rolls of fabric were included on export documentation and hence were to receive export credits. After they were loaded, the goods were rejected by quality control and hence unloaded. A small adjustment had to be then made to the claim.

Olympic Games: Public Order Laws

Senator VANSTONE (3.04 p.m.)—On 9 March, Senator Woodley asked me a question on public order laws in New South Wales. I have further information in relation to that and seek leave to have it incorporated in the Hansard.

Leave granted.

The document read as follows—

Senator Woodley asked the Minister representing the Attorney-General, without notice, on 9 March 2000 (Hansard page 12298):

With reference to changes to public order laws in New South Wales and Queensland:

(1)(a) Is the government aware that the New South Wales Law Society and other have asked the State government not to proceed with the public order laws which could potentially reduce the capacity for peaceful demonstrations by indigenous and other peoples during the Olympics?

(1)(b) Is the government concerned about State governments using the Olympics to introduce dramatic public order laws which may be used by temporary enforcement officers?

(2)(a) Whether the Attorney’s concern over recent unfortunate developments with Aboriginal reconciliation and mandatory sentencing may be increased if these laws are passed?
Whether it may also damage further black and white relations?

Senator Vanstone - The Attorney-General has provided the following answer to the honourable senator's question:

(1)(a) The issue of public order legislation in New South Wales is a state matter and does not involve the Commonwealth. I therefore do not propose to comment on any changes to these laws other than to say the Commonwealth is committed to ensuring a safe Olympic Games for all Australians.

(1)(b) Senator Woodley would no doubt be aware that public order laws are governed by state legislation and do not involve the Commonwealth. I therefore do not propose to comment further on this matter.

The Federal Government is committed to supporting New South Wales in ensuring a safe Olympic Games for all Australians. Security planning by both Commonwealth and State agencies is well underway to ensure a superior capability and state of readiness for the Games.

(2) As Senator Woodley well knows, the question of State public order laws is no way related to the issues of reconciliation and mandatory detention and to try and link them in this manner is simply mischievous.

The Government has reiterated its commitment to the goal of achieving lasting national reconciliation. As the Prime Minister stated in his Federation Address on 28 January 2000, meeting the challenges of reconciliation is an often slow and somewhat difficult process. Real progress is being made but may take some significant time.

The Government is standing by its commitment to make the maximum contribution towards achieving the conditions of reconciliation with indigenous Australians.

As the Honourable Senator is also aware, the Senate Committee's Report on mandatory detention is currently under active consideration by the Government.

Immigration: Mandatory Detention

Senator VANSTONE (3.05 p.m.)—On 13 March, Senator Bartlett asked me a question on immigration. I have further information in relation to that question, and I seek leave to incorporate it in the Hansard.

Leave granted.

The document read as follows—

(1) 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 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?

Answer..

Australia's migration law requires that all unlawful non-citizens must be detained and, unless they are granted permission to remain in Australia, they are removed from Australia as soon as reasonably practicable.

This policy is not arbitrary but aims to maintain the integrity of Australia's migration and humanitarian programs as well as prevent unauthorised arrivals from entering the Australian community until their claims to stay in Australia are accepted.

Australasian Correctional Services Pty Ltd (ACS) was selected as the service provider at immigration detention facilities following a tender evaluation in September 1997. ACS is a company specialising in the provision of custodial services.

The Department of Immigration and Multicultural Affairs has developed immigration detention standards which set the standard of care that must be provided in its detention centres in a culturally appropriate way, while at the same time providing safe and secure detention. Whilst in detention detainees are provided with health, welfare, educational, religious, recreational and interpreting services and facilities.

These have been developed in liaison with the Commonwealth Ombudsman and ensure consistency with Australia's international treaty obligations.

Decisions on the use of medication for detainees are made by health professionals employed by the detention services provider.

In the context of removals, medication is used when there is a risk of the person harming themselves or others.

In relation to the suggestions that there was inappropriate activity in relation to the recent removal of a number of failed Algerian asylum seekers, I can advise that, upon being notified of the incidents, the department immediately commenced appropriate action to investigate the matter for
consistency with the immigration detention standards.

I am advised that the department has already received some information from the detention services provider and is seeking further clarification from the company on a number of issues relating to this matter.

Once the Minister for Immigration and Multicultural Affairs has the full facts before him, he will seek further advice on whether further action is required.

A rigorous performance monitoring procedure has been built into the detention contract to ensure compliance with the immigration detention standards. The contract includes a range of incentives and sanctions as a means of ensuring high quality service provision, which clearly link payment to performance standards.

The new detention arrangements have delivered improved quality of services and conditions at detention facilities.

I would note that Chris Sidoti, the Human Rights Commissioner, has publicly acknowledged these improvements in detention services since ACM took over.

The Government takes seriously its duty of care obligations to those in detention. Any allegations of mistreatment are appropriately investigated and dealt with.

I indicate to Senator Schacht and Senator Ludwig that today I will have answers to their questions. I may be able to only table them, but if that is all I can do I will have them incorporated in the Hansard when we come back.

JOINT HOUSE DEPARTMENT: COMMONWEALTH ENERGY AND ENVIRONMENTAL MANAGEMENT AWARD

The PRESIDENT (3.05 p.m.)—I am pleased to advise the Senate that the parliament’s facilities manager, the Joint House Department, yesterday received an inaugural Commonwealth Energy and Environmental Management Award in the category of ‘Best performance of an agency leading by example’. The award recognises the department’s ‘considerable efforts in maintaining the Australian Parliament House as a showcase for energy and environmental efficiency’. The award further recognises that, from the time of completion in 1998, Parliament House has undergone a program of efficiency improve-
quite reasonable in respect of this return to order over the last week or so. We have allowed the minister a bit of extra time to consider whether he would table the document or not. We find his decision not to table it totally unacceptable; we find his reasons even more unacceptable. It is in the public interest to ensure that this document does surface and that parties, for instance, in negotiations between the Commonwealth and Queensland, have all the information at their fingertips.

We are talking here about a document that was commissioned from ABARE. The project proposal document says that it is a document which proposes to meet the short-term information requirements of policy makers. The project has been designed to provide Environment Australia with a series of data and briefing outputs in order to assess the magnitude of the impacts of tighter controls over tree clearing in Queensland, to enable assessment of the relative importance of various factors and assumptions in estimating the opportunity cost of land clearing, and so on. The project proposal goes through a work plan, and that work plan makes it very clear that, in many instances, we are talking about bringing together information from ABARE’s farm survey databases. It is in the public interest; it is in the interests of adequate scrutiny to ensure that this document is made available.

The minister, by not making this document available today, once again lets down the public policy formulation process. It indicates his disdain for meaningful and honest relationships with, in this instance, the state of Queensland. It is not good enough for him to say, ‘It is my assessment that it is not in the public interest.’ I think most Australians would assess that adequate, timely information in respect of land clearing in Queensland is in the public interest, particularly if it is drawn from publicly available databases and the like. His second argument in respect of greenhouse is one that he pulls out of the bottom of the bag again. You could argue that a whole range of areas might be connected to greenhouse in his portfolio. Once again, the minister seems to hide behind this particular defence. We will have to consider what further action we can take on this matter. I indicate that we will probably come back to the Senate when we resume.

Senator BARTLETT (Queensland) (3.10 p.m.)—by leave—I will try not to take up too much time, but it is an important issue not only in terms of this specific ABARE report into land clearing—land clearing itself being a crucial issue—but also in terms of governments wilfully defying orders of a house of parliament to produce a document. We have had a case just in the last day of the PM ignoring the parliamentary process and basically refusing to allow a bill that the parliament has produced and processed to even be debated in the House of Representatives, and I commend an excellent editorial in today’s Courier-Mail for senators to have a look at on that issue. It comes back to quite a fundamental component of our democratic system, which is the responsibility and role of the parliament as against that of the government, and the separation between those two bodies.

We have here, as we have had many times over the years, a return to order, which is a directive of a house of the parliament, for a document or something to be produced—a document in this case. Unfortunately, in this statement of the minister we have what is becoming an all too frequent occurrence of a refusal of the government of the day to comply with that order of the parliament. Whilst there have been occasions in the past where governments have given good reasons—reasons that the parliament has accepted—for a return to order not being complied with, I would have to say that, on first hearing the reasons the minister gave just now, they seem to be completely inadequate.

I am pleased that towards the end of last year the Senate finally moved towards taking some form of punitive action for failures of the government to respond to legitimate requests for the production of documents in relation to Minister Newman. I think that was a good start on the part of the Senate, because it is important for the parliament to assert its powers and duties for proper scrutiny in the public policy formulation process and in the process of public debate on important issues. Certainly, between now and when the Senate resumes, the Democrats will be looking closely at this issue and, as Senator Bolkus...
indicated, considering what further action may be appropriate. But, on the surface, it seems that the reasons the minister has given are completely inadequate. To simply suggest that it is not in the public interest in his analysis is obviously inadequate: it may not be in the government’s interests, but that is very different from the public’s interest or the parliament’s interest. Certainly, that is not a decision the minister should have the total say over.

Similarly, in relation to our greenhouse negotiations: I fail to see on examination of the minister’s initial statement how it can be good to hide information about Australia’s performance on greenhouse related issues, unless we are trying to set up some sort of deceptive process as part of those negotiations, which is completely the wrong way for Australia to go on an issue of widely acknowledged environmental and global importance. The land clearing issue is a significant part of the greenhouse issue. It is widely acknowledged as a very significant, if not the most significant, environmental issue in Australia today. It is one of those exasperating issues where all sides of politics recognise that it is a serious environmental issue, yet somehow or other we are unable to get action on it. I fear this is another example of the failure of the political process to deliver action in that regard. I want to emphasise the Democrats’ disappointment on first examination of the minister’s statement about his failure to comply with the Senate’s order. I indicate that the Democrats consider it a serious matter when governments refuse to comply with returns to order of the Senate. Certainly, we will be giving serious consideration to how we should progress this matter further.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Petrol

Senator MURPHY (Tasmania) (3.15 p.m.)—I move:

That the Senate take note of the answer given by the Assistant Treasurer (Senator Kemp), to a question without notice asked by Senator Murphy today, relating to the goods and services tax and petrol prices.

In noting—I suppose you could call it—an answer from Senator Kemp to a question I put to him today in question time, I would say it now is quite apparent that the Australian motorist will confront yet another broken promise on the part of this government with regard to the introduction of the GST. This is the government led by the Prime Minister, Mr Howard, who on the one hand said a little while back that he would ‘never ever’ introduce a GST. But in connection with his now proceeding to do that, he also told the Australian public, along with a whole raft of other things, that petrol prices would not rise as a result of the introduction of the GST. Indeed, in August 1998 he said:

The ordinary motorist will not pay any more for petrol but of course they will not get that reduction. They will not pay any more though, it won’t go up, the price at the pump will be the same.

Just one month later, the great Treasurer of our nation said—

Senator Hutchins—You’re going a bit far there.

Senator MURPHY—I probably am in respect of ‘the great Treasurer’. The Treasurer, Mr Costello, said that no petrol price would rise as a result of the GST anywhere. Of course, we know that it is now universally accepted that the CPI will rise by at least 5½ per cent with the introduction of the GST. There is nobody, except probably Senator Kemp, who would not accept that.

On 14 March this year the Automobile Association, through its Executive Director, Mr McIntosh, said that motorists could expect the GST to add at least 2c per litre to the price of petrol. We all know how much petrol has gone up recently, and there are some reasons for that. But this does not take away from the fact that this government, in the course of the election in 1998, said clearly that the price of petrol would not increase as a result of the introduction of a GST. Mr McIntosh also points that out when he says:

The Prime Minister has given an undertaking that petrol prices will not increase as a result of the GST and we welcome that, however the Government has not indicated just how it will meet this commitment.
I asked the Assistant Treasurer—which is what he is supposed to be—the minister responsible for the implementation of the GST, what the government’s estimate was. His response was, ‘We stick to our policy commitment; petrol prices need not rise.’ But I am not quite sure whether the Assistant Treasurer is saying that the Prime Minister and the Treasurer are telling pork pies when they say it will not rise. On 14 January this year, the Minister for Financial Services and Regulation, Mr Hockey, said that petrol prices would actually fall; they would go down, not up—not stay level, but that they would actually go down. The Prime Minister, in February of this year, on radio 2UE, said, ‘The imposition of the GST is not going to produce an increase in the price of petrol.’

So one has to ask, as I did: what is the government going to do about it, what is its estimate and how is it going to meet its commitment? That, I guess, is in the minds of all of the motorists of this country because, as we know, the price of petrol is over a dollar in a lot of areas already and the introduction of the GST could have a significant impact on them. We have been told that the government is looking at this and it will make some announcement closer to the time. But the reality is that it promised the people when they voted at the last election that this would not happen. It is again just another example of the government breaking its promises to the people—or, indeed, it is that the promises that were made in the first place were not the truth. (Time expired)

**Senator KNOWLES (Western Australia)**

(3.20 p.m.)—It is interesting that Senator Kemp for a fortnight now has been challenging anyone in the opposition to stand up here—and particularly in question time or on debates taking note of tax answers—and say, ‘We are not going to keep the goods and services tax.’ Senator Kemp repeatedly makes the claim, especially in question time, that it is now no longer the coalition’s tax policy but a policy that has been adopted by the Labor opposition.

Senator Hutchins is a very honourable man and I think he might be speaking in this debate. I look forward to maybe Senator Hutchins or Senator Carr actually telling the chamber whether they are going to keep the GST or whether there will just be this rollback. Senator Murphy has talked about fuel. This has come from a senator of a party that was in government for 13 years that consistently increased the price of fuel and increased taxes. Taxes, taxes, taxes—they just went up. But there was no compensation, and Senator Murphy did not do anything about it.

In the 1993-94 budget, Mr Beazley subjected all Australians to $13.4 billion in new taxes. The wholesale sales tax went up. Petrol taxes went up. The tobacco excise went up. In the 1994-95 budget there were further increases in taxes. In the 1995-96 budget there were further increases in taxes. The opposition do not want to talk about that. They now want to talk about the goods and services tax which they support—and they must support it because they do not deny Senator Kemp’s assertions every day that they support it. They will not tell us what it is they are going to roll back. They have told us that they are going to scrap the tax cuts. We at least know that bit. They are going to keep the goods and services tax, but people will not have the tax cuts and nor will the pensioners or the welfare recipients have the increases in benefits.

They will not tell us what is going to be rolled back. Senator Murphy is leaving the chamber. He did not tell us in his contribution whether they would roll the tax back on fuel and replace it with another tax or just have no tax. We do not know that. It would have been nice for Senator Murphy to actually say what the Labor Party thinks. Senator Sherry very honestly said on 13 May last year, ‘I am certainly not privy to advanced copies of any tax policy. It does not exist at the present time.’ There is only six weeks to go and it will be 12 months since he said that. Here we are and the Labor Party still does not have a tax policy.

When the Labor Party were rabbiting on about various elements of the goods and services tax the other day I put down the challenge to them, as Senator Kemp has done every single solitary day: what is it that you are going to roll back? This week they have raised beer, motor vehicles, clothing, food, insurance, deposits, charities, local government, petrol, trucks, sanitary products, local...
shows and solar suits. Not one single solitary item that they have grizzled about having the goods and services tax attached to it have they actually committed themselves to rolling back.

Why say this is all bad news and not at the same time say, ‘We will give the people of Australia a commitment to roll this back.’ They know that they cannot give such a commitment because they know that not even the Labor premiers will support Mr Beazley in what he is trying to do in rolling it back. They reckon that will make it far more complicated. Mr Beazley and the Labor Party do support the goods and services tax because Mr Beazley has said that the simple fact of the matter is that business will have spent billions on putting in place systems to conform with it. The states will have had all their own arrangements readjusted and some changes in the taxation arrangements associated with that. It is just amazing. They have to confess. (Time expired)

Senator HUTCHINS (New South Wales) (3.25 p.m.)—I welcome this opportunity to follow Senator Knowles in taking note of Senator Kemp’s answer to Senator Murphy’s question in relation to petrol prices. The issue of petrol prices arose when, as Senator Murphy said, Mr Lachlan McIntosh of the Australian Automobile Association issued a press release earlier this week in which he said:

We’re also concerned about the inflationary effect of the GST. The current higher fuel prices we’re experiencing will increase inflation, which impacts on the indexation of excise. It’s now expected the CPI will rise by at least 5.5% in the first year of the GST. That sort of rise will push petrol prices up by at least 2 cents a litre, as a direct result of the introduction of the GST.

I hope I am not slandering Mr McIntosh, but I think that in a previous life Mr McIntosh was the head of the Australian Shippers Council. I do not think that Mr McIntosh would be regarded as a friend of Labor—and maybe I am wrong here too. For someone who may be involved or supporting the conservative side of politics to put out a press release like this is something that should start to ring alarm bells in the coalition. If I were a member of the coalition, I would start to cringe now. When the motorists start to queue up and pay well over a dollar a litre for their fuel then they are going to look around for someone to blame. The prices are really going to increase in country Australia. This is where the real prices are going to increase.

You would think that those people had done something wrong. A number of seats in country Australia are still held by the coalition and in my state of New South Wales. The people voted for them. I am a bit concerned where we are going to in this regard. Once people start to queue up and pay $50 to $55 to fill their cars they are going to look around for someone to blame. If I were a member of the coalition, particularly in the lower house, I would be starting to cringe now. They must be wondering what they have done wrong. As we know and has been highlighted by the Labor Party all this week, the services available to country people are being reduced. The job opportunities available to them are going to be reduced over the next few years by the actions of this government. Once again, I come back to that rhetorical question: what have they done wrong to be punished like this? The only way they are going to alleviate this punishment is to ensure that they get even with them at the next federal election and kick them out.

I also want to highlight one other aspect of this increase in fuel prices. I have a copy of a magazine entitled Owner Driver which deals with a number of areas relating to the road transport industry. As has been highlighted, fuel prices have increased 15 per cent in the last 12 months. As one lorry owner driver said, every time fuel goes up a cent a litre it costs him another $23 a week. These men and women who are carrying the country are already having difficulties in trying to recover costs from retailers and manufacturers. At the same time as their prices are going up, retailers and manufacturers are pressuring them to put them down. That is going to lead to other consequences which we will see down the track. What I am worried about is that when the changes occur on 1 July there will be pressure on the transport companies to reduce their costs but no pressure on the retailers or manufacturers to reduce their costs. As you would know, Madam Deputy President, the community suspects that prices
have already increased to cover cost rises that will occur as a result of the introduction of the GST.

So when people get an opportunity to get a hold of this government, they will remember the non-answers we have been given by Senator Kemp. They will remember, particularly country Australia, that they have been punished because they live in the country. When we have the opportunity for an election, I hope they do not forget that, because I can tell you that we in the Labor Party will not let the community forget exactly what the coalition has done to them.

**Senator TCHEN (Victoria) (3.30 p.m.)—**

As a member of the coalition, I would like to assure Senator Murphy that we are not afraid of any scaremongering technique that the Labor Party and the media might wage on the GST, particularly on petrol prices, because we have faith that the Australian motorists are thinking people and that they understand that, if they are paying more for petrol, it is not because of the GST. Senator Murphy is a champion fly fisherman. We all know that. That has been reported many times. A champion at catching fish he may be, but he cannot count, because anybody with any sense would know that the price of petrol at the pump comprises a number of components. Anyone would know that petrol to be supplied at the pump will comprise, firstly, the cost of the materials and then the cost of production. Then it comprises cost of delivery, which also includes things like taxes and excise. Finally, there is a component of profits.

Of all these components in the cost of delivery, only a small part of it—which is the excise and taxes collected by the government—is under the control of the government. The bulk of the cost of the raw material is not under the control of the government. Everybody knows that. The Australian public knows that, but it seems that Labor Party members do not know that. They keep trying to blame the petrol price increases on the GST.

The important thing about our GST argument is that it is no longer simply a coalition policy. The Labor Party could not wait to sign on to it. It is true that every time Senator Kemp points that out to the Labor Party senators in this chamber, Senator Cook, among other people, shouts out loudly, ‘No, it’s not true.’ Yet he has never been able to get up and say exactly what the Labor Party’s policy on the GST is. The reality is that the Labor Party have promised that, if they take government, they will certainly keep the GST, but as long as they are in opposition, they will keep complaining about the GST. Isn’t that true, Senator Conroy? If you become government, you will take the GST.

**The DEPUTY PRESIDENT—**Address the Chair, please, Senator Tchen.

*Senator Conroy interjecting—*

**The DEPUTY PRESIDENT—**Senator Conroy, you have been here long enough to know that interjections are disorderly. You should not be encouraging them or answering statements that are not made through the Chair.

