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**TUESDAY, 27 JUNE**

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Tuesday, 27 June 2000

The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 2.00 p.m., and read prayers.

QUESTIONS WITHOUT NOTICE
Workplace Relations: Trial Work Periods

Senator CROSSIN (2.01 p.m.)—My question is to Senator Alston representing the Minister for Employment, Workplace Relations and Small Business. Minister, what is the government's attitude to the widespread practice of employers asking job seekers to work for a trial period with no pay, often for several days, before taking a decision whether or not to employ them?

Senator ALSTON—I suppose the real issue is the extent to which workers, or potential workers, are interested in putting themselves in positions where they might get a significant employment opportunity. No-one forces them presumably.

Senator Cook—It is exploitation.

Senator ALSTON—That is the sort of key word that you think you can press: press button A and away you go. I do not know the context in which Senator Crossin raises this issue, but if you ask me as a general matter of principle whether there is any objection to people coming to an arrangement that involves a trial basis, then it seems to me that that is understandable. But obviously situations in which people might be asked to work for a considerable period of time and then not be recompensed would certainly seem quite unfair.

On the face of it, it would seem to be a matter of balance, but I can understand where you come from. You take the view, of course, that from day one you ought to be bound hand and foot to award requirements and that there should be no such thing as ever giving anyone a bit of experimentation. In fact, you do not like apprentices or youth wages because you want to see people tied to a minimum and, presumably, maximum standard. They are all treated equally, and they are all then supposed to thank the trade union movement. The end result is that you can make it very difficult for employers to offer genuine opportunities for people to prove themselves. In most areas of life, people appreciate the opportunity to have at least a starting opportunity, and if that is what you are canvassing, then it seems to me that that is acceptable.

Senator CROSSIN—I ask a supplementary question, Madam President. Is the minister aware that this practice trial period with no pay for job seekers is so entrenched that Employment National is even recommending it to employers and employees? Can the minister confirm that it is in fact in breach of awards? Can he advise what action the government will take to ensure that the unemployed are not exploited in this manner?

Senator ALSTON—I can certainly assure Senator Crossin that the government would be concerned if there were evidence that employees were being exploited. It certainly does not follow that, if you are not able to access an award entitlement from day one, you are being exploited. I know that is the line that you would like to run, but I would need to see a lot more detail about the issue, and I do not have it in front of me.

Senator Cook—Doesn’t the law count with you?

Senator ALSTON—Yes, the law does count.

The PRESIDENT—Order! Senator Alston, ignore the interjections.

Senator ALSTON—I have been given a few general words, and obviously if Senator Crossin wants a detailed legal assessment of the situation, then I will see whether we can obtain that. But if you are asking me whether the government condones exploitation, the answer is no.

Tax Reform: Employment Incentive

Senator GIBSON (2.04 p.m.)—My question is to the Minister representing the Minister for Employment, Workplace Relations and Small Business, Senator Alston. The minister would be aware that for far too long Australia’s outdated tax system was a disincentive for Australians trying to get ahead. Will the minister inform the Senate of how $12 billion in tax cuts will better reward Australian workers for their efforts? Is the
minister aware of any alternative policy approaches? What would be the impact if they were implemented?

Senator ALSTON—If there is one thing that ordinary Australians are going to be very grateful indeed for come 1 July, it is the fact that 80 per cent of them who earn incomes of less than $50,000 will be on a top tax rate of 30 per cent. In other words, they will be significantly better off as a result of the historic reforms to the tax system. That of course is a very good outcome. It is in marked contrast to what prevailed under Labor when, as we know, real wages fell by in excess of five per cent.

Who was one of the biggest critics of the Labor Party in government at that time? One George Campbell, who wrote in a book called Out of the Rut: Making Labor a Genuine Alternative—and I suppose the subtitle could have been ‘and into that dirty, big Beazley black hole’—that wages fell deliberately during much of Labor’s time in government. I suppose the reward you get for being honest is that they shut you up by putting you in the Senate. And it certainly worked: we have not heard boo out of Senator Campbell since that time, except of course to bag the frontbench and to make it plain that he thought he was a candidate deserving of preferment. Some of his colleagues have long memories about the way in which he shafted them on that occasion. But Senator Campbell was dead right in what he wrote on that occasion. Of course, when asked about how small businesses were going to absorb the impost of a 38-hour week, he was not very right when he wrote, ‘Firms with staff on a shorter working week will just have to work their way out of it.’ In other words, you would translate that as, ‘Who gives a damn about small businesses?’

I think it is critically important that people understand that we are committed to higher wages and better standards of living and that these matters go to the heart of industrial relations policy. It is not an arcane dispute about what the relationship is between the Labor Party and the ACTU; it is about what the outcome will be, what the impact will be on ordinary Australian families. If we look at the way in which the Leader of the Opposition is now proposing to capitulate lock, stock and barrel to the trade union movement, going along there cap in hand today to apologise profusely for not having delivered everything on time, we see that all he has done so far is to commit himself to not expanding unfair dismissal laws, to reintroducing sympathy strikes and to changing the freedom of association provisions that we have introduced, and now presumably he is going to be asked to endorse a 48-hour week. Again, that is one of those classic examples of trying to grind people down, not bothering to ask families what they think but simply saying, ‘Families are a bit concerned about the balance between work and family life, so we will force them. We’ll tell them they are not entitled to work more than 48 hours a week.’ This is described by the Daily Telegraph today as a ‘mammoth miscalculation’ on the part of the opposition leader. This litany of concessions to the union movement ‘will not increase the wages of workers’. That is dead right. It is simply pandering to a grubby special interest group, as we know. The Daily Telegraph states:

Politically, the decision portrays Mr Beazley as a leader who is captive to the union movement at a time when union membership is at its lowest ebb...

... It is a policy that will provide the unions with unbridled power and the capacity to seriously damage employers and the economy.

There it is. That is what the people’s newspaper thinks of Labor’s approach. They know they are not interested in helping ordinary Australians. They are simply interested in stitching up a deal so we can end up with more George Campbells in the Senate, and what a shocking outcome that would be! At the end of the day, we want people in here who are serious policy players, we want people with a commitment to improving the standards of living of ordinary Australians. We are certainly not going to get it from you or Mr Beazley.

Goods and Services Tax: Petrol Prices

Senator LUDWIG (2.09 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Given that the Howard government has claimed that a supposed saving of 1.5c a litre will flow through to motorists from cost savings to the oil industry, how
does the government explain the Shell spokesman's claim, 'So even if we were to achieve a cost reduction in the cost of transport of 10 per cent that would be only 0.1c per litre,' followed by, 'The order of magnitude of the cost saving which the government is expecting is totally unreasonable'? Is the minister aware that the Chairman of the Business Coalition for Tax Reform, Mr Dick Warburton, said this morning that the government had got it wrong on the fuel issue and that the cost saving would be barely 0.1c per litre? Who is wrong—the Howard government or the Chairman of the pro-GST Business Coalition for Tax Reform?

Senator KEMP—It does surprise me somewhat that the senator is effectively aligning himself against consumers.

Senator Robert Ray—Just trying to keep the Prime Minister honest.

Senator KEMP—If Senator Ray could control himself for just the briefest of moments, we may pursue this matter.

Senator Ferris—It's a big ask.

Senator KEMP—It is a big ask, as my colleague said. It does surprise me that the Labor Party seem so keen to align themselves against the interests of consumers. If you look at your question, that is exactly what you said. We are aware that other people in business have made comments. But the government's position is clear.

Senator Murphy—You've misled the people again.

Senator KEMP—Coming from you, Senator Murphy, who, along with your colleagues, has attempted to make the government break most of its major election promises, that is a little rich. It is truly a little rich. Senator Murphy, having voted against the government's IR policy, having voted against many aspects of our tax policy, having voted against Telstra—all of which we went to the election on—complains that the government breaks its promises. It is just a joke to say that. There is one group that cannot make that claim and that group is the Labor Party.

Senator Herron—L-a-w.
the Labor Party who do not belong to trade unions and might like to feel that they have a senator—(Time expired)

Senator LUDWIG—I have a supplementary question. Was there any consultation on the effect of the GST on fuel prices with the oil industry, distributors, retailers or motorist organisations at any time prior to the government’s announcement of its fuel fudge last week? If not, why not?

Senator KEMP—Gee, that is a devastating question! Let me make it clear that this government is a consultative government. I do not think that anyone could argue that this government is not a consultative government. It is a consultative government: we are happy to talk to people. In fact, you would have to say that so many of the policies in tax reform that have been brought in are a result of intensive consultation. The mere fact that, from time to time, someone may have a different view does not mean anything. I know that in terms of the Labor Party that immediately means that the government is wrong. If the oil companies say something, that means—as far as Senator Ludwig is concerned—that the government is wrong. Well, Senator, we are interested in consumers and in keeping our promises. (Time expired)

Families: Tax Reform

Senator FERRIS (2.16 p.m.)—My question without notice is directed to the Minister for Family and Community Services, Senator Newman. Australian families are already enjoying the benefits of the coalition government’s $1 billion family tax initiative which was introduced in the first year of this government. Will the minister now outline how Australian families will further benefit by the tax reform package and other initiatives of the Howard government? Can the minister also inform the Senate of any alternative policy proposals?

Senator NEWMAN—I thank Senator Ferris for this question. She works so hard in her home state of South Australia on behalf of her constituents. It is just a pity that South Australia does not have even more coalition senators to represent it, when you see the quality that comes from the other side. Perhaps after Senator Schacht leaves, that might be rectified. Senator Ferris is quite right that Australian families are already receiving the benefit of the family tax initiative which was introduced in the first year we came into government, in 1996. But they are also soon to enjoy the benefits of a new tax and family payments system which will make a huge difference to the future of Australia’s families.

Senator Murphy—Where did you get that scarf?

Senator NEWMAN—From a friendly neighbour. By comparison, the tax credits that had been proposed by the ALP at the last election were very poorly designed, complex and inadequate. There was no recognition of the significant overlaps that they would create with Australia’s existing family support system. This sort of adhocery is how, in the first place, the family payments system got into the mess that it has been in. The earned income tax credit makes sense in the United States, because there is no general system of family assistance there. In practice, almost all EITC assistance there goes to families with children. A severe limitation of the Australian Labor style of EITC is that it only benefits people in paid work. Other low income people miss out. Another limitation is that those with very low earnings receive very little assistance.

In countries that do have a comprehensive family support system, like Australia, all the objectives of the EITC can be achieved through careful design and implementation of that system. And that is what this government has done in this country. The ALP does not seem to have realised that the government already has in place a scheme designed to make work pay. It is called the Family Tax Benefit and it operates from 1 July as part of the new tax system’s comprehensive reform of the family payments system. The government is committed to helping people create better opportunities for themselves, rather than just and only providing the passive safety net which we have currently. The Howard government is delivering $12 billion of personal income tax cuts; $2.4 billion of family payments; and improved taper and withdrawal rates, which means better work incentives for Australian families. By con-
contrast, Labor cannot be trusted even to deliver on what it says it might do. We all remember the I-a-w law tax cuts: never delivered.

Senator Cook—Not true!

Senator Newman—Never delivered! ‘Not true’? Here we have someone who is misleading the Senate. Senator Cook would mislead the Senate. We in this country also remember the wholesale sales tax hikes that went up time and time again without any compensation—not a cent of compensation for the rich, the middle income earners or the poor. So the holier than thou attitude of the ALP is sickening. The difference between us is that the government has a plan to take this country into the next century with a fair tax system that rewards hard work and protects the disadvantaged. Labor has nothing but empty promises, cynical opportunism and a terrible record.

Goods and Services Tax: Petrol Prices

Senator McLucas (2.21 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Can the Assistant Treasurer confirm that one oil company, BP, already has ACCC approval to raise petrol prices from this Saturday to account for the GST and excise changes and with GST compliance costs more than wiping out the government’s phantom cost savings? Can the minister also confirm that Caltex have also not received any ACCC objections to their pricing proposals? Isn’t this proof, from the government’s own price police, that its outrageous claims on cost savings cannot be substantiated, that compliance costs more than wipe out any savings, and that all Australian motorists will be worse off under the GST, starting this Saturday?

Senator Kemp—I appreciate the question from Senator McLucas; I have had a number of questions in the past from the senator. The relevance of that initial comment will become apparent when I finish this answer, so stay with us. My understanding is that Professor Fels—who, I might say, is an independent statutory officer, not appointed by this government—despite the absolutely outrageous attacks on him that have been made by one of your colleagues—

Opposition senators interjecting—

The President—Order! The level of interjection on my left is far too loud, and senators know that they are shouting.

Senator Kemp—You try to give a straight answer to this question and you get subjected to appalling abuse from the other side. Senator, the short answer to your question is that Professor Fels and ACCC, I do not believe, have made any announcement in relation to oil prices. My understanding is that there are discussions which are occurring, and I think that Professor Allan Fels—

Senator Conroy—Now you’ve told Fels to put the fix in.

Senator Kemp—What did you say?

Senator Abetz—Yes, repeat it!

Senator Herron—No, Conroy said they put the fix in.

Senator Kemp—It seems to me that it is going to be particularly interesting when Hansard comes out, Senator Ray. If I heard correctly, Senator Ray, you might like to stand up and make an explanation or an apology.

Opposition senators interjecting—

The President—Order! There are too many senators on my left shouting. Senator Kemp, resume your seat! There is far too much noise in the chamber. Senator Kemp, you should direct your remarks to the chair and not across the chamber, and senators opposite should not be shouting.

Senator Kemp—Madam President, there is some dispute about who made this appalling comment on the other side. Senator Ray, if it was not you, we will find out which colleague it was. It was the usual grubby comment that one hears from the Labor Party.

Senator Sherry—What about the question, Rod?

Senator Kemp—I mentioned in relation to whether a determination had been made by the ACCC that my understanding is that no announcement has been made by the ACCC. My understanding is that there are discussions occurring with the oil company, but no announcement has been made. I think that answers the substance of the question.

I also want to make a point here that, a couple of weeks ago now, Senator McLucas
asked me a question in relation to a particular caravan park. I asked Senator McLucas to provide me with the information so I could follow up that particular issue and ensure that the information that people wanted was given to them.

**Senator McLucas interjecting—**

**Senator KEMP—** I have waited and I have waited, and I still have not received the information from the senator. I put that on record because I think what we have been seeing is—

**Senator Cook—** Answer the question. If you can’t answer it, sit down!

**Senator KEMP—** I know this is hurting you, Senator Cook. I have another secret quote from Senator Cook, so if anyone wants to ask me a Senator Cook question I would be very happy to answer it.

**Senator Cook—** Sit down if you can’t answer!

**Senator KEMP—** Okay, I challenge you. Why don’t you ask me a question today?

**The PRESIDENT—** Senator Kemp, resume your seat. Order!

**Senator McLucas—** Madam President, I would like to make the point that I provided Senator Kemp with information about that matter some 25 minutes ago. But my supplementary question, following our discussion earlier—some two weeks ago; and he knows that, and it is incorrect for him to raise that matter in this chamber in that way.

**Honourable senators interjecting—**

**The PRESIDENT—** Order! Senator Kemp’s raising of that matter was out of order, and it is out of order to pursue it.

**Senator Sherry—** And he misled the Senate, too!

**Honourable senators interjecting—**

**The PRESIDENT—** Order! Senator Kemp! I said that Senator Kemp’s answer was out of order and it is out of order to pursue the matter at this stage; there is another occasion when it can be dealt with. There is far too much noise in the chamber. There are far too many senators calling out to each other across the chamber.

**Senator McLucas—** Madam President, I ask a supplementary question. Doesn’t the issue of GST compliance costs negate all the government’s arguments on cost savings? For the oil companies, like all other Australian businesses, the compliance costs to get GST ready are up-front, but any cost savings will be some time down the track. When will the Howard government recognise these realities of their new tax instead of trying to blame someone—anyone—else?

**Senator KEMP—** This comes from a senator whose party agreed. What changes on 1 July? What changes have the Labor Party agreed? That the GST stays—that is what changes. What we are seeing again is the complete hypocrisy of the Labor Party. The ACCC is an independent body. It is quite appropriate that the ACCC has guidelines with which to monitor the transitional period, and the government makes no apology for that.

**Genetic Information: Legislation**

**Senator STOTT DESPOJA (2.28 p.m.)—** My question is addressed to the Minister representing the Attorney-General, and I ask: given the historic announcement overnight of the finalisation of the human genome project, when will the Australian government finally take steps to ensure that we have legislation in place that prevents discrimination on the basis of someone’s genetic information and also ensures that that information is kept private? Does the government recognise that it is more than a year since the recommendation was made by the Senate Legal and Constitutional Legislation Committee that a national working party be established to look into these issues? I ask the minister: what progress, if any, has been made, and what assurance can this government give Australians, given this historic breakthrough, that their genetic information is safe, will be protected and cannot be used against them?

**Senator VANSTONE—** I thank the senator for her question. Senator, I have not been provided a brief from the Attorney on that matter. I will take each of your questions on notice, because there were a number within the whole question. I will get an answer from the Attorney. To the extent that I can get anything for you this afternoon I will, but
that may not be possible. It may have to wait until tomorrow. What I can say is something you probably already understand, and that is that the coalition is as interested as you are—and as interested as I think everyone else is—in scientific developments and the opportunities that they create for the people of the globe really, not just of Australia, and in the risks that they create as well and the necessary regulatory processes that need to be put in place. So your concern is shared. I will take the detail of the questions on board and get an answer from the Attorney.

**Goods and Services Tax: Trucking Industry**

Senator **MACKAY** (2.30 p.m.)—My question is to Senator Ian Macdonald, Minister representing the Minister for Transport and Regional Services. Minister, why did you claim in your press release of 30 May:

The transport industry will be able to claim back any GST that they pay on those capital purchases—

with regard to huge transport vehicles? Is it not a fact, Minister, that you got this wrong? Will the minister now acknowledge that any owner-driver who has agreed to purchase, for example, a new prime mover worth $225,000 GST inclusive after 1 July this year will in fact not be able to claim the full GST input tax credit of just over $20,000 for the 2000-01 financial year at all?

Senator **IAN MACDONALD**—I thank Senator Mackay for that question.

The Labor Party want to keep wholesale sales tax on big trucks, little trucks and cars—they want to keep that 22 per cent wholesale sales tax. They want to keep the 22 per cent wholesale sales tax on tyres and spare parts. That is the Labor Party policy. As opposed to that, this government wants to give real relief to the transport industry so that the rural and regional people of Australia can benefit from that relief which is to come.

I have mentioned a number of times that, according to Mr Crean, the Labor Party want to keep fuel excise at 44c a litre. That is the Labor Party policy. The Liberal-National Party policy is that for big trucks in rural areas the concession is to be in the range of 25c a litre. So that is what this government is doing. Obviously, in any of the new tax proposals there will be phase-in arrangements, and I suspect that that is what Senator Mackay is talking about.

Senator **Conroy**—You don't know, do you?

The PRESIDENT—Senator Conroy, stop shouting.

Senator **IAN MACDONALD**—But in the fullness of time road transport will do very well out of the arrangements that have been put in place by this government. As the years roll on, those savings will be there. They will be real. There is $4 billion worth of savings to our export industries, and a lot of that comes from the reduced transport costs for those exports leaving rural and regional Australia and going overseas or from goods coming into rural and regional Australia. So it is a good news story for rural and regional Australia. It will take time to be fully implemented. There is a phase-in arrangement, and that has been very common for a long time.

Senator **Conroy**—What about the input credits? Input credits—mention them.

The PRESIDENT—Senator Conroy, you are persistently interjecting.

Senator **IAN MACDONALD**—I thank her because there have not been too many of them, and at least it does show for the first time for a long time Senator Mackay recognises that there is a rural and regional Australia and that there is a rural and regional Australia that will do very well out of the government’s proposal.

The Labor Party want to keep wholesale sales tax on big trucks, little trucks and cars—they want to keep that 22 per cent wholesale sales tax. They want to keep the 22 per cent wholesale sales tax on tyres and spare parts. That is the Labor Party policy. As opposed to that, this government wants to give real relief to the transport industry so
that you were wrong? Minister, when will you apologise to the transport industry for your error?

Senator IAN MACDONALD—I must say I am amused at Senator Mackay. What I want to know is when the Labor Party is going to apologise for the distress they caused rural and regional Australians in their 13 years of office.

Senator Mackay—Madam President, I raise a point of order. The minister may regard this as amusing, but I can tell him it is not amusing to the transport industry. I asked a specific question: ‘When will he correct it?’ and I would ask you to direct him to answer the question.

The PRESIDENT—I draw your attention to the content of the question, Senator.

Senator IAN MACDONALD—Madam President, there is no need for an apology. There is no need for a correction. What I have said is that there will be real savings in the transport industry that will be great news for rural and regional Australia.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left will stop making so much noise.

Senator IAN MACDONALD—What I would like the Labor Party to do is to say what they are going to do, to demonstrate what their policies are. All we have got so far is that they will leave fuel excise at 44c a litre, that they will leave Labor’s wholesale sales tax at 22 per cent; whereas I have said, and continue to say, there will be big savings for rural and regional Australia arising out of the transport industry. There is no need for me to apologise to either rural and regional Australians for giving them the good news or to the transport industry for giving them good news. (Time expired)

Genetically Modified Food: Labelling

Senator BROWN (2.36 p.m.)—My question goes to the Minister for the Environment and Heritage. I refer to the growing trans-Tasman tension over the issue of genetic engineering. I ask why it is that the Prime Minister has had to write to the Prime Minister of New Zealand, the Hon. Helen Clark, revising downward the estimated cost of labelling of foodstuffs which contained GE contaminants from $1.5 billion per annum to less than $315 million per annum? I ask why Mr Howard got it so wrong in using those earlier figures to claim that labelling would hurt business. Is this why the New Zealand Minister for Consumer Affairs said on Sunday:

I think he's being an alarmist fearmonger. I think he has exaggerated. I think Mr Howard is rather extreme about these issues. (Time expired)

Senator HILL—Perhaps I can start with a bit of background, and that is that the government supports mandatory labelling. It gives useful information to consumers without imposing unnecessary costs. The government’s position is closely aligned with international approaches, including the European Union approach. Labelling is not a health and safety issue. The Australia New Zealand Food Authority scientifically assesses all genetically modified food for its safety before it can be sold or used. The government accepts that consumers want information about genetically modified food, but this must be balanced against the costs. Labelling all genetically modified foods would cost about $315 million annually and that is likely to impact most on low income earners. Australian and New Zealand exports may be affected if our labelling is stricter than that of other countries—potentially affecting up to $1.5 billion of exports in the dairy industry alone. The government is providing information through a public awareness campaign run by Biotechnology Australia. In relation to the question about a specific letter from the Prime Minister to the Prime Minister of New Zealand, I will seek advice from the Prime Minister.

Senator BROWN—Madam President, I ask a supplementary question. I asked the minister to comment particularly on the remark by the Minister for Consumer Affairs in New Zealand, Phyllida Bunkle, that the Prime Minister of Australia is being an ‘alarmist fearmonger’. I ask the minister: if he says—as he just did in that answer—that Australia is aligned with international positions, what is his comment on the advice by the Prime Minister of New Zealand, Helen Clark, to the
New Zealand parliament two hours ago as follows:
I am advised that the Australian Commonwealth position, at this time, does not appear to be well aligned internationally.

Who is right: the New Zealand Prime Minister or the Australian Prime Minister?

Senator HILL—I would be confident that, if in fact there was any difference, it would be the Australian Prime Minister who was correct—but I am not sure that there is any difference. In relation to the Prime Minister being alarmist, if it is that the Prime Minister is concerned about unnecessary cost to low income earners in Australia, I would not apologise for that either.

Goods and Services Tax: Rulings

Senator BOLKUS (2.40 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. I ask the minister: is it true that dozens of major industry rulings and thousands of private rulings on the GST are still being determined by the tax office? What precisely are the current statistics on outstanding rulings? I further ask the minister: how are businesses expected to properly apply the GST in the absence of so many of these rulings?

Senator KEMP—The tax office, in the introduction of the new tax system, is required to make a great number of rulings—there is no question of that. The rulings program is developed in consultation with industry.

Senator Conroy—Three telephones books and rising.

The PRESIDENT—Order! Senator Bolkus has asked a question, Senator Conroy. It is not for you to keep shouting during the answer and asking other questions.

Senator KEMP—Let me just deal with some of the statistics that—

Senator Conroy—It is 6.7 kilograms and growing.

The PRESIDENT—Senator Conroy, I have just drawn your attention to your behaviour.

Senator KEMP—By 30 June the ATO will have issued 46 key rulings in final or draft form. Rulings still in draft form as at 30 June will be treated as final to give taxpayers greater certainty on 1 July. In addition, let me make it clear that the government is working with various bodies to provide solutions to industry wide questions. The Commissioner of Taxation—and I think it is important to note this—has given assurances that people taking reasonable steps to implement the new tax system in the transition period but who make a mistake will not be penalised. I think that is an important assurance which has been given.

Senator Bolkus—Madam President, I raise a point of order. The question was not: how many rulings have been put in place? The question was: how many rulings are outstanding? If the minister has one part of that information, his brief must encompass the other part as well. I ask him to make his answer relevant and to answer the question: what are the current statistics on outstanding rulings?

The PRESIDENT—There is no point of order.

Senator KEMP—Of course there was no point of order. It is just wasting the time of the Senate carrying on like that, Senator Bolkus. I am shocked that a former minister in the Keating government would do that actually. In regard to the number of rulings outstanding, I will see if I can obtain some information from the tax commissioner.

Senator Conroy—He hasn’t got a clue.

Senator KEMP—We always try to assist Labor senators. Senator Conroy, and they do need, as my colleague Senator Herron says, a great deal of assistance. Senator Bolkus asked me a question in relation to rulings and I have provided information to him on the rulings program. He also wants some further statistics. As a matter of courtesy, Senator Bolkus, I will seek that particular information. So you will have to bear with me until I have the information on hand.

Senator BOLKUS—Madam President, I ask a supplementary question. Is the minister aware that, like himself, even accountants will not be ready for the GST? Is he aware that the National Tax and Accountants Association said yesterday that Australia’s accountants are still trying to navigate the ex-
tremely complex legislation on issues such as lease and hire purchase transactions, invalid tax invoices, adjustments for capital acquisitions and creditable transactions? As the Assistant Treasurer who has ministerial responsibility for GST implementation, can the minister answer this question: if accountants in the tax office are not going to be ready for the GST, what chance does small business have in complying with a labyrinth of GST legislation from this Saturday, just 96 hours away?

Senator KEMP—I think you will find, Senator, that come 1 July and the days and months beyond that, business is ready. We understand that the Labor Party simply wants to run scare tactics. I think the Labor Party’s behaviour in this whole period has been quite disgraceful. Let me make a prediction that in the coming months it will not be—I

Senator Bolkus—Madam President, I rise on a point of order. There was a precise question. The minister was asked to provide an answer which is relevant to so many businesses across the country. Waffle will not substitute. Can you get him to answer the question?

The PRESIDENT—There is no point of order.

Senator KEMP—Thank you, Madam President. I have answered and I will make this prediction: in the coming months there will not be complaints about the GST; there will be complaints about the Labor Party roll-back and there will be concern about Labor Party tax policy. The hypocrisy of the Labor Party in this whole campaign will be exposed.