**Senator TCHEN**—The point is that, as recently as 12 January, one of the opposition frontbenchers, Mr McMullan, said on Adelaide radio 3AA in answer to a question about the GST, ‘Well, the GST overall should be good for exports.’ Even Senator Cook, on 26 March last year, said to the Minerals Council of Australia that he suspected there is a quantifiable advantage to the mining industry from the new tax package.

There is no question that the GST has been adopted by the Labor Party, whether they admit it or not. But what comes with the GST under a Labor government is the question of what sort of roll-back they would have and whether they would guarantee that they would keep the income tax cuts which we are bringing in at the same time as the GST implementation. That tax cut will put $47 a week into the pockets of ordinary Australians.

**Senator Hutchins**—And take out $100.

**Senator TCHEN**—Madam Deputy President, through you: Senator Hutchins said we will take out $100. I am not sure what his expenditure is like that he will expect to lose an additional $100 a week. Maybe he has far more income than other senators, maybe in the range of Mr Richard Pratt. *(Time expired)*

**Senator CONROY (Victoria) (3.35 p.m.)—**I am not touching that one with a
barge pole. Senator Tchen is relatively new to the chamber, so I am going to take some licence here. He is new to the chamber so he was not involved in the hypocrisy and deceit that this government took to the last election.

Senator Tchen asked, ‘What is the Labor Party’s policy on tax?’ Let me give you a history lesson, Senator Tchen. What we have seen in the last two years was this government deceiving the Australian people for month after month after month. This government refused to tell the Australian people what was in its tax policy. This government hid its tax policy, consulted with its mates for six months and kept it secret. Then after six months of secret consultation with its business mates and all its spivs that wanted the GST in, what happened? The government announced the policy, announced a $20 million fraudulent propaganda campaign that was probably illegal, and called the election three weeks later. So this party that Senator Tchen represents announced its tax policy three weeks before the election was called. Don’t come into this chamber and say, ‘Where’s your tax policy?’ when we are nearly 18 months from the election. What utter hypocrisy and humbug. Three weeks before the government called the election, it revealed its policy.

There is a real credibility gap when it comes to your tax policy and the timing of elections. But I am rising to, once again, draw attention to the utter incompetence and incapacity of Senator Kemp, the Assistant Treasurer, to answer the simplest of questions on the impact of the GST. He was asked a question about petrol prices going up under the GST. We had the big promises: the GST will not widen the city-country petrol price gap. A few weeks ago in estimates, the ACCC admitted that it cannot do anything but widen the gap, so what we saw was Senator Kemp quickly whispering to a few journos, ‘We’ve got a rebate scheme coming, and it’ll be out soon.’ We were told at the beginning of last week that it would be out last week. Where is it at? It is the end of two parliamentary sitting weeks. We were promised it last week. Where is this fuel rebate for country petrol prices? Where is it, Senator Tchen? Where is it, Senator Watson?

It has taken them nine months to design the diesel fuel rebate. They have not worked out a conurbation there. It must be a nightmare trying to work out which country petrol stations will get the rebate. This must be an absolute motser. There have been a few other people with ideas about drawing lines on maps recently. Maybe they have given you some advice and you have worked out you cannot do it. It is going to be a joke, and you know it. That is why you have not brought it into this chamber yet.

The DEPUTY PRESIDENT—Order! Address the Chair, please, Senator Conroy.

Senator CONROY—We have the other big promise: petrol prices need not rise—once again demonstrating a complete lack of understanding of how the petrol taxation system works. Petrol taxation works on an excise and then the GST. So, if the excise goes up, the GST is on top of that. So, when the CPI—the index the excise is linked to—goes up by 2c, because the inflation rate that this government have fibbed to the Australian people about is higher than they originally told them, the GST impact is greater. So what happens is that the GST leads to a spiralling tax, and it is a tax on a tax.

We heard a lot about taxes on taxes from this government and how they were bad and evil and had to be done away with; and the first thing they did was deceive the Australian public, particularly regional and rural voters, about the impact of the GST. It mathematically cannot do anything but put this tax up. This rebate scheme is their way to try to fix it. They are going to throw more money at the problem. It is going to be a total, utter and complete farce. Senator Ellison, you were not listening when I started. For your information, you lot called an election three weeks after you announced your tax policy. So do not come in here and tell us to reveal ours now. (Time expired)

Question resolved in the affirmative.

NOTICES
Presentation

Senator Brown—by leave—to move, on the next day of sitting:
That a message be sent to the House of Representatives in the following terms:

That the Senate—

(a) notes that fair cooperation between the two Houses is essential if the legislative program is to be dealt with effectively; and

(b) requests the House of Representatives to consider the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 immediately.

DOCUMENTS

Auditor-General’s Reports

Report No. 34 of 1999-2000


COMMITTEES

Superannuation and Financial Services Committee

Report

Senator WATSON (Tasmania) (3.42 p.m.)—I present the report of the Senate Select Committee on Superannuation and Financial Services entitled Roundtable on choice of superannuation funds, together with the Hansard record of the committee’s proceedings and submissions.

Ordered that the report be printed.

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

Leave granted.

Senator WATSON—I move:

That the Senate take note of the report.

I seek leave to incorporate the tabling statement in Hansard.

Leave granted.

The statement read as follows—

I am pleased to table this report of the Senate Select Committee on Superannuation and Financial Services, entitled Roundtable on Choice of Superannuation Funds, together with the submissions received and the Official Committee Hansard of the roundtable forum which the Committee held in Sydney in December last year.

This report summarises the evidence received on the main issues involved when considering a greater availability of superannuation fund choice. In so doing, it represents the Committee’s first step in addressing its major terms of reference, namely to inquire into matters pertaining to superannuation and financial services, with particular reference to prudential supervision and consumer protection for superannuation, banking and financial services.

The evidence received reflects the views of twenty organisations – including representatives from government, the superannuation industry, service providers to industry, consumer advocates, employer and employee bodies and the major consulting groups.

These people made themselves available at short notice to assist the Committee to identify the best features that might be considered in any future choice of funds regime. These include:

- the options for the form of choice;
- preconditions and other measures which would need to be in place prior to the introduction of the choice option;
- other implementation issues associated with the introduction of the choice option, including the arrangements for default funds, insurance, asset allocation and frequency of payments of employee contributions;
- prudential supervision and consumer protection issues;
- investment choice; and
- the timing of the introduction of the choice option.

Many of these issues were addressed during the previous Committee’s inquiry into Choice of Fund in 1998. The 1999 roundtable provided an important forum for revisiting the issues, and for exploring the possibilities associated with emerging technologies, such as e-commerce.

The Government’s proposals for choice of fund have been before Parliament since December 1997. Although the legislation has been subject to some revision, debate on the bill in the Senate was adjourned in February last year and the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998 remains on the Table for consideration.

In the two years that have elapsed since the draft legislation was first formulated, choice has become a reality for some groups in some states although figures were not available to the Committee. Most industry representatives suggest there is now a need for a stronger regulatory framework.
From the roundtable discussion and submissions made to the Committee, it was evident that there was not a unanimous position. Views fell into three broad categories; those who support fund member choice with few reservations; those who believe fund member choice will not be in the interests of fund members; and those who believe fund member choice can be made workable subject to a range of conditions being met.

In an atmosphere of spirited discussion, all groups indicated their support for adequate protective measures, including a standardised approach for disclosure of fund details and an extensive education campaign. There was also debate on mechanisms to address the respective rights of both employers and employees.

I’ll now outline the views expressed on the major issues addressed at the roundtable.

On options for the form of choice, we recognised that some participants were opposed to the concept of choice. However, there was a body of opinion that, should it be introduced, the option favoured by the majority was for unlimited choice. Support was also expressed for the award fund as an alternative.

Most witnesses agreed, that for consumers to be able to make informed choices, there was a need for an appropriate and standardised disclosure regime and an extensive awareness and education campaign. There was also agreement that the disclosure regime should come well before the commencement date for choice. However, different views were expressed on the timing of the education campaign.

Witnesses generally agreed that e-commerce had the potential to reduce administration costs for some fund members and some employers, particularly if standard protocols were in place. While some witnesses queried Australia’s readiness for e-commerce, and pointed to the difficulties likely to be experienced by small business, others pointed to the significant cost and other advantages which were likely to be derived.

A number of other implementation issues were raised by participants. Witnesses generally supported maintaining the existing practice of the default fund being the relevant award fund where there is award coverage; and where there was no award coverage, the favoured option was that the majority fund in the workplace be the default fund.

The arrangements to ensure continuity of insurance cover, the need to address the problems of cross-subsidies and the questions of the cost and level of insurance cover, were also emphasised by witnesses. A number of witnesses also recommended that asset allocation be a minimum standard for default funds.

Almost all witnesses favoured monthly, or at least quarterly contributions by employers to employee superannuation funds, instead of the current annual contribution. Some witnesses pointed out that there were advantages, particularly for small business, to contribute quarterly to be more consistent with taxation requirements.

Prudential supervision and consumer protection issues were extensively canvassed. Evidence to the Committee was strongly in favour of appropriate prudential supervision and consumer protection measures, in addition to those provided by full disclosure and adequate education, to address the issues of commission based selling, and other related practices. There was also general agreement on the need for an effective dispute resolution mechanism, with a number of suggestions being made to address the capability of the current mechanisms.

On the important issue of investment choice, witnesses drew attention to the increasing number of options for investment choice, but pointed out that the take-up rates varied among funds offering investment choice. The main factor for this appears to be a lack of awareness and education in relation to the range of investment available; other factors include the possible costs involved in switching between investments and, of course, account balance.

While there were many different points of view expressed on the timing of the introduction of a choice regime, there was general agreement that:

- implementation be a staged process;
- the first stage be no earlier than 1 July 2001;
- whatever date is chosen be dependent not only on the finalisation of the legislation and prudential supervision regulations, but also on an appropriate and standardised disclosure regime and the conduct of an appropriate education program;
- the start-up date be 12 months after the finalisation of the above (including the CLERP 6 reforms) as well as other measures being in place such as standard protocols for e-commerce; and
- there was a probable need to defer the extension of choice to defined benefits funds because of the difficulties which would be involved in identifying what should be transferred and when.

The Committee has not drawn any conclusions from the evidence, nor made any recommendations, but presents this report in order to progress public debate on the complex issue of choice of superannuation fund.
I would like to take this opportunity to thank those who made submissions and presented their views at the roundtable.

The lessons learnt from the experience in Western Australia and other states have also been extremely beneficial in considering the requirements associated with choice from a federal perspective.

I would also like to thank the other members of the Committee for the cooperative approach which they brought to the inquiry and to acknowledge the work of the secretariat which has enabled the report to be tabled in such a timely manner.

I commend the report to the Senate.

Debate (on motion by Senator Carr) adjourned.

Public Accounts and Audit Committee Reports


I seek leave to a motion in relation to the reports.

Leave granted.

Senator WATSON—I move:

That the Senate take note of the reports.

I seek leave to incorporate the tabling statements in Hansard.

Leave granted.

The statements read as follows—

REPORT 373

REVIEW OF AUDITOR-GENERAL’S REPORTS SECOND HALF 1998–99

Madam President, on behalf of the Joint Committee of Public Accounts and Audit, I present the Committee’s Report No. 373—Migrant settlement services, Fringe benefits tax, Green Corps. This is our Review of Auditor-General’s Reports for the second half of 1998–99.

Madam President, the Committee held a public hearing in August last year to discuss these issues with relevant Commonwealth agencies. I will briefly discuss each issue in turn.

The Audit Report on migrant settlement services at the Department of Immigration and Multicultural Affairs identified several serious management deficiencies.

The Committee’s review focused on contract management; strategic management; the oversight of migrant resource centres; accommodation entitlements; and the accuracy of program objectives.

Our report urges DIMA to improve its approach in these areas. Citizens and their elected representatives are entitled to expect that resources will be used effectively in delivering programs, and that all clients will be treated consistently. In particular, the Committee recommends that DIMA devise and implement clear guidelines concerning the accommodation entitlements of newly arrived migrants.

Audit Report No. 34 investigated the administration of the fringe benefits tax. That report suggested several measures to make administration more effective.

At the public hearing, the Committee focused on the community’s understanding of the tax; the Tax Office’s knowledge of its client base; and the issue of compliance costs.

The community’s knowledge of, and compliance with, fringe benefits tax is relatively poor. One of the reasons for this situation is the tax’s complexity. In our report, we recommend that the Tax Office continue to monitor the cost of compliance and advise the Treasurer of opportunities to reduce the complexity of fringe benefits tax.

This report also encourages the Tax Office to continue its focus on the education of clients and to explore new ways of achieving better community understanding of the tax. The Tax Office’s knowledge of its client base is another area that could be improved. We encourage the Tax Office to determine whether particular industry sectors within the small business community require special attention.

Finally, Audit Report No. 42 examined the establishment and operation of the Green Corps program.

I take this opportunity to commend all those who have contributed to the great success of this program. Documented feedback from participants demonstrates that this is an excellent initiative. In order to maximise the effectiveness of the program, the Committee recommends that analysis be undertaken of its cost effectiveness.

Because the administration of the program is outsourced, it is critical that the department has sound contract management practices. The Audit report noted that there was room for improvement in this area. The Committee encourages the Department of Education, Training and Youth Affairs
to continue to implement the Auditor-General’s recommendations.

May I conclude, Madam President, by thanking on behalf of the Committee those people who contributed their time and expertise to the Committee’s review hearing.

I am also indebted to my colleagues on the Committee who have dedicated much time and effort to reviewing these Auditor-General’s reports. As well, I would like to thank the members of the secretariat who were involved in the inquiry; Dr Margot Kerley, the Committee secretary, Ms Jennifer Hughson, Ms Rose Verspaandonk, and Ms Maria Pappas.

Madam President, I commend the Report to the Senate.

March 2000
Report 374


May I say at the outset, Madam President, that the Committee has found that by and large the Acts are working well—the Committee, therefore, has given the legislation “a big tick”.

This is a credit to the original drafters who designed the provisions to cover the whole of the Commonwealth’s public sector, at the beginning of a period of significant change brought about by the Commonwealth’s move to accrual accounting.

However, as with all overarching pieces of legislation there are instances where anomalies or inconsistencies have arisen. During the review the Committee’s attention was drawn to two possible conflicts with other legislation—firstly, possible inconsistency with defamation legislation regarding the definition of ‘lack of good faith’; and secondly, with legislation in three states allowing employers to indemnify employees.

The Committee believes that in these two instances, legislative clarification is more desirable than awaiting future litigation to determine the issue. Accordingly, the Committee has recommended that DoFA and the Department of the Treasury, as lead Commonwealth agencies in this matter, should consult with their equivalent state agencies with a view to addressing these possible inconsistencies.

Turning to the accountability arrangements following the recent financial management reforms. Concerns were raised with the Committee that the change to accrual budgets might diminish Parliament’s ability to scrutinise appropriations. This was because appropriations are for high level outcomes rather than for line by line cash allocations.

The Committee notes that the portfolio budget statements, the appropriations, and the annual report are now in a common format. The Committee, therefore, believes this will provide a clearer picture of the overall aims of government and the full accrual costs of achieving those aims. There is a re-focusing away from process, to outputs and outcomes.

A consequence of this clearer overall view will, unfortunately, be a reduced ability to identify and influence spending on the actual processes of government. This raises the risk that with less focus on the details of process, there will be increased temptation to, as one witness put it, ‘push the boundaries’ of what can be done beyond the limits of what should be done. The Committee does not believe that the boundary is currently being pushed, but believes that Parliament is constitutionally required to remain vigilant.

The Committee notes that the full cycle of accrual appropriation-to-annual report has yet to be completed and so it is too early to determine the effect on the ability of the Parliament to undertake effective ex-ante scrutiny of the Executive. Nevertheless, already there is some concern among members of Parliament about this issue. The Committee therefore will at a later date undertake a survey of members of both Houses seeking comment on the impact of the new budget format on their ability to scrutinise proposed government expenditure.

In the meantime the Committee has recommended that DoFA review the accrual budget format to ensure that the change to full accrual accounting does not diminish the ability of Parliament to scrutinise appropriations.

The other major mechanism of Parliamentary scrutiny of agencies is via the annual report. Under Senate and House of Representatives Standing Orders annual reports stand referred to particular standing committees. The Committee advocates that standing committees of the Parliament take advantage of standing orders to review annual reports.

The Committee believes examination of the content of annual reports of FMA Act entities should include consideration whether the information supports the section 44 requirement for chief executives to manage in a way that promotes the
efficient, effective and ethical use of Commonwealth resources. For CAC Act bodies, emphasis could be on sections 22 and 23 which requires directors to act honestly, exercise care and diligence, and not use inside information to gain advantage or cause detriment.

In the report the Committee offers some suggestions as to how annual reports and chief executive officers could be examined for evidence of efficient, effective and ethical performance.

Regarding efficiency, the financial statements contained within annual reports provide information which can be used to benchmark efficiency and enable comparisons between comparable entities. The Committee first discussed this issue when it reviewed accrual accounting in 1995 and, at that time, drew attention to a booklet published by the then Department of Finance which described how data in financial statements could be analysed to measure performance.

The Committee considers there is merit in such comparative performance information being made available to the Parliament as this would assist committees and others in evaluating the financial statements contained within annual reports. Accordingly, the Committee has recommended that DoFA collect and table in Parliament on an annual basis a consolidated series of charts and tables comparing the performance of all Commonwealth agencies against a range of key performance ratios. The Committee has included as Appendix E a series of performance ratios which could form the basis for such comparisons.

In conclusion, Madam President, I would like to express the Committee's appreciation to those people who contributed to the inquiry by preparing submissions and giving evidence at public hearings.

Finally, I wish to thank the members of the sectional committee for their time and dedication in conducting this inquiry. I also thank the secretariat staff who were involved: the Secretary to the Committee, Dr Margot Kerley; Sectional Committee Secretary, Dr John Carter; research officer, Ms Rebecca Perkin and administrative officer Ms Maria Pappas.

Madam President, I commend the Report to the Senate.

Senator John Watson
16 March 2000

Debate (on motion by Senator Carr) adjourned
the inquiry into the proposed RAAF Base Townsville Redevelopment, Stage 1. The inspection included an examination of facilities completed for No 5 Aviation Regiment at the RAAF Base.

Similarly, in connection with two CSIRO proposals at North Ryde, the Committee undertook lengthy inspections of existing facilities and sites proposed for the construction of two new laboratory complexes. The Committee was able to observe scientific work being undertaken in the existing laboratories and to have informal discussions with leading CSIRO scientists.

During the inspection of No. 4 Treasury Place, Melbourne, the Committee's inspections revealed the existence of a number of heritage trees adjacent to the building.

I am very pleased to report that the Committee was able to obtain an undertaking from the Minister for Finance and Administration that these trees would not now be removed.

It is the Committee's policy to invite State and Federal Members of Parliament in whose electorates proposed works are to be constructed to take part in the inspections.

The Committee is pleased to report that on a number of occasions State and Federal Members availed themselves of this opportunity.

The Committee will continue to actively encourage the implementation of this policy in future years.

In previous years it has been rare for the Committee's formal public proceedings to extend beyond one or two days.

This has been largely due to the quality of submissions and evidence presented by representatives of proponent departments and agencies and the general support of proposed works by State and local government and the wider community.

During the year the Committee reported on two proposals of unusual complexity. Both required extended hearings.

The Committee's inquiry into the proposed construction of a replacement nuclear research reactor was complex due to the volume of evidence collected and establishment of a nuclear safety regime and nuclear waste disposal strategy in parallel with the Committee's inquiry.

The Committee's inquiry into the proposed Staff Colleges Collocation Project, Weston, ACT involved hearings spanning June to October. As well, the Committee inspected the existing staff college facilities at Weston Creek in Canberra and the historic Fort Queenscliff in Victoria.

The Committee felt it necessary to investigate fully the basis of the need to collocate the Defence staff colleges in Canberra and to satisfy itself that adequate measures would be implemented to preserve the historic Fort Queenscliff precinct.

This stance was taken in large measure as a result of concerns raised with the Committee by the relevant local government authority and the local Federal Member of Parliament.

The report makes mention of receipt by the Committee of the six monthly progress reports on the construction of the National Museum of Australia. Uncertainties about the final cost of the project and the suitability of the project delivery method adopted led the Committee to request such reports.

The Committee is pleased to note that the project appears to be proceeding on time and within the agreed project budget.

The Committee received one reference involving the construction of an overseas project during the report period.

This involved the refurbishment of buildings in Berlin to provide a chancery and apartments for the Australian Embassy.

As in previous cases involving the construction of overseas projects, the Committee's task was made difficult due to the provisions of the Public Works Committee Act which does not allow the Committee to meet overseas.

The eighth annual conference of Parliamentary Public Works Committees was held at Parliament House, Hobart, on 13–14 September. The Committee was represented at the conference by the Chair, the Honourable Judi Moylan MP, the Honourable Member for Throsby, members of the secretariat.

Representatives of public works committees from Tasmania, New South Wales, Queensland, South Australia and the ACT attended the conference. It is very gratifying to see that most state parliaments have followed the Commonwealth’s lead in appointing such committees.

Finally, Madam President, I would like to pay tribute to the Secretariat and my colleagues on the Committee. On behalf of my Senate colleagues on the Committee—Senator Ferguson and Senator Murphy, I would like to thank the Committee Chair and Deputy Chair for their support in maintaining the Committee’s long tradition of bipartisanship.

The report demonstrates that the Committee worked extremely hard during the year in discharging the duties and responsibilities enshrined in the Public Works Committee Act.
I commend the report to the Senate.

Debate (on motion by Senator Car) adjourned

(Quorum formed)

INTERNATIONAL LABOUR ORGANISATION CONVENTION 98

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.47 p.m.)—On behalf of Senator Quirke, I move:

That the Senate—

(a) notes that the Committee of Experts of the United Nations (UN) industrial arm, the International Labour Organisation (ILO), found, on 10 March 2000, that the Howard Government’s Workplace Relations Act breached ILO Convention 98 on collective bargaining;

(b) condemns the Government for bringing Australia into international disrepute; and

(c) calls on the Government to amend the Workplace Relations Act to conform with our UN treaty obligations.

This notice of motion concerns a matter of major importance for this nation and of major importance to this nation’s standing in the world. It was disclosed by a leak to the Australian Financial Review last week and reported on Friday that the Committee of Experts—that is, a body of eminent jurists empanelled by the International Labour Organisation, one of the oldest institutions in the constellation of institutions under the United Nations—had made a draft ruling that Australia was in breach of ILO Convention 98, one of the oldest ILO conventions, which sets out rights for collective bargaining for workers in society, and that it was in breach not on one count but on several counts.

As a consequence, we learnt of this by the leak from the newspaper, but extraordinarily we learnt of it because the Minister for Employment, Workplace Relations and Small Business, Mr Peter Reith, knowing that the draft report of the Committee of Experts was not in the public domain, nonetheless put out a press release attacking the draft ruling and declaring where it was wrong. Clearly it was a pre-emptive strike by Mr Reith to try to set the agenda and colour the debate and tilt the playing field in favour of his arguments. But it was also a matter of gross impropriety against Their Honours who sat on the bench of the Committee of Experts that made the ruling, because their reasons and their conclusions are not public. Therefore, what Mr Reith is replying to is not in the public domain and people are unaware of the detail of their findings. He may well be in contempt of the Committee of Experts of the ILO.

That this is a national disgrace is obvious, but why it harms our international standing is less obvious. This matter of general business today enables the opposition to canvass the very deep and serious reasons why Australia’s international reputation has been tarnished by the Howard government. While it may appear to be a costless exercise to thumb your nose at a breach of an international covenant in the arrogant way that Mr Reith has, nonetheless prices are paid. The area where prices are most often paid is in trade negotiations for this country. In short, it may well be that Australian farmers end up paying a debt, because of arrogance by this government, in international trade that they would otherwise not have to be burdened by. It is very important that this be understood more widely in the community.

Let me turn to a few matters of explanation. As I said in my introduction, the International Labour Organisation is a United Nations body. It is a tripartite body that is unique in the United Nations system and is made up of representatives of governments, representatives of national employer organisations, and representatives of national worker organisations. When this body—government, bosses and workers—sits down and agrees on something, they form a convention. They recommend that convention for adoption to governments who are affiliated to the ILO, which is to say most governments in the world, as standards for conduct in labour relations in their countries. The starting point, it has to be emphasised, is an agreement between governments, employers and unions. One knows in the fractious field of industrial relations that those agreements do not come easy and they do not come in a way in which all points of view have not been considered.
The ILO Convention 98 is one of the oldest, and it deals with rights in the workplace to negotiate with your employer. This convention was adopted by Australia 26 years ago following a process which each state and territory government considered and signed off on, enabling the Commonwealth government then to formally notify the United Nations that it had ratified this agreement. So from a process point of view, governments both conservative and Labor have considered and supported this convention. The reason why the eminent body of jurists known as the Committee of Experts found against Australia is that Peter Reith’s Workplace Relations Act breaches the international convention on collective bargaining. It breaches it in several points. I think that is a significant black mark against this nation, an own goal against Australia, an unforced error that we need not have had, and governments should be in a position to rectify that situation immediately. There is precedent for rectifying domestic law to conform with international conventions of this nature.

Let me turn to the most recent example. It concerns me directly during my tenure as Minister for Industrial Relations between 1990 and 1993. During that time I amended, with the consent of the parliament, the Industrial Relations Act. The ACCI—that is, the eminent employers’ body in this nation—took an action in the ILO arguing that the legislation that had been amended under the Labor government was in breach of the collective bargaining convention. The Committee of Experts upheld the claim of the ACCI, the employers’ organisation. As a consequence to that finding, I gave my word to amend, and later did amend, the Industrial Relations Act to bring it into conformity with this convention, so that Australia was not exposed internationally to ridicule and the damaging charge of hypocrisy—that is to say, we preach international good governance but, when there is a finding against us, we thumb our nose at it. So the Labor government brought the legislation into conformity. We did so at the request of the employers of Australia.

The complaint lodged this time is at the request of the workers. The government is not Labor, but it is a conservative coalition of the Liberal Party and the National Party. They should follow the precedent we set. The fact that the unions might not be seen as being on their side of politics or as friends of the government is not important here. What is important is that the appropriate judicial authorities have made a finding, and we should now bring our law into conformity. I am supported in that argument—at least the principle of it—by eminent spokespersons for this government at the time of the precedent I cited. Members in this chamber are aware that the Treasurer of Australia, Mr Peter Costello, was at the relevant time the shadow Attorney-General. He said on ABC radio—and I quote from an interview with Pru Goward, whose name has an interesting resonance in terms of the government:

The Australian Chamber of Commerce and Industry argued that some of Mr Cook’s legislation was in breach of an ILO convention, and they won. That legislation is still on the statute books. Senator Cook hasn’t repealed it, nor has he apologised, nor is he suggesting that he would reverse all the union amalgamations that went on under the law, which has now been declared to be a breach of freedom of association. He’s been very tardy, indeed, to respond to that. That was part of a call by the now Treasurer of Australia upon a Labor government to bring domestic industrial relations law into conformity with a finding of the Committee of Experts of the International Labour Organisation, part of the UN system. We then did it; we brought it into conformity. If it was good enough for Mr Costello to insist when we were in government, one would imagine, on the same principle, it would be good enough for him to insist when he is in government that the same standards be observed.

But he is not the only one either. The Prime Minister of Australia, Mr Howard, said in a series of press releases that Australia was bound to observe international obligations. The specific one was the heroin trials issue, where Mr Howard in December last year said that he could not ignore assertions that what is proposed could be in breach of Australia’s international obligations. He said in his own words: ‘I have now put on notice that there could be a breach of our international obligations and we are going to look at it.’ Then he,
in a press release, was reported as saying, ‘I cannot ignore those assertions,’ and then set out what he was proposing to do. It is clear that the Prime Minister invokes international standards and obligations of this nation when it suits his case. It may be inconvenient to his case now but, in order to evade the charge of hypocrisy, he should stick by the standards he asserted were fundamental and important to Australia when the heroin trials were up. There is nothing different about observing international standards: you cannot pick which ones you want and ignore which ones you do not; either you do observe them or you do not observe them.

This government does not have a good record. Since this government has come to power it has thumbed its nose or been in breach of international findings by the United Nations Committee on the Elimination of All Forms of Racial Discrimination over changes to native title laws. It is in breach of the United Nations Educational, Scientific and Cultural Organisation, that is UNESCO, for failure to properly protect the Kakadu National Park. It is in breach of the United Nations conference on climate change over Australia’s opposition to binding reduction targets. It is in breach of the South Pacific Forum for Australia’s refusal to commit to binding targets for reducing greenhouse gas emissions, and on this occasion in breach of the International Labour Organisation over industrial relations legislation. These are not matters lightly to be set aside, nor are they matters to be ignored in international debate, and the chickens do come home to roost.

Let me digress for a moment and refer to my shadow responsibility of trade. In November and December last year I was in Seattle when the World Trade Organisation sought to establish a new round of multilateral trade negotiations. If the round had been launched, $70 billion of extra income would have been liberated to the world—not a small amount. Economies that are now poverty stricken would have grown and more people would have been saved from starvation. Our economy would have been stronger. We would have removed barriers to our agricultural exports in Europe, the United States, Japan and elsewhere. The Minister for Trade, Mr Mark Vaile, made a statement reporting that to parliament upon his return and he did negotiate strongly in Australia’s interest. He did get close to concluding a deal on the common agricultural policy of the European Commission. Those things are a matter of record.

But what caused in part the breakdown in Seattle were the issues promoted on the agenda by the so-called civil society, matters of trade and the environment, and trade and labour standards—yes, labour standards. The unions of the world, through their representative organisation, the International Confederation of Free Trade Unions, sought to have the World Trade Organisation encourage nations that did not observe good conduct in labour standards to accept core labour standards; that is, nations that did not ban slavery, child labour and prison labour should accept standards of international conduct in which they banned those types of illegal labour or types of labour that offend humanity.

They also sought to have included the basic rights of workers to organise into a union and negotiate a living wage with their employer—the ILO conventions of freedom of association and collective bargaining. They are the core labour standards. This was not the only thing; there were other matters on the agenda as well that led to a breakdown, but because there was no agreement, the talks failed. It is a matter of historical record that we are now searching around to try and find a formula so that we can get that round of international talks launched again which will break down trade barriers across the world, add to economic growth in every trading nation, improve the living standards in Australia and, most critically, improve market access for Australian agricultural producers.

Trade and labour standards are important and the American unions, which are influential with the Clinton administration, have quite clearly influenced the view of the United States in this debate. The European unions that are affiliated in Britain with the Labour Party, which is in government, in Germany with the Social Democrats, which are in government, and with the political parties which are in government in France and Italy, will no doubt influence the attitude of
their governments when it comes to negotiating with Australia. Now we risk being declared as an international pariah because we refuse to abide by conventions we freely adopted 26 years ago after every state and every territory government had ticked off and approved the adoption of that convention and after the Commonwealth had signed off with the United Nations.

This is a set of affairs that cannot last. As I said, the government has called upon a previous Labor government to conform with these conventions. We now call upon this government to honour the undertaking that all governments of Australia have observed internationally and which they called upon a previous Labor government to honour. This is not a matter of argument; this is a matter of fact. They should now do it. If they do not, while the ILO has no sanctions by which they can force decisions—and in my view nor should they—nonetheless, attitudes will be taken to Australia at the bargaining table which put us in the company of repressive governments around world, and governments that deny rights to ordinary people around the world. This is not the company that Australia should keep internationally.

This is a fundamentally important question. We are trying to launch a new trade round. Australian farmers are amongst the most competitive in the world, if not the most efficient. Certainly, in the league of the most efficient agricultural producers, they would be right up there with the leaders. They cannot sell on a free and open market in Europe the goods that they can produce in Australia because there are barriers to entry. We have as our private negotiating objective in international trade the need to persuade the European economies to break down those barriers and to provide open access to the agricultural markets of Europe. We have that because we believe these markets should be open and the efficient producers should be able to have access to them.

Senator Boswell—I agree with you.

Senator COOK—Senator Boswell agrees with me. I would be surprised if he did not, because this is a fundamental question that binds us both. It would be idle and improper for us to imagine that, if Australia miscon-

(a) notes that the Committee of Experts of the United Nations (UN) industrial arm, the International Labor Organisation (ILO), found, on 10 March 2000, that the Howard Government’s Workplace Relations Act breached ILO Convention 98 on collective bargaining;

(b) condemns the Government for bringing Australia into international disrepute; and calls on the Government to amend the Workplace Relations Act to conform with our UN treaty obligations.

What this motion on behalf of the Labor Party shows is that they cannot get away from their past, they cannot get away from their union domination and control. I noted that in his remarks Senator Cook said that the International Labour Organisation is an important body and we must listen to its judgments because it is a tripartite organisation; it is an organisation consisting of representatives of government, employers and unions—and that that is why it is important and that is why we must listen to it. As I say, that simply reinforces the fact that Labor cannot get away from their commitment to the past. They cannot get away, in particular, from their commitment to the corporate state of big business, big government and big unions. That is what drove the Labor Party in government and it is now obvious that it is simi-
larly what drives them in opposition. The Labor Party simply live in the past. They cannot get up to date. They cannot get their minds around the requirements of a 21st century economy. That is why, during their 13 years in government, they bankrupted the Australian economy.

Let me say on behalf of the government that the Howard Liberal-National Party government is not going to foster the continuation of the corporate state. It is the very antithesis of our philosophy and of the policies derived from that philosophy. In contrast to the Labor Party governing for big business, big government and big unions, the Howard government governs for all. It governs for individuals—whether those individuals are employees or employers. It governs for families, it governs for small business as well as for other contributors to our economy. That is why we do not place the same great weight on the judgment of the ILO that Senator Cook and his Labor colleagues might do.

The other reason they bring this motion before the Senate today—apart from that commitment to the corporate state—is that they have not got anything else to talk about. They have no policies, as many on their own side have acknowledged and are now urging them to develop. They cannot talk about the issues that are of real importance to the Australian people, the state of our economy and how well Australians at large are doing, because it is an embarrassment to them. It is an embarrassment to contrast the success of the Howard government in economic management with their dismal failure during the 13 years in which they were in government.

Let us recall the double digit interest rates that rose to 17 per cent under the Labor government and are now at historically low levels to the benefit of homebuyers and small businesses in particular—historically low levels of interest rates, the lowest they have been since the 1950s, even lower. We had double digit inflation under Labor; now inflation has hovered around an annual rate of 1.8 per cent for some considerable period of time. The average inflation over the time they were in office was 5.3 per cent. Unemployment was again a double digit figure under Labor. It was 11.2 per cent back in 1992; now down to 6.8 per cent under the job creating policies of the Howard government. In just four years in government, 630,000 new jobs have been created as a result of the policies of this present government. In the last six years of the Labor government they created only 300,000 jobs—so more than double the jobs created in a shorter period of time because of the policies of this government. So the good economic record of this government goes on and on in areas such as inflation and employment levels.

Let us talk about the strong economic growth that has been maintained by this government over its period in office. What is it now, after 11 successive quarters of positive growth, Senator McGauran?

Senator McGauran—Four point three per cent.

Senator CHAPMAN—Yes, only in the last 24 hours the most recent national accounts have come out, and they reinforce the economic performance of this government: 1.1 per cent in the December quarter and 4.3 per cent for the 12 months to the end of December—a record period of sustained economic growth of above four per cent for 11 successive quarters. This is a growth rate that is incomparable and unrivalled in the last 30 years.

Senator Schacht—I think the word is ‘incomparable’ actually.

Senator CHAPMAN—Incomparable. It is certainly unrivalled, Senator Schacht, and that is perhaps a better word. Another achievement of this government—and it is reflected in the economic growth—is the growth in real wages that has occurred during this period of government, compared with a fall in real wages during the period Labor was in office. All that occurred during the Labor period in office was the increase in money wages for workers, but that was more than eaten up by the rate of inflation and the bracket creep of income tax. So, in net terms, employees were worse off. In contrast, because of the maintenance of low inflation by this government and because of our tax cuts, the wage increases obtained over the last three to four years have been real wages to
the real benefit of Australian workers. That is what workers really want: they want real wage increases that are going to give them real purchasing power. That is a much higher priority than the judgments of some international organisation.

So successful economic management has been a key achievement of the present Howard-Liberal-National party government. Of course, the consequence of that is that we have weathered the Asian economic crisis much better than anyone internationally expected. If we want to talk about the comments of international organisations, it is no wonder that the World Bank recently commended the performance of the Australian economy, commended the policies and management of the Howard government in achieving those positive economic outcomes. Let me then go on to consider the particular issue that the Labor Party have raised. As I said, in general terms the reason they have raised this is, firstly, their commitment to the corporate state and, secondly, because they cannot talk about economic issues, because they have nothing to say.

But let us have a look the specific issue, this ILO report and the comments of the ILO. The first thing to say about that is that it reinforces the hypocrisy of the Labor Party. The first time that the International Labour Organisation said that Australia had breached an ILO convention was under the former Labor government, when the ILO said that the Labor government breached convention 87 with its laws regarding secondary boycotts and the Trade Practices Act. The ILO committee said that it had actually received all the necessary evidence at that time, considered it and reported on it in full. So that breach was much more conclusive and much more damning than the recent comments of the ILO with regard to the Howard government’s workplace relations policies.

This clearly shows that the Labor Party not only have got nothing to talk about in terms of the issues that are really meaningful to the Australian people but are hypocrites and apply double standards. When they are in opposition they pretend they have got respect for the ILO protocols and conventions, but when they were in government they showed absolutely no respect themselves. And that was the occasion when Laurie Brereton was the minister for workplace relations. He and the Prime Minister cooked up a deal in the dark of night—contrary to all the convention and protocol of the ILO—to ratify convention 149. They did that in the dark of night without any consultation with relevant people, no consultation with the state governments that were affected by the convention. The only people they consulted with were the union heavies, as I said, their mates in their corporate state. That really shows that when you get down to brass tacks the attitude of the Labor Party to the ILO is one of hypocrisy and nonsense, that they regarded conventions as being there to be breached.

Convention 149 was the vehicle that Laurie Brereton and the former Labor government used in 1993 to create the original federal unfair dismissal laws, which foisted onto the Australian community one of the greatest political, economic and employment disasters of all time. It was those original unfair dismissal laws that destroyed the jobs of hundreds of thousands of Australians over the last three years that they were in government. And that was widely recognised. Even New South Wales Labor Premier Bob Carr publicly admitted that those unfair dismissal laws were bad laws. They were so bad that indeed Paul Keating in the depths of the 1996 election campaign was forced to concede that the Labor Party would have to consider change to those laws. Again, that is the way the Labor Party uses the ILO: to foist onto the Australian community laws that are entirely inappropriate and, in fact, destroy jobs in this country.

With regard to the recent BHP decision on which the ILO committee has made comments, they completely ignored the evidence provided by the Australian government. That just shows how much the ILO is out of touch with what is actually happening on the ground here in Australia. How can anyone think that Australia’s federal workplace relations legislation does not give a better than even chance for the application of collective bargaining—and that is what this ILO issue is about; the applicability of collective bargaining—when the Federal Court itself has
found that there is a serious question to be tried as to whether BHP has discriminated against some of its workers by offering individual contracts? And how can anyone think that our federal workplace relations legislation does not give a better than even chance for collective bargaining when the Federal Court has stopped BHP from offering individual agreements when faced with unions who want collective agreements?

How much more encouragement does the Labor side, the opposition, want for collective agreements? The Federal Court has made those decisions in the context of Australia’s workplace relations legislation. So, clearly, the ILO is out of touch with what is actually happening in Australia with regard to the application of our workplace relations laws. It also needs to be understood that the ILO observations are only comments and that an ILO observation is not determinative. As a consequence of that, the Australian government will continue to have dialogue with the ILO to reinforce the fact—and by providing further information lead them to clearly understand—that Australian laws do not breach this convention.

Let me turn to the issue of collective bargaining. Convention 98 itself says that encouragement and promotion of collective bargaining must be carried out only where necessary. Yet in its comments the ILO has failed completely to say why it should be necessary for Australia to encourage and promote collective bargaining or the circumstances which might have created the alleged necessity. The ILO cannot be said to have examined and commented upon all of the evidence that has been put to it by the Australian government in this context. As I said earlier, how can any more encouragement and promotion be necessary when provision has been made for collective bargaining in all previous Australian legislation since Federation, including the current legislation? And how can it be judged necessary when individual agreements have only been provided during the last four years? That deals with the issue of collective bargaining in relation to the ILO’s comments.