Resources Sector: Tax Reform

Senator BRANDIS (2.45 p.m.)—My question is to the Minister for Industry, Science and Resources, Senator Minchin. Will the minister inform the Senate of the benefits of the government’s new tax system for the resources sector? Will the minister also identify any impediments to further growth in the resources sector?

Senator MINCHIN—I thank Senator Brandis for his question. The resources sector is very important to the state of Queensland, which Senator Brandis is privileged to repre-
threatened by the non-government parties in this chamber. They all have huge backlogs of exploration and mining titles. There was a massive backlog of about 1,200 in Senator Brandis’s state of Queensland.

The Commonwealth Attorney-General has approved the Queensland Labor government’s native title regime but the regime faces a threat of disallowance from this Senate when we resume in August. Labor Premier Beattie said:

If this regime is disallowed, it would be the most savage slug to the mining industry in a generation. It would force mining offshore and it would destroy jobs.

I hope every Labor senator listens carefully to those words and listens to them accurately. The federal ALP refuses to say whether or not it is going to support its own Labor Party legislation from Queensland. Despite months of having that legislation available, Labor cannot answer yes or no to a simple question on this Queensland Labor Party legislation. The whole future of the mining industry in this country hangs in the balance because, without exploration, you have no mining industry and because you cannot say yes or no. It is a disgrace. You ought to face up to this issue, act in the national interest and approve this legislation.

**Goods and Services Tax: Implementation Manual**

**Senator GEORGE CAMPBELL** (2.49 p.m.)—My question is to Senator Ellison, representing the Minister for Finance and Administration. Can the minister inform the Senate of the full cost of the Commonwealth’s contract with Ernst & Young to produce a GST implementation manual for Commonwealth agencies? Can the minister also explain to the Senate why this implementation manual has not been updated since it was issued late last year?

**Senator ELLISON**—I can tell the Senate that government agencies are well on track for the implementation of the GST. The question that Senator George Campbell raises relates to a manual, which is really not the issue here. We are talking about whether government agencies and departments are ready for the GST—and they are. We are on track for the implementation of the GST in government agencies and departments, as much as the Labor Party would like it not to be so.

**Senator Robert Ray**—What a stunning answer! Now answer the question. Give us a straight answer and get on with it.

**Senator ELLISON**—That is a straight answer, Madam President, through you to Senator Ray. That is the answer. The government agencies and departments are on track for GST implementation, and it will not interfere in any way with providing services for the men and women of Australia.

**Senator GEORGE CAMPBELL**—Madam President, I ask a supplementary question. I repeat, for the benefit of Senator Ellison, the substance of my question: can the minister advise the Senate of the full cost of the Commonwealth’s contract with Ernst & Young to produce this manual? Isn’t this manual now significantly out of date as it does not take into account the many Howard government policy changes, backflips and clarifications since it was issued, including the thousands of tax office rulings relevant to the operation of Commonwealth agencies? Isn’t it also the case that agencies needing up-to-date information are directed to the DOFA web site or to the 1800 help desk numbers, which charge agencies up to $250 per hour for giving advice on this supposedly simple tax system?

**Senator ELLISON**—There have been no backflips whatsoever in relation to the implementation of the GST with government agencies and departments. This has been a comprehensive exercise, and we are on track for its implementation. There is absolutely no problem with it, but I will take on board the question that Senator George Campbell raised in relation to the cost of that consultancy and get back to him.

**Education: Boys**

**Senator ALLISON** (2.52 p.m.)—My question is to the Minister representing the Minister for Education, Training and Youth Affairs. I refer to the minister’s inquiry into boys’ education and ask: isn’t it the case that we already know that the key factor in poor performance is disadvantage and that, where boys are doing badly, girls are not far behind?
Why hasn’t the government thought about reversing its cuts to programs that helped to keep boys and girls at school, in particular the Disadvantaged School Program and the Full Service Schools program? Why is there no assistance for schools to deal with learning disabilities? Why has the government not taken up the NHMRC’s recommendations in dealing with attention deficit hyperactivity disorder, a condition which affects boys’ performance in schools? Why has the minister ignored the recommendations of the House of Representatives report on truancy and exclusion from school?

Senator ELLISON—The Full Service Schools program was always designed to finish in December 2000. That program had a limited life span. It was a transitional program, and we have always made it clear that the program would run only for three years. The state and territory education authorities were aware, when implementing the program, that this was so. The government have concentrated on the needs of primary school students in the key areas of literacy and numeracy. No other government has done what this government have done in achieving national benchmarks for literacy and numeracy. This is the disadvantage that we really have to get to grips with and deal with. This is what the parents of Australia want us to do, and this is what is best for the future of young Australians.

The Mapping the territory: primary students with learning difficulties: literacy and numeracy report, which was commissioned by the Commonwealth, highlighted the critical importance of literacy and numeracy skills for students. We are saying that you do not just look at a school and say, ‘That is a disadvantaged school.’ You look at the needs of the students. That is where the funding and resources should follow; they should not necessarily just go to the building itself and the school. We have measured this in accordance with need and in those critical areas of numeracy and literacy. We make a significant financial contribution to support the work of schools and teachers in improving the literacy and numeracy skills of all young Australians, and we will provide approximately $1.1 billion for literacy and numeracy in the next five years. There is much work to be done in the areas of literacy and numeracy, the key areas where disadvantage can be addressed. We are not going to shy away from this. It is quite wrong to suggest that we are not addressing the problem of disadvantaged students in Australia today.

Senator ALLISON—Madam President, I have a supplementary question. The minister has not answered my question about why we need an inquiry on boys when we already know the answers. However, I will ask: why is Professor Kenway’s report on school and gender, commissioned by the minister’s own department to examine just this question, still sitting on Dr Kemp’s desk six months after it was finished? When will that report be released, or is it the case that the government does not like the recommendations in the report? Is that why it is being held up? Minister, one in four girls in disadvantaged areas of Victoria like Frankston do not complete secondary school. What will an inquiry into boys’ education do for these students?

Senator ELLISON—It is quite obvious from the banter from the opposition that they are not interested in this question. I thank Senator Allison for her interest. I will take up the question of when there might be a response to the report with the Minister for Education, Training and Youth Affairs. This is a most important area which this government takes very seriously. I can say to the Senate that retention rates have risen under this government, unlike under the former government. If the opposition had any interest in this, they would check on those figures and know that we are heading young Australian students in the right direction.

Goods and Services Tax: Local Government

Senator MACKAY (2.57 p.m.)—My question is to Senator Ian Macdonald, the Minister for Regional Services, Territories and Local Government. Can the minister explain why he has continued to mislead the Australian community by asserting that local government rate rises are not the result of the GST as recently as 22 June in his press release entitled ‘Council rate rise not GST’? Is the minister aware that many councils, including Queanbeyan, Burdekin, Greater...
Geelong, Burnie and Brisbane, have incurred substantial costs in implementing and complying with the new tax system? Is the minister seriously saying that these councils and many others are going to have to absorb the entire cost of complying with the GST and that there will be no rate rises as a result of this compliance?

Senator IAN MACDONALD—I sincerely thank Senator Mackay for raising this issue with me, because it is very clear that local authorities do not have to increase their rates because of the GST. I have mentioned any number of authorities that have shown that, for local government, the new tax package is a great deal. I start with the Labor Treasurer for New South Wales, Mr Egan, who wrote to New South Wales councils and told them that it was a good deal. I mention the Arthur Andersen report done for the Victorian government—

Opposition senator interjecting—

Senator IAN MACDONALD—The Arthur Andersen report was for the Victorian coalition government. Arthur Andersen are a professional organisation; I am sure that they would be right no matter who commissioned them to do it. The Arthur Andersen group said that there were big savings, and they actually put a dollar figure to them. Senator Mackay has challenged this and suggested that Arthur Andersen might be unprofessional because of who asked them to do the report. Senator Mackay has also raised the Ernst and Young report commissioned by the Labor government. What does the Ernst and Young report say about this? Their executive summary states:

There are a number of cost savings that may be experienced by Local Councils. Based on our high level analysis, these arise in respect to a number of common costs ... The majority of savings, with the exception of savings arising from fuel, will commence to flow to Local councils within the short term (generally between 6 and 24 months after the implementation of ANTS).

They go on to say that in relation to fuel the savings to councils will be immediate. Senator Mackay mentioned the council that I had the privilege and honour of serving on, the Burdekin Shire Council. We did an exercise right in the beginning where the Burdekin Shire Council showed they would make savings in the vicinity of $100,000 because of the reduction in the cost of fuel.

Senator Mackay—Madam President, I rise on a point of order. My question was on rate rises resulting from compliance costs for the GST. I ask the minister to answer that question.

The PRESIDENT—There is no point of order.

Senator IAN MACDONALD—There is no GST on rates. If councils increase the rates because of the GST, they are being misleading and deceptive. Senator Mackay says that she has had lots of complaints from councils. In the last couple of weeks, I have met any number of councils. I have met the eastern Riverina region councils. I have been up in North Queensland. I have been to Wagga and to Wodonga, and I went to the Australian Local Government Association executive meeting. Not one of them raised with me the GST. They raised a lot of other interesting issues, but not one of them raised the GST. They are happy with it. We have conducted some assessments of local governments. All of them are ready for the GST. They all know—unlike Senator Mackay, who simply does not understand this—there is no GST on rates, no GST on regulatory services, no GST on water and sewerage and no GST on fines, and across the board it goes. On issues where local governments compete with private industry, there will be a GST. But that is not new; that has always been part of the government’s proposal. If local government are involved in business activities, they will pay the GST like other businesses. But, for local government across the board, this is a great package. It is confirmed by simply everyone who understands it. (Time expired)

Senator MACKAY—Madam President, I ask a supplementary question. I notice the minister completely dodged the issue of rate rises as a result of compliance costs for the GST. Minister, can you confirm that paragraph 2.28 from the ACCC guidelines states that businesses may be entitled to recoup reasonably incurred net additional compliance costs directly related to the new tax system changes and that these guidelines apply to
local government? Who is right: you or the ACCC?

Senator IAN MACDONALD—Mr Egan, the Labor Treasurer for New South Wales, is right; Arthur Andersen are right; Ernst and Young are right. All of the people who have made assessments of this project are right. It is a great package for local government.

Senator Cook—Madam President, I rise on a point of order. I am concerned that the minister has now misled the chamber twice.

Senator Carr—Three times.

Senator Cook—I am concerned that he be given a chance to correct his answer lest the *Hansard* prove that he does not know what he is talking about. I wonder whether you would extend the opportunity for him to correct the record now.

The PRESIDENT—There is no point of order.

Senator IAN MACDONALD—I am quite sure Senator Cook is just being rhetorical. Don’t take my word for it: ask your Labor state colleague in New South Wales.

Senator Mackay—Madam President, on a point of order: the minister has made no attempt whatsoever to answer the supplementary question on the ACCC guidelines, compliance costs and local government. Can he at least have a go at it? I ask you to direct the minister to the supplementary.

The PRESIDENT—There is no point of order.

Senator IAN MACDONALD—I asked Senator Mackay to have a look at the Arthur Andersen report. Across the board, councils will make big savings. Whether compliance costs them something or not, the savings they will make will far exceed those. That is what Arthur Andersen said, that is what Ernst and Young have said and that is what Mr Egan, the New South Wales Labor Treasurer, has said. Senator Mackay, you are only following Senator Cook when he says these rhetorical things. You are falling into his trap as well. It is a good package for local government. Everybody recognises it except you.

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

ANSWERS TO QUESTIONS WITHOUT NOTICE

**Ranger Uranium Mine: Tailings Dam**

Senator MINCHIN (South Australia—Minister for Industry, Science and Resources) (3.05 p.m.)—Senator Allison asked me a question on 9 May about a water leak at the Ranger uranium mine. In my answer, I undertook to ensure that any reports I received on this issue would be made public. I now table a report of the Supervising Scientist, which includes in its appendices the company’s and the Northern Territory’s reports on this issue, and I table a letter from ERA. All these documents are available to senators and the general public on the Supervising Scientist’s web site. I seek leave to incorporate a tabling statement in *Hansard*.

Leave granted.

*The statement read as follows*—

Madam President, today I table on behalf of my colleague the Federal Minister for the Environment and Heritage, Senator Hill, a report compiled by the Supervising Scientist into a leak which occurred in the tailings water return pipe at the Ranger uranium mine in the Alligator Rivers region of the Northern Territory.

I would also like to provide a response to the report’s recommendations on behalf of the Government in my role as the Minister responsible for the licensing of uranium exports under the Customs Act and for setting the conditions for the mining and processing of uranium ore.

The important point to note from the report is that the environment has been protected. The Supervising Scientist has confirmed that the people of the area and the World Heritage values of Kakadu National Park have not been affected.

In fact, the Supervising Scientist has calculated that before any change in water quality would have been detected outside of the Ranger mine site an event 120 times larger than the size of this leak would have had to occur unchecked.

This puts the leak into perspective and lays to rest the many ‘myths’ that have arisen in relation to this incident.

I want to point out to the members of the Senate that the critical issue here is not the leak itself. During the operation of the Ranger mine, there have been a number of small leaks, as there is bound to be. The protection mechanisms worked then to protect the environment, just as they have done so in this instance. This leak had no impact...
on the World Heritage values of Kakadu National Park.

This incident has, however, given the Commonwealth, the NT Authorities, and the company, a timely warning of the importance of paying close attention to detail—including the importance of timely and appropriate communication. We should expect no less from a mine situated in an area of such environmental significance.

While this incident shows that the environmental protection system we have in place at the Ranger uranium mine does work, we are continuously looking at ways to improve it. We are now looking at putting in place an even better protection system.

The Government accepts the 17 recommendations contained within the Supervising Scientist's report.

Our response to these recommendations will be a comprehensive appraisal of the system to make sure it meets today’s requirements. We are looking to ensure that there exists a culture of care at all levels in the organisations directly involved in ensuring the protection of Kakadu National Park.

The Supervising Scientist made 17 recommendations relating to the improvement of arrangements within the company, the Office of the Supervising Scientist itself, the relevant Northern Territory Supervising Authorities and between each of these organisations.

Recommendations 1-7 and 11 relate to the company. It has accepted these and in many cases has already commenced implementation of the recommendations. Included in the Report is a response from the company that outlines particularly, in Section 7 of the ERA report, their responses to the leak. I table as well a supplementary response provided to me in the last few days. This emphasises the concern and seriousness with which the company has addressed this issue.

Recommendations 9, 10, 12, 15, 16 & 17. These Recommendations directly relate to the working relationships between the NT and the Commonwealth.

It is now and has been for the life of the mine that the NT is the day to day regulatory authority. This is made clear under the agreements between the parties which describe the respective roles of the Commonwealth and the Northern Territory. The first agreement detailing the working arrangements was written in 1982. The agreement was revised in 1995 under the previous Government. I have been renegotiating with the NT Minister the Agreement between the NT and the Commonwealth on uranium mining in the NT. It has been the view of this Government that the relationships needed to be strengthened. To that effect it is our intention that the Agreement will make provision for the relevant NT legislation to carry a requirement that in specified areas in relation to uranium mining the Commonwealth Minister will have a formal and absolute role on specific matters.

I also expect to shortly place on the table amendments to the Customs (Prohibited Export) Regulations to strengthen our powers in this area of Commonwealth controls.

I have referred the Supervising Scientist’s report to the NT Minister for Resource Development for his response on the recommendations.

I would like to advise the Senate that in respect to Recommendations 9, 10, 12 and 16, I am formally requesting that the Mine Site Technical Committee, which is chaired by the Northern Territory, provide Minister Manzie and myself with a report on the actions that have been taken with respect to these recommendations.

We are also requesting that the Supervising Scientist keep Minister Hill and I informed of the Mine Site Technical Committee’s consideration of these recommendations and his assessment of whether or not we are achieving our objective of putting in place an even better environmental protection system.

We will review this advice with our colleague the NT Minister for Resource Development and will take whatever further action is necessary including ensuring that complementary action is taken at the NT end. I should add that the Mine Site Technical Committee is a body comprising the Supervising Scientist, the Northern Land Council, the NT Department of Mines and Energy and the Company. It is representative of stakeholders.

In respect of Recommendation 15 we have every intention of reviewing the working arrangements following the renegotiation of the Agreement.

At that time we intend to not only reinforce the framework responsibilities of the Supervising Scientist but also the structure of the Mine Site Technical Committee to ensure that it is relevant to our current needs.

In this process I wish also to explore how the Aboriginal community can best be assured that all these arrangements are working in it’s best interests and how the Aboriginal community can contribute more effectively.

Recommendation 13 concerns audit processes. It is our expectation that the Supervising Scientist will be undertaking on-site inspection and on a more regular basis. This activity has not been
undertaken in a rigorous way since the signing of the new working arrangements in 1995.

The Supervising Scientist will be concentrating on issues that have a potential to cause offsite impact. The NT Department of Mines and Energy has a much more extensive inspectorial role.

In addition I have asked my Department and Senator Hill’s Department to provide us with a review of the audit processes being used in relation to this mine and identify what is best practice. I want to be assured that at the minimum the processes in place will meet the ISO 14000 series of standards. The audit process must give all of us the confidence that what we expect to be done will be done.

Recommendation 14. The Government recognises the necessity not only to have assurances that environmental monitoring is being appropriately carried out but that the community has confidence in the results of the monitoring program.

To satisfy this need the Minister for the Environment and Heritage and I have agreed that the Supervising Scientist should develop and implement a routine environmental monitoring program.

The protection of people and ecosystems of the Kakadu National Park are of paramount importance. The implementation of this recommendation will give us greater confidence that our objectives will be met.

Recommendation 8. As evidenced by the commissioning of this report, the government understands the community’s concern over the need to seriously address the issues raised by this incident. But on the balance of evidence presented a prosecution in this case is not the best option.

The Government takes a measured approach to prosecutions, they are not to be entered into lightly. The former government did not take action to prosecute in any of the incidents which occurred during it’s period in office.

After reviewing the information in the Supervising Scientist’s report nobody could take a view that there was an intent to breach the environment requirements imposed on the mine under Section 41 of the Atomic Energy Act and the Supervising Scientist emphasises in his Report that there has been no environmental impact on Kakadu National Park.

This Government believes it is better to seek solutions than to make show case prosecutions.

The response that I have outlined today supported by Senator Hill is comprehensive and reinforces the position that we have all adopted, the security of the Kakadu region and the communities in that region is of paramount importance.

The responses are not costless to either the company or the governments involved but will be money well spent to ensure the ongoing protection of Kakadu National Park and its communities.

This mine has a life of only some years and the process of rehabilitation which will follow will be a very important one not only as a show case for what we and the mining community can do but as a message to the world about the importance we place on our communities and our world heritage.

**Goods and Services Tax: Implementation Manual**

**Senator ELLISON** (Western Australia—Special Minister of State) (3.06 p.m.)—I was asked a question today by Senator George Campbell about the cost of a GST implementation manual which was completed by Ernst and Young. The cost of that was $82,000.

**Education: Boys**

**Senator ELLISON** (Western Australia—Special Minister of State) (3.06 p.m.)—I was asked a question today by Senator Allison about a report which is with the Minister for Education, Training and Youth Affairs. I am advised that that report relates to significant matters dealing with the differences in the educational outcomes for girls and boys and their employment futures and other things. It is something that cannot be dealt with quickly. However, the minister has indicated that he has asked for the report to be published as soon as possible and also that it be available to the House of Representatives Standing Committee on Employment, Education and Workplace Relations.

**ANSWERS TO QUESTIONS ON NOTICE**

**Question No. 2229**

**Senator ELLISON** (Western Australia—Special Minister of State) (3.07 p.m.)—There was another matter raised by Senator Allison on Thursday, 22 June when she asked me about the status of question No. 2229, a question on notice to the Minister for Finance and Administration. I undertook to get an answer and I seek leave to incorporate that answer in *Hansard*.

Leave granted.

*The answer read as follows—*
Senator Allison asked the Minister representing the Minister for Finance and Administration, upon notice, on 17 May 2000:

With reference to the Charter of Budget Honesty and accrual accounting which require the Government to accurately value assets:

(1) Why is it that Telstra is valued at close to zero in the Budget when its value is estimated to be 90 billion.

(2) Why was the G3 mobile phone spectrum included as an asset and no other part of the spectrum.

(3) How was the G3 spectrum estimate of $2.6 billion calculated.

Senator Ellison—The Minister for Finance and Administration has supplied the following answer to the honourable senator’s question:

(1) The valuation of the Commonwealth’s equity in Telstra (50.1%) in the Budget is consistent with the Charter of Budget Honesty and accrual accounting principles. Telstra is valued in the Budget on the basis of the deemed historical cost of the Commonwealth’s equity in Telstra. Australian Accounting Standards provides for assets to be valued on this basis. In addition, it should be noted that the estimate of $90 billion assumed in the question is based on the market capitalisation of 100% of Telstra rather than the Commonwealth’s equity at historical cost.

(2) Australian Accounting Standards defines an asset as “a future economic benefit which is controlled by an entity as a result of a past transaction or event”. The ability of the Commonwealth to control access to spectrum and to derive a cash flow from it qualifies spectrum as an asset of the Commonwealth. As such, all spectrum, not just spectrum for 3G, are assets of the Commonwealth. However, the assets are valued at an historical cost of zero and are not separately displayed in the balance sheet. This is in line with previous practice in relation to spectrum estimates.

(3) The figure identified in the media represents the up-wards revision between MYEFO and the Budget for the anticipated proceeds of a number of auctions of spectrum licences to be conducted in 2000-01. The Government’s decision to disclose the revision was to end the exaggerated speculation on the value of the pending auctions. Three auctions contribute the most to this upwards revision:

1. 3G Mobile Telephone spectrum licences;
2. Spectrum associated with the sale of licences to datacast; and
3. Wireless Local Loop spectrum licences.

Nevertheless, the upwards revision largely reflects an increase in the anticipated proceeds from the sale of 3G mobile telephone spectrum licences.

In determining the revised estimates, a range of factors were considered, including the outcome of recent auctions in Australia and overseas, technological developments and commercial applications, spectrum availability, and market pressure on the Australian telecommunications sector.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Trucking Industry

Senator MACKAY (Tasmania) (3.07 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Regional Services, Territories and Local Government (Senator Macdonald), to questions without notice asked by Senator Mackay today, relating to the good and services tax.

It is important to go through some of the history of this issue. I notice that, even after being given a chance by the opposition, the government, through Senator Ian Macdonald, did not correct the record in relation to the issue of transport. What Senator Macdonald claimed in a press release—ironically headed ‘Labor ignorance on GST and regional Australia “Frightening”’—was the fact that transport companies could claim the full GST back through input tax credits from the first year, 2000-01. Senator Kemp uncharacteristically knew the answer to this question when Senator Hutchins asked it the other day; he knew that it was to be phased in over a three-year period. Unfortunately for Senator Macdonald, in the first year, 2000-01—this coming financial year—there is no capacity for input tax credits to be given to people who purchase big vehicles such as prime movers.

The example that the opposition used today in question time is that, if somebody believed Senator Macdonald’s press release, which he has not corrected and which he did not correct today—that is, that you could claim the full input tax credit for the coming financial year—they would potentially be $20,000 out of pocket. I think Senator Macdonald described this as amusing. It is not amusing to those people who read that press release, who would be under the misappre-
hension that the full input tax credit could be claimed for the forthcoming financial year and who believed Senator Macdonald. We had a reasonably correct response—and my colleagues will be talking about that later—from Senator Kemp who said it is phased in, and in the first financial year there is no capacity for input tax credits whatsoever. Senator Macdonald had due warning—because Senator Hutchins asked this question of Senator Kemp the other day and Senator Kemp had a go at it—that we were on to him and that his response and his press release were incorrect. I mentioned the press release earlier: it is somewhat amusingly headed ‘Labor ignorance on GST’.

It is simply not good enough for this minister to get away with putting out erroneous press releases that are misleading to a whole lot of small business people in rural and regional Australia—not simply big transport companies but small owner operators. Yet again here today, when Senator Macdonald was given the opportunity—I thought very graciously by the opposition—to correct the record, all he had to do was say, ‘I was wrong.’ That is all he had to say. But what he ought to have done, I believe, is correct the record when Senator Hutchins asked Senator Kemp the question. This press release did not simply go out to the gallery; the minister’s press release went out to every regional media outlet in Australia.

If that point was picked up—and I am sure it was—by people who were in the market to buy a big vehicle and who believed this, they would be up to $20,000, $30,000 or $40,000 out of pocket because they believed a government minister. What do the people of Australia have to do in order to get the correct information on the GST? Do they have to ring the tax hotline to check whether a government minister’s press release is correct or not? Is that what people are reduced to: checking with the tax hotline to check the minister’s press release? One assumes, because we had this on our side, that there is some checking mechanism on the other side. But this press release was wrong. It is potentially very hurtful for those small business people in regional Australia.

This minister could have got up here today and said, ‘I was wrong and I apologise’—not to me, not to the opposition, but to the people who were affected—but yet again he churlishly refused to do so. This is a prime example of what the problem is with this tax. If the government ministers do not understand this dog’s breakfast of a tax, how on earth can the community and people of Australia be expected to understand it? If you cannot trust a government minister who actually has portfolio responsibility for this issue to get it right, who can you believe? It really is a joke.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.12 p.m.)—The questions that were asked of Senator Macdonald today demonstrated one thing and one thing only: that the Australian Labor Party, as has been their bent since the new tax system was announced by the Prime Minister and the Treasurer in late 1998, have decided to do contrary to what Mr Keating did when he was the Treasurer in 1984. That is, Mr Keating pushed forward passionately with historic modernisation of the Australian tax system that he knew very well was needed then to make Australia a productive place, to boost employment and to boost our competitiveness. Mr Keating was a strong supporter of it then, as were many members of the current Labor frontbench, as people will see if they read the biography of Mr Keating by Mr John Edwards that I often refer to in this place. I recommend to anyone who wants to understand the Labor Party’s gross and rank hypocrisy in relation to tax reform that they read John Edwards’s book. It demonstrates that the Australian Labor Party—it does not matter how many days it is until the introduction of the new tax system—will mislead, exaggerate and distort the truth about tax reform. Senator Mackay opposite has continued with this program. The only thing that the Australian Labor Party—it does not matter how many days it is until the introduction of the new tax system—will mislead, exaggerate and distort the truth about tax reform. Senator Mackay opposite has continued with this program. The only thing that the Australian Labor Party have to go on is to scare people and distort the truth about the implementation and the implications of the new tax system after 1 July this year.

Come 1 July—and they are counting down the hours—those opposite will have to do some other things. They will have to come up
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with some alternatives to the tax system. They will not be able to make speeches with vague references to something called roll-back, which I have described as being analogous to jumping into an old Valiant, getting on a hill and rolling backwards down it, sticking the car in reverse, letting the clutch out and hoping that something happens. As Senator Kemp very eloquently said yesterday in question time, people understand very well these days that, if you roll back a tax, you have to roll forward another tax.

The Australian people, through long, hard and bitter experience of the Australian Labor Party in power during the 1980s, know very well that there is no such thing as an economic magic pudding. You cannot, for example, promise I-a-w law tax cuts, balanced budgets and no increases in direct taxes. The Australian people have learnt that. Last time they were promised tax cuts, no indirect tax increases and a balanced budget by the Keating government when Mr Beazley was finance minister, what did they get? They got no I-a-w law tax cuts, they got the biggest increases in sales taxes in the history of Australia with no compensation for low income earners and they did not get a balanced budget. In fact, they got some of the most unbalanced budgets in the history of Australia.