Let me turn to the issue of the unfair dismissal laws. How can the ILO suggest in all seriousness that certain exclusions from our unfair dismissal laws breach their convention? These exclusions are in fact allowed by the ILO itself. They are allowed by ILO C158. Why does the ILO suggest that the government laws are in breach when they are consistent with that convention and when, indeed, similar exclusions were included in the previous Labor government’s legislation and they escaped unscathed? This is the context in which we are debating the motion that has been put before the Senate this afternoon by the Labor Party, moved by Senator Cook, as I said, on behalf of his colleague Senator Quirke. Whether you look at the general way the Labor Party approaches issues or you look at the specifics, this motion really does not warrant the time of day.

The initiatives that this government has taken in the area of workplace and industrial relations are significant. These initiatives have made a major contribution to the improvement in the Australian economy, the growth in real wages and the general improvement in the workplaces around Australia. Our workplace relations have allowed for the conditions of employment to be determined at the individual workplace, whether that is by Australian workplace agreements, individual contracts or collective agreements. That has been a very important initiative because it means that the terms and conditions agreed upon, subject to those minimum requirements that are written into the legislation to protect against unscrupulous employers, are relevant to the individual workplace where they apply. Not all workplaces are the same and it is absolute nonsense to have those terms and conditions determined centrally by big business, big government, big unions and the Workplace Relations Commission away from knowledge of the individual workplace. To have national determinations that do not take account of local differences or the differences between individual businesses is absolutely ridiculous. If you persist with that structure, you will persist with an Australian economy that is performing at less than the optimum and providing less than optimum benefits to all Australians.

The reforms that we have made to workplace relations legislation and policies are a
key component of our initiatives since we have been in government. They are one of the central planks on which we were elected and we have successfully implemented those changes, and the benefits are now being delivered to all Australians as a consequence of that legislation. As I said, the economic benefits across the range are there for all to see, whether it is real wage increases, low inflation, higher employment, lower unemployment or a balanced budget—and so the list of economic successes go on. All these feed into benefits for individual Australians and their families. The issue is that it is for Australia itself to determine what works best for Australia and not to surrender decisions regarding that to international bodies. We will take note of comments by the International Labour Organisation—we will listen to what they have to say—but, as I said, the comments they have made about this particular issue are just that: they are not determinative, they have no legal status and they are based on an incomplete assessment of the circumstances in Australia, as I have clearly shown by the information that I have presented to the Senate this afternoon. On that basis we really should not support the resolution that has been put forward by the Labor Party this afternoon. It does not warrant the support of this Senate and I am confident that it will be defeated.

Senator JACINTA COLLINS (Victoria) (4.25 p.m.)—Can I say at the outset—following Senator Chapman’s comments and looking at this resolution in the context of the whole situation—that I think, rather than attracting fear and trepidation, as suggested by Senator Chapman, a clear and relaxed reading of the wording would highlight that this resolution is actually quite gentle, particularly once I put on record the broad scope of the issues relating to this matter. I want to take my time following Senator Cook to comment on two main issues. Firstly, there is the claim by both the minister and now Senator Chapman—who seems to be relying solely on the minister’s press release, which I will debunk—that these are only comments from the ILO and that we are in further dialogue with them. We have been through this issue many times, but I will outline quite clearly that these are not only comments. Rather, there is a long history involved in this matter, where the government continues to just bang its head against a brick wall and not accept advice. Further to that and to Senator Chapman’s comments, I really wonder why Australia is still participating in the ILO if it—as Senator Chapman tends to characterise the organisation—simply represents the corporate state. Senator Cook quite clearly outlined the ILO’s processes, and he also outlined the politics of convenience that is being played by the Howard government here. When Labor were in government we took on board the comments and determinations of the ILO, whereas this government continues to ignore them. I will set out the various ways in which it has done so.

The other issue that I want to comment on is quite topical. Contrary to Senator Chapman’s comments, there are many things that Labor can discuss and canvass in general business debates such as this. The issues relating to job security and to the contemptuous behaviour of Minister Reith and how he deals with his portfolio are very topical. We have had numerous examples of that, and this is just another. Australian workers will not forget—in fact, the general Australian community will not forget—the Patricks dispute and Minister Reith’s contempt not only for parliamentary processes but for general community attitudes in Australia. This now also appears to be the case with respect to the processes of the International Labour Organisation.

Let me put on record the facts of this matter to outline where the minister’s behaviour has been contemptuous of the ILO’s processes. In a press release last Friday, Minister Reith attacked an ILO committee of experts which had issued a draft finding that the Workplace Relations Act is in breach of ILO conventions 87 and 98. It has taken me about two days to get my hands on the draft finding so that I can build a bit of fact into this debate. I must also state at this stage that the minister’s department—the Department of Employment, Workplace Relations and Small Business—actually dealt with this matter quite appropriately. When we sought a copy of the decision—and it was in fact a draft decision that the minister was referring to in
his press release—the department quite cor-
correctly advised us that they could not furnish
us with a copy of that finding because it was
a draft finding circulated as a courtesy to the
Australian government for comment before it
was published as a finding.

That did not stop Minister Reith. Nothing
seems to stop Minister Reith going the way
he thinks is the way to go at a particular mo-
moment. As evidenced by his press release,
which is quite feral in its wording, the min-
ister would have been better off reflecting for
a moment before he responded to what ap-
ppears to have been a leak of the report to a
reporter. He would have been better off to
have relaxed for a moment and thought
through the issues rather than put out what
was a fairly shoddy and limited press release
in terms of not only its content but also how
it reads and its grammar and spelling. But the
minister saw fit to issue a press release on
what was a draft finding of the ILO. As
Senator Cook has already indicated, it may in
fact put the minister in contempt of the ILO’s
processes.

Let me get to the issues of the matter. The
Workplace Relations Act is in breach of ILO
convention No. 98 because it gives Austra-
lian workplace agreements primacy over un-
ion negotiated collective bargaining agree-
ments—that is, it does not adopt the general
view of the ILO and of the international la-
bour community, comprising governments,
worker representatives and employer repre-
sentatives, that the most sensible way for a
country to manage its industrial relations re-
gime and to protect the interests of disad-
vantaged workers is to promote collective
bargaining. Minister Reith does not accept
that view but, unfortunately, he will not front
up to that fact. He continues to maintain the
duplicitious situation of reporting half-truths
on these issues and maintaining our repre-
sentation on the ILO. As Senator Chapman
has already indicated, it may in
fact put the minister in contempt of the ILO’s
processes.

The Committee notes the Government’s report
and its submissions before the Conference Com-
mittee setting out the various ways in which col-
lective bargaining is still provided for and taking
place, including concerning multiple businesses,
and the various safeguards in the AWA procedure.
Having closely considered the Government’s ex-
planations and observations, the Committee re-
mains of the view that the Act gives primacy to
individual over collective relations through the
AWA procedures. Furthermore, where the Act
does provide for collective bargaining, clear pref-
ereence is given to workplace/enterprise-level bar-
gaining. The Committee, therefore, again requests
the Government to take steps to review and amend
the Act to ensure that collective bargaining will
not only be allowed, but encouraged, at the level
determined by the bargaining parties.

The precise wording of this finding debunks
pretty much all of what Senator Chapman
said in his contribution. The issue here is not
that the act provides scope for collective bar-
gaining but that it should actually promote it.
Minister Reith’s press release does not indi-
cate ways in which collective bargaining is
promoted. Even when he refers to issues such
as the BHP case, it is simply a reference to
the legislation allowing scope for collective
bargaining to be provided, not promoted. It is
amusing that Senator Chapman referred to
the ILO commenting on the BHP dispute,
because I see no reference to the ILO com-
menting on the BHP dispute. The reference I
saw to the BHP dispute was in Minister
Reith’s press release. I suggest government
senators get a bit more information from the
minister’s office when they want to contrib-
ute to a debate such as this.

Apart from being fairly feral, as I already
indicated, Minister Reith’s press release in-
cludes some very interesting references. I
noted in the Australian Financial Review
article of last Friday, when this matter first
arose, that Minister Reith referred to the BHP
dispute as an example of how the government
promotes collective bargaining, given that the
Federal Court had granted an injunction. In
response to Senator Chapman’s comments, I
need to point out that it is an injunction with
respect to inducements offered to workers to
accept individual contracts. It is not, as Min-
ister Reith’s press release seems to suggest,
reflecting the fact that unions wanted to col-
lectively bargain. The issue was the induce-
ments that were being offered by BHP. What is more interesting—and I am sure BHP executives will be interested—is Minister Reith’s observations on the Federal Court injunction against them appealing. In his press release, Minister Reith seems to quite clearly imply that he supports the injunction. This seems to be quite an interesting change of heart from the minister. Here, he is supporting an injunction against BHP offering AWAs, but he is using it in a somewhat false argument to try and bolster his position at the ILO.

This is not the first time that Minister Reith has done this, and this is why I want to go back to the claim that these are only comments and that they are in further dialogue. A look at the history of these matters will clearly debunk that. If we go back to the first wave that Minister Reith commenced, the Senate committee report on the first wave of reforms was quite clearly concerned about the implications of that bill with respect to our obligations at the ILO. This issue regarding collective bargaining was one of the key areas—not the only one—of concern.

Lo and behold, not long afterwards, the ILO committee of experts actually made a finding that, yes, the issues that we canvassed in our report were of serious concern to the ILO. Not long after that, at an ILO conference in full session, the ILO conference committee on the application of standards took the very rare and extraordinary step of requiring the Australian government to appear before it to address the matter of Australia and concerns about its breaching ILO standards. The finding of that committee’s consideration was to reiterate concern at the issues canvassed by the committee of experts.

Then we came to the second wave of legislation. In the second wave of legislation Minister Reith sought to compound some of these areas of breach—actually compound the breach that he knows that exists but that he cannot convince the ILO to turn a blind eye to. But what is worse than the fact that he is actually compounding the breach in relation to the legislation that was not pursued by the government in the Senate last year because it was clear that the Senate would reject it is the minister’s duplicity in the information that he is providing to the ILO. On that point I want to go to a comment in our report because once again this example highlights the minister’s duplicity here. On page 195 of the Labor report in relation to the second wave of legislation, we stated: Labor Senators also note that the Government indicates in the most recent Article 22 report to the ILO on Convention 98 [with respect to collective bargaining] that, ‘when a certified agreement has been certified and is in operation, the certified agreement prevails over an inconsistent Australian Workplace Agreement which takes effect during that period. This statement was presumably made in defence of the Government’s position that the WR Act does not undermine collective bargaining so is therefore not in breach of the Convention.

But what we noted in our report on that occasion was this:

Unfortunately, the Government will no longer be able to rely on this argument if the bill—that is, the second wave of legislation—is enacted. The proposed amendments would ensure that individual AWAs take precedence over collective certified agreements ....

So we have the minister running this duplicitous line: on the one hand, he is trying to argue to the ILO that the current act is not in breach of an ILO convention; and, on the other, his argument for why that is the case is a provision that he is presently seeking to remove from the act. Once you take that issue into account and compare it to the press release and what he does not say in it, Ian Hanke’s little ‘for the record’ at the end of it takes a completely different perspective.

Senator Chapman in his comments suggested that perhaps we did not have much to talk about if we were talking about these sorts of issues. When I looked at the speakers list today, I was a little disappointed at the representation of government senators on the list because they do not seem to have learnt the lesson of the most recent debacle that the minister has generated at the ILO in relation to issues affecting women workers. Unfortunately, there are no female government senators participating in this debate. Perhaps that is as a consequence of an earlier gaffe made by the minister at the ILO where he embarrassed Australia again by suggesting that women could be tested for pregnancy in
pre-employment tests. This is another example where our international reputation is suffering by gaffes uttered by our minister for industrial relations. I wonder, as Senator Cook has also pointed out, about the long-term implications of these types of gaffes which seem to have implications across a range of areas.

I will be interested to hear Senator McGauran when he makes his contribution on these issues because the trade implications are quite significant. As Senator Cook has pointed out, labour standards are very important to a number of the countries that participate in international fora. What will Australian farmers say in trade negotiations when the EU countries start pointing to the various gaffes that Minister Reith is making at the ILO and other fora? What will the farmers say in relation to their fears about free trade in Australia and about the concessions being made to these various other countries?

Rather than further detailing some of the facts about how this matter has proceeded, I need to go back to some of the issues canvassed by Senator Chapman. Senator Chapman suggested that this government was very good in its economic performance and that Labor were hypocrites. Senator Cook has already pointed out that the real hypocrisy is the current Treasurer and the current Prime Minister where in the past they have sought—in some cases successfully—to get Labor to fix some areas where the ILO has raised concerns. Senator Chapman suggested that the economic performance of the Howard government should outweigh all of these factors. Yet when we looked at Minister Reith’s second wave of legislation, government senators did not pick up those economic concerns and did not address the various economic issues. Labor senators in their report gave lengthy consideration to various concerns about the economic impact of the second wave of IR legislation. A variety of concerns had been raised about the impact of the 1996 act on Australia’s economic interests. I would encourage government senators to look more carefully through those issues before they make assertions that the Howard government’s economic performance outweighs the issues associated with labour standards.

But the other issue—and I think our report on that occasion also highlighted this—is: who does the Howard government represent? When you look at who the Howard government represents, I think that chapter to which I have referred on economic interests says it all. It refers to this quote, this famous statement by Mr Reith: ‘Never forget the politics and never forget which side we’re on; we’re on the side of making profits, we’re on the side of people owning private capital.’ Those words are not about Australian workers, and our behaviour at the ILO highlights that point.

Senator McGauran (Victoria) (4.45 p.m.)—The government welcomes any discussion on industrial relations, given that we take pride in our industrial relations reforms—one of the major areas of reform implemented by this government since it first came to office in 1996. It was one of our first, early areas of reform, and for that we thank the Democrats—namely, the former leader Senator Cheryl Kernot, now Mrs Kernot from the House of Representatives—for understanding the importance—they are the cornerstone—of those reforms which now underpin a successful economy.

Industrial relations and our budget reforms are the two main hallmarks of this government to this point—and, of course, we have the major tax reforms to come after 1 July. They will continue the government’s major reforms which have, in fact, all together created a labour standard that can be measured by the fact that, in the term of this government, we have had record employment rates—an employment rate of some 6.7 per cent—and real wage increases of some five per cent. They are the sorts of labour standards that really do appeal to the workers. I would have thought Senator Collins would have used those sorts of standards instead of some spurious international standard. The real standards the workers want are real pay increases—

Senator Boswell—And full employment.

Senator McGauran—and full employment. You are not going to get those
from the ILO, I can assure you of that. Just on the ILO, it is worthy to record what this motion is. Should any future readers of the Hansard be interested in knowing exactly what we are discussing here and how the other side is trying to attach the parliament to international treaties, the motion reads:

That the Senate—

(a) notes that the Committee of Experts of the United Nations (UN) industrial arm, the International Labor Organisation (ILO), found, on 10 March 2000, that the Howard Government's Workplace Relations Act breached ILO Convention 98 on collective bargaining;

and consequently the Senate:

(b) condemns the Government for bringing Australia into international disrepute; and

(c) calls on the Government to amend the Workplace Relations Act to conform with our UN treaty obligations.

Anyone who heard the mover of that motion, the first speaker, could only deduce one thing from that unmemorable speech: Senator Cook is attempting to bind this government to all international treaties. That is what he said. He said, 'Mr Howard, you can’t pick and choose which treaty you want to obey and which you don’t. You have to observe all of them.' We all know how these international treaties are written. They are as broad or as narrow as you seek to interpret them. To commit your government to obeying an international treaty, an international obligation ahead of your own domestic law is bad and irresponsible government—and this government will not be so bound and committed.

Our domestic law comes first. After all, it was the ILO that criticised this government for changing the previous government’s unfair dismissal laws. We all know what Laurie Brereton’s unfair dismissal laws did to the economy and employment. Such applications jacked up the cost of small business; the number of applications for unfair dismissal, the number of vexatious unfair dismissal claims changed the whole industrial relations culture to the point that small business, to a business, walked away from the Labor government and demanded a change.

We introduced that change for the sake of good industrial relations and for the sake of employment—because that is the bottom line of all industrial relations changes: to create a climate of employment. Then to have the ILO criticise us for changing the unfair dismissal laws really goes to the point that I am making; that is, you simply cannot be bound by these international organisations and it would be a farce if you were.

The ILO also criticised this government in relation to strike pay; we were criticised for the fact that this government prohibited strike pay. The ILO was saying simply that we should introduce strike pay. This would mean, of course, that every time a union calls ‘out on the grass’, its workers are getting paid. That is the sort of law that the ILO expected this government to introduce. That shows the ignorance of this Geneva based organisation in the nuts and bolts of this government’s industrial relations. The ILO may want to set broad terms to which we would agree. But for that organisation to get into the clause-by-clause industrial relations of this country, not understanding them—as I have pointed out in regard to the unfair dismissal laws and the strike pay—is absurd. For the other side to expect us to obey every dictum of the ILO or every treaty that we may sign is absurd, and we reject it.

Senator Schacht—Even the ones you signed?

Senator McGauran—We place this country’s law first; the domestic law of this country comes first. Let us look at what the ILO in this particular case objected to.

Senator Schacht—He needs a lot of help.

The Acting Deputy President (Senator Chapman)—Order! Senator Schacht, I am quite confident that Senator McGauran is capable of proceeding without your assistance.

Senator McGauran—The International Labour Organisation has reaffirmed something that it criticised this government for in 1997—that is, the application of the federal Workplace Relations Act 1996 in relation to international standards on collective bargaining. The ILO committee has expressed its concerns in relation to the alleged primacy given to individuals over collective relations through the AWA, the Australian workplace agreements, procedures of the Industrial Re-
The government rejects this claim. The ILO has conveniently or otherwise left out important clauses of convention 98, which it claims we have breached. They state:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

The key words are ‘appropriate to national conditions’ and ‘where necessary’. In this country we have introduced choice and flexibility into the industrial relations system. We have introduced three choices for the workers to take up. One is collective bargaining. If that is the choice of workers on the factory floor then they can take up collective bargaining through the award system. We have also introduced certified agreements which again can be union negotiated or otherwise. The one that those opposite would most like to abolish if they were ever given the chance is the Australian workplace agreements, which is one-on-one negotiation and agreement with the employer.

As my colleague Senator Chapman pointed out, these reforms have underpinned a strong economy. We simply could not have the four per cent growth that we have in this country without these proper industrial relations laws. Imagine if we had the old regime where we had some of the worst strikes in the world. They matched the best in the world. Today, we have the lowest strike rate since 1913. Basically, we have the lowest strike rate since Federation.

I would like to know what the ILO thinks about the OECD, another international organisation, praising this country for its labour market reforms and the impact those reforms have had on productivity and employment. They highlight the fact that we have introduced a more flexible enterprise bargaining level in Australia as the stimulus for our strong economy. It is now growing at some four per cent. The national accounts released today tell us that we are growing at 4.3 per cent. That is the 11th consecutive quarter; the best in 30 years. We are running at a low inflationary rate. We are gaining the full benefits of all the reforms introduced by this government, no less industrial relations. It has been ticked off by the OECD that it has been our labour market reforms that have added positively to that very strong economic performance.

The transformation of Australia’s industrial relations climate is well under way now. The reshaping of Australia’s workplace relations system since 1996 has been central to the government’s goal of a strong, growing, competitive economy into the next century. The government regarded the previous system as rigid and cumbersome. Its emphasis was on the centralised determination of wages and conditions through awards, the settlement of disputes by parties outside the workplace and the primacy of trade unions within the industrial relations system.

The 1996 act has put responsibility for wages and conditions and work practices where they belong—in the hands of employers and employees in individual enterprises and workplaces. The government’s workplace relations system allows employers and employees to reach mutually rewarding objectives by making workplace agreements in a non-adversarial environment. The system encourages parties to take direct responsibility for employee relation outcomes and discourages uninvited and unwelcomed third party intervention by placing people and business first and the system and its institutions second. The benefits are coming through. We have high productivity, the lowest level of industrial disputes, and a low inflation effect because of the productivity gains which are linked with real wage increases. It all bottoms out with a strong growth rate of greater than four per cent. One of the major factors is that we have been able to sustain the Asian economic downturn, which is now slightly turning up. It is no time to rest on reform.

If the opposition ever had a chance to enter government again—and I guess one day, Senator Campbell, you may—you would turn back all those reforms. You would roll back all those reforms. This I am sure of. We know you are not going to roll back the GST. We
know you are not going to abolish the GST. When it comes to industrial relations, I have no doubt what you will do. It is your culture, your history and your roots; your master is the unions.

This is one area you will attempt to change. You will give priority to collective bargaining. Out will go the AWAs and the certified agreements. Out will go the employer-employee direct relationships. In will come the union. The right to enter will be a demand to enter. It will be the end of freedom of association. All these reforms will be turned back.

What is more, and worst of all—and I hope I am not in the Senate to see it—you will again abolish the secondary boycott laws that this government rightly reintroduced. Out they will go. It was a Fraser government that first introduced the 45D and 45E. When you came in, out they went as a favour to the unions, and that completely turned around the industrial culture in this country. We have had the courage and the will to reintroduce the secondary boycott laws.

There is a very good reason why we have reintroduced the secondary boycott laws—that is, without those secondary boycott laws we would never have had the revolution that we have had down on the waterfront. Quite frankly, we would never have won the battle of the waterfront. Senator Campbell, it was won because the changes down on the waterfront are quite marked. The reforms down on the waterfront that you, the others on the other side and the MUA told us would never happen and could never happen have happened. You were down on the picket, no doubt, Senator Campbell, but without the secondary boycott laws we could never have introduced those major reforms.

I say that because, in the old days when the MUA were in trouble down on the waterfront, out went the transport union and out went every other union in sympathy with the MUA, and the country was crippled accordingly. When the government was crippled and the country was crippled, the MUA would win hands down. When you crippled every business in the nation, you brought employers to heel, but the country in the long run suffered. We ground to a halt. When the recessions came in 1982 and about 1990, the economy had no defence against them. We were caught up in the boom and bust because of years and years of grinding industrial relations whereby productivity was never, ever linked to wage increases. I hope, as I said, I am never in the Senate should the Labor Party gain power again and go straight for the secondary boycott laws.

Senator Quirke—Ha, ha!

Senator McGauran—You laugh, Senator Quirke, but admit that that would be the first thing you would do when you come into government: turn over the secondary boycott laws. I have said the significance of that.

Senator Jacinta Collins—You’re not likely to be here.

Senator McGauran—A lot depends on my coalition colleagues in regard to that. Given the time left, I would like to signal what happens when you lose control of your industrial relations and when a government does not have the will. We had the will in introducing these reforms and transforming the Australian waterfront to an efficiency that is close to world class. Truck turnaround times have improved and crane rates have improved. In Melbourne on a good day they are lifting 42 an hour; on average it is about 25.

I just happen to have returned from Taiwan with Senator Quirke. We asked that shipyard for their crane rates, and they said, ‘On a good day, we can lift 42.’ We are doing that in Melbourne now, Senator Quirke, and we are proud of it; it is happening because of our industrial relations reforms. The farmers initiated these industrial relations reforms because they could not get their product off the waterfront.

In the time I am given, I really would like to signal this fact: when a government loses will in industrial relations, you get chaos. We are sure looking like that down in Victoria, where Labor have just entered government in
a surprise victory to all—you have to admit that, Senator Collins; I see the surprise on your face—and they are losing control over industrial relations in Victoria. The unions so early—how indecent can they be: they have not even got the decency to wait 12 months for a honeymoon period—have gone straight from Trades Hall into Spring Street demanding their pound of flesh.

Senator Quirke—Talking about honeymoons.

Senator McGauran—There is no honeymoon in Victoria. The Victorians are right back to the bad old days. The old gang is back in town. I hear that Tom Roper is back in town, and Neil Pope happens to be negotiating industrial relations settlements. This is a former state minister in the Kirner-Cain government. When he was minister—I think he was even industrial relations minister—there was no greater chaos. John Halfpenny was running amuck. The man from the meat-workers union—I do not know why his name escapes me—

Senator Boswell—Wally Curran.

Senator McGauran—Wally Curran was running amuck, and Neil Pope was letting it happen. Now he is chief negotiator for the Bracks government. That is why we are getting blackouts; that is why we are getting the construction industry demanding 36 hours. (Time expired)

Senator GEORGE CAMPBELL (New South Wales) (5.06 p.m.)—I have to say, Senator McGauran, that that was one of your better efforts. Mind you, it was pathetic. Your arguments had no rationale at all, but it was certainly one of your better efforts. It is nice to see you put a bit of enthusiasm into your speeches, but it is unfortunate that it is enthusiasm for a policy position of this government that does not stand up to proper scrutiny.

We have heard two speakers on behalf of the government pour scorn and ridicule on the ILO. Maybe they have a view about life that we ought to get rid of all international organisations. Let us get rid of the WTO. There are a lot on the Labor side who would be very happy to do that. Let us get rid of the UN. Let us get rid of all those international organisations that bring some stability to the world in which we live in. Let us go back to the law of the jungle. Let us have a totally open market environment. Let us go back to the days of Adam Smith and Ricardo, and look at life from the 17th century.

Your industrial relations policies are in fact about returning us to the days of Dickens. You would like to see people rewriting the stories that Dickens wrote about of people starving, of people being transported for stealing a loaf of bread, of people being chained to the looms in the linen mills or of children of seven and eight years old being sent down the coal mines. That is what your industrial relations policy is about.

We all know, and you also know, that the International Labour Organisation is a consensus body. It is very difficult to get agreement on ILO conventions. At the end of the day, you essentially get very minimum standards out of the ILO conventions, what are recognised as very minimum basic rights that workers should be entitled to. An ILO convention is no different in terms of setting out what are very basic rights. We as a nation should feel great shame that, being part of the industrialised world and regarding ourselves as being an advanced nation with proper standards, with proper democracy, we have in fact been criticised for not even being able to meet those minimum standards in our industrial relations laws. That is really what is at the heart of this, and it must make it very difficult for us as a nation to argue in other international forums for our point of view when we cannot even meet basic standards in our own legislation.

What is interesting about the finding of the ILO Committee of Experts is not so much that it has demonstrated that we are in breach of the convention but that it has exposed the real agenda of this government with respect to its industrial relations laws. It has exposed what is inherent in the quote from Minister Reith that Senator Collins read out in her contribution. It has exposed whose side of the equation this government is really on in terms of industrial relations, and quite clearly it is that of employers. It is not about taking an even-handed approach. It is not about setting up a fair system that allows both sides to
argue their point of view to get a resolution of their differences. It is about swinging the pendulum clearly in favour of employers in that environment, in that relationship.

What did Senator McGauran say in his last couple of minutes when he got a little bit excited? He did not say the dispute on the waterfront had been won, that it had brought about a better working environment; he said, ‘We won the dispute.’ That was a clear identification that he is on the side of the employers, that he was on the side of Patricks. Irrespective of whether they pulled rorts, irrespective of the tricks they get up to to rob workers of their just entitlements, he was clearly identifying himself and the government with Patricks and with Chris Corrigan in that dispute.

There is a clear indication of where this government sits in terms of industrial relations laws. The reality is that, no matter how you mask it, no matter what rhetoric you put around your agenda, you are substantially and significantly anti-union. You are about trying to bust the trade union movement wherever it operates. You are about trying to bust the ability of workers to act collectively to protect their interests or to extend their interests in the workplace—forget about whether or not they are represented by a union in a formal sense. Your act does not discriminate in that sense. It is about preventing them from acting, and weakening their ability to act, collectively. If you look at the way in which some of the organisations that have been built around the 1996 act are operating, they are in fact promoting that type of environment. You have only to look at the operation of the Office of the Employment Advocate and its role in a range of disputes. I had occasion to question the Employment Advocate at the last Senate estimates hearing about a dispute in Sydney with a firm called Bev-Pak and what was happening there. It is true, to the strict letter of the law, that the Employment Advocate followed up what in fact are his requirements. But what happened in practice? Here was a company who employed a workforce that was 99.99 per cent Vietnamese, of which 99.99 per cent did not speak any English. What did the Employment Advocate do? He sent them a letter, written in English, explaining the contents of the workplace agreement, and none of them could understand it.

A number of those workers submitted affidavits clearly demonstrating that they had not been given choice, that they had not had their individual contracts explained to them, that they had been brought in one by one and told by the employer to sign up on the dotted line. When they realised what they had signed, what did they do? What most workers in the country are doing at the present time: they rang up their union and asked for some advice. The union went along and talked to those workers, and the company got to know about it. What did the company do? It sacked
them on the spot for having the temerity to ring up a union and seek advice as to what they ought to do in respect of how they had been placed on their individual contracts.

That dispute went to the Federal Court. My old union happened to be involved in promoting the issue of those workers in that dispute. When I questioned the Employment Advocate, he did not even know it had taken place. He was not aware that there was a dispute in the Federal Court over workers being sacked because they had talked to their union about individual contracts which his office was supposed to be managing. That stretched his credibility to a large extent. The Employment Advocate seems to be able to respond very quickly when there is an employer under threat or a union organiser walks on a site somewhere where he is not wanted, but his office was not aware of a major case taking place in the Federal Court over this sort of discrimination. I think that really does stretch the imagination, but it also reflects the mindset and the direction which people involved in this area are coming from. Discrimination is at the heart of it. That is what is at the heart of the finding of the ILO.

Our laws, as they are currently constructed, tested against that convention, clearly discriminate against workers in a number of respects. It is not just happening in those areas in the workplace. We had occasion to test APRA, which has just been created, at Senate estimates. The people who have been employed with APRA were presented with individual contracts and told that that is going to be the only form of regulation of employment conditions in the new body—sign up or do not bother applying. That is still the case—no choice—despite the fact that the majority of those workers who were being transferred to APRA had signed a petition saying that they wanted a collective agreement. They were not given the choice of bargaining collectively with their employer and signing up to that agreement—no choice whatsoever. So do not come in here as representatives of this government and start sprouting that you are giving workers choice, because that is an absolute nonsense.

I want to respond to some of the issues raised by Senator Chapman in his contribution, which I thought to some degree amusing, if not substantially off the mark. He praised this government for having created 630,000 new jobs. When you look at those jobs you see that a substantial proportion of them are casual and part time, but we will set that aside. It is also true that under the Labor government over two million jobs were created in this country. But what was more important about those two million jobs was that they provided substantial access to the workforce for women. It changed the nature of our workforce. It changed the nature of the relationship of women to the workforce and provided substantially the opportunity for women to get access to the workforce. There has been a significant growth of opportunity in that area for women to get into the workforce.

He talked about and praised this current government for economic growth of 4.3 per cent. He held that up as a demonstration of how effective their industrial relations laws had been in contributing to that. What Senator Chapman did not tell you, however, was that that economic growth has been driven by consumption. It has not been driven by investment in capital, it has not been driven by investment in new factories; it has been driven by consumption. But the bigger underlying problem is that it is being driven by debt. Household debt in this country has almost reached 100 per cent. People are living off their credit cards. That is the point this government will not point out to you when they start to talk about their economic performance. They will not talk about the underlying weaknesses of our economy.

He talked about the fact that Labor was only interested in money wages. I have to say to Senator Chapman: I do not know where you have been for the past 20 years but you have not been listening to or observing much of what has been going on around here. There was a very significant shift in the relationship between the social wage and industrial wage under the Labor government. Superannuation, family assistance payments, Medicare—there was a whole range of areas in which workers were substantially advantaged by
shifts in the social wage, shifts which reversed what your party did when it was in power in the seventies.

I was an official in the Metal Workers Union in the seventies, and we did an assessment at the end of the seventies as to how our members had performed under the Fraser government. We had been successful. We had actually increased money wages for metal workers by $22 above the movement in CPI, despite the fact that there was partial indexation over that period. But do you know what we found out? Because of what the Fraser government had done in shifting and stripping away the social wage through budget policy, at the end of that period metal workers had in fact become $24 a week worse off in real terms in measuring their living standards.

That is why there was an accord in 1983. That is why there was a commitment to make a shift from the industrial wage to the social wage, because everyone understood you could make more lasting and sustained benefits in that area than you could through the industrial wage, particularly in an environment of high inflation when it was being eaten away rapidly. You consistently point to your figures. I remind this government and the Australian people that in 1983 when the current Prime Minister, John Howard, was Treasurer of this country, he left this nation with double digit inflation and double digit unemployment. Inflation was over 11 per cent and unemployment was over 11 per cent. That was his record as Treasurer of this country, when he had the reins of power for some seven years.

Do not come in here boasting about your economic performance, because you conveniently forget what you have done in the past. You conveniently forget the long haul that had to be undertaken to get the economy back into repair. In fact, if you had any scruples, you would admit that the good economic figures you are now able to produce were laid on the foundations of the Keating government in the 1990s. We already were tracking down to low inflation; we already were substantially on the road to low inflation in the 1990s. Employment was starting to grow again in 1996. The great tragedy is that you got the benefit of the work that was done by the Labor government when it was in power.

I want to come back to what Senator McGauran said and to make a couple of points. It is unfortunate that Senator Boswell is not here. One of the great tragedies of the industrial relations agenda that this government has put in place and of the chains that it has put around the ability for workers to act collectively to protect their interests is that the workers in regional Australia are the greatest victims of that process. They are the greatest victims of the inability to operate collectively and of having to negotiate one on one, because they, in the main, are the most susceptible to unemployment, are facing the pressure of getting jobs in the regions and are most impacted by low wages and opportunities in their areas. Traditionally, they have always relied on other parts of the work force to be able to set the standards against which they are measured. That is very unfortunate for those workers. We have not heard from any of the National Party representatives in this place, who claim to be the champions of regional Australia. They sold them out on caravan parks and on the GST. They will sell them out on Telstra—just watch it happen. We all know it will happen—they will sell them out in respect of industrial relations, and they sold them out in respect of their wages and their working conditions. They have now put them in a position of substantial disadvantage in their ability to bargain apropos their cousins in the cities.

The truth of the matter—as I commenced my remarks by saying—is that the ILO have got only very basic standards. It is a great tragedy that this country has put itself in a position where it has been found by a group of experts that it is in breach of one of those conventions. (Time expired)

Senator COONAN (New South Wales) (5.26 p.m.)—If anyone is still following this debate, I think it is worth while reminding them that we are addressing this afternoon Senator Quirke’s motion that the Committee of Experts of the United Nations’ industrial arm—I would call it the industrial strong arm, but that is just my comment—the Inter-
national Labour Organisation, found on 10 March 2000 that the Howard government’s Workplace Relations Act breached ILO Convention 98 on collective bargaining. That is the first error contained in that clause because there was not a finding; it certainly was not a determination. The best that could be said about this is that it was a comment, and one in error in any event, as I will elaborate.

The second part of Senator Quirke’s motion then goes on to rather bravely condemn the government for bringing Australia into international disrepute, although that begs the question. The third part of the motion builds on this unfounded assumption and calls on the government to amend the Workplace Relations Act to conform with our United Nations treaty obligations. That of course will be difficult to do if it already conforms.

I think what underscores and underpins this motion—and I make no personal criticism of Senator Quirke—is that there appears to be very little in the way the motion is drafted that comprehends treaty interpretation. There is nothing there about a margin of appreciation. It appears that the motion, at least if taken on face value, suggests that those on the other side of this chamber wish Australia to dance to the tune of faceless bureaucrats who have absolutely no accountability to the Australian people. The motion is a showcase to try to criticise the government, and so far I do not think the debate has done that very effectively. What it really underscores is the incongruous position that faces signatories to international treaties when, in effect, some unrepresentative and undemocratic international body prognosticates on whether local laws and conventions meet international standards.

And haven’t we had our fill of it this week? As we found out this week in the mandatory sentencing debates, words can be twisted to mean much more in legal practice than they apparently mean. If we leap every time some international body makes a comment, we are being governed not by our own democratically elected and responsible governments but by local guardians—the ILO, the WTO, the World Bank, the Asian Development Bank and over 900 other treaties to which we are party. We have to ask: what do we, the Australian people, want? I believe the Australian people want elected representatives who interpret local conditions and govern in an accountable manner. In respect of the ILO, which I think is one of the least representative of international bodies, the minister has gone on the record urging it to get a bit modern, to live in the real world. He has said that the Australian government has strongly supported measures to modernise the International Labour Organisation. That is certainly overdue.

In addressing the plenary session of the 87th International Labour Conference, Minister Reith welcomed the reorganisation of priorities recently outlined by the new ILO director and endorsed a series of specific reform measures. These are extremely important because, if these global guardians or international bodies do not reform their internal processes — in this I include the WTO—they are simply not going to have respect at the local level. The sorts of things that Minister Reith suggested the ILO should do include reviewing obsolete ILO standards and conventions; refocusing the priorities of ILO supervisory committees, including the one that made the comment we are dealing with this afternoon; improving the ILO focus on outcomes linked to its core objectives; and prioritising employment growth, as well as regulatory issues. Isn’t that the nub of the matter? Aren’t we interested in employment growth? Isn’t that the outstanding success of the AWAs? Minister Reith also used the opportunity of addressing the 174 member countries of the ILO to repeat Australia’s call for the immediate release from imprisonment by Yugoslavia of the CARE workers, Steve Pratt and Peter Wallace. Happily, that happened. The Australian delegation took an active interest, and continues to do so, in child labour and maternity protection measures, which we are currently discussing.

Senator Collins brought up the comment that there was no representative at the relevant meeting that we were discussing this afternoon, but that was dealing with workplace agreements.

The ILO, like all organisations which existed for most of the last century anyway, simply has to modernise to meet the chal-
lenges presented by this century. It is terribly important that the reform process be supported and that we actually get to assess benchmarks that would be a useful measure. Senator Cook, in a press release of 14 March this year, said that the finding—which is incorrect—of the International Labour Organisation’s committee of experts that Australia is in breach of the convention on collective bargaining may well be used against us in future trade negotiations. Senator Cook went on to say:

Australian farmers can blame Peter Reith for making it harder for Australia to break down trade barriers—especially in Europe.

Here is the clincher:

Last December’s World Trade Organisation meeting in Seattle collapsed,—

according to Senator Cook in part, because of the labour standards issue. If another round is to be successfully launched, one of the hurdles that will have to be cleared is labour standards.

That is the most extraordinary statement. The reasons for the failure of Seattle are manifold. No-one is suggesting that President Clinton having raised labour standards was not an issue. But it is drawing more than a long bow to suggest that Australia’s compliance or otherwise with labour standards had something to do with the collapse of Seattle or that this will have something to do with whether a new trade round got off the ground.

The political landscape in America was effectively the reason for the failure of Seattle. In fact, that political landscape was dominated not only by the inertia of the Clinton administration and the presidential primaries but by other very significant congressional debates that were going on, including the review of the United States’ participation in the WTO, China’s accession to the WTO and the status of normal trade relations due for renewal by the United States in July 2000. To suggest that somehow or other Australia and Australia’s labour standards had anything to do with the collapse of Seattle and also with any impediment to getting a new round up is drawing a completely unsustainable long bow. It comes back to the fact that the ILO has absolutely no internal dispute resolution system. All the agitators around the globe are trying to get environmental measures and labour standards dealt with in the WTO because the ILO system is so outmoded and provides no redress for issues—quite legitimate issues on the world stage—that need to be agitated. The suggestion that the ILO should modernise its standards is something that all of us in this parliament should look to. The WTO dispute settlement system is effectively for trade disputes. The more it gets overloaded by extraneous issues such as labour and environmental matters, the more difficult it is going to be for all of the countries that want to belong to the WTO to effectively use the system.

I would urge all of those seriously interested in Australia’s position in agriculture and the benefit for Australia’s farmers of belonging to the WTO not to make these sorts of unsustainable comments about the connection between labour and the WTO. Modernise the ILO, get a decent dispute settlement system into the ILO and we might actually discuss some issues that need to be resolved.

The other point that I wanted to make was that I think Senator Collins may have said—no doubt I will be told if she did not—that Minister Reith was referring to the report as a draft report in his press release. I must say that, having looked at it, I cannot see any reference that the minister made to a draft report. What Minister Reith has said in the press release is that the ILO observations can only really be regarded as comments. And, of course, the Australian government will be taking up these matters with the ILO in due course.

What has not been said—indeed, I think it is quite unfair for those on the other side not to say this—is that whilst concerns have been expressed there does not appear to be much analysis as to whether the Australian evidence was properly taken into account. Just referring to it briefly—and if I get a chance I will do it in a little more detail—the ILO committee has expressed concerns in relation to the alleged priority given to individual over collective relations through the AWA procedures of the Workplace Relations Act. In proposing that Australia should weaken its
unfair dismissal laws and encourage strike pay, the ILO must be so out of touch with workplace realities in Australia and practically everywhere else. It simply reinforces the call for the ILO to get itself modernised—and quickly.