These people opposite will tell you that they can roll back the GST. After 1 July the pressure will be on them to say just where the roll-back will occur. The line they have been using to get away from having to specify what they are going to roll back is, 'Oh, we'll just have to see what the budget looks like at the time.' That means that, if there is a surplus of a few billion dollars, they will roll it back. But, if all of a sudden things get tighter again, they will roll it forward again.

So those opposite will have to do better than just saying, 'Oh, we'll take the tax off tampons,' or 'We'll take the tax off books or something if the budget bottom line is looking rosy,' because there is a corollary to that. That is, if Labor take the tax off tampons and books after the next election because the budget is in surplus but then do what they have always done by putting the budget back into deficit, it will mean they will have to put the tax back on tampons and books. So you will have to get a little bit more sophisticated than that.

You have had your fun up until now. You have spent two years carping, whingeing, undermining, misrepresenting and grossly exaggerating claims about the new tax system. But after 1 July you will find that the press gallery will focus very closely on just what the alternative is. You have been in opposition for over four years now. You have come up with only a few new policies: first, to bring in a retrospective capital gains tax; second, to bring in a new tax on four-wheel drives; and, I think, third, to put a tax on caviar. That is not what you would call a brilliant or inspired start to writing a tax policy, but at least it is a start. The real work begins come 1 July. You will then have the focus of the Australian people on just what your alternative is—and it is about time that took place. An opposition cannot survive by just opposing. (Time expired)

Senator HUTCHINS (New South Wales) (3.17 p.m.)—I also wish to take note of the answer given today by Senator Macdonald. In doing so, I am reminded of a quote from an old mate of mine. He said to me once—that does relate to politics—'If you ever fall into quicksand, don’t struggle, wait for your mates to come along.' Over the last week or so, we have been pursuing Senator Macdonald over his incorrect press statement. In that statement, he incorrectly and wrongly advised heavy vehicle operators that they would have access to an input credit immediately after 1 July. In those circumstances, the best thing that Senator Macdonald could have done was get up here and say, 'I was wrong, I was incorrect.'

In fact, I put a question to Senator Kemp last week and his answer was to his credit—and Senator Hogg has chipped me about our not giving too much credit to Senator Kemp. But I will quote from Senator Kemp’s answer to me last week. I asked him whether it was a phased reduction for heavy vehicles to be able to claim the input credit immediately after 1 July. In those circumstances, the best thing that Senator Macdonald could have done was get up here and say, ‘I was wrong, I was incorrect.’

There is a phased reduction, as the senator said, for the introduction of GST input tax credits for businesses, and that was designed specifically—and it has been stated on many occasions—to alle-
and it has been stated on many occasions—to alleviate delayed purchases in the lead-up to the GST.

So not only did Senator Kemp figuratively drop his mate in it last week by cutting him up in front of his whole frontbench and backbench; he also specifically said that it had been stated on many occasions.

As I said at the start of my contribution, ‘If you’re in quicksand, don’t struggle, wait for your mates to come along and pull you out.’ How would you be if you looked on that side and waited for those mates to come along and pull you out? We are all aware that you are waiting on some imminent ministerial reshuffle. We are all aware that some of you may not be here when we come back in August. No wonder you take the opportunity to slice each other up publicly, as Senator Kemp did the other week.

I will come specifically to this input tax credit. We have been dealing with the diesel fuel rebate legislation, and there is a very fine report that was commissioned by the Australian Trucking Association which refutes any claims that the government has been making that there will be any reduction in freight costs. This report, prepared by economic analysts called Tasman Asia Pacific, says this in particular on the GST input credits:

However, the rate at which those retail prices will fall is a much slower rate than would have occurred if trucking companies were allowed to claim full GST input tax credits from the date of the introduction of the GST. For trucks purchased in 2000-01, the retail price of trucks will not fall by around 15 per cent.

It goes on further to say:

For example, trucking firms that purchase most or all of their fleet prior to 1 July 2000 will not enjoy the benefits of cheaper trucks until they subsequently renew their fleets. In fact, the owners of the existing fleet will experience a capital loss.

So not only will the cost of operating a vehicle not go down as claimed by the government but also those existing heavy vehicle fleets will incur a capital loss, according to the Australian Trucking Association.

Although today in this place we have had an opportunity for forthright and honest approaches to be taken to what will be one of the most massive tax changes this country has ever experienced, those opposite have not even given us the decency of treating us honourably by giving us correct answers. I believe and understand, particularly in relation to petrol—and I have made some informal inquiries about the age of a number of the fleets that work directly for either petrol companies or their contractors, and I say this informally—that they have no intention of purchasing new vehicles either after 1 July or for another two years. So any opportunities for a reduction in freight costs as a result of the GST input tax credit are not there. I say once again that there will be no freight cost reductions once this comes in. In fact, I firmly believe that after 1 July freight rates will increase by at least 4½ per cent.
purpose tax. The entire tax revenue goes to the state governments.

Every one of these characteristics is against the taxation principles that the Labor Party love. The Labor Party love hidden taxes. The Labor Party love taxes which they can direct at a particular part of the community. They can direct those taxes to the people they do not like, not to their mates. They can direct their tax to their enemies. They are the sorts of taxes the Labor Party like, like the wholesale sales tax. Who understands the wholesale sales tax? Who knows what rate of wholesale sales tax you levy? You can change it any time. And we have done away with the wholesale sales tax. All we have now is a GST.

We know that; everybody knows that. Eventually the Labor Party will come into government and then they will have a tax to deal with that they cannot change. That is what the Labor Party hate about the GST. That is why they attack it all the time. That is why they have tried to confuse everybody. The real approach the Labor Party have towards taxation is, in fact, demonstrated by what the Labor Party say about what they will do to the GST. They say they will do a roll-back. Mr Beazley gets up and says, ‘We will roll the GST back.’ Where will they roll it back? He says, ‘We do not know yet. We will do it later but we will roll it back. We will roll it back here; we will roll it back there.’ But where are you going to roll it back? We do not know. It is more likely that you will roll it over because how you roll it back depends on where you stand, doesn’t it? So far we have not been able to get a single straight answer out of the Labor Party. The Australian community has not heard a single word about what the Labor Party will do with the GST if they get into government. They say they will roll it back, but where? Selectively, somewhere.

But, fortunately for us, the Australian community is not confused. For example, let me refer to Mr Campbell Anderson, the President of the Business Council of Australia. He said:

... amidst all the noise and inevitable transitional confusion—most of it sowed by the Labor Party—we are now experiencing and seeing magnified out of all proportion in the media and in the parliament, we should not let ourselves lose sight of the fundamental benefit of the taxation reform program. That is what it is all about: the fundamental benefit to the Australian community.

That is something which the Labor Party cannot stand because that is not something they can bring in. (Time expired)

Senator HOGG (Queensland) (3.27 p.m.)—I felt sorry for Senator Tchen then. He was given the poisoned chalice trying to defend Senator Macdonald this afternoon. I never thought I would hear this uttered in this chamber and it was done so by Senator Mackay before me in this debate: she has actually proven that Senator Macdonald is worse than Senator Kemp. I never thought we would see that day. Senator Kemp, who is affectionately known as the Sergeant Schultz of the—

The DEPUTY PRESIDENT—Order! Senator Hogg, do not reflect upon another member in this place, please.

Senator Ian Campbell—You just wish that you had a nickname.

Senator HOGG—I do, as a matter of fact, Senator Ian Campbell. Senator Kemp, of course, is well known for not answering questions but Senator Macdonald has proven far worse. But the point was missed in this debate. The point here is that the minister put out a media release on 30 May 2000 which said:

... with the Wholesale Sales Tax of 22% completely going from huge transport vehicles, from tyres and spare parts, the transport industry will be able to claim back any—

and ‘any’ is the operative word—GST that they pay on these capital purchases. If Senator Macdonald had taken the time to do just a little bit of research, even from the Parliamentary Library, he would have found out that that is not true. He tried to back-pedal today to say that there will be phase-in arrangements, and even then he could not tell this chamber what those phase-in arrangements were. But he could not apologise for the fact that the press release he put out on 30 May was not telling the full story about the introduction of the GST.

Senator O’Brien—He could not admit he was a bungler.
Senator HOGG—He could not admit, as my colleague Senator O’Brien said, that he was a bungler. Of course, if you look at the information that was supplied by the Parliamentary Library on the purchase of motor vehicles, it says quite clearly:

However, these GST credits will be severely limited in the first two years of GST’s operations. The reason for this is the fear that businesses may defer their vehicle purchases until after the introduction of the GST.

And then it goes on to say:

The government considers that this ‘could seriously disrupt the motor vehicle market’.

Then it goes on to the restrictions. When you read into the document, you find that it quite clearly points out what the restrictions are. It says:

Firstly, for these items no GST credits will be allowed for purchases or importations before 1 July 2001. In other words, if you buy the item during the first year of GST’s operation, you will not get a GST credit for it.

That was a simple answer that was available to the minister from the Parliamentary Library in this very building. He did not have to go very far to get the answer to find out that his press release was quite incorrect. The statement from the Parliamentary Library, which comes out of the CCH publications, says further:

If you buy the vehicle between 1 July 2001 and 30 June 2002, only half of the normal GST credit will be allowed. If you buy on or after 1 July 2002, the full GST credit will be available.

That is certainly not the message that was conveyed in the press release of that minister of 30 May. All the minister was being asked to do was to come in and not confirm in some sop manner by saying that he understood that there were phase-in arrangements or to say that there is no need for a correction or an apology. As my colleague Senator Mackay pointed out, this press release was put out throughout the whole of Australia—that is what the minister did. If the minister made a mistake, it is easy for the minister to correct the mistake. It is easy for the minister to stand up here and say, ‘No, I was not correct in my press release. There were going to be phase-in arrangements, and these were the phase-in arrangements.’ But the minister obviously had not paid up his subscription to either the Parliamentary Library or to CCH publications, for if he had he would have known the correct information to give the people of Australia and not have misled them as, I believe, was done in that particular press release. There is no doubt it is an utter disgrace on the part of this minister. (Time expired)

Question resolved in the affirmative.

Genetic Information: Legislation

Genetically Modified Food: Labelling

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.33 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Justice and Customs (Senator Vanstone) and the Minister for the Environment and Heritage (Senator Hill), to questions without notice asked by Senator Stott Despoja and Senator Brown today, relating to genetic privacy and the labelling of genetically modified food.

At midnight last night, President Clinton, in conjunction with another world leader, Tony Blair, announced the finalisation of the human genome project. I think all honourable senators would reflect on this with a degree of, I hope, excitement and pride. I think it is one of the most exciting scientific discoveries this century—certainly in the last 100 years—and certainly, in my lifetime, since man walked on the moon.

This historic event has posed a number of challenges for legislators all around the world but, in particular, in the federal parliament, because in the United States, before such an historic announcement, President Clinton had put in place a legislative framework that looked into issues such as preventing discrimination on the basis of your genetic information in federal departments and agencies. In Australia we do not have comparable legislation, and I think this is of great concern to many Australians, given that this discovery is essentially a genomic blueprint of all people.

I called on Senator Vanstone today to find out when exactly the government would recognise the urgency of the need for genetic privacy protection and either implement legislation or act on the recommendations of the
Senate Legal and Constitutional Committee, which actually reported around March last year, suggesting the creation of a national working party to investigate some of these issues. I acknowledge that the senator did not have the brief and will come back to me with, I hope, a comprehensive response to my question. But it was a little surprising that she was unable to answer my question, given that I asked a very similar question almost a year ago in relation to the same matter.

I asked when this government would implement legislation that would not only protect the privacy of genetic information but also ensure that that information could not be used against people, say, in the employment sector or for the purposes of health insurance. In health insurance we know that it is already happening. In states like Victoria, people who have the Huntington’s disease gene are being forced to pay higher premiums. Of course, just because you have a predisposition for a particular genetic condition does not necessarily mean that you will develop that condition.

These are the pressing moral, legal, political and social questions that we should be examining as a parliament. I had given the minister notice, effectively, by asking this question on at least one occasion almost a year ago. In fact, on that occasion such was the lack of understanding in the chamber that at least two shadow ministers accused me of asking a dorothy dixer because they thought this was an easy question for the minister to answer. Of course, we are now all learning just how complex, scientifically and legally, this issue is. To argue, for example, that current Commonwealth legislation, say, anti-discrimination law, takes into account the issue of whether or not people can be discriminated against in the work force is insufficient because we know that the definition of discrimination is probably not broad enough to take into account the issue of genetic discrimination.

So I put on record yet again the recommendation of the Senate committee, which said:

That the Commonwealth Government give consideration to a reference to the Senate Legal and Constitutional References Committee to undertake a thorough examination of the issues relating to genetic privacy and discrimination, including consideration of insurance, employment, provision of goods and services, clinical diagnosis and treatment, conduct of medical and other research and genetic information concerning children.

And also it suggests that a national working party be established. Again, I urge the government to pay attention to at least these recommendations, even if they find of concern the notion that they should implement an Australian Democrats’ private member’s bill. I acknowledge that that is probably not going to happen. But I am proud of the fact that my party has put this issue on the agenda for debate, that we were able to introduce a private member’s bill that covered these pressing issues back in 1998—issues that other countries have at least endeavoured to take into account. I know that the private member’s bill has been discussed in places in Europe, yet we cannot get it discussed in our own parliament. I hope that the government will at least initiate their own legislation to ensure that Australians are able to undertake genetic testing, which can have potential benefits for Australians, but not have to worry about how that information is going to be collected, stored and utilised. (Time expired)

Question resolved in the affirmative.

PERSONAL EXPLANATIONS

Senator ROBERT RAY (Victoria) (3.38 p.m.)—Madam Deputy President, I wish to make a personal explanation.

The DEPUTY PRESIDENT—Does the honourable member claim to have been misrepresented?

Senator ROBERT RAY—Yes.

The DEPUTY PRESIDENT—Please proceed.

Senator ROBERT RAY—Last Wednesday Senator Kemp, under order of the Senate, produced certain documents in the chamber. He sought leave to make a statement, which was granted, and then accused me of selective quoting. In precise terms, Senator Kemp said:

However, Senator Ray failed to mention that the commissioner told the committee twice that there would be a personalised message included in the
mail-out. The Hansard records the commissioner’s words—
and he went on to quote the words. He then says:
I do not think it was referred to in Senator Ray’s
remarks in this chamber.
Going back to my remarks, you will find that
I quoted Mr Carmody as saying:
My only observation at this moment is that the
campaign is designed to be effective. Part of that
effectiveness is the personalised nature of it.
So quite clearly I put that down on the rec-
ord. Senator Kemp, I suppose in spite of his
reputation for forensic mastery of detail, ob-
viously did not actually read my speech. One
of his staffers obviously failed to read all of
the speech before his statement was prepared.
Twice during question time, subsequently,
Senator Kemp has inferred that I am a selec-
tive quoter. I did say at the very start of my
statement on the adjournment that the ques-
tioning covered 3½ pages and that I would
endeavour to be objective. Clearly, the ac-
cusation that Senator Kemp has made that I was
selectively quoting and the example he has
used is disproved by a reading of my speech.
I do not want to debate the matter, but I
thought I should at least correct the record to
stop him making those sorts of allusions and
mistakes like he made at question time today,
nominating me as an interjector—I would
have to say that on past form it was a fair
guess—but I happened to be engaged in a
private conversation at the time with other
senators. So one of my other colleagues, for
whatever was said—and I still do not know
what was said—can wear the odium or oth-
erwise. I think Senator Kemp is getting a lit-
tle sensitive to some of the criticisms I have
made. I welcome the robust debate in re-
sponse from him. I just want it to be based on
accuracy.

NOTICES

Presentation

Senator Crowley to move, on the next
day of sitting:
That the time for the presentation of the report
of the Community Affairs References Committee
on how, within the legislated principles of
Medicare, hospital services may be improved, be
extended to 12 October 2000.

Senator Cook to move, on the next day of sitting:
That the Senate condemns the Prime Minister
(Mr Howard) and the Government for deliberately
misleading the Australian motorists that petrol
will not rise as a result of the goods and services
tax.

Senator Forshaw 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 5 September 2000:
The provisions of the Gene Technology
Bill 2000, with particular reference to:

Objectives

(a) whether measures in the bill to achieve
its object ‘to protect health and safety of
people and to protect the environment’
are adequate;
(b) whether the proposed regulatory
arrangements and public reporting
provisions will provide sufficient
consumer confidence in the regulation of
the development and adoption of new
gene technologies;

The Office of Gene Technology Regulator

(c) the structure of the Office of the Gene
Technology Regulator (OGTR) and its
assessment processes compared with
other proposed stakeholder models and
similar overseas bodies;
(d) whether the powers and investigative
capability of the OGTR are adequate to
ensure compliance with conditions
imposed in licences;
(e) whether the proposed cost recovery and
funding measures for the OGTR are
appropriate and will allow for adequate
resourcing of the office;

Other proposed bodies

(f) the role and membership of the proposed
ministerial council.
(g) the functions and powers of the Gene
Technology Community Consultative
Committee and the Gene Technology
Advisory Committee;

Other issues

(h) procedures for review of decisions and,
in particular, the rights of third-parties to
seek review of decisions;

(i) liability and insurance issues relating to
deliberate and accidental contamination
of non-genetically modified crops by
genetically-modified crops and how those issues are being addressed in international regulatory systems;

(j) the validity and practicability of any proposed clause allowing individual states the right to opt out of the scheme and the implications of such an option in the context of Australia’s international trade and related obligations; and

(k) the alleged genetically-modified canola contamination in Mount Gambier and the processes followed by the Interim Office of Gene Technology in investigating and reporting on the allegations.

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

That the Senate—

(a) notes:

(i) the comments of the Australian Ambassador to the United States, Mr Michael Thawley, in his address to the Georgetown University Law Centre forum on trade dispute resolution on Monday, 26 June 2000, in which he called for reform of the World Trade Organization and the strengthening of its disputes resolution system, and

(ii) calls by the Secretary of the Australian Manufacturing Workers’ Union, Mr Doug Cameron, for the Australian Government and Australian Labor Party to adopt a policy of fair, rather than free, trade; and

(b) acknowledges that, in light of the growing international divide between developed and developing nations, fair trade is not about protectionism, but ensuring that basic standards of human rights, workers rights and environmental sustainability are respected and protected in international trade.

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

That the Senate—

(a) notes that:

(i) the International Labour Organization (ILO), in the week beginning 25 June 2000, released a report showing that globalisation and increased trade liberalisation have resulted in job loss and less job security,

(ii) this report also reveals that 75 per cent of the world’s 150 million unemployed people have no access to income support, and that the majority of these are women, and

(iii) Australia, the United States and Britain have slipped to the middle rung of worker protection in light of their sustained campaigns to cut income support for unemployed people;

(b) endorses the finding of the report that worker protection in economies undergoing rapid change as a consequence of globalisation is essential to smooth the acceptance of these changes; and

(c) advises the Federal Government and, in particular, the Minister for Employment, Workplace Relations and Small Business (Mr Reith) to take note of the warning by ILO Director-General, Mr Juan Somavia, that recalcitrant countries which undermine worker protection could ‘eventually suffer a destructive backlash’.

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

That the Senate—

(a) notes that:

(i) the Special Session of the General Assembly of the United Nations, the World Summit for Social Development and Beyond: Achieving Social Development for All in a Globalized World, is being held in Geneva in the week beginning 25 June 2000,

(ii) this special session will review the achievements made at the Copenhagen Social Summit in 1995 and look to developing and implementing new initiatives to reach the goals set then, and

(iii) these goals centre on the eradication of poverty, promotion of full employment, fostering of social integration and, most importantly, placing the human person at the centre of development; and

(b) endorses these goals and condemns the Federal Government for failing to send a representative to this landmark meeting, when it has been able to send the Treasurer (Mr Costello) to chair the meeting of the Organisation for Economic Co-operation and
Development Ministerial Council in Paris in the week beginning 25 June 2000 and a major delegation to London to mark the Centenary of Federation.

**Senator Carr** to move, on the next day of sitting:

(1) That the Employment, Workplace Relations, Small Business and Education Legislation Committee reconvene to resume its consideration of the 2000-01 Budget estimates on 14 August 2000, for the purpose of further examination of the Employment Advocate.

(2) That the committee, by unanimous resolution, may determine, following receipt of answers by 24 July 2000 to questions placed on notice during the committee’s initial examination of the 2000-01 Budget estimates, that the hearing is no longer necessary.

**Senator Sherry** to move, on the next day of sitting:

That the Senate notes that:

(a) more than 100 questions taken on notice at the supplementary additional estimates of the Finance and Public Administration Legislation Committee hearings on 2 May 2000 remain unanswered;

(b) answers to questions taken on notice on 2 May 2000 have been in the office of the Minister for Finance and Administration (Mr Fahey) since before 23 May 2000;

(c) the Special Minister of State (Senator Ellison) advised the committee at the hearings on 23 May 2000 that answers to these questions would be provided ‘within a couple of days’;

(d) these questions related to matters raised at the budget estimates hearings on 23 May 2000 which could not be properly pursued as the answers to questions on notice of 2 May 2000 had not been received at that time;

(e) many of the questions taken on notice relate to Employment National, a Government business enterprise that has been run in a questionable manner;

(f) some questions specifically relate to the continuing investigation into matters relating to the process of awarding the Job Network 2 contracts, possible breaches of the Corporations Law and the actions of the Minister for Finance and Administration in this regard; and

(g) the delay in giving answers to these questions may be seen as an attempt by the Government to avoid scrutiny in relation to the actions of the sole shareholder of Employment National, the Minister for Finance and Administration.

**Senator O’Brien** to move, on the next day of sitting:

That the National Health (Lifetime Health Cover) Regulations 2000, as contained in Statutory Rules 2000 No. 106 and made under the **National Health Act 1953**, be disallowed.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.43 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

- A New Tax System (Tax Administration) Bill (No. 2) 2000
- Excise Amendment (Compliance Improvement) Bill 2000
- New Business Tax System (Miscellaneous) Bill (No. 2) 2000
- Primary Industries Legislation Amendment (Vegetable Levy) Bill 2000
- Product Stewardship (Oil) Bill 2000
- Customs Tariff Amendment (Product Stewardship for Waste Oil) Bill 2000
- Excise Tariff Amendment (Product Stewardship for Waste Oil) Bill 2000
- Product Stewardship (Oil) (Consequential Amendments) Bill 2000.

I also table statements of reasons justifying the need for these bills to be considered during these sittings and I seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—

**A NEW TAX SYSTEM (TAXATION ADMINISTRATION) BILL (No. 2) 2000**

Purpose of the proposed measures:

To complete the package of measures to simplify administration of the tax system as foreshadowed in Chapter 4 of ANTS on 13 August 1998.

The A New Tax System (Taxation Administration) Bill (No. 2) 2000 includes provisions establishing
a new penalty regime to support the new tax system, and allowing certain persons to charge a fee for the preparation of, and advice about, business activity statements.

It also provides for the calculation of rebates for certain users of diesel and other fuels.

Reasons for urgency.

It is important that the provisions establishing the new penalty regime, are passed before 1 July 2000 when the regime is to commence.

Those persons who will be permitted to charge for the preparation of, and advice, about, business activity statements will not be able to begin charging until the bill is passed.

Payments of rebates to the relevant users of diesel and other fuels could be delayed by a delay in passage of the bill.

(Circulated with the authority of the Treasurer)

EXCISE AMENDMENT (COMPLIANCE IMPROVEMENT) BILL 2000

Purpose of the Bill

To introduce new controls on the growing and movement of tobacco, revise penalties for offences and enhance legislative provisions for granting of registration and licences for all Excise manufacturers and warehouses.

Reasons for Urgency

Introduction and passage of the Bill in the 2000 Winter sittings will limit the opportunity for excise evasion in illicit tobacco.

(Circulated by authority of the Treasurer)

NEW BUSINESS TAX SYSTEM (MISCELLANEOUS) BILL (No. 2) 2000

Purpose of the proposed measure:

The bill will implement important Government reforms to Australia’s Business Tax system, including capital gains tax, imputation, life insurance and superannuation measures.

Reasons for Urgency:

The measures in the bill will commence from 1 July 2000. (Most of the measures were announced on 21 September.)

Given that the measures take affect from 1 July 2000, it is important that the relevant legislation is enacted before that date to provide certainty to taxpayers. A large number of taxpayers are likely to be affected by the Government’s reforms, including individuals, companies and superannuation funds.

Result if bill not dealt with in these sittings:

A large number of taxpayers, including individuals, companies and superannuation funds, are affected by these measures. They will face uncertainty in managing their business affairs if the legislation is not passed as soon as possible.

(Circulated with the authority of the Treasurer)

PRIMARY INDUSTRIES LEGISLATION AMENDMENT (VEGETABLE LEVY) BILL 2000

Purpose of the Bill.

The Bill seeks to amend the Primary Industries Levies and Charges Collection. (Vegetable) Regulations to clarify the rate of levy intended to be struck on vegetables that were grown and processed by the grower between 1 March 1996 and 30 June 1999. There will be a retrospective decrease in levy liability for the small number of grower/producers affected. It will provide refunds of up to $5000 in total.

Reasons for Urgency

The Bill is necessary to correct an inequity in the previous primary legislation which was repealed as part of the amalgamation of levies and charges legislation accomplished on 1 July 1999. The intention is to correct this long standing inequity as soon as possible. For transactions post 1 July 1999, the inequity has already been corrected.

PRODUCT STEWARDSHIP (OIL) BILL 2000

CUSTOMS TARIFF AMENDMENT (PRODUCT STEWARDSHIP FOR WASTE OIL) BILL 2000

EXCISE TARIFF AMENDMENT (PRODUCT STEWARDSHIP FOR WASTE OIL) BILL 2000

PRODUCT STEWARDSHIP (OIL) (CONSEQUENTIAL AMENDMENTS) BILL 2000

Purpose of the Bills

Provide for a Product Stewardship System for Waste Oil to implement one of the Government’s commitments under A New Tax System — Measures for Better Environment. Specifically the bills will:

- ensure the environmentally sustainable management, re-refining and reuse of waste oil;
- support economic recycling options through product stewardship;
- ensure that products manufactured from recycled oil meet the relevant Commonwealth environmental standards;
- avoid environmentally damaging disposal of waste oil;
- create an effective product stewardship partnership between oil producers, collectors recyclers and the States and the Commonwealth;
- allow for transitional assistance to introduce product stewardship; and
ensure that oil producers progressively assume the costs of product stewardship and environmentally sustainable practices for waste oil.

The Product Stewardship (Oil) Bill (the PS(O) Bill) establishes the mechanisms for paying product stewardship benefits to oil recyclers and establishes an advisory body to the Minister for the Environment and Heritage.

The Customs Tariff Amendment (Product Stewardship for Waste Oil) Bill amends the Customs Tariff Act 1995 to collect an excise-style levy on lubricant imported into Australia.

The Excise Tariff Amendment (Product Stewardship for Waste Oil) Bill amends the Excise Tariff Act 1921 to collect an excise-style levy on lubricant produced or blended within Australia.

The Product Stewardship (Oil) (Consequential Amendments) Bill amends the Taxation Administration Act 1953 to draw in general interest provisions needed to support provisions in the PS(O) Bill.

Reasons for Urgency

In the 2000-2001 Budget Papers the Government made a commitment to the introduction of product stewardship arrangements for waste oil during 2000-2001. Introduction and passage in the Winter sitting is required in order to make the system fully operational and effective from the revised commencement date of 1 January 2001.