The government did not feel that it had to draw the attention of the ILO to the actual obligations of convention 98, but I suppose that is now necessary. For the record, it is important to refer to article 4, which provides that ‘measures appropriate to national conditions shall be taken where necessary to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers and employers organisations and workers organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.’ Those words that really need to be emphasised are: ‘Measures appropriate to national conditions’—there is your margin of appreciation—‘shall be taken where necessary.’ This was never meant to be prescriptive. This is something that needs to be interpreted according to national conditions, and action taken where necessary.

By any reading, the obligation under convention 98 is that encouragement and promotion of collective bargaining must be carried out, but only where necessary. That is the whole point of article 4. The ILO has certainly not indicated why it would be necessary for Australia. That, of course, once again underscores the fact that the ILO probably cannot be across every set of local conditions in every country to which it addresses its attention. So we know nothing from these comments as to why the ILO says it would be necessary for Australia to further encourage and promote collective bargaining or what circumstances might have created such a necessity, given that no forms of employer-employee relations other than collective bargaining have been provided for in any previous Australian legislation since Federation. In suggesting that federal legislation gives primacy to the individual over collective relations through Australian workplace agreement procedures of the Workplace Relations Act, the ILO has simply ignored the recent Federal Court injunction stopping BHP from offering individual contracts to Pilbara employees who want them because the unions wanted collective bargaining.

I think I have said several times that this is not a determination; it is only comments. One of the things that I think is very interesting when you actually have a look at the ILO committee of experts is that there was an Australian representative there, who I think one would normally have expected would have been across these issues, would have been able to bring an Australian perspective to the matters that were looked at. However, the comment that was made was made was unanimous, which actually made me interested as to who the Australian was. The representative is a Ms Robyn A. Layton QC from Australia. She has what you might think was the fairly typical CV of someone with a long background in law: chairperson of a human rights committee; involved in the Law Society of South Australia; former Commissioner of the Health Insurance Commission; former chair of the Australian Health Ethics Committee and there are a number of other former positions. But the truth is that she may not be an impartial bystander—I do not really know Ms Layton—but I was surprised to see that she is a former wife of former Labor Premier, John Bannon. It was the then South Australian Labor government who appointed Ms Layton to the South Australian Industrial Relations Commission. I am certainly not in any way suggesting that Ms Layton is compromised—

Senator Jacinta Collins—Why are you raising it?

Senator COONAN—But it certainly is worth saying—and Senator Collins is really upset about this. These sorts of ILO comments simply reinforce the need for the ILO, like all organisations that have existed—

Senator Jacinta Collins—You are as bad as Reith.

Senator COONAN—really for the bulk of this century, to get itself modernised to be able to face the challenges that are facing all of us in this country. Minister Reith has brought up this issue at the International Labour Conference, and I think it is about time we had a serious debate in this country about
where we stand in respect of our international obligations across this range of treaties—

Senator Jacinta Collins interjecting—

Senator COONAN—Are you finished?

Senator Jacinta Collins—Yes.

Senator COONAN—Good. There is a need, a serious need—and I would even go as far as to say a bipartisan need—for us to actually address how we are going to use these international organisations so that they actually work in the domestic interests of Australia, so that we are not continually worrying about unrepresentative comments made by international bodies. The government firmly believes that it is complying with its obligations under convention 98, in that the right to collective bargaining is provided for in the act and the act does not limit the right. Whatever anyone says about that in this debate or any other debate, that is an irrefutable fact. That is the reason why we are complying with our obligations, and that is why this is a failed and flawed motion that will go nowhere, even if it does go to 6 p.m. tonight.

Senator HOGG (Queensland) (5.45 p.m.)—I was very pleased to hear Senator Coonan’s contribution this afternoon, because obviously when something stings the first thing you do is come in and bucket it—the ILO, in this case—just as when the government were having trouble with the High Court they bucketed the High Court. Senator Coonan spoke at length about global guardians, international obligations and so on. It is very interesting to look at the Joint Standing Committee on Treaties, which is a joint committee of the Senate and the House of Representatives. It is interesting to note that Senator Coonan is a member of that, along with a number of other government and opposition members. And I am sure now that with Senator Coonan wanting the coalition government—

Senator Heffernan—You’re struggling.

Senator HOGG—I am not struggling—to resign from our international obligations we will be moving to have that committee disbanded immediately, in spite of the fact that it has some 16 issues currently before it. The reality of life is there are conventions that we as a government have signed up to in the past, and our obligations under those conventions are well known—or should be well known—to Australians far and wide. Of course, to refer to the ILO—or in this case the Committee of Experts on the Application of Conventions and Recommendations—as the industrial strongarm of the ILO is really quite unfair. I will go into the make-up of that committee in the not too distant future in my deliberations here this afternoon.

But it is interesting to look at the convention that is in question in this motion this afternoon. It is convention 98—Right to Organise and Collective Bargaining. In the consideration of provisions of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999, the Workplace Relations, Small Business and Educational Legislation Committee addressed this issue—in particular, article 4 of convention 98—at page 384 of its report, and they listed what it actually says. I do not think that this has been put on the record this afternoon. It says:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntarily negotiation between employers or employers’ organisations and workers organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

That is what article 4 of the convention says, and that is the article that is in question on this occasion. Then in response to the issue that had been raised about the breaches of that convention, the Committee of Experts had this to say about the Workplace Relations Act and its relationship to this convention:

This emphasis on direct employee-employer relations is particularly evident in Part VID of the Act regarding Australian workplace agreements (AWAs), which are defined in section 17OVF: “an employer and employee may make a written agreement, called a Australian workplace agreement, that deals with matters pertaining to the relationship between an employer and employee”.

It goes on to say:

This Part promotes AWAs. ... The Committee considers that the provisions of the Act noted above do not promote collective bargaining as required under Article 4 of the Convention. It, therefore, requests the government to indicate in its next report any steps taken to review these provisions
of the Act and to amend it to ensure that it will encourage collective bargaining as required by Article 4 of the Convention.

That was the request to the now government, that they comply with article 4 of the convention. The Committee of Experts, to whom Senator Coonan referred, then came in for a bit of a side-swipe, as I said. They were described as the industrial strongarm of the ILO. But if one looks on the web site at the explanation of the Committee of Experts—who they are, what they are and what their charter is from the ILO, which, by the way, is not simply a stooge organisation of the trade union movement—one finds this:
The examination of governments' reports is carried out in the first instance by the Committee of Experts on the Application of Conventions and Recommendations.
The site goes on to say:
The Committee consists of 20 independent persons of the highest standing, with eminent qualifications in the legal or social fields and with an intimate knowledge of labour conditions or administration.
So they are not some hacks that they have just gone out and picked up off the road; the committee consists of people of 'the highest standing'. It continues:
Members of the Committee are drawn from all parts of the world. They are appointed by the Governing Body of the ILO on the proposals of the Director-General, in their personal capacity, for a period of three years, their term of office being renewable for successive periods of three years. They meet each year in November/December in Geneva.
The web site goes on:
It has been said that independence and objectivity are the life-breath of the international judicial inquiry.
So the picture that is being painted of this committee is quite at odds with that which the government members would have us believe. The web site continues:
This saying is fully applicable to the functions and responsibilities of the Committee of Experts. In this connection it may be useful to quote the words used by the Committee of Experts itself when it reaffirmed its belief in this fundamental principle in 1987:
‘The Committee’s fundamental principles, as voiced on a number of occasions, call for impartiality and objectivity in pointing out the extent to which it appears that the position in each State is in conformity with the terms of the Conventions and the obligations which that State has undertaken by virtue of the Constitution with the ILO. The members of the Committee must accomplish their task in complete independence as regards all members States.’
I do not think that anyone could in any way contrive to describe that committee as being the strongarm of the ILO. The fact is that it is a body of high repute. It is not a body that is loaded, as I said, with people just pulled off the street corner. These are people who are eminently respected in their own right, in their own way, throughout the rest of the world. But it seems that if you cannot agree with their decision, you take the time to sit back and bucket them—and I think that is quite unfair. If one looks at the response that the government made to the reported ruling that I read out from the legislation committee’s report of November 1999, one sees that the government submitted a rather lengthy document back to the ILO committee of experts to argue against what they had said. Time does not permit going through the whole document—the document is some 18 pages in length—but it is a fairly wide-ranging critique of what the committee of experts had said on article 4 of convention 98. Then we come to the result of the motion that my colleague Senator Quirke moved here today. We have the further response that has come out of the committee of experts, and this is after having considered a rather lengthy submission put to them by the Australian government. The committee of experts have come back and said, on article 4:
Having closely considered the Government’s explanations and observations, the Committee remains of the view that the Act gives primacy to individual over collective relations through the AWA procedures.
So they say that they have considered the document from the Australian government and that they still remain of the view that the act gives primacy to individual over collective relations. That is what this argument is about: the ability to collectively bargain for one’s rights and one’s conditions in the industrial relations arena. But the report goes on further to say:
Furthermore, where the Act does provide for collective bargaining, clear preference is given to workplace/enterprise-level bargaining. The Committee, therefore, again requests the Government to take steps to review and amend the Act to ensure that collective bargaining will not only be allowed, but encouraged, at the level determined by the bargaining parties.

The mere fact of life is this: the government does not like what the committee of experts have said—it does not want to abide by what they have said. The committee have said nothing that is extraordinary. They have said, purely and simply, to the government, ‘Do what you have to do’—that is, abide by article 4 of convention 98. The government should stop wasting time bucketing the committee of experts and the ILO by advocating a program of retreating to ‘fortress Australia’. We live in an international community—these conventions are freely entered into and they are there to be abided by. The government had its opportunity and it lost. So now the government must redeem the position and make the amendments to the Workplace Relations Act that are necessary to be made. Mr Reith has responded to this, and I quote from the Financial Review of Friday 10 March:

But in a strongly worded statement, the Federal Workplace Relations Minister, Mr Peter Reith, attacked the committee’s opinion. ‘The Government did not feel that it had to draw the attention of the ILO to the actual obligations of Convention 98, but it now considers that it is necessary,’ Mr Reith said.

Mr Reith cannot stand losing, but he is now a born loser. He lost on waterfront—

Senator McGauran interjecting—

Senator HOGG—He wanted to bully, as you now, Senator McGauran. I am glad to see you back. We missed you. You made some absolutely nonsensical statements in this whole debate. If you had addressed the issue, we would have been right.

Debate interrupted.

DOCUMENTS

United Nations Convention to Combat Desertification

Debate resumed on motion by Senator Ludwig:

That the Senate take note of the document.
into this chamber on 30 June 1994. Australia signed the convention at the signing ceremony in Paris on 14 and 15 October 1994. On 30 June 1994, Senator Chapman gave notice of a motion to refer the issue of Australia signing the desertification convention to the Senate Standing Committee on Regional and Rural Affairs. This motion was debated in the Senate on 1 September 1994, and the coalition government established a committee of inquiry on the desertification convention’s call for public submissions. Senator Coulter gave notice of a motion to refer different aspects of the desertification convention to the Senate Committee on the Environment, Recreation and the Arts. This motion was debated and defeated in the Senate on 22 September 1984. We have it again. Despite earlier comments about other types of conventions, it has been an important convention, and it has re-emerged. The rationale of the convention is to encourage countries to develop strategies for dealing with and preventing desertification. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Productivity Commission: Gambling

Debate resumed on motion by Senator Sherry:

That the Senate take note of the document.

Senator HOGG (Queensland) (6.06 p.m.)—I must thank Senator Ludwig for keeping this on the Notice Paper in my absence last week. It is an issue that I have a great deal of interest in. At the outset, no-one enjoys having a bit of a punt at the TAB more than I do. But the problem outlined in this productivity report should be of grave concern to a lot of people throughout Australia, as Senator Sherry outlined when this report first came before the chamber.

The report of the Productivity Commission is quite voluminous and, in the short time that is available here, one cannot hope to canvass the whole issue. My real concern is for those people who suffer an addiction to gambling as a result of some uncontrollable urge and for the treatment that those people are receiving in the community. In many instances, the addiction causes a destruction in their family life and in their social life. In the case of individuals, it has an impact on their career, their livelihood and their role and participation in a society that invariably shuns these people because of the addiction that they have. Our society can treat these people quite dispassionately by saying, ‘It’s their problem and they have to be able to overcome the problem.’ Whilst that might sound nice in theory, unfortunately, the practical realities are that that is not what happens.

Whilst most industries in Australia over the last quarter of a century have had moderate to good improvements in their returns, the gambling industry has gone ahead in leaps and bounds. This is seen quite dramatically in this report. It is interesting to look at the forms of gambling that are available which are listed on pages 2.6 and 2.7 of the report. There is a vast range of gambling alternatives now available to Australians. With this temptation being put in the way of many people, it must nonetheless suck some of these people into the habit and ultimately ruin their lives.

If we look at the problem outlined on page 6.47, we see that in percentage terms it is not a large number of people. About 0.12 of one per cent of the population have what could be described as a serious gambling problem. But even with only that small percentage of the population having a gambling problem, there is still a major concern as to what steps are being taken to try to assist those people and to identify those people and their problem before the problem happens. That might sound a bit idealistic. Nonetheless, as far as I can find out, no real research seems to have been done to see if the problem that these people are heading into can be identified and the crisis can be avoided in some ways. There is tragedy associated with this problem. We hear stories of children being left in cars while parents go off and gamble in casinos or at clubs. There are even tragic cases where children have died or been severely injured as a result of being left alone.

This report is not only of great length but also of great importance. There are consequences from gambling that everyone regrets: domestic violence, suicides, theft, and so it goes on and on. We can but be aware of the
volume of the report and hope that it has
some impact in the broader community and
draw people’s attention to the fact that there
are many people who are suffering as a result
of an addiction to gambling. There should be
an answer to their problem. I cannot at this
stage envisage what that would be. I seek
leave to continue my remarks later.

Australian Law Reform Commission

Debate resumed from 9 March, on motion by
Senator Ludwig:

That the Senate take note of the document.

Senator LUDWIG (Queensland) (6.11
p.m.)—This is a matter that I have referred to
earlier. I wish to seek more time to speak on
the report of the Productivity Commission
entitled Managing Justice: Review of the
Federal Civil Justice System. The last time I
was in the chamber on this matter, I spoke
about the conference in May. This time I
would like to draw the Senate’s attention to
the notable work that was undertaken
throughout the report by Professor David
Weisbrot and Dr Kathryn Cronin—the Presi-
dent and Deputy President of the Australian
Law Reform Commission at the time. They
provided, in short, an extremely comprehen-
sive report on the terms of reference.

The review started some time ago with the
then Attorney-General of Australia,
Mr Michael Lavarch, providing the terms of
reference which are worth reiterating this
evening:

the need for a simpler, cheaper and more acces-
sible legal system;

the Justice Statement; and

recent and proposed reforms to courts and tribu-

nals.

They are three very lofty goals. There is no
doubt in the wider community that there is a
requirement for a simpler, cheaper and more
accessible legal system. Anything that con-
tributes to that debate to raise the profile of
access to a simpler, cheaper and more acces-
sible legal system is a worthwhile cause.

Looking at the reforms to courts and tribunals
to ensure that they meet community needs
and expectations is another matter that I ap-
plaud. The matter then went for review be-
fore Mr Daryl Williams, the present Attor-
ney-General of Australia, and, to his credit,
the terms of reference remained largely un-
 altered.

The issue that I particularly wanted to
mention this evening in the short time avail-
able is not only the legal costs themselves but
also the legal assistance that is provided. Le-
gal costs are dealt with in chapter 4 of report
No. 89. Paragraph 4.1 provides:

The Commission’s terms of reference direct that it
give particular attention to the causes of excessive
costs in legal services and to the need for a sim-
pler, cheaper and more accessible legal system.

I guess it is a little bit disappointing when
you then have to start off with a phrase that
really complains about the cost of the legal
system today. It is compounded when we add
4.4, where they have found it necessary to
talk about the goods and services tax. As we
know, when that is introduced it will impact
adversely in respect of access to justice. It
will increase costs—and it will do so signifi-
cantly. The impact of the goods and services
tax at 4.4 says:

The impact of the Goods and Services Tax (GST)
also should be considered in relation to the cost of
legal services. The Law Council has estimated
that costs for legal services will increase by
around 8%. There will be a small offset from in-
put tax credits, but most of the full effect of the
tax will be passed on to clients as increased fees.

There is concern there not only that you are
going to get an eight per cent rise but that it is
almost the full 10 per cent. There is very little
scope for argument about that, given that the
report details the sort of rise that will occur—
and against whom will it impact? We find
that answer partly in 4.9 of the report. In the
Family Court, there are a range of fees that
are likely to be charged. What are provided
as a backdrop to the report are the fees and
charges that currently exist. In the Federal
Court, on the commission’s cost data and
utilising a prototype case as a model, some-
ingthing in the order of $10,014 was added to
the costs for each party involved. If in the
end discovery was reached, $85,629 was
added to the cost. Each expert added another
$28,817, and each court appearance added
$2,761. Mr Acting Deputy President, I seek
leave to continue my remarks later.

Leave granted; debate adjourned.
Thursday, 16 March 2000

United Nations: Conventions and Protocols on Torture, Racial Discrimination, Civil and Political Rights

Debate resumed from 15 March, on motion by Senator Cooney.

That the Senate take note of the document.

Senator BARTLETT (Queensland) (6.17 p.m.)—As I have one minute only in which to speak, I will seek leave to continue my remarks at the end of my speech. There are a number of documents here that relate to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which Australia is a signatory. Article 3 of that convention obliges Australia not to return a person to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture—a fairly reasonable obligation for Australia to sign up to, one would think. Yet one needs to look at the operation of such conventions in practice, which is why it is important that documents such as these are tabled.

A report on Four Corners earlier this week highlighted allegations of mistreatment of people in detention centres, which is obviously a very important matter. But I think even more crucial than that is the whole operation of our determination process of whether or not Australia is returning people when there are reasonable grounds for suspecting that they will face persecution. (Time expired)

Senator BARTLETT (Queensland) (6.18 p.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration


Wheat Export Authority—Report for the period 1 July to 30 September 1999. Motion of Senator Forshaw to take note of the document agreed to.

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Order! The time for general business has expired.

COMMITTEES

Legal and Constitutional References Committee

Report

Debate resumed from 13 March, on motion by Senator McKiernan.

That the Senate take not of the report.

Senator LUDWIG (Queensland) (6.19 p.m.)—I participated in the inquiry into this matter. I have already dealt substantially with a lot of the issues that arose in the inquiry—the debate on the second reading amendment took place earlier this week. This evening I want to refer in particular to a number of matters that have arisen and that are worthy of report to the Senate. In respect of Mr Howard’s view, I take the Senate to the Australian of Thursday, 16 March 2000, wherein it is stated:

John Howard has promised new measures to combat the impact of mandatory sentencing on young Aborigines after quashing a backbench rebellion aimed at overturning the Northern Territory laws.

The Prime Minister told the Coalition party room yesterday that he would appoint a three-person backbench committee to advise cabinet on measures such as diversionary programs and interpreters.

It is interesting to note that the report itself, at attachment A—‘Government Senators Report’—provides a range of Commonwealth government programs. It talks about the National Suicide Prevention Strategy, which states:

The Commonwealth’s ongoing commitment to suicide prevention is demonstrated by the Government’s allocation of $39.2 million in the 1999-2000 Federal Budget...

It also refers to a range of other programs, such as the Young Offenders Pilot Program, or YOPP, and states:

The Commonwealth Government has contributed funding to preventative programs for juvenile offenders including the Young Offenders Pilot Program (YOPP) in the Northern Territory and Western Australia.
Without going into detail, I want to cover the range of programs that are provided, which are set out in appendix A. In addition, it provides the Job Placement, Education and Training Program, or JPET, which is a Commonwealth government program. It also talks in attachment A of ‘Pathways to Prevention: Developmental and Early Intervention Approaches to Crime in Australia.’ It then goes on to highlight the national crime prevention strategies for young people and talks about recent achievements.

The word belongs to the young people. In an article in the Adelaide Advertiser on 16 March 2000, Laura Kendall states:

More than 500 delegates to an international youth conference in Adelaide—including a senior United Nation official—have labelled mandatory sentencing laws unnecessary and harsh.

In an open letter to Prime Minister John Howard, delegates from 28 countries at the First International Youth Service Models Conference condemned the laws as “counterproductive to the interests of young people and the community”.

I understand that that open letter will be forwarded to all politicians. I look forward to receiving that letter and being in a position to be able to respond positively to it. I would prefer to have the government respond significantly positively to the recommendations provided in the report of the inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999. We have been told in media reports that that is not going to happen.