If the bill is not dealt with in the Winter sittings, a critical element of A New Tax System - Measures for Better Environment will not be able to be implemented by 1 January 2001.

Public consultation regarding this issue was undertaken with the expectation that product stewardship arrangements will be in place in 2000-2001.

(Circulated by authority of the Minister for the Environment and Heritage)

BUSINESS

Hours of Meeting and Routine of Business

Motion (by Senator Ian Campbell)—by leave—proposed:

That on Tuesday, 27 June 2000:

(a) the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to 11 pm;
(b) the routine of business from 7.30 pm to 10.20 pm shall be government business order of the day no. 2 (Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000 and a related bill); and
(c) the question for the adjournment of the Senate shall be proposed no later than 10.20 pm.

Senator HARRADINE (Tasmania) (3.46 p.m.)—I raise with the chamber a difficulty that I have in respect of this matter. This is an important piece of legislation and it has difficulties within it, and it is important that we are able to assess intelligently not only the legislation but the amendments that are coming before us. As of this morning at around 10.30, there were no amendments at all in the Table Office in respect of this legislation: none—not even the government amendments, presumably. The question was asked, by my officer who went down to the Table Office, whether there were any amendments to the legislation and the answer was that there were not. There must be some difficulty here.

We are operating under considerable difficulties. It is one thing to be a member of a party and to have a spokesperson dealing with this matter intimately, because the other members of the party are then following what that person does. But for minor parties, and particularly as far as I and Senator Brown are concerned, it is difficult to keep up with it. So far as the Labor Party is concerned, we have only just this minute received the amendments on the table in the chamber, and there are something like 100 amendments. I appeal to the chamber to have regard to the problems that beset us. We have now got to go through all of those. The Australian Democrats courteously sent along some draft amendments this morning to my office, and I appreciate that. But it is a difficult situation—in fact, almost an impossible situation—to deal diligently with these matters in a manner that brings about an outcome where all points of view have been taken into account.

This chamber is supposed to be a chamber of review. How can we review legislation, unless we are aware of what amendments are proposed by the government or by anybody else in this chamber? Here we are on the brink, I presume, of going again into the committee stage of the bill, and we have only just got all of these amendments. I make two appeals. One is to the chamber officials
somehow or other to ensure that the Table Office does have the amendments when they hit the deck in this chamber. It seems to me that the amendments hit the deck in this chamber before they are given to the Table Office. I do not know that that is an efficient way of carrying on the business of the Senate. The second appeal is to the parties to give us the courtesy of letting us know, even if it is in draft form, what you propose for us to vote on. I for one would be most grateful if that could occur.

Senator BROWN (Tasmania) (3.51 p.m.)—I want to concur with what Senator Harradine has had to say. We have more than 50 amendments here from the government, more than 50 from the opposition, and more than 50 from the Democrats. It is not easy legislation that we are dealing with: it is very complex conceptually. If we are properly going to review the matter, before we debate it here there ought to be an opportunity for community consultation. There are a lot of stakeholders in this—19 million of them. There are quite a few stakeholders out there who are quite concerned about how this legislation is going to affect them. One cannot but be concerned that, the closer we get to the community as far as those stakeholders are concerned, the less they are able to have any input into a debate as complex as this one, when they have not got the basic information on which the debate is being founded. It is a totally unsatisfactory situation.

I would suggest that the bigger parties take stock. I think this legislation ought to be held over until our August sitting. That would be a sensible thing to do. There is no compelling reason we should have to deal with that before we rise at the end of this week; least of all is there any reason that it could be upheld by the government when it brings amendments so late into the place. We will function a lot better if we have had time to get some feedback from the community. In fact, I think we are doing the wrong thing by the community if we do not. I would suggest that the government in particular again look at the circumstances in which this debate has been listed, and do the right thing and hold it off until we have had a break and we have had proper input from all the stakeholders.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.53 p.m.)—I will quickly respond by saying that I understand the amendments have all been circulated. I understand Senator Harradine’s point about ensuring that amendments are circulated as early as possible for all senators. As the Manager of Government Business in the Senate, I understand the practicality, even in this place, if you do have any sort of agreement on any amendments between the two major parties if you want to get the bill through the Senate. Independent senators can, if they are kept out of the loop on these things, take an extraordinary amount of time in the chamber asking a series of questions about bills, and it is clearly in the government’s interest to ensure that they are kept in the loop. I think Senator Harradine and Senator Brown would say that we generally are successful in doing that. We try to inform them of what we are doing as quickly as possible after we ourselves have decided what we are doing, and generally seek a consensus outcome. Often—as Senator Harradine will know better than most—when negotiations go on over these complex bills, discussions on amendments and amendments to amendments do take place in meeting rooms over periods of days.

The datacasting debate in particular has been going on since the minister announced the policy scheme late last year, from my memory. There has been public consultation ad nauseam on the issues. There has been the Senate committee inquiry process, which is our normal procedure with these matters. That committee has had hearings and has reported, and it is now back before the Senate. There is very good reason to have the bills dealt with by 1 July in that, as all honourable senators who take an interest in this area know, there is billions of dollars worth of investment tied up in shifting to digital television in Australia, and all the industry players, regardless of their views on the legislation, want to see this regime in place before the end of this financial year. I suspect that it is a matter that you could debate and consult on for the next two years and still have a debate in the Senate about it. But the government has made a commitment to put
in place a regime with the support of the ALP and the Democrats, who both see the sense in that. We do have a range of other important measures to put in place by 1 July. I have circulated a list of those priority bills we want concluded by the end of these sittings which are scheduled to conclude on Thursday afternoon. Sitting a few extra hours tonight to consider this important bill should facilitate that. I thank the chamber for agreeing to do that.

Question resolved in the affirmative.

**LEAVE OF ABSENCE**

Motion (by Senator O’Brien)—by leave—agreed to:

That leave of absence be granted to Senator Harris for the period 26 to 30 June 2000 inclusive, on account of ill health.

**NOTICES**

**Postponement**

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Opposition in the Senate (Senator Faulkner) for today, relating to the reference of matters to the Finance and Public Administration References Committee, postponed till 15 August 2000.

General business notice of motion no. 605 standing in the name of Senator Woodley for today, relating to the Australian dairy industry, postponed till 29 June 2000.

General business notice of motion no. 607 standing in the name of Senator Stott Despoja for today, relating to the work for the dole scheme, postponed till 28 June 2000.

**GOODS AND SERVICES TAX: PETROL PRICES**

Motion (by Senator Cook) agreed to:

That there be laid on the table, no later than 4 p.m. on 28 June 2000, by the Assistant Treasurer (Senator Kemp), a copy of the economic modelling, including the methodology and assumptions, relating to petrol pricing and referred to by the Prime Minister (Mr Howard) in his interview on the Channel Nine Sunday program on 25 June 2000.

**COMMITTEES**

**Privileges Committee**

Reference

Motion (by Senator Chapman) agreed to:

That the following matter be referred to the Committee of Privileges:

Having regard to the letter dated 22 June 2000 to the President from the Chairman of the Parliamentary Joint Committee on Corporations and Securities, whether there was an unauthorised disclosure of a submission to the Joint Committee on Corporations and Securities, and, if so, whether a contempt was committed by any person in relation to that disclosure.

**Corporations and Securities Committee**

Meeting

Motion (by Senator Chapman) agreed to:

That the Parliamentary Joint Committee on Corporations and Securities be authorised to hold a public meeting during the sitting of the Senate on 28 June 2000, from 5.30 pm, to take evidence for the committee’s inquiry into aspects of the regulation of proprietary companies.

**Public Works Committee**

**Report**

Senator CALVERT (Tasmania) (3.58 p.m.)—On behalf of the Parliamentary Standing Committee on Public Works, I present the sixth report of 2000, relating to the proposed Navy Ammunitioning Facility, Twofold Bay, New South Wales. I seek leave to move a motion in relation to the report.

Leave granted.

Senator CALVERT—I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling statement in Hansard.

Leave granted.

The statement read as follows—

Madam President, the report I have just tabled concerns the proposed construction of a Navy ammunitioning facility at Twofold Bay, New South Wales.

The project is estimated to cost $40 million.

The Committee has recommended that the project should proceed.

The need for this project arises out of the closure of Newington Armaments Depot in Sydney last year.
Until the closure of this depot, the East Coast Fleet had been ammunitioned when positioned at the base at Garden Island in Sydney Harbour.

Since the closure of the Depot, the Navy has been using Point Wilson, near Geelong, as an interim ammunitioning facility until a permanent facility can be established.

In 1998, the Committee considered a proposal to develop Point Wilson as a permanent ammunitioning facility. This was as part of the proposal for an East Coast Armament Complex.

The Committee found that Point Wilson was an unsatisfactory location for an ammunitioning facility, and recommended that locations closer to Sydney be further investigated.

Twofold Bay was suggested as a location worthy of further consideration.

In March this year, the Committee inspected the site of the proposed facility and held a public hearing at Eden.

The inspection and public hearing re-affirmed to the Committee the advantages that Twofold Bay offers the Navy in terms of an ammunitioning facility. These are:

First, the location is reasonably close to the Fleet base at Garden Island, and very close to the Navy exercise area off the coast of Jervis Bay.

Second, Twofold Bay provides a safe, deep and sheltered harbour for Navy ships.

Third, the area is relatively unpopulated.

This last feature will enable the facility to function in accordance with the NATO principles relating to the handling of explosive ordnance.

To provide some certainty over the long-term operation of the facility, Defence will seek to control future developments that are incompatible with the NATO planning principles.

A comprehensive Environmental Impact study was conducted on the area in accordance with both Commonwealth and New South Wales legislation.

Environment Australia’s Environmental Assessment Report concluded that there were no over-riding environmental reasons why the project should not proceed subject to the recommendations of that report.

Environment Australia’s recommendations are attached to this report as Appendix C.

The Committee has recommended that when moving the expediency motion for the work to proceed, a guarantee should be provided to the House that all recommendations set out in Appendix C will be implemented.

The Committee has also recommended that the Navy should strongly consider holding a public meeting in Eden every two years to report to the community on the state of the environment surrounding the facility.

In conclusion Madam President, I would just like to make two more points.

First, the Navy estimates that it will only use the wharf up to 75 days per year. For the remainder of the time, the wharf will be made available on a commercial basis for the import and export of cargoes.

There was some debate at the public hearing about whether any viable export cargoes could be sourced from the Eden area.

However, the majority of the witnesses believed that the existence of the wharf could only assist in encouraging regional businesses.

The second point concerns community consultation.

At the public hearing, Defence advised the Committee that if the project were to proceed, consultation would continue between Defence and the local community.

For this consultation to be meaningful, Defence may need to look at ways of including the whole region, not just Eden.

Madam President, I commend this report to the House.

Senator Brown (Tasmania) (3.59 p.m.)—At this stage, with this report having just been tabled, and my not having been able to analyse it, I simply want to comment on behalf of those people who are not in favour of the wharf and storage facility to be located at Twofold Bay opposite Eden in New South Wales. I simply want to reiterate that this wharf and storage facility will replace the current ammunitioning facility on Sydney Harbour which is due to finish at the end of this year
and is being moved because it is not considered proper to have such an ammunitioning facility in the precincts of our largest metropolis. Twofold Bay was chosen as the location after an extensive and ongoing process—so-called, by the Minister for the Environment and Heritage, Senator Hill—which saw the rejection of Point Wilson East Coast Armament Complex being built at Port Phillip Bay in Victoria.

There is a better place for this facility, which is coastal from Rockhampton in Queensland. This facility is totally inappropriate for such a beautiful place as Twofold Bay. There are great concerns by those residents who have an environmental regard for Twofold Bay and its enormous attractiveness as a harbour halfway between Sydney and Melbourne. Twofold Bay has suffered greatly over the years—firstly, as a whaling port, then as a woodchip port and a petroleum storage facility, amongst others. It is a very sad event indeed that it is now going to become an ammunitioning place when it does not need to be and there is a better alternative. I will be looking forward to the further debate about this matter when Senator Calvert and the government choose to bring it on later in the year.

Senator WEST (New South Wales) (4.02 p.m.)—I would like to rise to take note of this report also but to take a slightly different tack to Senator Brown, because I have grave concerns about the implications of some of Senator Brown’s comments. Eden, situated on Twofold Bay, is a town in a region that has suffered quite disastrously in recent times because of a number of issues affecting it. They cannot be blamed on any one person, but a group—

Senator Ian Campbell—Does very well when you have a rough Sydney-Hobart race.

Senator WEST—I am not an expert on Sydney to Hobart, Senator Ian Campbell. You probably are. It is certainly well known for that berthing facility that it offers. It is also known as a very good whale watching area. But it is an area that has very high unemployment, and I would urge Senator Brown to be very cautious about criticising a proposal that many people of the region see as part of the future plan and future development of this area that will provide them with employment and, therefore, enable them to have stability to continue to live in what is a very beautiful area and on what is a very beautiful bay. I would urge Senator Brown to be very cautious about this, because the people of Eden—the people of Eden-Monaro—are very concerned about any proposals that might take away any potential employment proposals and propositions that they are looking at and trying to work up. I would, therefore, ask Senator Brown to be very careful about his criticisms of this and his wanting us to disregard this proposal, because I think it is something that has certainly got to be looked at very carefully. I think that the committee’s report—which I take it is a unanimous report—is one that we need to make sure does certainly get the go-ahead. I seek leave to continue my remarks.

Leave granted; debate adjourned.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Hogg)—The President has received a letter from a party leader seeking a variation to the membership of committees.

Motion (by Senator Ian Campbell)—by leave—agreed to:

That Senator Murphy be appointed a participating member to the Environment, Communication, Information Technology and the Arts Legislation and References Committees.

NEW BUSINESS TAX SYSTEM (MISCELLANEOUS) BILL (No. 2) 2000

First Reading

Bill received from the House of Representatives.

Motion (by Senator Ian Campbell)—by leave—agreed to:

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

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.05 p.m.)—I table a revised explanatory memorandum relating to the bill and move:
That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

The New Business Tax System (Miscellaneous) Bill (No 2) 2000 builds on earlier legislation implementing the Government’s landmark business tax reforms. It contains a wide range of measures, most of which are based on the recommendations of the Review of Business Taxation. The Review was established by the Government to consult extensively with business over a 12 month period and make recommendations on business tax reforms. Since the Government announced its response to those recommendations, it has continued to extensively consult with business on the implementation details.

The measures in this bill can be broadly broken down into 6 categories: scrip for scrip rollover relief, the taxation of life insurers, measures dealing with losses, measures dealing with the imputation system, other CGT measures and integrity measures.

**Scrip for Scrip Rollover Relief**

One of the Government’s key business tax reforms is the provision of scrip for scrip rollover relief for takeovers between companies and between trusts, regardless of whether the entities are widely-held or private.

This measure has already been legislated and took effect from 10 December 1999. It removes a major impediment to mergers and takeovers and allows start-up and innovative firms to undergo restructuring without triggering a capital gains tax liability.

Schedule 5 of this Bill puts beyond doubt that scrip for scrip rollover relief is available for: schemes of arrangement; where scrip is cancelled and reissued; and where a subsidiary company makes the takeover offer using its parent’s scrip ('downstream' acquisitions). These amendments are important because takeovers may utilise these types of features.

Schedule 5 also contains integrity rules as well as some technical amendments.

**Life insurers measures**

This Bill represents a major improvement in the competitive neutrality, the consistency and the integrity of the taxation system.

It is indisputable that life insurance companies should be taxed on their profit at the company tax rate like all other companies.

The former Government announced its intention to review the taxation arrangements for life insurers in the 1995-96 Budget. However, it did nothing.

The Government announced that it would reform the tax treatment of life insurers in its tax reform document ‘A New Tax System’. Since that time, the life insurance industry has been extensively consulted regarding the impact of the measures, both during the Review of Business Taxation and subsequently.

This bill now delivers the long overdue reforms.

The bill will introduce new rules that will broaden the tax base for life insurance companies and friendly societies.

The reforms will apply from 1 July 2000 and will ensure that life insurers are treated on a more consistent basis with other entities. Promoting this kind of equity across taxpayers is a key foundation on which the new business tax system is based as it facilitates much lower company tax and capital gains rates. The new rules will increase the integrity of the tax base and will also substantially reduce complexity.

The bill also ensures that the pension business of superannuation funds is taxed consistently with the immediate annuity business of life insurance companies and removes an anomaly in the current law that allows capital gains accrued on an asset during the accumulation phase to escape taxation if the asset is transferred to the pension phase. However, the bill provides transitional relief for small superannuation funds to reduce the capital gains tax impact arising on the commencement of a pension where a member of the fund commences a pension between 1 July 2000 and 30 June 2005.

**Losses measures**

There is a range of losses measures in the bill. They include those designed to:

- prevent the multiple recognition of losses in a company for tax purposes in certain circumstances (known as the inter entity loss measure);
- modify and refine the continuity of ownership test and provide an appropriate link to the inter-entity loss measures;
- align the application of certain loss measures; and
- strengthen the unrealised loss measures where loss assets are transferred within a company group.

These measures are based on the recommendations of the Review of Business Taxation.

**Imputation measures**

Small individual shareholders will benefit from reduced compliance costs flowing from a measure
that will extend an exemption under the franking credit trading rules. The effect of this measure will be that shareholders entitled to franking rebates of up to $5,000 will no longer need to consider the 45 day holding rule. This change recognises that such shareholders would seldom be caught by the franking credit trading rules.

The imputation system, as it applies to life insurers, is amended in the bill so that franking credits and debits accrue to life insurance companies based on tax paid on income actually allocated to shareholders. This replaces the more arbitrary basis through which franking credits and debits currently accrue to life insurance companies.

There are also other changes which are consequential on the broadening of the tax base for life insurers referred to earlier, including changes to franking accounts.

Measures in the bill also recognise the introduction of the Pay As You Go instalment system in allowing franking credits and debits to arise in relation to PAYG instalments and in recognising payments under PAYG before 1 July 2000 by early balancing companies.

Other CGT measures
In relation to capital gains tax, the bill ensures that the Government’s fundamental CGT reforms, introduced last year, operate in the intended manner.

Integrity measures
And finally, there are two other specific integrity measures in the Bill.

First, there are rules that will penalise taxpayers who obtain tax benefits from schemes to avoid, defer or reduce, PAYG instalments. The rules are consistent with the framework of a general anti-avoidance rule. The general anti-avoidance rule in the income tax law does not apply to the PAYG system contained in the Taxation Administration Act.

Second, there are technical amendments to the prepayments measure already legislated to ensure that the provisions operate in the way that they were intended, including correcting potential anomalies in the law.

Full details of the measures in the bill are contained in the explanatory memorandum.

I commend the bill.

Ordered that further consideration of this bill be adjourned to the first day of the 2000 Spring sittings, in accordance with standing order 111.
wished to bring their parents to Australia indicated they would meet all the costs associated with the migration of their parents.

In response to the preparedness of sponsors to contribute to the costs of aged parents migrating to Australia, I announced on 3 April 2000 that the Government would introduce new entry arrangements for parents in the 2000-2001 Program year. These new arrangements will provide for a significant increase in the number of parents who will be able to come to Australia to be reunited with their children.

A contingency reserve of 4,000 visa places is available for this parent category over the next two program years. This is in addition to places for other parent categories.

The Senate voted to disallow the previous entry arrangements for parents as they believed them to be visas for the rich.

The Government was not creating a visa class for the rich. We wanted to allow more parents to live in Australia, in a way which ensured a fair deal for the Australian taxpayer.

As a result of the disallowance and the negative budgetary impact of parent migration, the Government was able to accommodate only 500 parents in the Migration Program intake for 1999-2000.

The Designated Parent visa category was introduced in November 1999 and was specifically designed to assist those parents who were adversely affected by the Senate’s disallowance of the previous parent entry arrangements.

The Designated Parent visa classes incorporate key elements of the previously disallowed parent entry arrangements including the payment of a $5,000 health charge for each parent.

A very high level of interest in the Designated Parent visa category has been demonstrated by almost full acceptance of my invitations to lodge an application under this category.

Around 1,100 Designated Parent visas have been granted since November 1999, with the remaining 1,100 to be granted in the 2000-2001 Program year.

The introduction of the Designated Parent visa category was accompanied by an announcement of a more flexible visitor visa arrangement for parents with an on-going migration application. This was in recognition of the extended processing times faced by parents and has resulted in a greater number of parents being able to visit their children in Australia.

Health and welfare costs for aged parents suggest that the previously disallowed arrangements may not have been a good deal for the Australian taxpayer.

On average, the total health costs for persons over 65 are around $6,000 per year. For a person with a remaining lifespan of 20 years, the total cost may be around $120,000.

The total welfare costs in special benefit and age pension payments could be as large as $160,000 per person over the same period.

Faced with these potential lifetime costs totalling about $280,000, the new arrangements introduced by this Bill involve a very reasonable contribution by applicants and sponsors, particularly for the cost of health services.

The most important features of the new visa classes are:

an extended Assurance of Support period of 10 years instead of the normal 2;

an increased bond payable in respect of an Assurance of Support. The amount will go up from $3,500 for the main applicant and $1,500 for other adults to $10,000 and $4,000 respectively; and

a choice for applicants to either obtain suitable private health insurance for the first 10 years in Australia should such a product be available, or pay an up-front health services charge of $25,000 per person.

The extended Assurance of Support period is consistent with the long-standing 10 year residency bar on access to the Age Pension.

The increased bond is refundable with interest after 10 years, less any welfare benefits accessed during that time.

The health services charges of $25,000 per person represents only about one fifth of the potential health costs.

While the current parent visa classes will be closed to new applications upon implementation of the new visa category for aged parents, those in the current pipeline will continue to be processed within current capped levels.

Given the greater financial commitment of applicants and the consequent lower budgetary impact, it should be possible to increase parent visa places over the next two program years, without placing an unsustainable burden on the Australian community.

The second major initiative in this Bill is the introduction of changes to Medicare arrangements for parent and protection visa applicants. The Bill removes access to Medicare from parent visa applicants who are in Australia temporarily.
while their permanent visa applications are being processed. This is necessary because the flexible visitor visa policy for parents may potentially result in increased Medicare usage, with the corresponding financial impact and community reaction. Certain parents, however, will continue to qualify for limited access to Medicare under Reciprocal Health Care Agreements.

The Government is also concerned to ensure a consistent approach to health care entitlements for people who are seeking asylum in Australia. The health care component of the Asylum Seeker Assistance Scheme was established in early 1994 as the appropriate arrangement for providing health care services to asylum seekers in the community. However, an unintended consequence of subsequent legislation changes in 1994 allowed some asylum seekers to become eligible to access Medicare in addition to the Asylum Seekers Assistance Scheme.

The Bill removes this access to Medicare for new applicants for Protection Visas, restoring the health care arrangements under the Asylum Seekers Assistance Scheme as the vehicle for providing health services for all asylum seekers in the community. The Bill also clarifies and simplifies Temporary Protection Visa holders’ eligibility for Medicare. Holders of Temporary Protection Visas will be eligible for Medicare without needing to apply for a further visa as is currently the case.

You may note that this Bill takes the unusual step of amending regulations by way of a Bill. This is based on the Government’s desire to ensure that the Parliament has the opportunity to consider this package as a whole. This is an important initiative, one which is intended to maximise the number of parents who can migrate to Australia. It is for this reason that I ask all parties to support this Bill.

I commend the Bill to the chamber.

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

YOUTH ALLOWANCE CONSOLIDATION BILL 1999

Consideration of House of Representatives Message

Message received from the House of Representatives acquainting the Senate that it had agreed to the amendments requested by the Senate to the bill.

Third Reading

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

ASSENT TO LAWS

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

- New Business Tax System (Venture Capital Deficit Tax) Bill 1999
- Telecommunications (Interception) Legislation Amendment Bill 2000
- Pooled Development Funds Amendment Bill 1999
- Primary Industries (Excise) Levies Amendment Bill 2000
- Taxation Laws Amendment Bill (No. 10) 1999
- Customs Tariff Amendment Bill (No. 1) 2000
- Excise Tariff Amendment Bill (No. 1) 2000

NEW BUSINESS TAX SYSTEM (MISCELLANEOUS) BILL (No. 2) 2000

Report of Superannuation and Financial Services Committee

Senator McGauran (Victoria) (4.08 p.m.)—On behalf of Senator Watson, I present the report of the Select Committee on Superannuation and Financial Services on the provisions of the New Business Tax System (Miscellaneous) Bill (No. 2) 2000, together with the Hansard record of the committee’s proceedings and submissions received by the committee.

Ordered that the report be printed.
DIESEL AND ALTERNATIVE FUELS GRANTS SCHEME AMENDMENT BILL 2000

Second Reading

Debate resumed from 26 June, on motion by Senator Patterson:

That this bill be now read a second time.

upon which Senator Cook had moved by way of amendment:

At the end of the motion, add:

"but the Senate condemns the Government for:

(1) the uncertainty generated in the transport industry through the introduction of significant new amendments to the Diesel and Alternative Fuel Grants Scheme with less than two weeks to go before the commencement of the new Scheme;

(2) not disclosing the powers for the Commissioner of Taxation to stop, detain and search vehicles prior to the last election; and

(3) imposing a complex new layer of administration on transport operators in connection with the Scheme, in addition to the new compliance burden associated with the GST".

Senator KEMP (Victoria—Assistant Treasurer) (4.09 p.m.)—This bill further extends the Diesel and Alternative Fuels Grants Scheme, which will reduce fuel costs for heavy transport across Australia. This scheme is a central plank in the coalition government’s reform of the taxation system, reducing the effective rate of taxation on diesel, particularly for the benefit of rural and regional Australia. Under the scheme eligible recipients will receive a fuel cost reduction of around 24c per litre. The bill before the Senate therefore extends eligibility in three key areas. First, it extends eligibility to primary producers, irrespective of their location. This is a very important extension, enabling farmers to access the benefits of the scheme even if they are located within the metropolitan area. Second, it extends eligibility to buses operating within the metropolitan area using alternative fuels, primarily CNG or LPG. This move will provide a boost to public transport and reflects environmental concerns about the use of diesel raised in particular by the Australian Democrats. Third, it extends eligibility to emergency vehicles over 4.5 tonnes. This will provide a benefit to many volunteer fire brigades in rural areas located on the urban fringe, a benefit they have not had in the past.

The bill also makes a range of minor administrative changes, all of which operate to the benefit of claimants under the scheme. In addition, the bill makes a further amendment to reflect the government’s policy intention in respect of stationary vehicles. For vehicles which perform part of their operations on road and part of their operations in a stationary position at a particular site, the formula for calculating eligible fuel usage would not have been appropriate. The formula took the ratio of eligible kilometres travelled to total kilometres travelled and multiplied it by total fuel used. Clearly, for vehicles which use a significant portion of their fuel while stationary at a site, this formula would overstate the amount of eligible fuel usage. The scheme is designed to cut the cost of on-road transport. As a result, the amendment in this bill will alter the formula so that, if more than 20 per cent of the fuel used by a vehicle is used while stationary, then the stationary use for fuel must be deducted from the total before applying the formula. This reflects the policy intent of the Diesel and Alternative Fuels Grants Scheme.

Unlike the Labor Party, which consistently raised excise during its term in government, the coalition is serious about reducing transport costs. In the final term of the Keating government the excise rate on petrol and diesel was raised by 5c a litre, all due to discretionary budget measures and not merely to indexation. In contrast, the coalition government is reducing transport costs in a number of ways, including by giving business the ability to claim input tax credits on the fuel they purchase in the course of their business activities by extending the Diesel Fuel Rebate Scheme to cover marine transport and rail transport. Through this scheme, the Diesel and Alternative Fuels Grants Scheme will provide an effective cost reduction in the order of 24c per litre for on-road transport by heavy vehicles. I commend the bill to the Senate.
Amendment not agreed to.

Original question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator CONROY (Victoria) (4.13 p.m.)—The Diesel and Alternative Fuels Grants Scheme Amendment Bill 2000 proposes significant amendments to the administration and compliance regime for the Diesel and Alternative Fuels Grants Scheme. Before I go into detail on this bill, I would like to question for a moment the way in which the government has developed this legislation. Ten minutes before this bill was due to be debated in the House of Representatives last week, Labor was handed an amendment to the bill from the government. Why is it that so many bills that come before parliament require amendments from the government? If it were just one or two amendments this would be acceptable, but it is not. Last week the government was forced to announce amendments to its new business tax miscellaneous bill to fix a glaring problem in terms of retrospectivity for self-managed funds that were to be charged CGT when transferring assets to a pension. The amendments to build to this bill that were passed in the House of Representatives also included technical changes to fix drafting errors. It seems the reason the government amend so many bills is that they are a rabble and they are out of control. There can be no better example of this than the legislation that is before the chamber this week. It is legislation that, if the government had been organised, would have been passed long ago so that business could have had a fair chance to prepare themselves for the Liberal-Democrat GST. It seems that the government consistently produce legislation that has not been adequately considered or has not been properly drafted.

The government have carved out a bill and a deal with the amendments that leaves industry struggling to comply. This forces industry groups into intense lobbying efforts trying to explain to flustered Treasury officials the unintended consequences of the bills that are about to be passed. A lot of these dramas could be resolved if the government simply consulted before introducing legislation. A classic example is this legislation, which seeks to amend the government’s initial bill to establish the Diesel and Alternative Fuel Grants Scheme. We must question whether the parliament’s time could not have been better spent debating other matters. If the government had properly consulted stakeholders about the initial Diesel and Alternative Fuels Grants Scheme Act, would we have needed to race another bill through parliament a few days before the scheme is due to start to fix the failures of the first bill?

The opposition supports this bill. Labor did not oppose the Diesel and Alternative Fuel Grants Scheme, because it constituted a way to help the transport and primary production industries mitigate the impact of the GST. The anomalies in the scheme were always inevitable and inherent in the government’s endeavours to draw artificial boundaries around benefits. As I said, the government have carved out the maps of those who will receive the grant and those who will not. If you are on one side of the line, you will get it; if you are on the other side of the line, you will miss out. This bill tries to address some of the obvious anomalies. It amends the Diesel and Alternative Fuel Grants Scheme to extend it to primary producers who operate within metropolitan areas, to buses that operate within metropolitan areas that use alternative fuels and to emergency vehicles in metropolitan areas.

In addition to policy changes, this bill proposes significant amendments to many provisions to correct errors and anomalies. They include provisions to: extend the entitlement to vehicles that satisfy the entitlement criteria for some part of the grant period even if the vehicle is not yet registered with the scheme at the time of the claim being made; accept registration of additional vehicles at the same time a claim is made in respect of those or other vehicles; ensure clients who seek to correct a mistake or omission for a previous
claim do not lose their entitlements for both claims; provide for the payment of interest to clients on the underpaid amount of fuel grants which are paid or applied against debts as a result of an objection against a fuel grant assessment; clarify that journeys between metropolitan areas and non-metropolitan areas are eligible in both directions; and, finally, repeal part 8 of the 1999 act dealing with recovery of scheme debts and insert a new section dealing with recovery by set-off.

These amendments will cost the government an additional $17 million in the 2000-01 financial year to operate the scheme. This scheme is so inefficient that it is costing $20 million in the first year to collect $120 million of revenue. If Senator Sherry were now in the chamber, he would be on his feet to defend the superannuation surcharge as the most inefficient bill this parliament has ever passed. But in actual fact, on a dollar-for-dollar basis, I think that Treasury have now got the winner. And they should hang their heads in shame. Treasury pride themselves on an efficient tax collection system, but this bill is the dog of all bills when it comes to how cost ineffective it is. But this government was prepared to stoop to any level to do its deal with the Democrats, and that is why we are in this mess.

Senator Heffernan—They’ve got more influence than you!

Senator CONROY—I am prepared to concede that, Senator Heffernan. That is why the people of Benalla gave the thumbs-down to the National Party in Victoria recently, while the Labor Party has gone from about 28 per cent to 30 per cent of the primary vote in Benalla, a seat which we have never held in the 97 years of Victorian parliamentary history. What happened was that people in Benalla spoke, and it sent a shiver down Senator McGauran’s spine. Senator Kemp well knows he was invited: ‘Come and defend the GST; come and defend the Diesel and Alternative Fuels Grants Scheme; come and defend it in Benalla.’

Senator Heffernan—Get back to the policy!

Senator CONROY—You stick to beating up Alby Schultz in Hume, mate. You just try to fix Hume.

Senator Hutchins interjecting—

Senator CONROY—He has beaten up John Fahey; that is right. Thank you, Senator Hutchins. It is John Fahey you are trying to knife. You want his position in cabinet. That is why you are trying to do him over, Senator Heffernan. So don’t you start on policy. You have not spoken on one bill in this parliament since the day you entered. You are a parliamentary secretary. Don’t you give me a lecture on policy. For goodness sake. There is no-one with a straight face in this chamber on that interjection.

The TEMPORARY CHAIRMAN (Senator Hogg)—Address your remarks to the chair.

Senator CONROY—But I go back to the bill. Look at that: Senator Heffernan is running again. This National Party, which used to be a proud political outfit is just missing in action. The Democrats throw a hissy fit and are in for the fix. But this bill and the amendments to this bill are a tribute to some cunning on the part of the National Party.

As Senator Hutchins outlined yesterday, the Democrats are in one of the worst political fixes that this country has seen in years. We have seen boundaries drawn around conservative marginal seats. If you live in
Queanbeyan, you get the grant. If you live in Fyshwick, you do not get the grant. What is the only difference, Senator Brown? The conservative marginal seat of Eden-Monaro covers Queanbeyan, but the strong traditional Labor seat of Canberra covers Fyshwick. That is the only difference, and the Democrats have signed up to it. In Victoria, as Senator Hutchins mentioned yesterday, we have Ballarat, a struggling, two per cent marginal conservative seat, and Geelong. Both are an hour from Melbourne and both centres have vibrant transport industries, trucking companies and bus companies, but Geelong is a strong Labor seat. Geelong does not get the grant; Ballarat gets the grant. The same applies in Queensland. The same applies in New South Wales. The Democrats deserve condemnation and should hang their heads in shame over this because, to cover their hides, they have been in on one of the worst political fixes. The Democrats know that when this government loses the next election the Democrats will be the bridesmaid. The Democrats know that they have been part of this cheap, dirty political fix, and we are seeing more amendments again today to try to make this bill more palatable to the Australian public.

As we saw in the last news poll, the Australian public are not buying this GST. They are not buying the compensation package. They know when they have been ripped off and—I will come to this in a minute—they know when it comes to petrol and fuel that the government speak with a forked tongue. The government made a core promise. Petrol was not even a non-core promise. Remember the difference between core promises and non-core promises? They do not have to keep non-core promises, but they keep core promises. The government said that there would be no need for a GST increase in petrol. ‘Petrol prices will not go up’, they said. Everybody in the country now knows that on Saturday we will see petrol prices increase because of the GST. Don’t be fooled by the Prime Minister trying to blame the oil companies. He is so desperate that he will be blaming the banks for a petrol price rise next. That is where this government have got to. They will say anything and do anything to convince people, but this government is guilty as charged when it comes to petrol pricing. Ewen MacPherson, the Deputy Director of the Australian Institute of Petroleum, says:

... any savings that do exist will be passed on, but they will not be anywhere near 1.5 cents per litre. The Government’s claimed saving simply has no basis in reality.

The government have their dodgy Treasury model called PRISMOD. PRISMOD is a model that we debated extensively in the Senate GST committee because it was the basis on which the government were misleading the Australian public about the benefits of the GST. The PRISMOD model makes the assumption that, on 1 July, 100 per cent of every possible cost saving that a company may make over a five- to eight-year period will actually be delivered from day one, 1 July.

When the Prime Minister appeared on the Sunday program last weekend, he said that Treasury modelling says there is 1.5c of savings. In actual fact, he was saying that in the Treasury modelling in the long term—and the long term, the Treasury admitted, was five to eight years; that is roughly the average when you are doing economic modelling—there is maybe a 1.5c a litre saving. The Prime Minister knows this. He has been the Treasurer. He knows the way these models work, so he has made an assumption and a bland assertion that the savings that will come through, according to the modelling, are not deliverable until five to eight years. Yet he is trying now to say that the petrol companies should pass on their anticipated savings, and the ACCC are going to be sooled onto them. And what did Allan Fels say yesterday? Notwithstanding the fix that the government is trying to make Fels cop, Fels knows that he cannot deliver on this one. He cannot continue to pretend that 10 is 10 is 10 on this one. He knows that there is no way this government can make the oil companies pass on anticipated savings. It is not the law. Even Allan Fels has run from this one. Fels has been in every other fix you have put him up to in the last 12 months, but this one is too hard even for Fels to swallow. He knows that he cannot make oil companies pass on anticipated savings.
Senator McGauran—So you are down on Fels too?

Senator CONROY—Down on Fels? He has been running your propaganda for 12 months, but even this is too much for him to swallow, Senator McGauran. He knows that he cannot enforce an anticipated cost saving in petrol prices on 1 July, and he knows that prices are going up by between 1c and 1.5c on Saturday. Even Fels will not give you cover on this one.

I would just like to inform the chamber that we have here in Canberra, visiting from my old home town of Whitehaven, the current Deputy Mayor of Whitehaven, Norman Williams. I would like to welcome you on behalf of the Australian parliament. It is great to see you visiting here. For those who are interested, I understand that Norman is the hot tip to be the mayor of Copeland Council next year, which I am very proud of. It is a very proud Labour council from the northwest of England, near the Lake District, for those of you who do not know where I am from. I am very honoured to have met Norman today and welcome him. In winding up, don’t be fooled by the conservatives. Just like the VAT sank them in England, the GST is going to sink them here, Norman.

Senator HUTCHINS (New South Wales) (4.28 p.m.)—Taking note of the time that we would like to spend on this, I have just a few questions. Maybe the minister might be able to answer them all if I hit him with them all at once. Is the rebate 16c, 17c or 18c? The second question is about the definition of ‘journeys’. I mentioned this in my statement yesterday in the Senate. Will vehicles between 4½ tonnes and 20 tonnes—essentially almost 90 per cent of buses are in that category—

Senator Kemp—What rate?

Senator HUTCHINS—My questions on the journeys are in relation to the 4½-tonne to 20-tonne vehicles used for journeys outside a conurbation into a conurbation and returning. Using an example from yesterday, Pierce’s Bus Company could come from Valley Heights—which is a non-conurbation area in Western Sydney—collect as part of its journey half a load of schoolchildren going to a concert in Sydney, take them to Sydney and then come back and drop some in Penrith—which is in the conurbation—and some back in the non-conurbation area. That will happen, whether with passengers or with general freight. When do you become eligible for the rebate? Is it for the full journey? It is not clear in the Bills Digest.

I also want to refer to the issue of primary producers in the conurbations being eligible for the rebate if their vehicles weigh less than 20 tonnes. I mentioned yesterday that, when the old road maintenance tax was in place, it used to be avoided by companies saying that they had chooks on board when they had frozen chooks on board. If primary producers were not doing well, they would use their ability to register and make application under the old system to avoid paying the road maintenance tax. They would say that they were primary producers when they were actually carting general merchandise. So there are three questions. What is the rebate? How are you going to define journeys and the eligibility for the grant? What about primary producers?

Senator KEMP (Victoria—Assistant Treasurer) (4.32 p.m.)—Thank you for those questions. I will be in a position to deal with each of those questions. Some notes are being prepared on the last one. I know you have a particular interest in this, Senator Hutchins, and we are happy to provide you with a full briefing. There are a variety of journeys, and I would not want you to feel we had deprived you of the definition of a journey. Before I turn to the matters before the chair, let me note what seemed to me to be Senator Conroy’s second reading debate speech.

Senator Carr—That is because you jumped too early.

Senator KEMP—He was not in the chamber. Excuse me for jumping. He was late as usual. That is all right. It is perfectly acceptable if he wanders in late. We are well used to that with Senator Conroy, so we accept that. But it did seem to me to be more a second reading contribution. We would also like to welcome Mr Norman Williams from the council of wherever it was. We hope your stay in Australia is satisfactory.
Senator Cook—If you’re doing cheerios, I can send one to my mum.

Senator Kemp—I am just responding to matters which were raised in Senator Conroy’s speech in the second reading debate. Excuse me for doing that. I join Senator Conroy in welcoming his guest to the Senate. Turning to the issues before the chamber, the first question related to the rebate rates. The undertaking we gave was to cut the effective excise rate to 20c per litre for diesel and to maintain the price relativities of alternative fuels, and we have achieved that with the rebates which are being given: for diesel fuel, the level which has been struck is 17.798c; for compressed natural gas, it is 12.132c; for liquefied petroleum gas, it is 11.466c; and for ethanol, it is 20.009c. That meets the commitment that we gave.

The straightforward answer to the matter of the definition of a journey is that the journeys travelled by buses on scheduled services or advertised charter services will be eligible where some part of the route extends beyond a metropolitan area. So the picking up and the dropping off of passengers is not the relevant feature of this. They are eligible where the scheduled service extends beyond a conurbation. That is a very good result for the bus industry, I suspect, and I am pleased to see that my advisers are nodding sagely at that point.

Primary producers are eligible, as are contractors working directly for the primary producers. The way we define the primary producers is the way they are defined by the Income Tax Assessment Act. That is the fair way to do it, and that is accepted by the industry. I underline that the contractors have to be working directly for the primary producers. That avoids the problem that you raised.

Senator Hutchins (New South Wales) (4.36 p.m.)—I am not clear about the bus definition. I am not trying to be difficult here, but it would appear to me that a company coming from outside a conurbation will be advantaged whereas a company in a conurbation will be disadvantaged. They may be competing for the same passengers or the same freight.

The second point is about primary producers in, say, an urban area like Sydney: there are not only fruit and vegetable growers but also a large number of chicken growers who should be in that Sydney conurbation. To my knowledge, they do not necessarily have their own vehicles; they engage other companies. Would it be the case that this scheme will require a lot of policing of the paperwork? Who would be responsible? Because, as I said earlier, when a similar type of tax was in place over 20-odd years ago, it was able to be avoided.

Senator Kemp (Victoria—Assistant Treasurer) (4.38 p.m.)—We are very keen to make sure that there is proper compliance. Of course, the compliance activities of the ATO are subject to the Auditor-General. I understand we have had preliminary discussions, looking at the various compliance procedures that are to be put in place. We are very conscious of the need to properly enforce the law and for there to be appropriate compliance. But, at the same time, we want to make sure that the compliance arrangements are not unduly burdensome. We have taken steps to consult with the industry—and I think they welcome this initiative by the government, as we would expect—and we have discussed compliance arrangements with them. There is no doubt that the concept in this bill and the development of the urban conurbation matter do lead to some additional compliance costs, but we have been very keen to discuss the matter with the industry to make sure that those costs are not burdensome.

Just touching a bit on what you said in your speech in the second reading debate, the address of the business is not the determining factor in assessing eligibility for a grant. Where a particular business is located does not determine eligibility for a grant. Eligibility is based on the nature of the journey undertaken—specifically whether it starts or finishes in a non-metropolitan area. In that sense, if a bus company is located within the conurbation and another bus company is located outside it, that does not of itself give a particular advantage. It depends on where the journey occurs. Are you with me? So a transport company, for example, doing deliveries around Canberra with a vehicle of between
4.5 tonnes and 20 tonnes GVM qualifies for a grant based on where the goods were picked up and delivered, not where the transport company is located. Similarly, the eligibility of a bus company undertaking a charter will be determined by where the charter commences and finishes and not where the bus company is located. So we are looking at the journey itself, not the postal address. Putting it another way, it is the pick-up and drop-off points which are relevant, not the address of the company.

Let me just make sure that we are clear on the issue of the buses. I said that journeys travelled by buses on scheduled services or advertised chartered services would be eligible where some part of the route extends beyond the metropolitan area. A bus charter—in other words, buses on a journey travelled not on a scheduled service—which commences outside the metro area and picks up passengers outside the metro area will be eligible until they pick up passengers in the metro area. There is a difference between the bus charter and the scheduled service. I hope that clarifies that issue.

Senator HUTCHINS (New South Wales) (4.41 p.m.)—It is just that in the Bills Digest it says that the government has inserted a new paragraph 10(2)(ba) and goes on to say:

This provides that a journey between a point inside or outside a metropolitan area is covered by the scheme. Item 4 thus removes an anomaly, namely, that a journey from a point outside to a point inside a metropolitan area would be eligible but the same journey in the opposite direction would be ineligible.

Senator KEMP (Victoria—Assistant Treasurer) (4.43 p.m.)—Life sometimes has complexities which we would prefer to avoid, but it has been my experience that politics is never particularly tidy. Let me just deal finally with the issue you raised. It was always the intention that a journey either way would be eligible, but there was some legal advice that suggested that the bill was unclear on that. We then clarified the matter, and our view was that the position was clear. But I think some people in the industry were still uncertain. This is why that change has been made. But it was always the intention that the journey either way would be able to qualify for this scheme.

Senator BROWN (Tasmania) (4.43 p.m.)—Mr Temporary Chairman, you will be aware that this bill applies a rebate scheme to diesel and alternative fuels, and by ‘alternative fuels’ is meant ‘compressed natural gas or liquefied petroleum gas or recycled waste oil or ethanol or canola oil or such other fuels as is specified in regulations’. I ask the minister: how much will this scheme cost in total on a per annum basis, and how much of that cost will apply to each of the fuels that the act lists in its definition?

Senator KEMP (Victoria—Assistant Treasurer) (4.44 p.m.)—Senator, the total cost of the bill is some $600 million per annum. We do not have a breakdown of the separate costs. I will see whether there is any information we can provide to you. But, on the preliminary advice that I have, I am not sure that we have those figures, Senator.

Senator BROWN (Tasmania) (4.45 p.m.)—I ask the minister: is that the total cost of this bill on top of the scheme as a whole, or is that the total cost of the scheme as a whole, on a per annum basis, as amended by this bill?

Senator KEMP (Victoria—Assistant Treasurer) (4.45 p.m.)—The original cost of this scheme was in the order of $600 million, and the additional cost flowing from the amendments in this bill, I am advised, total some $17 million.
Senator BROWN (Tasmania) (4.45 p.m.)—I ask the minister: is it true that the ACCC has advised the public that LPG prices will rise by an estimated seven to 8.5 per cent under the GST? You will be aware, Mr Temporary Chairman, that there is some debate involving the Prime Minister about whether petrol and diesel fuel prices will rise. But I ask: in view of that advice from the ACCC, what impact does that have on this rebate for those vehicles which are using LPG? Also, what is the ultimate outcome when you add the new cost on LPG of the GST and then defray that cost through this rebate system?

Senator KEMP (Victoria—Assistant Treasurer) (4.46 p.m.)—Senator, I do not have advice on those figures that you have quoted from the ACCC. But let me just make the general comment that, if it is a business user, the GST is claimed back. So I do not know whether the effect of the GST is 3c or 4c—as I have said, I am just using this as an example—but that would be claimed back as an input tax credit. To the business user, there would not be a GST effect. This scheme provides, I think, in the order of just over 11c a litre. Using your figures, the 11c would be minus whatever the figure is that you have—and I do not have that figure here with me.

Senator BROWN (Tasmania) (4.48 p.m.)—But, using the minister’s figures of 3c or 4c a litre—

Senator Kemp—that is just an example.

Senator BROWN—as an example, what we have is a very big departure from the Prime Minister’s or the government’s assurances that vehicle fuel prices would not rise as a result of the GST. The point here goes to how the GST will impact on the use of a more environmentally acceptable fuel, remembering that in this country the environmental impact of the burning of fossil fuels is one of the biggest components of both the production of carcinogens, which claim hundreds of lives each year in the big cities, and global warming, which is totally out of control in this country; the Minister for the Environment says that it is running at 119 per cent—1990 levels by 1998. We have here a formula for giving a better deal under the GST to the more polluting fuels and a worse deal to LPG. I ask the minister: is that correct?

Senator KEMP (Victoria—Assistant Treasurer) (4.49 p.m.)—Certainly the promise made by the Prime Minister related to petrol and diesel, and I have made it very clear the commitment that the government has to its promises, Senator. You can argue, I guess, what you like. But it should not be implied in your comment—and I do not think this was your intention—that the government is not keeping its commitment that it made to the people. It is keeping its commitment. I have given you an example of the amounts that are applicable in the grants scheme. Senator, I am not sure that I can add much to that, but the fact of the matter is that this is still good news.

Senator BROWN (Tasmania) (4.50 p.m.)—The clear indication the community got from the government was that vehicle fuel prices would not be rising as a result of the GST. So I do not agree with the minister.

Senator Kemp—that is not true.

Senator BROWN—Here we are finding that, where you have citizens who have changed or converted or bought vehicles that use an environmentally better fuel such as LPG, they will be penalised under the GST. In other words, the GST has built into it an environmental penalty clause as far as vehicle users are concerned—and that is reprehensible.

I reiterate that Australia is in deep trouble over its failure to act on its Kyoto protocol commitment to keep global warming gases coming out of this country at a 108 per cent level by the year 2010 compared with the year 1990 level. But the minister for the environment, who has failed to bring in here one piece of legislation with teeth to meet that commitment because he has the hand of the Prime Minister on his shoulder, has let it be known that by 1998—that is, less than halfway through the period between 1990 and 2010—Australia was already emitting 119 per cent of the level in 1990. In other words, it had blown out and was more than 100 per cent over its Kyoto protocol commitment in less than half the time.
Our global warming commitment is broken. Global warming in Australia is out of control, as far as our international obligations are concerned. But here we have legislation whereby, under the GST, those citizens who have paid to convert their cars to a less damaging fuel—primarily in many cases because they wanted to be environmentally responsible, but also because it was cheaper, amongst other reasons—will be penalised by the government. So the commitment on fuel prices did not apply to them. They are going to see their fuel prices rise by seven to 8½ per cent next week, while the Prime Minister struggles to get the oil companies to ensure that those people using petrol and diesel do not see a fuel price rise—although we know that even that commitment is not going to be met.

But when you compare that with LPG prices, the people who are doing the environmentally right thing are going to be socked by the Prime Minister and this government under the GST. There is some amelioration in this legislation for those people who are in business using LPG, there is none as far as private citizens and the use of their vehicles are concerned. In other words, the formula for this government is that you are penalised if you do the right thing by the environment.

When Senator Hill goes to the Hague in November, at the next world conference on global warming, he is going to be penalised and the Australian community is going to be falsely regarded as the world’s worst polluters because we have a government which has the world’s worst environmental record, not least in terms of global warming. This was an opportunity to do good things for the environment but this Democrat government legislation has failed to do that. The diesel fuel rebate scheme is an incentive to pollute.

I have said before that I think that there are extraordinarily good reasons primary producers should be getting it. But as far as the big miners and the woodchippers and the transport corporations are concerned, this government is going in the opposite direction to almost all other governments in the OECD who have introduced carbon taxes and a penalty for those who burn fossil fuels. Here we are seeing an incentive given for the very same thing in this country that puts us in breach of international obligations and increases the threat to the economy, lifestyle and wellbeing of future generations.

That needed to be said on this occasion. I am not going to delay the committee, but I would appreciate it if the minister, who was unable to give the exact figures I sought a while ago, could provide them to me before this debate is up, or at least before this week is up, so that those people who are environmentally minded in this country can know just how much this government is going to penalise them come midnight next Friday.

Bill agreed to.

Third Reading

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

SOCIAL SECURITY AND VETERANS’ ENTITLEMENTS LEGISLATION AMENDMENT (MISCELLANEOUS MATTERS) BILL 2000

Consideration of House of Representatives Message.

Consideration resumed from 26 June.

Motion (by Senator Kemp) proposed:

That the committee does not press its request for an amendment not made by the House of Representatives.

Senator BARTLETT (Queensland) (4.58 p.m.)—I will not delay the committee for a long period of time, but I have circulated a request which I wish to move as a consequence of the rejection by the House of Representatives of the initial request that was passed by this place when we last considered this bill.

The TEMPORARY CHAIRMAN (Senator Hogg)—I will not delay the committee for a long period of time, but I am not sure of the procedure from here, but I have circulated a request which I wish to move as a consequence of the rejection by the House of Representatives of the initial request that was passed by this place when we last considered this bill.

The TEMPORARY CHAIRMAN (Senator Hogg)—I can put the motion first and then you can move your further request.

Senator BARTLETT—That being the case, do I need to deal with that question first before I can move this request?

The TEMPORARY CHAIRMAN—Yes. The question is that the motion moved by the minister be agreed to. We are dealing with
message No. 409 from House of Representatives and the minister has moved that the Senate does not press its request.

Senator SCHACHT (South Australia) (5.00 p.m.)—Is this the request only for the veterans’ amendments, not the amendments that I moved on social security matters?

The TEMPORARY CHAIRMAN—That is right, as I understand it.

Senator SCHACHT—They do not want us to press the amendment that the Democrats moved, which we supported, on veterans’ issues for disability pensions?

The TEMPORARY CHAIRMAN—Yes, as I understand it.

Senator SCHACHT—As you have put the motion, it is now open for debate? Is that right?

The TEMPORARY CHAIRMAN—Yes.

Senator SCHACHT—I think in this case that it might be better for Senator Bartlett to explain why he is going to move an amendment after we move to vote down this motion from the government. Have I got that right?

The TEMPORARY CHAIRMAN—Senator Bartlett, if we hear from you, we may well clear this up.

Senator BARTLETT (Queensland) (5.01 p.m.)—Thank you. My presumption is that we would support the government’s motion, given that I am moving a different request. Acting on that presumption to keep it all as one, I will speak in the debate now.

The TEMPORARY CHAIRMAN—Right, please proceed.

Senator BARTLETT—Whilst I do not suggest that we insist on the original request that was moved by the Senate and therefore would support this motion, I foreshadow that we would move a further request. We had this debate at some length before, so I will not go on about it now at length. The government indicated some problems with the initial request because it was too broad and went broader than we all understand the intent to be and what we are intending to do. I do not doubt that the government is correct in that regard. Since that time, we have obviously made requests in the debate and outside of the chamber for the government to indicate what form of words would be appropriate to achieve the desired intent. The government has not been interested in cooperating in that regard, so we have continued to try to narrow it down to meet the intent. I am not sure that we have it right as yet.

Nonetheless, in the absence of any cooperation from the government in that regard to ensure we come up with the right set of words, we are certainly not going to let the matter drop just because of that lack of cooperation. We foreshadow that we will put forward a different request which goes closer, I think, to meeting the intent, although it may not go all the way. In that context, we would not insist on the initial request but indicate that we would wish to replace it with another one, again aimed at exactly the same intent. We debated that in this chamber when the bill was first before us.