Support for the position that has been adopted in this report can also be found in the 17th report of the Joint Standing Committee on Treaties into the United Nations Convention on the Rights of the Child of August 1998. The Joint Standing Committee on Treaties was highly critical of mandatory detention. At page 346 of its report, it states:

Mandatory sentencing does not take into account the child’s age, the facts of the current offence, the individual circumstances of the person, consideration of an appropriate period of time or the application of judicial discretion. Mandatory detention restricts the court’s capacity to ensure that the punishment is proportional to the seriousness of the offence and in relation to the rehabilitative options. These minimum sentences are in contravention of Article 37(b) of the Convention which requires that deprivation of liberty not be arbitrary and is a measure of last resort.

In addition, there is the report of a National Inquiry into Children and the Legal Process. The human rights violations inherent in mandatory detention laws were highlighted in Seen and heard, a report produced in 1997. The report of the National Inquiry into Children and the Legal Process, undertaken jointly by the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission, had this to say:

The Northern Territory and Western Australian laws breach a number of international human standards and common law principles. They violate the principles of proportionality which requires the facts of the offence and the circumstances of the offender to be taken into account, in accordance with article 40 of CROC. They also breach the requirement that in the case of children detention should be a last resort and for the shortest appropriate period, as required by article 37 of CROC. Mandatory detention violates a number of principles in the ICCPR including the prohibition on arbitrary detention in article 9. Both CROC and ICCPR require that sentences should be reviewable by a higher or appellate court. By definition, mandatory sentencing cannot be reviewed.

The United Nations Committee on the Rights of the Child has also provided an additional comment in respect of this issue. The mandatory detention laws have also been the subject of international criticism. In 1997, the United Nations Committee on the Rights of the Child stated in relation to Australia:

The situation in relation to juvenile justice and the treatment of children deprived of their liberty is of concern to the Committee ... The Committee is particularly concerned by the enactment of new legislation in two States, where a high proportion of Aboriginal people live, which provides for mandatory detention and punitive measures of juveniles, thus resulting in a high representation of Aboriginal juveniles in detention.

Where we end up is that mandatory sentencing is not a matter that provides for the care, the interest and the wellbeing of the children that we are talking about. It highlights the inequities and the disproportional effects of the legislation, especially when you view the types of crimes that are allowed to be punished under that law as against white-collar crimes or crimes of other types.
In conclusion, it seems that the matters that I have spoken about tonight will be left in the first report which I have been involved with in this Senate. I find it disappointing. The recommendations are well supported by the evidence contained within the report. It is disappointing that the House of Representatives was unable to hear the views of its members and the matter seems to have ended quite prematurely. In my view, it is not a matter that should be truncated. The debate should not end. The debate in respect of this issue should continue. It is an issue that is not going to go away. It is an issue that should be pursued by those people who have an interest in it and those people, such as us, who have a view about the law.

Question resolved in the affirmative.

Socioeconomic Consequences of the National Competition Policy Committee Report

Debate resumed from 9 March, on motion by Senator Quirke:

That the Senate take note of the report.

Senator LUDWIG (Queensland) (6.31 p.m.)—When the interim report—Competition policy: Friend or foe: Economic surplus, social deficit?—of the Senate Select Committee on the Socioeconomic Consequences of the National Competition Policy was released in August 1999, it was a matter that I also had an opportunity to speak to. The interim report provided a signpost for the direction in which they were heading. Some may say that both the competition policy: Friend or foe interim report and their final report, Riding the waves of change, are a very dry read after the earlier mention of arid, dry lands and the UN desertification treaty. However, the national competition policy deserves far more serious attention, although I am not saying that the UN desertification is not a serious issue.

The executive summary and recommendations state, ‘The overwhelming response to the national competition policy is paradoxical.’ I end the quote there because it is paradoxical. Having visited places like Surat, Roma, Toowoomba, St George, Charleville and other parts of western Queensland where these towns are located, and having worked in a union which covered shearsers and many other workers in the north and in regional parts of Australia, I found that the whole process of national competition policy, from whence it started to now, has provided many a paradoxical outcome. As the executive summary says:

... on the one hand, many, but not all, accept the theory that NCP is being beneficial to the community overall, but reject individual changes where the initial costs in terms of employment or social infrastructure are severe.

Perhaps one of the paradoxical matters that does arise under the report is the social consequences of change resulting from national competition policy. Change in Australia and elsewhere, we are told, is rapidly increasing in pace, and being on the merry-go-round is not a choice any more. It is a matter that we have to deal with and grapple with, and the Senate committee during its inquiry and subsequent writing of Riding the waves of change found, I think, the paradoxes that exist but dealt well with riding that merry-go-round. The Senate committee found several major concerns that I wish to go to this evening. First and foremost, the committee report states:

... the inconsistent application and interpretation of the public interest test with its domination by economic assessment ahead of the harder-to-measure intangible attributes in the social and environmental areas—

What of course the committee is referring to is that, if you are introducing national competition policy—and perhaps I can deal with it in short—you have to go through a public interest test to ensure that national competition policy is a matter that should be dealt with.

The committee found, in general terms, that there was much confusion and misunderstanding over what constitutes public interest. In previous work that I undertook for the union, similarly we came across problems of how the public interest test was going to be utilised and the use of the public interest test for other purposes rather than the introduction of national competition policy.

We also found that public awareness and the level of education about national competition policy out there in rural and regional
Australia are not as wide as you would expect them to be. In fact, even within the regional areas and the urban areas, we found that the information dissemination process of the national competition policy was not as good as otherwise it could have been amongst councils. It is not a matter of apportioning blame or saying that this is a matter that a simple leaflet will fix. National competition policy is a matter that requires a whole of government approach. It requires participation from the community, the government, welfare groups, other community groups and local councils to ensure that national competition policy and the educational awareness of the principles behind it are put out into the wider community, rather than kept in filing cabinets and the like.

Dealing with a couple of issues that are at the heart of some of the areas that I have dealt with in the bush, we then look at employment. The report talks about the impact on employment and working conditions in regional Australia, particularly at 5.15, where it states:

Social commentators have noted that the changes are contributing to higher levels of insecurity in the community.

Structural change has also left a growing group of so-called ‘battlers’ in comparatively low-paid jobs, poorly organised and reliant on a relatively stagnant minimum award wage structure.

Section 5.16 of the report states:

There is evidence to suggest that the significant losers with respect to NCP implementation and other microeconomic reform measures are employees. The following issues have been raised:

- high levels of retrenchment resulting in significant short and medium term unemployment;
- changes in working conditions, particularly affecting women and non-English speaking peoples;
- movement from full time to part-time, temporary and contract work;

That third point is a very important area—a precarious employment situation. The issues that are being thrown up as part of the national competition policy and the report highlight some of the work the committee did in teasing out the nub of the issues that exist and being able to articulate it in a way that I not only hope but sincerely believe this government should address in a positive way. To that end, recommendation 12 in this particular section states:

That reviews and public interest tests must include Employment and Community Impact Statements.

And recommendation 13 states:

That reviews of legislation to consider and report on transitional arrangements, including compensation or retraining. The costs of such and how these arrangements will be implemented should also be outlined and be transparent.

It is important that, if we are going to take the benefit of national competition policy, we do take a more inclusive approach, that we do ensure that, if there are areas which need addressing, they are not simply left unaddressed, that in the areas of unemployment—should they be structural or fractured as a consequence of the introduction of national competition policy—we can ensure that the public interest test itself highlights the importance of including employment and community impact statements and that we can ensure that those sensitive issues are taken into consideration and dealt with. In addition, recommendation 19 provides a broader view about the role of local government in national competition policy and states:

That the Federal Government in consultation with local government and industry and community bodies and NCC, create a ‘one-stop-shop’ advisory service —

And these go back to the earlier comments I made with respect to ensuring the community is aware of national competition policy and its effects and can deal with the public interest test to ensure that it contains employment sensitive checks and balances and to ensure that local government provides with the community bodies a one-stop shop advisory service to ensure that the awareness level is raised. (Time expired)

Senator O’BRIEN (Tasmania) (6.41 p.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

Privileges—Standing Committee—86th report—Alleged threats to a witness before the Select Committee on a New Tax System. Motion of the chair of the committee (Senator Ray)—That the Senate endorse the finding at paragraph 12 of
the 86th report of the Committee of Privileges—agreed to.

Rural and Regional Affairs and Transport Legislation Committee—Report—Class G airspace demonstration. Motion of Senator Calvert—that the report be adopted—agreed to.


Rural and Regional Affairs and Transport Legislation Committee—Report—The Northern Prawn Fishery Amendment Management Plan 1999. Motion of the chair of the committee (Senator Crane) to take note of report called on. On the motion of Senator O’Brien the debate was adjourned till the next day of sitting.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Fuel Substitution: Investigation

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (3.55 p.m.)—On behalf of the Minister for Justice and Customs, Senator Vanstone, I seek leave to incorporate further information in relation to two questions without notice asked on 6 and 7 March this year.

Leave granted.

The answers read as follows—MINISTER FOR JUSTICE AND CUSTOMS QUESTION WITHOUT NOTICE

On 7 March 2000, Senator Ludwig asked me as the Minister for Justice and Customs a number of questions without notice concerning fuel substitution. In my reply, I undertook to seek further information in relation to this matter.

In response to Senator Ludwig’s questions I provide the following material.

The $35M under investigation as of June 1998 consisted of the 11 cases. Of these nine were terminated because of insufficient evidence. One prosecution brief has been completed and one is nearing completion.

Excise responsibilities passed to the Treasury portfolio in October 1998 under the Administrative Arrangements Orders. Prosecutions and investigations under way in Customs were properly handed over to the Australian Taxation Office.

For further information in relation to excise duty, I refer you to the Assistant Treasurer, who is responsible for this area.

MINISTER FOR JUSTICE AND CUSTOMS QUESTION WITHOUT NOTICE

On 6 March 2000, Senator Schacht asked me as the Minister for Justice and Customs a number of questions without notice concerning fuel substitution. In my reply, I undertook to seek further information in relation to this matter.

In response to Senator Schacht’s questions I provide the following material.

The 1998/99 Customs Annual Report states 551 tests were carried out on distributors, service stations and transport operators during 1998/99. The Customs Service detected 52 cases of fuel substitution during the 1998/99 annual report period.

Three prosecutions for excise avoidance under the Fuel (Penalty Surcharges) Amendment Act were prepared.

In early 1998 the Customs Service set up inspection units to test for the presence of the marker in fuel in all States except Tasmania, which was covered by the investigation team in Victoria, to detect cases of fuel substitution.

The Customs Service leased seven trucks through DASFLEET for a period of three years. The cost of the lease was $7,445 per month ($89,340 per annum). The one-off fit-out cost for the equipment was $134,812.

Excise responsibilities passed to the Treasury portfolio in October 1998 under the Administrative Arrangements Orders.

The current availability of these trucks is a matter which is relevant to the operation of the Australian Taxation office which is within the responsibility of the Assistant Treasurer.

For further information in relation to excise duty, I refer you to the Assistant Treasurer, who is responsible for this area.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 1999

Financial Sector Reform (Amendments and Transitional Provisions) Bill (No. 2) 1999
The ACTING DEPUTY PRESIDENT
(Senator Chapman)—Order! There being no further consideration of committee reports, I propose the question:

That the Senate do now adjourn.

Beetham, Mr Richard

Senator WATSON (Tasmania) (6.42 p.m.)—I rise tonight to pay tribute to the life and achievements of the late Mr Richard Beetham, the founding Commissioner of the former Insurance and Superannuation Commission, now the Australian Prudential Regulation Authority. Richard Beetham died on Remembrance Day 1999, on 11 November, aged 63. After a five-year appointment with the Insurance and Superannuation Commission, Richard did not seek a further term as commissioner and retired in October 1992 for personal reasons. His retirement came as a surprise to me and also to many in the superannuation and insurance industry.

Richard Beetham was born in Lancaster, England, in 1936. He studied at St Mary’s College in Blackburn and graduated with the degree Bachelor of Economic Science with honours at the University of Hull in the United Kingdom. He settled in Australia in 1962 and studied the degree Master of Economics at the University of Adelaide. That same year, he won the Reserve Bank of Australia scholarship through the University of Adelaide, researching and preparing a thesis on the ‘Development of non-bank financial institutions in Australia and implications for monetary theory and policy’.

From 1964 to 1968, he worked with the Reserve Bank as an economist preparing financial analysis and forecasting with advice on macroeconomic and banking policy matters. Richard was then lured to the federal Treasury in 1968 and held the very responsible position of Senior Executive Research Officer of the Commonwealth-State Financial Relations Section. In 1969, he moved to be head of the monetary division section of Treasury and, from 1972 to 1976, he was assistant secretary of the Treasury’s banking and insurance branch.

Washington DC was Richard’s next appointment, where he held the position of economic minister at the Australian embassy. He also held the position of financial affairs minister in absentia to the Australian High Commission in Ottawa. Here Richard monitored economic and financial developments in the United States and Canada and represented Australia at the United Nations. In 1979, he accepted the position of First Assistant Secretary of the Financial Institutions Division of federal Treasury, where he gave policy advice and undertook administration relating to most aspects of the structure and operations of the Australian financial system.

From 1987 to 1992, Richard Beetham was Commissioner of the Australian Insurance and Superannuation Commission. This is where I had extensive contact with him. He was responsible for the establishment and development of the ISC, which supervised life insurance, superannuation and general insurance industries. In addition, Richard provided policy advice on all matters relating to these industries and related industries. While at the ISC, he gathered around him a very enthusiastic and dedicated team of professionals. While there, this team, under Richard, developed an insurance regulatory system which was world renowned. That applause continues today. In fact it was only today at lunch that we hosted a delegation from the United Kingdom, a committee that was sent here specifically to look at retirement income issues.

Following Richard’s term with the ISC ending in 1992, he established his own firm, Richard M. Beetham Consulting, and became a consultant to Access Economics Pty Ltd. He also became Chairman of MLC Lifetime Ltd, MLC Management Ltd and Plum Financial Services Nominees, continuing his work and interest in economics, funds management and life insurance, and a director of MLC Nominees. All these firms that he worked with progressed under his leadership and direction. He was also a director of LawCover Ltd and LawCover Plus Ltd, companies providing professional indemnity cover to many Australian lawyers. The industry association representing all general insurers in Australia, the Insurance Council of Australia, also had
the benefit of Richard’s expertise and extensive experience, being their senior adviser, raising the industry’s profile with regulators and legislators.

Other major positions held by Richard Beetham included being a member of the review group headed by Mr Vic Martin, known as the Martin Group, which reported on the Australian financial system in 1983; a director of the board of the Primary Industry Bank of Australia from 1981 to 1986; and a member of the Australian Payments Systems Council from 1984 to 1987. He was in receipt of a Senior Executive Fellowship in the overseas study of financial systems in North America, Europe and Asia in 1984; Chairman of the Commonwealth Committee on Retirement Incomes in 1983 and 1984; Chairman of the Commonwealth Task Force on Occupational Superannuation from 1979 to 1983; and a member and Chairman of the federal Treasurer’s Industry Consultative Committee on Life Insurance, General Insurance and Superannuation spanning 1975 through to 1992.

So it can be appreciated from the very extensive lists of achievements of Richard Beetham that Australia has indeed lost a very intelligent and well-respected man, dedicated to the fields of economics, insurance and superannuation. Richard was greatly admired by all those who came into contact with him. He was a man of hard work. He was a genuine man. To quote an extract from the Australian Financial Review, ‘Richard Beetham was popular with bankers and insurance types because, in ACT terms, he was a relatively easygoing chap who liked a drink and a smoke and had a better than average feel for the private sector.’ Indeed he had.

I take this opportunity afforded by this adjournment debate tonight in the Senate to say farewell. I salute Richard Beetham, and at the same time I offer my deepest sympathy to his wife, Robyn, who has distinguished herself in another area of service, and to his daughters, Debra and Sally-Ann. I thank the Senate.

Concerned Families of Truckies Association

Senator HUTCHINS (New South Wales) (6.49 p.m.)—I rise to bring to the attention of the Senate tonight action taken recently by retailing giant Woolworths in banning a Central Coast grandmother from their stores. On Sunday, 5 March, the Concerned Families of Truckies Association held a cake stall outside the Woolworths store at St Clair shopping centre in western Sydney.

The association was formed by a small group of truck driver wives and relatives in September 1999. It was launched by my colleague and then shadow transport minister, Cheryl Kernot, and has since grown to over 200 members. The association was established because they were tired of watching drivers and their families be destroyed by the strains of working in the long distance trucking industry. They declared that they had had enough of the excessive hours behind the wheel, the drugs and the enormous pressures that are continuing to kill drivers and rip families apart.

Driver relatives are probably unique in that no other work force can compete with truck drivers in terms of fatalities. Last year in New South Wales 351 people were killed in work related accidents. Of those, an incredible 171 were killed in work related accidents involving trucks. Around 40 members of the Concerned Families of Truckies Association, along with their families, including children, held the cake stall at St Clair to raise money for Woolworths, a company that had a gross turnover of $13.6 billion last year. Their intention was to donate the money raised to Woolworths to assist the company in paying subcontractor drivers for taking their required rest breaks. Management obviously resented this attention the cake stall brought to them and have subsequently banned the Chairperson of the Concerned Families of Truckies Association, Mrs Judy Penton, a grandmother in her fifties, from shopping in any of their stores in New South Wales.

Woolworths use a complex maze of subcontracted drivers and companies to move their stock. A high proportion of drivers working on those subcontracts are underpaid and driving illegal hours. It is the only way
they can win and maintain the contracts that Woolworths issue. The response from Woolworths has been very predictable: ‘It’s not our problem.’ They claim it is not their fault that subcontractors break the law. It is the subcontractors’ decision. The reality is that if they do not do that they lose the contract.

Through the New South Wales branch of the Transport Workers Union I have been made aware of some alarming facts involving drivers working for one transport company in western Sydney. That company subcontracts to Woolies. Five drivers from that company approached the TWU claiming they were being underpaid. Initial investigations by the union have uncovered around $200,000 worth of back wages—and this is just for five drivers. One driver has admitted to working 100 hours a week, most of which was spent behind the wheel delivering goods for Woolworths. When the union approached the general manager of this company, their only defence was: ‘If we had to pay the right rates we could not possibly continue to carry out that contract for Woolies.’

This comes back to the issue of the transport chain of responsibility. This government is all for a hands-off approach that allows industry players to regulate themselves. Its excessive faith in permitting industry to run itself simply does not work. The deaths and destroyed families are testament to the failure of this approach in the road transport industry. In the long distance transport industry, a lack of regulation has allowed the clients of industry to drive the market. The obvious result has been the rampant undercutting of rates and safety in an attempt to win the contract. The clients are sitting pretty. They have all the benefits from lower transport costs without any of the responsibility. If, like the example I mentioned earlier, a subcontracting company turns around and tries to pay the right rates and ensures its drivers drive legal hours and speeds, it loses the contract.

While the rates remain as low as they currently are in the long distance transport industry, there will always be someone prepared to risk all to win the contract. This government is not only endorsing this practice by inaction, it is actually increasing the risk through the industrial relations system. This system is allowing individual agreements to be registered which are undercutting existing wages and conditions to drivers. One recently approved AWA involving employees working for one long distance transport company has enshrined average speeds of over 90 kilometres an hour. This is a dramatic increase on the existing award formula, which is based on 75 kilometres per hour. Put simply, it is not possible for a heavy vehicle to legally maintain an average speed of 90 kilometres an hour. So the law, by approving this Australian Workplace Agreement, is endangering public safety. The only way those drivers working under those agreements can earn a decent wage is to speed, rost their log books and spend excessive hours behind the wheel. By forcing drivers to work under these conditions in order to support their families, the federal government’s law is placing all road users at risk.

In this climate, Woolworths are playing the system to their utmost advantage. They are using the subcontracting system as an excuse to avoid any responsibility and pay minimum road transport rates. The Concerned Families of Australian Truckies Association and the TWU have asked Woolworths to discuss signing a protocol covering subcontractors, focusing on occupational health and safety. The company has refused even to take up the offer to talk about the matter. It claims, ‘The terms and conditions under which those people fall, fall outside the scope of our responsibility.’ This, as I said earlier, is a company that had a gross turnover last year of $13.6 billion.

Until all members of the transport industry, including Woolworths, are accountable for the demands they place on drivers, the highway carnage involving heavy vehicles will remain. I hope this statement tonight does not lead to me being banned at Woolies like Mrs Penton.