Senator SCHACHT (South Australia) (5.03 p.m.)—The opposition will support the request from the House of Representatives that we not insist on the amendment that we moved here last week, but we indicate that we will support the amendment to be moved today by Senator Bartlett. Senator Bartlett has explained that the new amendment is a tighter and better drafted amendment than the one opposed last week, in respect of which the minister explained that for the government the costs were undefinable in a number of areas and that the amendment was going way beyond what some of us may have been willing to support.

Last week I had discussions with, and I appreciate the cooperation of, the office of the Minister for Veterans’ Affairs. We went through the technical details of what the amendment may or may not have meant. I also had a discussion with Senator Bartlett in his office. I indicated to the office of the Minister for Veterans’ Affairs that the opposition would be willing to support a restricted amendment that would deal basically with removing from the incomes test disability pensions paid to veterans of the Second World War who did not get qualifying service—those who stayed in Australia, although they volunteered to serve out of Australia. That was at a cost of around $20 million.
There may be some other categories, but it was about that cost.

I received information earlier this week from the minister’s office to indicate that, firstly, the government would not support any amendments at all and, secondly, would refuse my request to even consider at least drafting the amendment along the lines that I would support—to at least get it technically correct. I can understand why the government said, ‘If you are not going to vote for an amendment, we are not going to give you a hand to draw it up.’ I appreciate that, given the thrust of this place politically. But I am always interested, whatever the issue, in at least getting amendments technically correct, even if they are voted down.

The minister’s office indicated that they know this issue is a strong issue. Last weekend I was at the state RSL conference in Queensland with 200 or 300 RSL delegates. I was asked to address the conference, which is the normal courtesy they provide to the minister and the shadow minister. The first question I got from the President of the RSL in Queensland was: how is the amendment going for the disability pension being exempted from the incomes test? They made it very clear that that was a reasonably high priority of the RSL and that they wanted that change to go through.

Senator Bartlett has made a genuine effort to redraft the amendment. I do not know, Minister Newman, whether you or your advisers have had a chance to look at the revised amendment from Senator Bartlett. I would be interested to hear your comment about it. But I indicate from the opposition that, unless we get strong contrary advice from you, the opposition will be supporting this amendment. The RSL have told me that they have been having discussions with the minister’s office in the last few days and they want this general issue dealt with. If it is possible for the minister at the table, on behalf of the Minister for Veterans’ Affairs, to give any indication that, if the Senate did not insist on Senator Bartlett’s amendment today, we will get an undertaking in this chamber on the record that when a future veterans’ affairs bill is before the parliament in the spring session this issue can be dealt with either by amendment from the government, after discussion with the veterans’ community, the opposition and the Democrats, or we ourselves will choose to move an amendment at that stage.

Minister, while I am on the subject of future bills, last week you gave an indication that the government would introduce into the parliament this week the amending legislation to deal with the policy initiatives in the budget dealing with the Far Eastern Strategic Reserve and the Vietnam morbidity study. Are we still on track to have that legislation introduced into the House of Representatives or the Senate before we rise on Friday? I would like to know that because I was also asked that question in Queensland at the weekend. I am going to the Victorian RSL tomorrow and I suspect that they will ask the same question. I will be in Adelaide on Saturday and Perth next and I am sure the Vietnam veterans and naval people will be asking that question accordingly.

I appreciate the work that Senator Bartlett and his staff have done in attempting to reach a reasonable resolution on this matter. This matter has been around for a fair while. The anomaly is there. I think we can deal with it. I look forward to your response, Minister.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.09 p.m.)—I thank senators for their comments. I will try to respond in some detail now. Senators would be interested to know that excluding the DVA disability pension from the social security income test would cost about $23.5 million per year. That includes abolishing the special rent assistance income test for service pensioners so they will not be disadvantaged, but this also includes the estimated administration costs for Centrelink and DVA.

This new attempted amendment by the Democrats still does not resolve the issue surrounding the rent assistance income test for service pensioners, which would be an undesirable consequence if this amendment were passed. Veterans with a service pension under the Veterans’ Entitlements Act administered by the DVA and who rent will be disadvantaged because, although their disability pension is not counted in the calculation of
their service pension, it is counted for calculating the amount of rent assistance. That is one undesirable consequence, you may recall, I highlighted with the previous amendment when we debated this issue last week, and it remains in this new attempt by the Democrats. The problem has not been solved in the new amendment. In addition, part (B) of the amendment is in fact a nonsense. I do not know any other way to describe it. Section 24 of the Veterans’ Entitlements Act pays the special rate, the TPI, of disability pension. The wording of this amendment means that all special rate disability pensions would continue to be counted as income. I cannot believe that is what Senator Bartlett is trying to achieve with part (B). So I urge him to have a look at that.

The exemption of disability pension from the income test for DVA service pensioners, like other distinctions between the veterans’ and social security systems, is in special recognition of the stresses faced by veterans who served in areas where enemy forces were actively hostile—that is, those with qualifying service. Exempting disability pension could generate pressure to remove other distinctions between veterans with and without qualifying service such as access to service pension and the gold card. Those veterans who were subjected to the stresses of service on the battlefield may not wish that the special recognition that they receive from the community be extended to all veterans. I referred to that in the previous debate.

The government’s tax reform changes to the income test from 1 July will go some way towards alleviating the difference between the service pensioners and the veterans receiving Centrelink payments. Because the income test is being relaxed, a single totally and permanently incapacitated disability pensioner with no other personal income will get an increase in their age pension of about $35 a fortnight, which means that their disability pension will not affect their age pension as much as it currently does. That is in addition to the $41 a fortnight increase in their pensions that this veteran will get to compensate for tax reform.

Australian veterans already enjoy one of the most generous compensation schemes in the world, and no-one can dispute the level of care and recognition that we as a nation provide for our veterans. This government, as I said last week, has listened to the veteran community and to their priorities and we have acted on them in order of priority within the government’s budget constraints. We extended the gold card to a further 50,000 Australian veterans, giving them full medical treatment in recognition of their special standing in the community. We have also increased the pension by $13.60 a fortnight for over 100,000 war widows by enshrining in legislation the link between pension increases and increases in wages.

In this year’s budget we are extending the eligibility for repatriation benefits to include service in South-East Asia between 1955 and 1975 and we are simplifying access to health care for veterans. Both of those are significant priorities for the veteran community. Since 1996 we have increased government spending for veterans by $1.16 billion. The government will always consider the priorities of the veteran community in a holistic manner within budgetary constraints. As I pointed out last week, the previous government knew about this issue while they were in government and did not see it then as their highest priority to fix. Neither did they extend the gold card to a greater number of World War II veterans, nor did they extend the eligibility to service pension and other repatriation benefits to veterans who served in South-East Asia between 1955 and 1975.

Senator Schacht, I hear what you are saying, and the government is well aware of the issue you have raised in this place and this will be kept in mind for the next budget. This will be something that the government will look to redress as it comes to the top of the priority list, a list which reflects the concerns of the veterans community. With the government’s long list of achievements in the veterans portfolio, it is bound to rise to the top of the pile sometime in the not too distant future. The bill, however, has nothing to do with means testing of veterans payments. I remind the Senate that this bill includes a range of benefits which are at risk if this legislation is not passed, including portability simplification, which will benefit about
90,000 customers each year and make available for the first time ancillary payments, such as rent assistance and pharmaceutical allowance portable for up to 26 weeks. There is a provision allowing for people who are eligible for social security payments from foreign countries to make an effort to claim before they claim under the Australian system, and that is a saving for the Australian taxpayer. This government places great store in maintaining the integrity of the Australian social security system. It is an important element in Australians maintaining confidence in the system.

As part of that process, the bill will extend the use of tax file numbers as a datamatching key rather than relying solely on names and dates of birth. Some people inadvertently or deliberately provide false or misleading information, and it is up to the government, which is entrusted with redirecting money from the taxpayer, not to waste it on people who mislead or rort the system. The final but equally important measure involves a four per cent increase in pension rates from 1 July, as part of the new tax system, in the calculation of a person’s pension bonus and in working out a farmer’s maximum basic entitlement for the purpose of the Retirement Assistance for Farmers Scheme. On this basis, the government will oppose this latest and still crude attempt to amend this legislation.

Senator SCHACHT (South Australia) (5.16 p.m.)—Thank you, Minister, for the information. I was not surprised that you still find that there are what I would call technical difficulties in Senator Bartlett’s attempted amendment. That is why I tried to steer away and to have discussions with the veterans’ affairs minister’s officers about that. As I said last week, as a member of an alternative government, I am not automatically enthusiastic about having a bill come into parliament to do one thing and then, because it is such a large bill, for it to have another measure tacked onto it, even by the illustrious Senate process. I think there are difficulties long term if that becomes the standard practice. It will be something like what the US Congress does: they have a tax measure for dogs put into a defence bill to help some congressman in south-west Oregon; and, in the end, no one knows what the bill is doing or who is doing what to whom. So we in the opposition are cautious about this.

However, I still make the offer that we have got till Friday or Thursday night before we adjourn, and this matter could be voted through one way or the other in about five seconds flat, if there were agreement. I would still like to put the offer that I will vote with the Democrats on this amendment now; but I would still like to have a discussion with the Democrats and the government about the disability pension. I know you say, quite rightly, that those who have got qualifying service and served overseas may well be prickly about having those who did not go overseas given the same benefit, because they are not the full ridgy-didge veterans. But the thing is that the organisations that represent the veterans, such as the RSL, are carrying resolutions and are actually supporting the principle of what Senator Bartlett and I are trying to raise. It would be a different kettle of fish if we were raising this and the veterans organisations were saying, ‘This is actually diminishing the value of the treatment of veterans who have qualifying service.’ So I have to say that the veterans organisations seem to have moved on somewhat in recent years in looking at benefits for all their members, because even those who did not go overseas are now eligible to be members of the RSL and other veterans organisations.

It is with reluctance, in one sense, that I say to you, Minister, that we will vote. If this leads to a bit of a Mexican stand-off overnight or tomorrow to have further discussion, I think that I gave a bit of an indication—and you partly gave an indication, when you said that any of these priorities can be dealt with in the next budget context, which is 12 months away, that you recognise that this may be a priority issue—

Senator Newman—Eleven months away.

Senator SCHACHT—Eleven months away—okay: I am not going to argue over a month. It is still nearly a year away. I have indicated that, if you could give an undertaking that, at the very least, we could have this properly debated with a technically correct series of amendments in a bill early in
the spring session, I am bending over a fair way—maybe further than Senator Bartlett would go—in trying to reach a resolution of this.

I want to conclude by saying that, since I have become shadow minister for veterans' affairs, I have at all times attempted to say that this portfolio should not be treated as a party political, point scoring portfolio. The issue of the treatment of veterans and their welfare is above party politics. What we should be dealing with only is what is best for the veterans. I have made that view known at many veterans organisations and previously in this place. I still hold that view. I do not want to deal with this issue as a point scoring exercise that the Labor opposition has scored a victory over the government or vice versa: I know that most veterans reject that sort of attitude from both sides. So I am willing, if I can get an indication—but I have to say that, at the moment, we are trapped into voting for this amendment and then dealing with it. If the House of Representatives still rejects the amendment, we will have to deal with it in another message in the next 24 to 36 hours.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.21 p.m.)—Mr Temporary Chairman Calvert, I have just got the information that Senator Schacht was asking for previously about the legislation relating to the strategic reserve, et cetera: it will be introduced this Thursday into the House. I would draw to your attention, Senator, that veterans are also raising other priorities. Right now, they are raising other priorities, and we are in the middle of—

Senator Schacht—Much more costly than this one—the extension of the gold card.

Senator NEWMAN—The point is that successive governments have usually worked from the priority listing of the veterans organisations; not one branch of the RSL, not necessarily one state congress of the RSL. Their priorities are arrived at as they work through their annual conferences and congresses, and then they have their national one. You know that process as well as I do. The government is concerned to see to it that, if financially feasible, veterans’ priorities will be met. But I have already told the Senate that the issue that is before us today, the substance of the amendments that have been raised—which is quite removed from the purpose of the legislation—will be kept in mind for the next budget. It is something that we will look to redress as it comes to the top of the priority list. It is very much an issue which is not just in the hands of the government; it is also in the hands of the veterans community. I think it would be most unwise for the Senate to stand in the way of the important measures that are in this bill, which are quite separate from the issue that is before us at the moment—the compensation measures for the new tax system that come in on 1 July. Quite apart from the others, I would find it quite extraordinary if opposition parties were to stand against those compensation measures. I have constantly heard over the last few months that the government must provide proper compensation. If the opposition then stands in the way of compensation that is being legislated for people, it would be very hard for the opposition to explain.

The attempt to amend this legislation is, I think, misguided in the first place because it is not the appropriate place for such an amendment. It has twice now appeared in a form which would have very unfortunate consequences. I cannot believe Senator Bartlett would want something to go forward under his name that had unfortunate implications for, say, rent assistance and also the TPI special rate. I am sure Senator Bartlett did not intend that incredible result to come into law as a result of his amendment. Senator Bartlett has been here listening to me speaking on behalf of the government, just as Senator Schacht has. If Senator Bartlett were to withdraw this amendment—as might be quite wise—this sort of issue could be dealt with at another time, in a more appropriate format, and certainly with better application to the drafting.

We are talking about a complicated act, just as the Social Security Act and the tax act are complicated acts; it is no shame on anybody that their amendments come forward in an unsatisfactory form. But it is also not the
best sort of governance that you can have in a country—which, as Senator Schacht just pointed out, happens sometimes in the American Congress—to have policy implementation on the run attached to legislation which is for other purposes. I urge the Senate not to pursue this Don Quixote-like amendment. Everybody has their heart in the right place, but it is not good enough if the donkey collapses underneath you. Don Quixote will not get too far if he is tilting at windmills and his transportation is inadequate to the task. I do urge you all to think again about what is being proposed here because the government is certainly not prepared to accept, and we would think that the people of Australia would not accept, this important piece of legislation being held up for something which is a fundamentally flawed process.

The TEMPORARY CHAIRMAN (Senator Calvert)—The question is that the motion moved by the minister to reject the first amendment be agreed to.

Question resolved in the affirmative.

Senator BARTLETT (Queensland) (5.26 p.m.)—I move:

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

(1) Schedule 1, page 37 (after line 6), at the end of the Schedule, add:

Part 6—Certain income tests for veterans

166 At the end of paragraph 8(8)(y) Add

(x) a pension under Part II or Part IV of that Act, other than a pension that is payable:

(A) under section 30 of that Act to a dependent of a deceased veteran; or

(B) to a person to whom a special rate of pension is paid because of subsections 24(2) to (5) of that Act;

This further request is as circulated, and I have already spoken to it. The opposition may wish to question the minister more, but I want to reinforce one aspect of what Senator Schacht said. I am not specifically moving this to try to score political points or to beat any political party around the head. If the opposition sees the need to not insist, I certainly will not be kicking them around the head for it either—I can understand the reasons.

I do think that it is rather disingenuous to suggest that it is not appropriate for the parliament to put forward amendments to legislation addressing issues of concern to the community that have been put forward year after year. The parliament makes legislation, and using a social security act or bill to amend social security laws seems fairly reasonable to me.

The minister says she cannot believe that the unintended consequences in this request are what I am trying to achieve. I think the minister, everyone in this place and all her advisers and the department know exactly what the Senate is trying to achieve. She knows and I am sure people here know but, for the benefit of others who do not, when the Senate passes a request it is considered by the House of Representatives. If they believe that it is flawed they can replace that request with another amendment which does achieve what we are trying to achieve. The minister has a whole department with ranks of people who can draft what is intended. Everybody knows what is intended. I am quite happy to take the rap for failing the drafting of amendments to legislation school and for not passing the test. Everybody knows what we are trying to achieve, but the government keeps saying, ‘We know what you’re trying to do but you’ve got it wrong, so we’ll just send you back to school again. You can keep coming back until you get it right, but we’re not going to tell you what the answer is.’ It is as if there is a secret answer hidden under a cup somewhere. For us to have to keep turning over cups until we find the one that the government says is right seems to be a ridiculous process to follow. The minister and the government have the resources there and obviously can put it forward. To simply put forward the argument that this should not be accepted because it has not been drafted correctly is grossly misleading. If the government does not want to accept the basic principle of it, that is fine, but it should not use this red herring that somehow or other that is getting in the way of everything, because, quite clearly, it is not.
I certainly welcome the minister’s indication—I would not call it a commitment—that this issue will be given consideration for the next budget. I think the minister did put forward a suggestion as to why going down this road may be problematic, which is that it might create pressure to remove other distinctions between people who have been on active war service overseas and other veterans. It is an interesting statement, because I suggest that could be interpreted as an argument that the government is putting forward as to why the principle that the Senate is agreeing to here is not one that would be pursued—which would, if anything, be a bit of a watering down from the government’s previous statements on this, which has been to acknowledge that it is an anomaly, an anomaly that to fix would cost money. I recognise there are always budgetary implications and struggles with Treasury about being able to do that sort of expenditure. That is one reason that can make things difficult for the government, I recognise. But if the minister is actually suggesting that the government does not support such a change because it may create pressure to make further changes, then that is a position I was not aware they had held in the past.

I am not sure reasons such as, ‘Well, the last government did not do it, so neither are we, and don’t blame us,’ or saying that we are all just tilting at windmills in some naive endeavour reflecting what is quite clearly a significant priority of the veterans community is not really treating the issue with the seriousness it deserves. Anyway, we can each say what we wish about the issue. I guess that is the point of having the Senate: so we can put our views on the record. In any case, I move this further request as an indication that the Democrats do believe it is an issue that should be addressed. We do believe it is an appropriate mechanism for doing so, and we would ask the government to look at it again.

The TEMPORARY CHAIRMAN (Senator Calvert)—As chairman of the committee, I note the further request—

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.32 p.m.)—I just wanted to respond to one of the items that Senator Bartlett just referred to. The government would find it unconscionable—and I am sure the veterans would too—for people who have not had qualifying service to be better off than people who have had qualifying service. If you asked anybody who has just been to East Timor, for example, whether they think people who did not go to East Timor should get better assistance from the government—or the Senate, or whatever—I think you would hear in no uncertain terms what their view is. I just think that that needed to be clarified.

The TEMPORARY CHAIRMAN—Minister, before you made that point, as the chairman of the committee, I was to be in the unique position of saying that there are two statements accompanying this request pursuant to the order of the Senate of 26 June 2000—one is a statement pursuant to the order of the Senate of 26 June 2000; the other is a statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000.

Senator BARTLETT (Queensland) (5.33 p.m.)—Just briefly, I suppose that makes this a historic request, does it?

The TEMPORARY CHAIRMAN—Yes, it does.

Senator BARTLETT—I see mine is the first one that has a statement attached to it, but it does not change the intent of the amendment, of course. I indicate just for the record that in no way is it the intent—and as I have said a number of times it is quite clear what the intent of the Democrats and the Senate on this issue is—to make people who have been on active service less well-off. Again, I would suggest that we not be distracted by focusing on unintended consequences of the amendment when everybody knows what the clear intent of the issue is.

The TEMPORARY CHAIRMAN—The question is that the further request for an amendment be agreed to.

Question resolved in the affirmative.

Resolution reported; report adopted.
NEW BUSINESS TAX SYSTEM
(INTENSITY MEASURES) BILL 2000
Second Reading

Debate resumed from 20 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (5.35 p.m.)—As just announced, this is the New Business Tax System (Integrity Measures) Bill 2000. In producing the name of this piece of legislation all you can say is that those that instructed the government draftsmen must have a keen sense of irony to regard this as the integrity measures bill. ‘Integrity measures’ would suggest that this bill protects the tax system from haemorrhaging, protects the tax system from avoiders and protects the tax system from the black economy. It does some things that might be put in that basket, but it does not go anywhere near far enough.

There are some glaring faults with the Australian tax system, some of which the government alleges will be corrected by the GST—which of course is not true; that is a propaganda assertion by the government, not a seriously held view by tax experts—and some that have been on the books and around for a time that the government has been invited by the commissioner or others to correct and the government leaves to sit there. The fact that they neglect the opportunity to improve the system suggests, therefore, that they wish to benignly give assent to the types of avoidance I refer to.

Let me just mention a couple of things that I think currently cloud the tax horizon by being tools for avoidance. There is the use of trusts. We know that in the Ralph report it was recommended that trusts be cracked down on and be taxed as companies by 1 July of this year. It was recommended by the Ralph inquiry that at the end of this week, when the GST clicks in, trusts begin to be taxed as companies.

In the use of trusts, of course, the trusts themselves are not taxed; the beneficiaries of the trusts are taxed. As a consequence, if you receive a large cash injection—for whatever reason—into your trust and the beneficiaries are yourself and all of your family, then you engage in income splitting. So the amount of tax payable by those wealthy enough to afford this device is much lower than if you received income as wages and were paying income tax. That is something that was supposed to be cracked down on by 1 July. We know that Mr Tim Fischer, the then Deputy Prime Minister, promised to defeat this idea in the cabinet room and we know that this rough, tough Treasurer of Australia, Peter Costello, thumped the tub and said that he would do it, but he has backed down and backed away from this. The taxing of this type of avoidance is now to be put off for another year and will not come into force until 2001.

I want to say a bit more about trusts towards the end of my remarks, but let me go to another example: controlling superannuation schemes. We know that this is the basis of some of the charges in the fraud case known as the ‘Petroulias case’ where a Deputy Commissioner of Taxation is being charged with tax fraud. We know that the revenue is at risk to the extent of $2 billion per annum, haemorrhaging by avoidance. Is that covered in this integrity measures bill? No, it is not—despite the fact that advice has constantly gone to the government that something should be done to staunch this leakage from the tax system and to improve the integrity of the system. It is a scheme which the flash money at the big end of town who have the smarts about how to manipulate the tax act know how to get around. The failure of the government to move on this is therefore an open question. Are they endorsing this sort of spivvy type action at the top end of town? We know that one of the leading promoters of this scheme in New South Wales, the Remuneration Planning Consultants Organisation, is run by Kerry Chikarowski’s ex-husband, and it does sort of make a linkage.

We also know that the black economy is the much touted area in which the GST is supposed to harvest massive gains, but that is a disputed fact. The propaganda, the Unchain my heart advertisements and all of the $430 million of taxpayers’ money being spent to propagate the GST and tell every Australian
wage and salary earner that it is good for them or that, while it might hurt their pocket, it is in the national interest are justified, in part, because the black economy and avoidance because of it will be cracked down on and cut out. The Business Review Weekly, the distinguished business magazine that is the bible for many in Australian business, put flight to that fancy when, in this week’s edition, it reported that the black economy is likely to thrive under the GST, not dive under the GST. Interestingly, last night on the Late-line program the leading partner for Price Waterhouse in New Zealand enlightened viewers of the ABC at that late hour by telling them the horror stories of how the black economy in New Zealand, under their version of the GST, was thriving and growing in strength.

I mention these things because this bill is entitled ‘new tax system tax integrity measures’ and any person passing in the street who saw the name of this legislation up in lights would feel a warm inner glow thinking that the government was doing something to protect Australians who are honest taxpayers from fraudsters and from spivs who want to rip off the system. My point is that this bill does not cover a lot of those things and therefore that the ‘integrity’ title of this legislation is misleading. The government should be rightly criticised for pretending that it is doing something when, in practical terms, there is still wide scale avoidance of the taxation system. The principle here is that, if you are wealthy enough to have discretionary income to employ slick lawyers and shoddy accountants, you can find a way around managing your affairs and avoid taxation but, if you are a wage and salary earner who has tax deducted from your wages every fortnight, month or week—whatever the interval of instalment for payment is—then your tax is paid in full and you do not avoid it. Tax avoidance is an indulgence of the wealthy and not of the workers of this country, and Labor is rightly concerned that avoidance be cracked down on.

Let me just go to what this bill is about. The parts of this bill that I want to focus on concern the non-commercial losses aspect of this legislation. Non-commercial losses refer to losses from business enterprises which, when viewed objectively, are not serious commercial operations—that is, they have little, if any, prospect of being conducted profitably, let alone making a commercial return. These are businesses conducted to make a loss, with those losses to then be claimed as tax deductible. The losses from those activities are allowable to be offset against other income, and thus you reduce your income and the amount of tax payable. This is an activity where you have to have a few dollars in your account to be able to operate it. If you haven’t and you spend everything that you earn, it is unlikely that you would ever get involved in setting up a business of this sort. The Ralph review—the government’s own review of the tax system—identified this as a serious drain on revenue.

The amendments proposed here will ensure that individuals carrying on a business activity, either alone or in partnership, will be allowed to claim a loss from that activity only if they satisfy one of a number of tests. Let me quickly run through these tests—there are essentially five of them. The first test is that the assessable income of the business activity is at least $20,000. You have to earn more than that to escape under this clause. The second test is that the activity produces profit for tax purposes in at least three out of the last five years, including the current year. I acknowledge here that the Ralph recommendation was three out of the last seven years. This is indeed a tightening and that ought to be acknowledged. The third test is that the value of real property used in carrying on a business is at least $500,000. So if you are carrying on a business on a property, if you are a Pitt Street farmer who has a hobby farm in the near country and it is valued at above $500,000, you escape this legislation. But if you are battling sharecropper or someone holding a small property that is valued below that sum, you are caught by this legislation. See how it works to favour those people who have wealth. The fourth test is that the value of real property used in carrying on a business is at least $500,000. So if you are carrying on a business on a property, if you are a Pitt Street farmer who has a hobby farm in the near country and it is valued at above $500,000, you escape this legislation. But if you are battling sharecropper or someone holding a small property that is valued below that sum, you are caught by this legislation. See how it works to favour those people who have wealth. The fourth test is that the value of other assets used in carrying on a business is at least $100,000. Those assets do not include motor vehicles but, if your asset value is less than $100,000, you are caught. The fifth test is that the
commissioner exercises his discretion to allow the loss due to special circumstances.

These provisions are, in the main, consistent with what was suggested in the Ralph review. However, the bill fails to raise the revenue that was promised by the Treasurer Peter Costello back in November last year. This is because of special concessions, entered into as a consequence of this legislation, for primary producers, who will still be allowed to gain the tax advantage of non-commercial losses—that is, they have been exempted from the legislation. When this legislation was first proposed, Labor suggested that another group—artists—ought to be excluded as well. I note an amendment, that we will be dealing with at the committee stage, from Senator Ridgeway of the Australian Democrats. I acknowledge that amendment now and indicate that, when it comes before the chamber, Labor will support it. But in passing, I point out that the bragging rights for who was responsible for raising this question in the first place rightfully belong to my colleague in the other place, Duncan Kerr, who has agitated on behalf of struggling artists in Australia on this issue for some time.

Senator Woodley interjecting—

Senator COOK—He is generous enough to acknowledge that that is true, too. Senator Ridgeway has played a role, the Greens have played a role, and now the government has fallen in behind the lead being shown by the non-governing parties in this chamber. I think that is worth while recording in Hansard.

The point I want to return to momentarily is that, because of the special concessions, this bill will now not raise the amount of revenue that was forecast. When the measures were first announced, it was believed that $50 million would be raised in the next financial year, 2000-01. The bill now raises only $30 million, a shortfall of $20 million. In the following year, $310 million was to be raised; but this bill, in its cut-down form, raises $230 million—a shortfall of $80 million. And so it goes; if you add it all up, over four years, what was proposed in the Ralph inquiry falls short by the $230 million that will now not be collected.

I want to say that the farming exemption here has some merit. But the objection I have to it is that it still allows wealthy lawyers, doctors or stockbrokers who have a hobby farm in the country valued in excess of $½ million or have assets other than their motor vehicles on their property in excess of $100,000 to escape the provisions of this bill. But struggling small farmers that do not meet that qualification are caught. There ought to be some regard for the equity elements of that issue.

I return to the issue of artists. This is an exemption that Labor has supported. This is an amendment that will be moved at the committee stage. I want to quote from what my colleague in the other place, Duncan Kerr, says about this. That will help explain why Labor believes this is a worthwhile change to make. In a press release on 2 June he said that the vast majority of artists in Australia, those people who enrich our cultural life, give our nation its unique cultural identity, add to the creative heritage of our nation and, if you like, capture the spirit and aspirations of our people in their art—in whatever form that art is practised—are, in the main, people who work for very little money at all. We all know of one or two examples of high earning artists. As with athletes, while there are one or two examples of people earning a lot of money, most people do not fit into that category; most people are quite poorly off. Duncan Kerr went on to say:

The vast majority of professional artists in Australia certainly earn less than $40,000 a year. The Australia Council estimates that the average income for artists is less than $20,000. These are not the tax avoiders that the Ralph measures were aimed at.

My colleague then said:

Most are struggling with little or no profits and have been disproportionately hard hit by the GST changes which will increase their costs and reduce their already meagre returns. The double hit of the GST and the Ralph measures would force many out of the industry.

Artists, however—and I certainly subscribe to this view—make a vital contribution to Australia’s quality of life. What they do and how they thrive, or fail to thrive, shapes our cultural identity.
There is no justification to deny low-income artists the right to claim the losses of their art practices against their non-art income if farmers are given equivalent exemption from the Government's tax crackdown on non-commercial losses ...

That was part of the statement my colleague made on 2 June. I note that, in a release yesterday, Senator Ridgeway indicated that he has struck a deal with the government on this matter and that there will now be a change to the legislation. I will say a brief word on the deal. Of course, the Australian Democrats are in a position to strike a deal with the government; they are the bedfellows of the government on the GST. We have a GST because they voted for it, and they therefore have some capacity to make special pleading. Nonetheless, I am glad to say that, in this case, it has been productive on behalf of a struggling group of Australians who require recognition within the tax system.

Labor will support this bill because the measures go some way to meeting the objectives and dealing with the issues that I have raised. I do not believe they can be regarded as covering all areas of concern for the integrity of the tax system. I encourage the government to act more strongly and to show a bit more spine when it comes to trusts, to the controlling superannuation scheme loophole and to actually addressing black economy issues.

In another piece of legislation—which we expected to see today, according to the Notice Paper, but it now looks like it will be delayed until tomorrow—which deals with the question of tax on contractors or the alienation of personal income, as the bill calls it, we ask that the watering down through the transitional provisions in the bill not be pursued in the way it has been. The Treasurer has clearly broken a commitment that he made to the shadow Treasurer, my colleague Simon Crean, in the other place. The Treasurer sought some consensus between the major parties last November for the enactment of the business tax reform package. That assent was given by Labor on the understanding that the measures on the alienation of personal services income would be applied by the government. We were assured by the Treasurer at the time that they would be. We were assured by him because we insisted. He read into the Hansard a commitment to do so so that it would be in writing. When we saw the legislation, we found that yet again the Treasurer had broken a commitment that he had firmly given—in this case, a commitment given in the parliament to the opposition about sensitive legislation. The result is again a loss to revenue.

I cite at least those four examples as areas in which more could be done on tax avoidance, and I reiterate the commitment of Labor to ensure that we have a fair tax system. One of the principles of taxation is that the system must be fair. If it is not, if individuals or wealthy entities are conspicuously able to avoid taxation, it brings the whole system into disrepute and causes the growth of an ethos where people say, ‘If they’re not paying tax, why should I?’ It is absolutely essential that the integrity of the system be protected and maintained, and that is of course a Labor commitment. But this bill does not manage to do it very well, and there are conspicuous exemptions. In view of what I have said, I now propose to move the opposition’s second reading amendment, which I understand has been circulated in the chamber. I move:

At the end of the motion, add:

"but the Senate condemns the Government for:
(a) its lack of integrity for failing to tackle tax avoidance through the use of family trusts;
(b) the flawed implementation process of the various new taxation arrangements;
(c) the scandalous waste of taxpayers money on the promotion of new taxation arrangements; and
(d) the fundamental unfairness and complexity of so much of the new tax arrangements".

I understand that that has been circulated. I apologise if it has been circulated a little late, but since it is around the chamber and we believe it is the appropriate expression of our view I move it accordingly. (Time expired)

Senator RIDGEWAY (New South Wales) (5.55 p.m.)—I rise on behalf of the Australian Democrats to also speak about the New Business Tax System (Integrity Measures)
Bill 2000. This bill is the latest in the various large pieces of legislation to implement the recommendations of the Ralph business tax reforms. I want to make some comments about that acknowledging the comments by Senator Cook. Whilst the Democrats have been broadly supportive of the general thrust of the business tax reforms, we believe that the government’s approach is deficient in several respects. This bill, for example, is supposed to strengthen the integrity of the tax system, yet when you examine it in great detail any positive effect of these integrity measures is certain to be wiped out by the huge tax loopholes being created by the government’s capital gains tax reforms. The halving of the capital gains tax rate, in the absence of changes to negative gearing itself and other reforms, essentially creates an enormous incentive to convert ordinary income to capital and hence reduce rates.

Even some of the strong supporters of lower capital gains tax rates, like Alan Reynolds from the US based Hudson Institute, say that it should be done with negative gearing intact. There has been much discussion about trying to ensure that Australia’s CGT rate matches that of the US and other countries, yet none of those countries allows for negative gearing. Mr Reynolds, along with US congressional tax expert, Jane Gravelle, and Australian tax law professor and Ralph adviser, Rick Kreever, all told the Senate committee that the lower tax rate combined with negative gearing was an invitation to avoid tax and should not be supported. The Democrats and the Labor senators acknowledged those particular concerns in their committee report. Yet, a few days after that, Labor Senators Cook, Campbell and Conroy—despite all of the evidence that they had collected and their strong recommendations—were overridden by Simon Crean. He rushed off to the Treasurer’s office to tick off the business tax reforms without a single amendment, and that needs to be noted for the record. He ticked off a $500 million tax cut for high income earners and a huge gaping new tax loophole without flinching, essentially ignoring the warnings from his Senate colleagues Cook, Campbell and Conroy. These three gentlemen tried to do the right thing and were rolled.

Of course, this bill fixes a small part of the negative gearing issue. It precludes losses from non-commercial activities being able to be claimed against other earned income. This is at least one small step towards the US approach of quarantining losses against the actual business activity, but this bill picks up only one category of non-commercial activities—that is, the running of a business. It does not pick up passive investment losses, particularly losses in shares or rental. As such, the bill is deficient. True, there is about $200 million a year to be gained from the activities deemed to be non-commercial in this bill, but the non-commercial losses expressly excluded from the bill, particularly in relation to property rentals and shares, are worth over $1 billion a year. With this bill, we are picking up less than a fifth of what is needed to restore integrity to the tax system in terms of the treatment of non-commercial losses. The Democrats could not get support from either side, the coalition or Labor, to move on non-commercial losses from property, shares or negative gearing, as it is known. It is a tax rort and everyone knows that it is a tax rort, yet this $1 billion loss to the tax system is condoned by Labor and the coalition.

The bill picks up some non-commercial losses, but in some ways it picks up the wrong ones. If a person opens a small business and runs it on the side—actually gets their hands dirty trying something new—then the non-commercial losses from having a go at a business are not tax deductible under the bill. If, instead of sinking a bit of money into a new business, they stick it into a speculative investment—property or shares—then the non-commercial losses are fully tax deductible, and the final capital gain from the speculation is taxed at half the rate. What sort of message is it to send? We reward speculative investment but penalise active investment in new businesses. Such is the lunacy of the government’s and Labor’s timidity in refusing to address the issue of negative gearing.

It is very heartening for the Australian Democrats, and for me personally, to see that the need to amend the bill for the benefit of Australia’s professional artists is a measure
that now enjoys full cross-party support. That is one thing that I am pleased about. The fact that the government has committed to supporting our amendments to make sure that professional artists are not the collateral victims of this legislation means the arts sector is now in a better position to reach its full potential and to continue to flourish. We have to speak more about the arts industry. Australia’s arts and culture related sector is now valued at $19 billion annually. It is experiencing real growth, becoming a major employer and making a substantial contribution to our economy. Seven per cent of Australia’s work force, some 500,000 people, now earn some income from their work in the arts. Their talent and their creativity attract valuable foreign investment and export markets. International visitors to Australia alone spend some $65 million a year on indigenous artwork and a further $200 million on culture and entertainment.

It would have been a real tragedy to enact legislation that stifles this growth industry and places an unmanageable burden on artists who are already struggling to make ends meet. Until a few days ago, the Arts Law Centre was warning a Senate committee in a hearing on the bill that it would force artists to either go on the dole, which would be disastrous for the government in terms of the increased expenditure on social welfare, or go into full-time work and greatly reduce their art work—perhaps stop it altogether—which would be disastrous for Australia both culturally and economically. Professional artists were telling us during that inquiry that they were insulted by the implication in the bill that they would be labelled ‘hobbyists’ if they earned less than $20,000 per year. They were equally outraged when they realised the only hope of escaping the effects of the bill required them to meet non-commercial loss criteria that were clearly directed at asset-rich farmers.

Mr Jose Borghino, the Executive Director of the Australian Society of Authors, summed up just how inappropriate these provisions are when applied to artists. In the ASA submission to the recent inquiry, Mr Borghino said:

Especially when they embark on their careers, writers will not earn anywhere near $20,000 from their writing, they will rarely make sustained profits and they will never be able to invest $100,000, or own property relating to their writing valued at $500,000 or more.

I add that it is just as unlikely that the Commissioner of Taxation would be able to exercise his discretion on a case by case basis for the estimated 40,000 professional artists the Australia Council has identified. Mr Borghino went on in his submission to make a further point, which is something I cannot emphasise too much. He pointed out that artists:

... will be undertaking a serious and important business activity—one that sustains a whole range of other Australian industries and which, more importantly, will delineate a unique and vibrant Australian identity into the future. The flowering of Australian culture over the past thirty years should not be taken for granted. Artists in Australia remain in a precarious position. The present Bill, as it stands, will send us back to the bad old days when it was only the rich and the desperate who would contemplate a life in the arts. It may well wipe out a whole generation of new [artists] who will abandon their creative ambitions in the arts entirely. And it will condemn us in this new century to the status of cultural importers, consuming the excess produce of overseas cultures.

Mr Borghino’s comments to the committee remind us just how vital our artists are to the cultural wellbeing of this country. Their contribution to our economy should not be valued any less than that of our primary producers.

Fair and equitable business taxation reform is crucial, and it can be undertaken in a manner that does not decimate Australia’s burgeoning arts and culture industry. There can be business tax reform and a thriving arts sector in Australia. The Australian Democrats support the principle of limiting the extent to which taxpayers can use non-commercial losses to reduce the tax paid on their other income. That said, such an integrity measure needs to be exercised with care to ensure that individuals carrying on genuine businesses but supplementing their income from other sources are not adversely affected by this legislation.
It is already recognised in the legislation that protection should be granted to some primary producers who find it necessary to support themselves with off-farm income. Primary producers who earn off-farm income of less than $40,000 will not be affected by the bill. Many genuine professional artists face similar circumstances. Lengthy production times and fluctuating incomes mean that many artists, both emerging and established, must supplement their art income with other sources of income. Periods of hardship are as much a reality for artists as they are for small-scale primary producers. As Tamara Winikoff of the National Association of the Visual Arts pointed out last week at the Senate committee hearing into this bill, the Throsby report in 1994 found that artists’ annual income from arts related activity ranged from $2,000 for most authors to $9,000 for composers.

The Australian Democrats are not suggesting, as others have, that all artists across the board should be exempted from the implementation of the integrity measures bill. Rather, we believe that only those artists who are professional or who regard themselves for tax purposes as being a business should be granted the same exemption already proposed for primary producers. And of these artists practising as a business, only those earning less than $40,000 per annum from their non-art related income will be able to deduct their uncommercial art losses.

In addition to the equity reasons for exempting artists who come under the $40,000 threshold, it should be noted that the risk to revenue of extending the exemption can be considered reasonably low. As noted in last week’s Senate Economics Legislation Committee majority report, the ATO and arts groups have collaborated on establishing a set of criteria for defining genuine artistic businesses. In evidence, the ATO indicated that this collaborative work had been successful in helping both the ATO and artists to sort out genuine arts businesses from arts hobbyists that were not eligible for business deductions. This understanding between the ATO and the arts sector has operated successfully since 1998. These existing measures have already curbed arts hobbyists from being able to claim business loss deductions. Consequently, the risk to tax revenue in providing an exemption for professional arts businesses which earn less than $40,000 is not likely to be high.

If you are talking about a writer who is lucky to earn $2,000 per annum or a visual artist who earns an average of $3,000 per annum, you can hardly put artists in the category of being tax rorters or tax dodgers. The Australia Council, which advises the government on these matters, has calculated that there are some 40,000 professional artists who will be affected by this legislation. We are therefore talking about the future of 40,000 Australians, not 9,000 as the Australian Taxation Office would have us believe. We are talking about 40,000 Australians who want to contribute substantially to our intellectual and cultural lives, to our leisure time and to our economy through employment, taxes, tourism and export dollars.

I would further add my own personal observation of just how inaccurate the figures touted by the ATO are. The Australian Democrats alone have received well over 1,000 emails and letters from artists concerned about their future careers and their ability to survive as artists if this bill is not amended. This figure of 1,000 does not include any duplicate emails or letters that were sent to all other Democrat senators. Therefore, if we are to believe the ATO’s figures of some 9,000 professional artists, I can assure the Senate that I personally have corresponded with at least one-ninth of all of Australia’s professional artists, and they are very concerned and disillusioned about the potential consequences of this bill if it is not amended.

I also want to note that I have received a petition from the Queensland Artworkers Alliance containing over 350 signatures in support of the amendments that the Australian Democrats seek to move, and these signatures were collected at one public protest rally in Brisbane last Friday. Similar rallies were also held in Sydney and Canberra. If Brisbane is any measure of the public concern about the future of Australia’s professional artists, I believe the Senate has a duty to heed that expression of concern and sup-
port our amendments. Furthermore, in the last two days I have received another 500 electronic signatures to a petition with a similar message to the government to amend this bill for the benefit of professional artists. The genuine concerns of so many artists cannot be ignored, and the regressive impact of this bill, if unamended, should not be underestimated.

The Australian Democrats call on the government, the ALP and other parties represented in this chamber to support our amendments. I note Senator Cook’s comments and I thank him for that support. Essentially, our amendments will seek to provide that the exemption that is available to primary producers is extended to professional arts businesses or practising professional artists. Our amendments will also ensure that the assessable income threshold, currently set at $40,000 per annum, will be monitored by the government to make sure that it has real value over time. If the $40,000 is reviewed and increased for farmers, it must also be increased for artists. This is the outcome of negotiations that have led the government to make a written undertaking that it will continue to monitor and review the threshold. Support for the amendments that we propose to put forward has also been expressed by many of the representative bodies of the professional arts sectors. These include the Australia Council, the Arts Law Centre, the National Association for the Visual Arts, the Australian Society of Authors and the Australian Screen Directors Association.

I conclude by saying that the definition as to what constitutes a ‘professional arts business’ is very inclusive and far-reaching in its scope. It is based on the existing definitions in the 1997 Income Tax Assessment Act, which cover performing artists, production associates and those providing artistic support. The individual professions that come under the umbrella of the term ‘professional arts business’ range from choreographers through to costume designers, musicians, dancers and other performing artists. Another strength of the definition of ‘professional arts business’ is that it is defined in a manner that ensures that categories of artists which emerge in the future as a result of technological or other forms of innovation can also come under the umbrella of the integrity measures bill. I believe that my colleague Senator John Woodley is also going to speak about the consequences for primary producers. In the meantime, I commend the foreshadowed Democrats’ amendments that I will move during the committee stage to the Senate.

Senator WOODLEY (Queensland) (6.13 p.m.)—I also rise to speak on the New Business Tax System (Integrity Measures) Bill 2000. I noted very carefully what Senator Cook said tonight in his contribution on this bill. However, as an introduction to my contribution on this bill, I believe it is worth quoting from the very good speech that Senator Cook made last night. I will use his words, with only very minor alterations. This is what Senator Cook said—with some alterations, I do admit:

The original bill arose as a consequence of the slapdash arbitrary arrangement made between the government and the—

ALP on the business tax reforms known as the Ralph report. He continued:

Now that legislation has gone through, what do we find? We find that ... the government—one presumes on this occasion, with the consent of the original architects of this legislation—

the Australian Labor Party—

are moving to amend the legislation before it has even had a chance to take effect. Such is the organisation, such is the planning, such is the forethought, such is the preparation and such is the consideration of the government and the—

Labor Party—

in their rush to the headline that they support—

this bill—

it just so happens they have overlooked a number of quite important and significant elements to their own legislation. But more of that in a moment. I want to spend some time in my speech in the second reading debate to focus on exactly what the problem is between the government and the—

ALP—

on this legislation.

I am surprised at the second reading amendment which the Labor Party have moved, given that they agreed with the government
on the Ralph report without any changes at all and that they criticise the Democrats for making an agreement with the government on the GST. But let me point out that the Democrats obtained $5 billion worth of benefits in amendments to the GST legislation, whereas the Labor Party in their agreement with the government on the business tax reforms got nothing. You can see how important the speech that Senator Cook made last night is. I thought we needed to hear it again—with some slight alterations, I do admit.

I now want to turn to the weekend Financial Review because it puts, in a very succinct and clear way, the reasons why we need to worry about the Ralph business reforms. These are the reasons why I am critical of both the government and the Labor Party for the legislation which brings those reforms into the parliament. An article in the Australian Financial Review for the weekend of 24 and 25 June headed ‘Bad economics and bad tax: 19 reasons to worry about the Ralph business reforms’ states:

Many of the non-GST changes in the new tax system starting on July 1 were recommended by a committee headed by a senior business figure, John Ralph, assisted by two other prominent businessmen, Bob Joss and Rick Allert. Apart from supposedly simplifying the law, the changes are intended to boost economic growth, enhance fairness and reduce uncertainty.

The article then goes on for two pages listing 19 reasons why those very high-sounding objectives have not necessarily been achieved by the Ralph tax reforms and certainly not by the legislation before us. The article states further:

According to the Ralph committee, the starting point for its recommendations was that “transactions with similar economic substance should be taxed in a similar manner. This should generally minimise the impact of the tax system on choices between alternative investments and so help to ensure that the allocation of resources reflects market realities.”

However, it continues:

This is not achieved by this legislation or by these reforms.

I want to concentrate on one of the problems that is raised by the legislation and, in particular, the government amendment to this legislation which seeks to mitigate somewhat the effect of taxing what are known as hobby farmers.

The problem is: where do you draw the line? Who is a hobby farmer who is using the loss on his farming enterprise as a write-off against other income? The Democrats believe that any artificial activity in this way should be condemned and prevented. But the problem is that this legislation—and even the amendment to the legislation which seeks to mitigate somewhat the hobby farming tax problem—ends up not just dealing with hobby farmers but also catching many genuine farmers on low incomes.

Another article in the Financial Review of last weekend headed ‘Tax hobbyhorse deserves a nay’ states:

What’s wrong with hobby farming? Nothing that a minor wealth tax couldn’t fix! The Prime Minister, John Howard, used to think along similar lines.

But now he has gone the other way and attacked hobby farmers with a blunderbuss which looks like inflicting collateral damage on innovative small businesses across the nation.

Just why hobby farmers should be regarded as a big problem is a mystery. The popular image is of a city-based merchant banker or medical specialist claiming tax deductions for a rural property.

But the deductions are the same as those available to any other farmer. They can’t be claimed unless money is actually spent. Moreover, hobby farming normally entails a transfer of capital from urban to rural Australia, often revitalising small communities and introducing improved agricultural practices.

As I have said, the problem is: where do you draw the line? Obviously, hobby farmers who are simply engaging in agricultural practices as a tax dodge ought to be condemned and ought to be caught by this legislation. But there is a big question about whether or not these measures are effective in catching those people. In fact, the unintended consequence is that many genuine farmers also will be caught up by this measure.

I would like to refer to a friend of the Democrats in the House of Representatives, Peter Andren, who I think often makes a good contribution in that place to debate and who has raised a number of very important
points in his speech. I want to quote just a few parts of that because I believe that he makes some very good points. In a letter to me dated 8 June he said:

While I support the thrust of the Bill—to rein in certain tax avoidance activities, I have serious concerns that, as currently drafted, the Non-Economic Loss provisions, are poorly targeted. As they stand, I am concerned these ‘integrity measures’ will penalise many genuine small farming enterprises, but allow many of the ‘hobby farmers’ they supposedly target, to continue to deduct farm-losses from off-farm income.

During the debate Mr Andren detailed how the measures will penalise many genuine small farmers and other businesspeople but allow a stockbroker with a hobby farm in Bowral to continue to claim deductions. In a speech to the House of Representatives, he asked:

How much of these savings will be ripped out of regional communities as small farmers reduce the amount they spend on local goods and services?

He gives an example which I think is very relevant. He says:

... under the changes, a farmer around Bathurst, who also earns over $40,000 from working in a local factory or abattoir, won’t be able to claim deductions for farm losses against his off-farm income unless he satisfies one of the four objective tests, one of which is that his farm is worth over $500,000.

On the other hand, a stockbroker or banker on $150,000 with a hobby farm close to the city will still be able to avoid tax if their property is worth more than $500,000.

So you can see the problem. We certainly know that drawing lines is a difficult thing to do no matter what it is that you are debating or what legislation you are trying to put in place, whether it is a line between one kind of food and another, or whatever, but perhaps the government needs to look at it again. I hope that over the coming months it will certainly look at the effect of this legislation to see whether the line has perhaps been drawn in the wrong place.

I agree with Peter Andren when he raises the problem that there is another issue with this bill. Although the bill tackles hobby farmers and seeks to cure that problem, it gives preferential treatment to property and share investments because they are still able to be negatively geared. Effectively, the government is saying that it is willing to support people who want to gear up to the hilt and speculate on the share or property market but not if they want to get out and actually produce something. I agree with Peter Andren and with the articles in the Financial Review on the weekend. I say to the government that the Democrats certainly would be willing to look again at this legislation and the line which is drawn if, indeed, it proves not to catch the people it is supposed to catch but, in fact, catches as an unintended consequence those small, struggling farmers whom we certainly do not want to penalise any further but want to support.

Senator BROWN (Tasmania) (6.26 p.m.)—I want to look particularly at the impact of this legislation on the Australian arts community. Senator Ridgeway has already made mention of that but I think it should be emphasised that the whole process here has failed that community because it was overlooked from the outset. The Ralph inquiry did not, so far as I am aware, go to the arts community and find out what would be in its interests so far as Mr Ralph’s proposed tax reforms were concerned. When the government came to draw up this legislation to reflect his recommendations, the arts community was overlooked and therefore ensnared. I think it was unwitting but it was also unforgivable.

It was ensnared because artists had come to a satisfactory arrangement with the government two years ago. Under existing circumstances, they are able to deduct the cost of their work as artists against other income that they get to enable them to make ends meet—be it as waiters, bus drivers, taxi drivers or whatever other work they may undertake. This legislation cut the feet from under that arrangement without their being consulted. It means, as it stands, that artists would not be able to deduct their costs against other income. We have to remember that, as far as income from their art work is concerned, creative genius in our community is classed, by dint of income, as on the bottom rung. Artists’ income from their creativity is something like $10,800 per annum.
I will not recanvass the public expressions of support for the arts community which have come out of this debate. Suffice it to say, Australia is greatly enriched by their endeavours. It is extraordinary that a government could overlook them in drawing up this legislation, let alone fail to acknowledge them and make sure that they got not only protected treatment but also special treatment. The amendments that are coming before the Senate tonight are to give them protection for, if not special acknowledgment of, the role that they play in enriching everybody’s life as an Australian. I will continue my remarks after the dinner break and talk then about the amendments which we have before us.

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

BROADCASTING SERVICES
AMENDMENT (DIGITAL TELEVISION AND DATACASTING) BILL 2000
DATACASTING CHARGE (IMPOSITION) AMENDMENT BILL 2000

In Committee

Consideration resumed from 22 June.

BROADCASTING SERVICES
AMENDMENT (DIGITAL TELEVISION AND DATACASTING) BILL 2000

The bill.

Senator BOURNE (New South Wales)
(7.30 p.m.)—by leave—I move:

(1) Schedule 1, item 11, page 4 (line 9), omit “Schedule 6”, substitute “section 146T”.

(2) Schedule 1, page 16 (after line 19), after item 47, insert:

47A After Part 10A

Insert:

Part 10B—Datacasting services

146T Allocation of datacasting licences

(1) The ABA may allocate a datacasting licence to a person in accordance with the regulations.

(a) the objective that datacasting services must not be, or include, broadcasting services;

(b) the objective that datacasting services must not provide access on a store-forward basis to video programming that would function as a video-on-demand service;

(c) the objective that a datacasting service must not provide access on a store-forward basis to video programming that, if automatically or manually combined with other video material or with other material that contains a mechanism that triggers the activation of material after a specified or calculated period of time, would substantially be, or include, a broadcasting service if transmitted by a radio or television broadcasting service.

(d) the objective that datacasting licences will be allocated in accordance with a process that includes the following elements:

(i) the commissioning of independent research by the ABA on the market value of the datacasting spectrum;

(ii) the determination of a base market price by the ABA following an assessment of the independent research;

(iii) the publication of guidelines by the ABA, not inconsistent with the regulations, for the assessment of acceptable datacasting services;

(iv) the calling of tenders by the ABA for the allocation of datacasting licences in relation to which tenderers will be required to provide details of the proposed datacasting service and the proposed price the tenderer will pay for the licence (which need not be the same as the base market price);

(v) the giving of opinions by the ABA, on request, on whether proposed datacasting services comply with the guidelines for the assessment of acceptable datacasting services;

(vi) the provision of a tender period of not less than 2 months;
(vii) the assessment of tenders by the ABA on the basis of the guidelines and in accordance with prescribed public interest tests;

(e) the objective that datacasting licences will be subject to conditions which reflect the details contained in the licensees’ tender for the licence;

(f) the objective that the ABA will carry out regular reviews of a licensee’s compliance with the conditions of the licence;

(g) the objective that a licensee may apply to the ABA for a variation of its licence conditions and that an application for a variation of licence conditions will be assessed by the ABA on the same basis as the allocation of licences.

(3) For the purposes of subparagraph (2)(c)(iv), the regulations must provide for a tenderer to include the following details in the tender for the allocation of a datacasting licence;

(a) a business plan;

(b) evidence of the tenderer’s financial capacity to provide the proposed service;

(c) a statement of the reasons why the tenderer believes that the proposed service constitutes an acceptable datacasting service;

(d) a statement of how the proposed service will serve the public interest.