Nursing Homes: Young Disabled People

Senator ALLISON (Victoria) (6.55 p.m.)—A great deal has been said this week about the standard of care in nursing homes, although the focus has been on elderly residents. I rise again to speak tonight about the problems of young people with disabilities in nursing homes. According to Crisis Account,
launched by Advocacy Victoria late last year, 1,152 disabled Victorians are accommodated in nursing homes. Many of these are people with acquired brain injury.

As we know, nursing homes increasingly house very frail elderly people with severe physical or dementia related problems. The reality is that people live a relatively short time in nursing homes. Nursing homes have become places where people very often live out their last few months of life. Being surrounded by such frail and dying residents is not good for younger people who may be there for very long periods of time, hoping against the odds in most cases for more suitable accommodation.

The unsuitability of nursing homes for young disabled people is by no means a criticism of nursing home operators. Many recognise that problems exist and they are working with residents, advocates and carers to try to create more suitable accommodation models for young people with disabilities. But the reality is that staff employed by these centres are not necessarily trained for the challenging work of caring for, particularly, head injured people. Neither their training nor their resources extend to catering for the quite extensive emotional and physical needs of these younger people.

I would like to emphasise just how important this issue is by presenting this evening some case studies which highlight the needs of people placed inappropriately in nursing home care facilities. Colin McGill is currently teaching mathematics and chemistry at Mentone Grammar School. His story is very extraordinary and inspirational because he has twice had accidents that have caused brain injuries. He is confined to a wheelchair, has only two to three per cent eyesight, is partially paralysed in his right arm and his left hand has been amputated. He writes in the latest edition of *Headway News* that, while he is physically disabled, his cognitive skills are intact. He speaks of the frustration and anger of having to live with people suffering from dementia day in, day out.

Colin, who has now twice lived in nursing homes, points out the differences between the intellectual needs of people who function at high and low levels of cognitive functioning and why this should be acknowledged when housing people. Daily routines in nursing homes are geared to elderly people with very low levels of cognitive functioning. It does not matter how patient you are, you soon get sick of sing-a-longs based on the popular music of the 1920s and 1930s and playing bingo. Such programs are not suitable for people who often need greater stimulation in order to prepare them for living in a world outside the nursing home.

For a young person to be placed in this situation, it can lead to a loss of self-respect and sense of self to the degree that it causes enormous confusion. Placement back into the wider community is then much less likely to succeed. Colin suggests that, when people like him are accommodated in nursing homes, staff training should include much more imaginative approaches that include intellectual stimulation and contact with the wider community.

I have had many pleas for assistance from distressed family members and carers because of the lack of care options. The people who do not have funds to sue anyone or who are struggling without accident insurance payments will soon discover that nursing home care is the only accommodation option they have. They are distressed not only by the disability that changed the life of their family member forever but also by a very bleak future with little skilled support and stimulation. Young people with disabilities are frequently moved about. One woman tells of the effects on her family of the many relocations forced on her brother, a man with progressive brain damage and challenging behaviour. This man was shifted from Plenty to Larundel and back to Plenty, and is now at Mary Guthrie House, a purpose built centre for people with acquired brain injury. But that place was recently reclassified for so-called slow stream rehabilitation. Slow stream rehabilitation means that once the progress levels out, it is time to move on out. Because this man’s condition will not improve, his family knows he will be relocated soon. They were recently informed that they would have to find a nursing home that would be willing to permanently accommodate him. The man’s family insists that his personality deteriorates
when he is placed in nursing homes where staff without the specialised training offered at Mary Guthrie House cannot manage his difficult behaviour, and they are much more likely to overmedicate him in order to manage his behaviour.

Frail elderly people are often disturbed by the behaviour of those with acquired brain injury. The nursing home staff ratios are much smaller than they are for specialised accommodation homes. The young daughter of another brain injured man said that putting her father into a nursing home was like putting a pre-school kid into high school. She added that she was not trying to change the world or stop world hunger; all she wanted was to see her dad in nice, suitable surroundings where they were all comfortable spending time as a family.

Drug related acquired brain injury will place further demands on an already critical situation in this country. In August last year, the *Age* reported that heroin and other drug related brain damage is on the rise. Nearly 10,000 patients are treated in Victorian hospitals each year for overdoses, and many of these people end up with brain damage in their late teens and early thirties. The majority are men, destined to spend the rest of their lives in nursing homes unless we find better alternatives. This new ‘disease’ will further burden the nursing home system and place further pressure on governments to provide suitable accommodation options. It seems to me this accommodation issue is about dignity. It is about providing stimulating activity programs for people who are not sick or dying but who are injured. It is about providing friendly places where families can easily visit and relax. It is about providing social support and ensuring socialisation outside the institution. It is about providing people with acquired physical disabilities and brain injury with the care options most suitable to their needs. Senator Newman told me in November 1998:

The Commonwealth believes that nursing homes for aged people do not provide appropriate accommodation for younger people with disabilities including those with acquired brain injuries.

Senator Newman went on to say:

Commonwealth nursing home guidelines aim to ensure that younger people are only to be admitted to nursing homes as a last resort when no other more appropriate form of accommodation support is available.

This is in line with Department of Health and Aged Care guidelines for assessing accommodation options for young people with disabilities. The question remains: why are so many people still being placed inappropriately in nursing homes, and why has this issue not received the same attention as standards of care for the frail aged? While the states and territories and the Commonwealth government are at a stalemate over funding for the Commonwealth-state disability agreement and there is a concentration on accreditation, coalescence, standards and the use of kerosene in treating scabies, one in every 30 nursing home residents—that is, 40 times more people than were housed at the Riverside Nursing Home—is not being cared for adequately.

**Exceptional Circumstances Policy: Drought**

**Senator CALVERT (Tasmania)** (7.04 p.m.)—I wish to speak tonight about the exceptional circumstances policy relating to drought. I am prompted to do so by speeches made yesterday by Senator O’Brien and Senator Ferris. I know that Senator O’Brien is particularly concerned about the Central Highlands in Tasmania; Senator Ferris spoke mainly on how the exceptional circumstances policy is carried out. I found in my bookcase an old report that I was involved in back in 1992. I refer to the report that was made by the Standing Committee on Rural and Regional Affairs—a committee of which Senator Forshaw is now a member. That report was entitled *A National Drought Policy, Appropriate Government Responses to the Recommendations of the Drought Policy Review Task Force*. I looked through some of the places we visited in 1992, places like Walgett, Bourke, Cobar, Ravensthorpe and Esperance. They were all in severe drought at that time. Now, of course, half of them are underwater. Those are the vagaries of the climate we have in Australia.

Who would ever think you would suffer drought in Tasmania? I can assure you,
Madam President, that, as a farmer for 45 years in the south-east of Tasmania, I have certainly experienced one-off droughts, one-year droughts. In 1981-82 we had a terrific drought where we had 10 inches of rain one year and 11 inches the next. If you consider that that is about half of the expected rainfall, you can imagine the severity. I do know a bit about drought, I know the pressure it puts on people and I know a bit about government policy on drought. I looked through the conclusions and recommendations that our committee made and found them very interesting. One reads:

The Committee considers that the Commonwealth Government has a responsibility to provide additional assistance in severe drought, as it is in the national interest for the Commonwealth Government to protect and maintain Australia's agricultural base and productive capacity, particularly Australia's breeding herd and flock.

That is one recommendation. Another one was:

The committee notes that the Commonwealth and the States have agreed in principle that, in circumstances of severe and exceptional drought, the Commonwealth and each State will consider an appropriate response.

Another recommendation states:

The Committee reiterates its view that the arrangements relating to assistance in response to severe drought need to be consistent and clearly enunciated.

I believe this is where the problem has been arising. Over the last few years we have seen the situation where the Southern Highlands in Tasmania have been very severely affected. I have closely followed some of the applications for assistance under the policy of exceptional circumstances, and I find it rather unusual that an application from Flinders Island has been accepted and another more recent one in the same region has been rejected.

As I said, I am very concerned also that I have seen the rejection of a number of applications from the Southern Highlands region of Tasmania, because I believe that area has been particularly affected, not only by drought but by a once in a generation grasshopper plague, which is almost unheard of in Tasmania. I have seen the Southern Highlands area, and I must say the prolonged rainfall shortage is certainly having an effect there. The hills look more like ploughed paddocks—not what you expect to see in Tasmania where one’s images of green hills and rolling plains are the norm. In this case, they really are suffering. I am well aware of a lot of the farmers in this area. They are fourth and fifth generation farmers who are very good farmers. They are risk managers and would be well aware of preparing for drought and drought proofing their properties. Springs have dried up that have never been known to dry up before. They have done as much as they possibly could to carry on their farming operations. But no reasonable level of planning could have prepared them for what has happened. The last couple of years have been unbelievably bad. As I said, the lack of rain and the grasshopper plague over the last 12 months have left the region bare.

There is no doubt in my mind that the circumstances faced by these farmers and their families certainly amount to exceptional circumstances. But, for a number of reasons, all applications on behalf of the farmers in this region have failed to get up. Each time these applications have failed, it has devastated the affected farmers—and I know how dejected they feel about the time they put in putting together the information to justify their applications and the other countless hours they have spent around the clock trying to keep their farms from financial ruin. From my perspective, the crux of the matter is why their applications have failed when the circumstances they face are so clearly exceptional. One has to look at why that happens.

Under the current regime, to make a prima facie case for exceptional circumstances, the following criteria must be met: a prolonged downturn in income must occur that is ‘rare and severe’ compared to other downturns in the historical record; this downturn must be caused by a rare event beyond those that can be planned for and managed by producers under normal risk management; and producers’ financial circumstances must not be part of a structural adjustment or long-term downturn in commodity prices. Certainly, the grasshopper plague is something they would not be planning for and that would not hap-
pen under normal risk management, I can assure you.

The most recently rejected application by the Tasmanian Labor state government sought to address these criteria but it failed in a number of ways to satisfy those criteria. In particular, I am informed that there was a lack of information supporting the fact that the downturn was due to an exceptional event and not due to long-term commodity prices and that there was insufficient evidence demonstrating that the income downturn was beyond the normal management capacities of farmers drawing on existing assets. Further, I understand that the state Labor government applications also failed to include evidence supporting the exceptionality of the rainfall shortage and actually suggested that the downturn was in part due to ‘an exceptional deviation of farm incomes in relation to wool prices’, which is a statement directly counter to the criteria. So I think that if the state Labor government had done its homework the farmers in the Southern Highlands would have had a far better prospect of currently enjoying exceptional circumstances assistance.

I also think it is profoundly unfair that farmers who are clearly facing exceptional circumstances do not currently enjoy assistance because of the incompetence of the Tasmanian state Labor government. As such, the exceptional circumstances policy itself and the manner in which its terms are applied must also wear part of the blame for the failure of worthy applications not only in Tasmania but right across the country—and Senator Ferris pointed that out last night. In this respect, as I said, I support the call from my honourable colleague from South Australia for a rethink of the policy and how it is applied to the applications.

In particular, I believe that a greater level of responsibility should be given to the state governments to actually deliver assistance to the affected farmers. Basically, that is what we said in our drought policy report back in 1992. It is all too easy at present for a state government to put together a shoddy application which has no hope of getting up as a result—and then of course they turn around and blame the federal government when it fails. The exceptional circumstances provisions should not be used as a political football. The states make a small and diminishing contribution to the costs of exceptional circumstances support; the Commonwealth pays all welfare costs and up to 90 per cent of the interest rate subsidy. The readiness of some state governments like Tasmania’s Labor government to produce poor quality applications only creates unrealistic expectations amongst vulnerable farmers. What I have seen of the applications that have been sent to Canberra and the advice I have had back from the bureaucrats just supports that. (Time expired)

**Superannuation: Wide Bay Bricks**

Senator **LUDWIG** (Queensland) (7.14 p.m.)—I rise on a matter that has occurred in Queensland in the Wide Bay area. Wide Bay Bricks, a local industry in Bundaberg, went into receivership in early September 1999. The receivers discovered that the company had not made compulsory superannuation contributions for—as I am informed—two years. The amount unpaid to a relevant fund, or in default to the Australian Taxation Office, on behalf of employees is alleged to be in the order of $200,000 or more. And some reports in the newspaper put the amount at $450,000. I am referring to an article in the Bundaberg local newspaper on 4 February wherein that was provided.

The Australian Workers Union organiser in Bundaberg, Mr Damien Green, organised the workers to lodge complaints with the Australian Taxation Office to seek recovery of the amounts alleged due. There is, as I understand it, no provision for the union to pursue either the company or the directors for the full amount of unpaid superannuation contributions. I am informed that the company is still trading, although they are hopeful that the company will be able to be sold and the employees will continue to have a job. The receiver has the unenviable task of managing the business in the interim. The receiver, to his credit, has reinstated the superannuation payments on behalf of current employees but, of course, is not responsible for past unpaid superannuation contributions.

On about 23 September last year the union, on behalf of members employed at Wide
Bay Bricks, wrote to the Australian Taxation Office to seek assistance to recover the un-
paid compulsory superannuation contribu-
tions. The Australian tax office responded on
9 February 2000 explaining the process and
why it may take some time for the ATO to
act. It is worth going in part to that letter
from the Australian Taxation Office, which
was provided to me. It was written from
Moonee Ponds. Moonee Ponds is not in
Queensland. In fact, it is in Victoria. The let-
ter states:

In some cases, resolving a claim is a lengthy proc-
cess as it may involve; undertaking audit activities
either field or desk audit, calculating an em-
ployee’s superannuation entitlement and raising
an assessment against an employer where there
has not been sufficient contributions made to a
superannuation fund; and/or undertaking legal
action to recover amounts outstanding.

I have some previous experience in respect of
this type of work. I have been employed in
the past for some 10 years as an industrial
inspector, where one of my unenviable tasks
was to in fact find employers who had under-
paid and either seek them to refund the
amounts underpaid after doing assessments
or take them to court to recover the amounts
underpaid. During the course of that type of
work you would expect the employee to de-
mand a service from the government, and
they mostly got one, usually within about a
month, and that was on the longer side. You
would be able to recover amounts or have the
employer settle them, or at least start to
gather evidence for a court case if that was
needed. Of course, the longer you left these
things in abeyance, the more likely it was that
a company may go into receivership and then
be wound up or that businesses would have
no moneys to be able to refund the underpaid
wages or superannuation.

However, in this instance to date, as I am
informed, the ATO has not acted. There is an
urgency, though, and the urgency is for the
ATO, the Australian tax office, to act with
some expediency in order to protect the em-
ployee entitlements. It does not quite say in
the letter how it is going to act with some
expediency from Moonee Ponds, but let us
hope that they have got that sorted out. But I
remain to be encouraged about that. Should
the company that I have been referring to be
sold or closed the possibility of recovering
any moneys in respect of contributions for
superannuation may be more difficult, espe-
cially if the brickworks is sold and the new
owners go on and get about their business.
The hope of workers getting any money may
disappear. The Australian tax office’s ability
to respond in a timely fashion to these mat-
ters seems lacking. Their ability to properly
investigate, report and recover—or, if neces-
sary, prosecute—also seems lacking.

Questions remain on a wider level. What is
the number of outstanding investigations by
the Australian tax office in respect of non-
payment of superannuation, and why is the
Australian tax office not acting quickly and
effectively in dealing with these matters? It
raises a concern with me that employers who
fall on difficult times—through no fault of
their own in some respects and some circum-
stances, and sometimes through their own
fault—may not pay superannuation first. It
may be one of the first things that falls off the
edge. Some businesses may even believe that
the Australian Taxation Office will not pur-
sue them and thus they may allow that one to
be the first and avoid that debt because they
have a reasonable expectation that they will
not be pursued about it.

However, back to this issue: further, the
company may go into liquidation or be
stripped of assets before the ATO can recover
the unpaid contributions on behalf of em-
ployees. As I said earlier, one of the jobs as
an industrial inspector was in fact to look at
those sorts of circumstances and, where com-
panies or businesses looked like going into
receivership, being wound up or filing for
bankruptcy, you usually put them on the ur-
gent list and inspected them within a very
short space of time in order to protect em-
ployee entitlements. The current proposals
for protection of employee entitlements does
not include, as I understand it, the nonpay-
ment of compulsory superannuation under
the scheme. It is obviously considered to be a
tax office issue. However, it appears the tax
office is not acting proactively to secure these
amounts on behalf of employees. My view is
premised, of course, on the fact that—espe-
cially in respect of this matter—the location
of the ATO service to recover these moneys
is in Moonee Ponds. Does it stretch to Queensland? Maybe it has the ability to do a desk audit from there. I do not know.

In addition, of course, the reasons the employee entitlement scheme may not include it is that the debts might be secured under the Corporations Law in respect of priority payments, where the employees can access priority under that act. However, it still leaves, in part, room for initiatives. It leaves room for the ATO to improve its response. It leaves room for other initiatives, such as raising the priority for employees so that they can secure under Corporations Law the unpaid superannuation entitlements or giving power to industry organisations to recover nonpayment of superannuation contributions. But, of course, the wider issue about what the ATO is doing in Moonee Ponds in Victoria remains.

**Senate adjourned at 7.23 p.m.**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

- Cocos (Keeling) Islands Act—List of applied Western Australian Acts for the period 25 September 1999 to 10 March 2000.
- Customs Act—
- CEO Instruments of Approval Nos 2 and 3 of 2000.

**Indexed Lists of Files**

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended 3 December 1998:

- Indexed lists of departmental and agency files for the period 1 July to 31 December 1999—Statements of compliance—
  - Department of Communications, Information Technology and the Arts.
  - Department of Defence.
  - Department of Education, Training and Youth Affairs.
  - Family and Community Services portfolio.
  - Office of the Commonwealth Ombudsman.
- Nuclear Non-Proliferation (Safeguards) Act—Regulations—Statutory Rules 2000 No. 22.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Minister for Immigration and Multilateral Affairs: Departmental Liaison Officers
(Question No. 1309)

Senator Robert Ray asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 23 August 1999:

(1) How many departmental liaison officers are employed in, or were seconded to, the Minister’s office as at 23 August 1999.

(2) (a) What are the names of the officers; (b) what are their employment classifications; and (c) what duties are they assigned, that is, to which policy areas or agencies are they allocated responsibility.

(3) What was the total cost to the department of these officers.

Senator Vanstone—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator’s question:

(1) Two provided by the Department of Immigration and Multicultural Affairs and one provided by the Department of Prime Minister and Cabinet to support Mr Ruddock in his role as Minister assisting the Prime Minister for Reconciliation.

(2) (a) Tony Le Nevez, Peter Thomson and Alistair Sherwin.

(b) Mr Le Nevez and Mr Thomson; Executive Level 1 and Mr Sherwin Executive Level 2.

(c) Mr Le Nevez and Mr Thomson are employed on DIMA portfolio duties and Mr Sherwin is responsible for liaising on reconciliation.

(3) The cost to the Department of Immigration and Multicultural Affairs for Mr Le Nevez and Mr Thomson is $138,828 for the period 21 October 1998 to 23 August 1999 inclusive. The cost to the Department of Prime Minister and Cabinet, since Mr Sherwin’s commencement on 24 May 1999 until 23 August 1999, was $20,763.

Minister for Immigration and Multicultural Affairs: Departmental Liaison Officers
(Question No. 1333)

Senator Robert Ray asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 23 August 1999:

(1) How many departmental liaison officers are employed in, or were seconded to, the office of the Minister’s Parliamentary Secretary as at 23 August 1999.

(2) (a) What are the names of the officers; (b) what are their employment classifications; and (c) what duties are they assigned, that is, to which policy areas or agencies are they allocated responsibility.

(3) What was the total cost to the department of these officers.

Senator Vanstone—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator’s question:

(1) One.

(2) (a) Bill Muirhead.

(b) He is employed at the APS Executive Level 1.

(c) He is employed on DIMA portfolio duties which include checking responses prepared by DIMA for the Parliamentary Secretary’s signature, checking briefs and submissions and answering portfolio related telephone enquiries.

(3) The cost to the department of this officer in terms of salary, superannuation and allowances is $67,330 for the period 21 October 1998 to 23 August 1999 inclusive.

Treasury: Cost of Legal Advice
(Question No. 1716)

Senator Faulkner asked the Minister representing the Treasurer, upon notice, on 2 November 1999:
(1) What has been the total cost to the department, and each agency in the portfolio, of legal advice obtained from the Attorney-General’s Department in the 1998-99 financial year.

(2) What has been the total cost to the department, and each agency in the portfolio, in the 1998-99 financial year of legal advice obtained by the department from other sources.

Dr Kemp—The Treasurer has provided the following answer to the honourable senator’s question:

(1) and (2) The relevant figures are set out in the table below.

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