(4) For the purposes of subparagraph (2)(c)(vii), the regulations must provide for the ABA to assess tenders for the allocation of datacasting licences in accordance with the following public interest tests:

(a) that the diversity of datacasting services available to the Australian people will be maximised;

(b) that the number of new and innovative datacasting services available to the Australian people will be maximised;

(c) that the benefits of datacasting services to communities will be maximised;

(d) that the financial return from the sale of licences will be maximised for the benefit of the Australian people.

(5) Subsection (3) does not limit the matters for which the regulations may provide in relation to the details to be included in a tender for the allocation of a datacasting licence.

(6) The regulations may provide for the following matters:

(a) criteria for assessing the suitability of tenderers;

(b) the transfer and surrender of licences;

(c) ownership restrictions;

(d) general conditions of licences;

(e) complaints about datacasting;

(f) remedies for breaches of licensing provisions with a maximum penalty of 20,000 penalty units;

(g) review of discussions;

(h) datacasting technical standards;

(i) review of the scheme;

(j) such other matters as are necessary or convenient to be prescribed for the regulation of datacasting services.

(6) Schedule 2, item 1, page 99 (line 8), omit “Schedule 6”, substitute “section 146T”.

(7) Schedule 2, item 31, page 112 (lines 12 to 21), omit the item, substitute:

31  At the end of section 114

Add:

(5) For the purposes of this section, an authorisation by the licensee of a datacasting transmitter licence results in a breach of the BSA control rules if, and only if, the authorisation would result in a breach of section 54A or 56A of the Broadcasting Services Act 1992.

I understand from looking at the running sheet and the list of amendments that we are dealing with my proposed changes to schedule 6, which would take out schedule 6 and substitute my suggested section 146T. Is that correct?

The TEMPORARY CHAIRMAN (Senator George Campbell)—No. We are dealing with schedule 1, amendments (2), (1), (6) and (7) on sheet 1848, which you have moved, by leave, together.

Senator BOURNE—These amendments would change the rules for datacasting and allocating datacasting licences currently un-
der schedule 6. Is that what we are dealing with?

The TEMPORARY CHAIRMAN—That is right.

Senator BOURNE—The suggested form that I have is something that has been known for several years, at least since the pay TV debate, which I was involved in myself, as a beauty contest. It would mean several things. First of all, the licences would be allocated not just by price—which would be one of the four reasons for allocating a licence—but also with three other objectives in mind: the diversity of datacasting services available to the Australian people, the number of new and innovative datacasting services available to the Australian people, and the benefits of datacasting services to communities. This form would also have to be maximised when the ABA determined how they would allocate licences. Also, the financial return from the sale of licences would be maximised for the benefit of the Australian people, but that would be one of four criteria that would be looked at equally.

This is the sort of way that licences were allocated, as I understand it, when radio was first introduced in Australia—and I know that was a while ago. It is also the sort of system that I suggested when pay TV was introduced in Australia. Unfortunately, I did not exactly win that debate. It is also a system which, I noticed from a newspaper article from, I think, the Age or possibly the Sydney Morning Herald of two Saturdays ago, seems to be coming back into fashion in Europe. The argument there is that if a licensee pays a great deal of money for a licence, they are going to have to get that money back from somewhere, so they would do that by passing on their costs to those who are paying for their service. If you have more of a social conscience, you will go for the beauty contest, so the costs of the licences are not as high, but you have a much wider service that way. You have more diversity in what is offered. That is the way the licences would be determined by the ABA.

I should let others speak for themselves, but I understand that the problem with this that most people I have spoken to have is that it gives far too much power, as they see it, to the ABA. I also understand from having spoken not to the minister himself but to others that the minister did consider this as a possible way of undertaking the allocation of these licences and then looking after them. It would basically be looked after by the ABA. If somebody came to the ABA and put up a suggestion for a licence, they would have to show how they would maximise the benefit to the Australian people under those four things that I mentioned. They would have to show their business plan for what they wanted to do. The ABA would determine whether that was allowable. If it was allowable, they would wait until the tenders were finished and then they would determine who got the licences. If somebody wanted to change what they were doing with their licence, they would have to go back to the ABA to make sure that it was still allowable under the four criteria.

The problem, as I understand it, that people have with this is that it gives too much power to the ABA. People worry about the power of the ABA, but I still think that it allows a much broader diversity for what is going to end up as our datacasting services. I think it will allow for things that we have not even thought of. At the moment with the government's proposed genre rules—and I accept it is really only until 2007 and in some cases before that with all those reviews—we are determining what will happen before we even know what is possible. I think narrowing down the parameters of what we think is possible before we even start—these things probably will not be on the air for about 12 months or more—is a problem. I think it is a problem that we have to accept and a problem that we have to try to fix. I think this is the best way to fix it. This has a social conscience in it. It is one way that we can try to get the best datacasting services now and also into the future, up until 2007. If somebody wants to change, they would have to change according to those four rules. I am proposing this. If anybody wants to ask me any questions about it, I will be happy to answer them. I will also be interested to hear what others have to say about it.

Senator ALSTON (Victoria—Minister for Communications, Information Technology
and the Arts) (7.37 p.m.)—I will respond to Senator Bourne to the extent that she suggested that the government had seriously entertained this approach. In the course of a very extensive examination of the way in which we ought to endeavour to ensure that we strictly adhered to the 1998 digital conversion legislation, we did examine any number of possible options, and a number of them were quite technical. It was always the view that we took that there had to be certainty. The trouble with technical approaches is that you cannot always be sure that you understand the current state of the art and you certainly cannot predict what might be around the corner tomorrow. The general technical approach, we thought, was fraught with difficulty.

There are some circumstances in which you do delegate responsibility to regulatory authorities. Quite clearly, the parliament can set out principles and leave it to others to administer the regime. But with something as fundamental as this legislation, in which the absolute bedrock principle is that datacasting services must not be broadcasting services and that you cannot be a de facto or backdoor broadcaster, time and again you run up against the vagueness of the current definitions contained in the Broadcasting Services Act. I do not think it is so much a matter of giving power to the ABA; it is a matter of the ABA not really knowing where to start or where to finish and perhaps finding itself in a situation where it tries to make some judgments, it gets taken to court and it then changes its mind because it thinks that is what the courts will interpret in the future; and then you have an absolutely chaotic environment in which people have to build very substantial business cases and outlay very significant sums of money.

Our approach has always been that we should try to ensure maximum certainty. At the end of the day, it is not much more than a hospital handpass to the ABA if you say to them, ‘You go away and work out what you think broadcasting means and then decide that datacasting is everything else.’ It seemed to us that that was not a sensible approach to take. When the definition of broadcasting was put in the act, it was at a time when most of the new technologies, including the Internet, had not even been thought of. In that sense, it may well be a very outdated and very slippery concept because television services may or may not embrace a particular number of television programs. Where do you draw the line? A television service might be defined as providing one or a series of programs. On the other hand, unless it was a full 24-hour provision of programs, it may not be regarded as a broadcasting service at all. One view is that the definition of broadcasting could be interpreted very narrowly; another view is that it could be interpreted very widely.

We thought the only safe approach to take was for the parliament to define as much as possible—still with some general anti-avoidance provisions and some de minimus arrangements—and to spell out in advance with as much clarity as possible what we understood to be the general look and feel of television so that people would know in advance what they were allowed to do. All parties in this debate have said time and again that they adhere to the principles from 1998—that is, that a datacaster cannot be a broadcaster. If that is so, you have an obligation to define what you mean by broadcasting. The BSA does not do it. So with a great deal of effort, consultation and discussion—no doubt along similar lines to others, including Senator Bourne—we have done our very best to identify the principal characteristics of a television service and television programs to then identify that as the benchmark against which you can do other things which amount to datacasting.

The Democrats’ approach, as I say, essentially hands the problem to the ABA. It invites the ABA, as I understand it, to effectively conduct a beauty contest. We all know the difficulties of beauty contests and why our predecessors in government moved away from them and we have stayed away from them. You are exposed to enormous pressures. I do not believe we have corruption in this country at all in terms of these sorts of decisions, but the pressures that can be brought to bear on people can be very considerable. The mere fact that the problem is transferred to the Broadcasting Authority
does not give me any greater confidence, without for a moment casting aspersions on the integrity of the members of the ABA. The fact is that when you essentially give someone carte blanche to define a new regime you are susceptible to a whole range of pressures, and it is very difficult to know in advance what the ultimate regime will look like. We thought it was much better, much safer, for the parliament to define up-front what the rules were and then you can make your decisions. We will allocate the spectrum by an auction process for datacasters and then they will know what they are entitled to do. You do not go out there and say to the ABA, ‘Firstly, work out what a broadcaster is and then say which one you think provides the most acceptable datacasting service.’ There may be a further definition of that but, on the face of it, that again is fraught with dangers and uncertainty.

The objective is that datacasting licences will be allocated in accordance with a process that includes the following elements, including the publication of guidelines not inconsistent with the regulations for the assessment of acceptable datacasting services. Again, the ABA is left not only with a huge discretion but a huge and, I would have thought, unwanted responsibility. It is not their task to make decisions of this magnitude. Their task is to administer legislation which the parliament is prepared to put in place, and they then go away and ensure that the detail adheres to the framework. But what you are essentially doing is asking them to construct a completely new edifice. That is why we very strongly take the view that, much and all as I understand why Senator Bourne might be attracted to this approach, it is an approach that we could not possibly accept, because it fails on all those counts. Certainly, on one view, as I say, you could end up with not even allowing educational programs or information programs. It depends entirely on the way in which the definition is interpreted; and that is not a decision that we should be delegating to the ABA or to any other body. It is a decision that we ought to take here and we ought to make it clear, as best we can, what is in and what is out.

The replacement of the proposed new schedule 6 by a single section dealing with principles ignores the findings of an almost two-year-long review process. It does not answer the complex questions. It merely puts off the decision to a later date and provides no certainty to industry and no guarantees to Australian viewers. I think it provides the worst of all worlds: you would guarantee that there would continue to be maximum uncertainty and, probably, calls for government intervention. Whenever anyone disagreed with a decision, it would be immediately reviewed—and, no doubt, endlessly so—because this industry, above most others, can well afford to be highly litigious, because the stakes are very high. I do not think that is a price that any of us would want to pay, because the end result is maximum uncertainty. You have only to remember what occurred in the auction of the third commercial television licence in Western Australia some 10 years or more ago: I think there ended up being 18 separate challenges through the AAT, the Federal Court and the High Court, and back again. You could do that on almost every decision the ABA took here. That is why I say that, with the best will in the world, what you are really doing is avoiding the tough decision that I think the parliament needs to take. It is up to us to work out what datacasting is, and I do not think we should shirk that responsibility.

Senator MARK BISHOP (Western Australia) (7.47 p.m.)—I have a few comments to put the position of the opposition in respect of the amendments put forward by Senator Bourne. As Senator Bourne outlined and Senator Alston repeated, the regime that the amendments seek to establish is essentially a beauty contest regime. Prospective datacaster applicants apply to the ABA for a datacast licence, and their application is made on the basis of the proposed service to be offered by the datacaster, and the applicant discloses his or her credentials, the bid fee and the service offered. If the service is subsequently varied, you would have to go through the entire process again. What that suggests to us is, quite briefly—and it was referred to by Senator Bourne and certainly strongly mentioned by the minister—that the parliament is delegating its authority and its responsibility to the
ABA to define and determine what a datacaster is and what services the datacaster might offer to the public.

The opposition is of the view that those functions are properly reserved to the parliament and should be administered by the parliament—and that presumably means the government of the day. As Senator Alston said, this is a rich industry with billions of dollars invested on an ongoing basis. It is not unreasonable, from the perspective of the industry and from the perspective of consumers, that there be certainty at the outset in terms of outcomes. It is the opposition’s view that that is properly a job for the parliament and not at all to be delegated or referred to the ABA. We have listened to the propositions put to us over the past two days by Senator Bourne and her advisers on this critical issue, but we have not been persuaded that it is in any way appropriate to depart from our initial principle position that this is the responsibility of the parliament.

In summary, we say for the record that the regime outlined by Senator Bourne does not set a firm framework for ongoing distinctions between datacasting and broadcasting. The beauty pageant approach may have been more suited to traditional TV services in days gone by, when they could be readily and easily defined—although the comments by Senator Alston are correct: there was a huge problem in Western Australia when the third TV licence was issued, because the stakes were so high and many interested parties chose, for reasons best known to themselves, to spend hundreds of thousands, if not millions, of dollars in a range of court actions that went all over the country for a number of years. So we are not at all keen on inviting that sort of outcome back into the system.

We think also, going down that line, that the regime put forward by the Democrats simply allows too much discretion to the ABA on the issues of price, who gets the licence, and the specific conditions on each specific licence. We think each of those three issues is better resolved in other forums: price, by an auction based system; licence, through application; and specific conditions to be attached to the licence, by the government of the day. This is not a class based system; it is a specific licence by a licence system and it provides no certainty. For those reasons, the opposition find no comfort in the approach suggested by Senator Bourne and we will oppose it in due course.

Senator BROWN (Tasmania) (7.51 p.m.)—I am interested to see the maximum options available to the viewing public, and this legislation does not provide for that. I am not a captive of the 1998 decision, and I do not think any of us should be. We have got in train a process where this government is locked into 10 years of captivity to a prescription for restricting the options of Australians to a maximum diversity of information, entertainment and broadcasting in general at the behest of a minimum number of outlets.

I would like to see that freed up. Australia suffers from very restricted press ownership, and I think we have to find means of diversifying the options when it comes to what people can get through modern technology. This legislation does not lead us in that direction. I say again: we should not be confined by mistakes of the past. This is an option to open up to Australians the advantages that people elsewhere in the world will get through the digital phenomenon. The restrictions that the government has placed on that are not in the interests of the average Australian.

The Democrats have got amendments which help to loosen that a little, and Labor, I think, go a little further. I recognise that the options are: government, most restrictive; Democrats, somewhat less restrictive; and Labor, marginally less restrictive again. So I will take the options from the bottom working up. I believe all three options are too restrictive. I think that other players should be enabled to enter into the digital and datacasting options which are now before us, and I do not think we should be closing down on those options for almost a decade to come. That is the way I will be going as far as these options are concerned, and the amendments coming further down the line.

Senator BOURNE (New South Wales) (7.54 p.m.)—The one thing that probably has been overlooked, or possibly not, by others when they commented on this—the way I see it—is that, because it took less time than we
would have hoped to have to put together this whole scheme, we do have in part 6 regulations provided by the minister covering a range of matters, including criteria for assessing the suitability of tenders and transfer and surrender of licences, and things like that, that he may make regulations in relation to if he wants to. That is in there. The minister mentioned that he thought this could create a chaotic environment for building a business plan. I was actually trying to stop the creation of a chaotic environment by having everything assessed before the service goes to air. So there may be confusion, there may be disagreement—more likely—before the service goes to air but, after the service goes to air, it should be quite clear whether or not it is actually allowable, and that, I would have hoped, gave certainty to industry.

I love the minister’s ‘not quite Candide’, where he thought it was the ‘worst of all possible worlds’. I do not think it is quite that bad, Minister. I think a lot of people would suggest that your own scheme is not the best of all possible worlds, and I certainly think this is a much better scheme. I thought it was a much better scheme with pay, and I still think that; I think people around the world are going back to it. I think it is something which will become more prevalent in the years to come—I hope so. I would still like it to get up but, as I am able to count, I can see it is probably unlikely to do so at the moment.

Amendments not agreed to.

The TEMPORARY CHAIRMAN (Senator George Campbell)—Senator Bourne, the next set of amendments are Nos 3, 4 and 5—they were consequential. As you do not want to proceed with those, we will move on to opposition amendments Nos 17 and 18 on sheet 1823.

Senator MARK BISHOP (Western Australia) (7.57 p.m.)—by leave—I move opposition amendments Nos 17 and 18:

(17) Schedule 1, item 140, page 53 (line 13) to page 60 (line 15), omit Part 1 of Schedule 6, substitute:

Part 1—Introduction

1 Simplified outline

The following is a simplified outline of this Schedule:

This Schedule sets up a system for regulating the provision of datacasting services.
Datacasting service providers must hold datacasting licences.
A datacasting service cannot be a broadcasting service.
The distinction between datacasting and broadcasting services is based on the attributes of the service.
The ABA will be empowered to determine additional criteria or clarify existing criteria about what constitutes a datacasting service or a broadcasting service.
The ABA may give advisory opinions, on request, about whether a proposed service is a datacasting service or a broadcasting service.
The ABA will be empowered to make determinations about whether particular services are datacasting services or broadcasting services.
A group that represents datacasting licensees may develop codes of practice.
The ABA has a reserve power to make a standard if there are no codes of practice or if a code of practice is deficient.
The ABA is to investigate complaints about datacasting licensees.

2 Definitions

Classification Board means the Classification Board established by the Classification (Publications, Films and Computer Games) Act 1995.
Interactive, in relation to a datacasting service, means a capacity for a user to request specific responses, make choices or engage in digital transactions or communications.
Internet carriage services has the same meaning as in Schedule 5, but does not include a service that transmits content that has been copied from the Internet, where the content is selected by the datacasting licensee concerned, unless the same content is available simultaneously on the Internet.
Nominated datacaster declaration means a declaration under clause 45.
Non-contemporaneous, in relation to a datacasting service, means that users of
the service do not view the same content simultaneously.

**non-linear**, in relation to a datacasting service, means that content is designed to be selected or accessed at irregular intervals in accordance with user-defined requests and not as a single, continuous stream of data to users.

**ordinary electronic mail** does not include a posting to a newsgroup.

**qualified entity** means:

(a) a company that:
   (i) is formed in Australia or in an external Territory; and
   (ii) has a share capital; or
(b) the Commonwealth, a State or a Territory; or
(c) the Australian Broadcasting Corporation; or
(d) the Special Broadcasting Service Corporation; or
(e) any other body corporate established for a public purpose by a law of the Commonwealth or of a State or Territory.

**related body corporate** has the same meaning as in the Corporations Law.

**static graphic interface**, in relation to a datacasting service, means a method of providing interactivity to a user through menu systems or other control mechanisms common to digital services and applications.

**transmitter licence** has the same meaning as in the *Radiocommunications Act 1992*.

### 3 Datacasting services

For the purposes of this Schedule, a **datacasting service** means a service (other than a broadcasting service) that delivers information (whether in the form of data, text, speech, images or in any other form) to persons having equipment appropriate for receiving that information, where the service has the following attributes:

(a) it uses the broadcasting services bands; and
(b) it is interactive; and
(c) it is non-contemporaneous; and
(d) it is non-linear; and
(e) it offers frequent user-defined choices; and
(f) it makes frequent use of static graphic interfaces; and
(g) it complies with any determinations or clarifications under clause 4 in relation to datacasting services.

### 4 ABA may determine additional criteria or clarify existing criteria

(1) The ABA may, by notice in the *Gazette*:
   (a) determine additional criteria to those specified in clause 3; or
   (b) clarify the criteria specified in clause 3;
   for the purpose of distinguishing between datacasting services and broadcasting services.

(2) The Minister may give specified directions to the ABA as to the making of determinations and clarifications, and the ABA must observe those directions.

(3) Determinations and clarifications under subclause (1) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 5 Requests to ABA for an advisory opinion on whether a service is a datacasting service or a broadcasting service

(1) A person who proposes to provide a datacasting service may apply to the ABA for an advisory opinion as to whether the proposed service is a datacasting service or a broadcasting service.

(2) An application must be in accordance with a form approved in writing by the ABA, and must state the applicant’s opinion as to whether the proposed service is a datacasting service or a broadcasting service.

(3) If the ABA considers that additional information is required before an advisory opinion can be given, the ABA may, by notice in writing given to the applicant within 14 days after receiving the application, request the applicant to provide that information.

(4) The ABA must, as soon as practicable after:
   (a) receiving the application; or
   (b) if the ABA has requested further information—receiving that further information;
give the applicant, in writing, its advisory opinion as to whether the proposed service is a datacasting service or a broadcasting service.

(5) If the ABA does not, within 28 days after:

(a) receiving the application; or

(b) if the ABA has requested further information—receiving that further information;

give the applicant, in writing, its advisory opinion as to whether the proposed service is a datacasting service or a broadcasting service, the ABA is taken to have given an advisory opinion at the end of that period that accords with the applicant’s opinion.

(6) The ABA may charge a fee for providing an advisory opinion under this clause.

6 Requests to ABA to determine whether a service is a datacasting service or a broadcasting service

(1) A person may apply to the ABA for a determination as to whether a service is a datacasting service or a broadcasting service.

(2) An application must be in accordance with a form approved in writing by the ABA, and must state the applicant’s opinion as to whether the service is a datacasting service or a broadcasting service.

(3) If the ABA considers that additional information is required before a determination can be given, the ABA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) The ABA must, as soon as practicable after:

(a) receiving the application; or

(b) if the ABA has requested further information—receiving that further information;

give the applicant, in writing, its determination as to whether the service is a datacasting service or a broadcasting service.

(5) If the ABA has given a determination under this clause to the provider of a datacasting service, neither the ABA nor any other Government agency may, while the circumstances relating to the datacasting service remain substantially the same as those advised to the ABA in relation to the application for the determination:

(a) take any action against the provider of the service for the period of 5 years commencing on the day on which the determination is given on the basis that the service is not a datacasting service; or

(b) unless the ABA has made a determination or clarification under clause 4 after that determination was given that places the service outside the definition of a datacasting service—take any action against the provider of the service after the end of that period on the basis that the service is not a datacasting service.

(6) If the ABA does not, within 45 days after:

(a) receiving the application; or

(b) if the ABA has requested further information—receiving that further information;

give the applicant, in writing, its determination as to whether the service is a datacasting service, the ABA is taken to have given a determination at the end of that period that accords with the applicant’s opinion.

(7) The ABA may charge a fee for providing a determination under this clause.

7 Matters to be considered by ABA

In making determinations under clause 4 or clause 6 in relation to datacasting services, and in giving advisory opinions under clause 5 in relation to proposed datacasting services, the ABA is to have regard to:

(a) the attributes of the service and its mode of delivery; and

(b) the dominant purpose of the service; and

(c) such other matters as the ABA thinks fit.

(18) Schedule 1, item 140, page 62 (line 17) to page 70 (line 11), omit Divisions 1 and 2 and the heading to Division 3 of Part 3 of Schedule 6, substitute:

13 Primary condition—datacasting service not to be a broadcasting service
(1) Each datacasting licence is subject to the primary condition that the licensee will not transmit matter that, if it were broadcast on commercial television or radio, would be a broadcasting service.

(2) The condition set out in subclause (1) does not prevent the licensee from transmitting live matter that consists of:
   (a) the proceedings of, or the proceedings of a committee of, a Parliament; or
   (b) the proceedings of a court or tribunal in Australia; or
   (c) the proceedings of an official inquiry or Royal Commission in Australia; or
   (d) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory.

(3) The condition set out in subclause (1) does not prevent a datacasting licensee from transmitting matter that consists of no more than:
   (a) text; or
   (b) text accompanied by associated sounds; or
   (c) still visual images; or
   (d) still visual images accompanied by associated sounds; or
   (e) any combination of matter covered by the above paragraphs; or
   (f) any combination of:
      (i) matter that is covered by any of the above paragraphs (the basic matter); and
      (ii) animated images (with or without associated sounds); where:
      (iii) having regard to the substance of the animated images, it would be concluded that the animated images are ancillary or incidental to the basic matter; or
      (iv) the animated images consist of advertising or sponsorship material.

(4) The condition set out in subclause (1) does not prevent a datacasting licensee from providing an interactive computer game.

(5) The condition set out in subclause (1) does not apply to the transmission of ordinary electronic mail.

In determining the meaning of the expressions ‘television’ or ‘television program’, when used in a provision of this Act, subclauses (3), (4), and (5) are to be disregarded.

Schedule 6 of the bill sets out the government’s proposed framework for datacasting. It imposes significant and specific limitations on the scope of datacasting services which are enumerated as datacasting licence conditions in the bill. The licence conditions limit the types of content allowed to be provided by datacasters according to genre. The opposition is of the view that the government’s datacasting framework is restrictive, complicated, highly prescriptive and goes beyond restricting datacasting to services that do not constitute broadcasting. Accordingly, the policy position of the opposition has been to develop a new general definition of datacasting and, in doing so, discard the government’s proposed framework in schedule 6 of the bill and develop an entirely new framework which incorporates a general definition of datacasting which does not allow datacasters to become de facto broadcasters.

The reasons for our amendments are, put simply, that we have concerns that the definition of ‘datacasting’ in the bill was unreasonably confined to datacasting so as to stifle competition and innovation, would be costly to Australian consumers and businesses alike, would delay consumer adoption of digital technology and would deprive business of opportunities to develop new products and services for the world and the Australian market. We are of the view that such prescriptive regulation is detrimental to this emergent industry and consumers. The bill is considered likely to have a negative impact on Australian consumers, due to the inability to provide the full range of new digital services, and to significantly limit the viability of the emergent industry. The opposition is of the view that it is critical that this emergent industry is not stifled in its development and innovative capacity by overly restrictive regulation with consequences for Australia’s technological advancement, improved consumer services and employment and economic opportunities.
We are of the view that the best way to give effect to the policy objectives is to amend the bill so that the definition of datacasting is not based on the existing genre based distinctions. This requires, as I said, an entirely new framework for the definition of datacasting. So the amendments, in terms of the alternative framework, replace the provisions of the new schedule 6 of the government’s bill with a new framework for datacasting which uses the datacasting definition in the 1998 act as its foundation and maintains the distinction between broadcasting and datacasting services. Like the government’s existing framework, the amendments proposed are based on the premise that datacasting will be largely subject to the regulatory conditions of the existing broadcasting regulatory framework.

The new framework achieves the following objectives: it confirms that datacasting services may not be broadcasting services and allows the ABA to determine whether a service is a broadcasting service or a datacasting service; it maintains a distinction between broadcasting and datacasting services by recognising the attributes of datacasting services while remaining technologically neutral; it recognises that common elements exist between datacasting services and broadcasting services and allows the Australian Broadcasting Authority to consider the relevant dominance and intent of these attributes in determining whether a service is a broadcasting service or a datacasting service.

Like the government’s framework, this proposed framework confirms the 1998 legislative position that datacasting services cannot be broadcasting services. Similarly, the proposed framework provides that those matters allowed without constraint in the government’s bill remained unconstrained in the model effected by these amendments—for example, parliamentary or live court proceedings, information transmitted in the form of text and still pictures, interactive computer games, Internet carriage services and electronic mail. The framework considers both the physical attributes of emerging digital services and the intent of services provided in order to make a distinction between broadcasting and datacasting services.

The following attributes will be a guide for the ABA and datacasters. Firstly, datacasting is noncontemporaneous. Not all users of the service view exactly the same content simultaneously. While the amount of content offered at any given time may be finite, the interactivity and user-defined choices mean that different users or viewers will have different viewing experiences. Datacasting is nonlinear. While content may be provided in a uniform manner, it is not delivered to users and viewers in a steady, single continuous stream; rather, it is delivered in discrete quantities according to user-defined requests at user-defined intervals. Datacasting is interactive. Datacasting services offer interactivity for users to request specific material linked to the Internet or engaged in digital transactions and communication. Frequent user-defined choices reflect the use of interactive menu systems and control mechanisms. The frequent use of static graphic interfaces also reflects the use of interactive menu systems and control mechanisms.

Consistent with the powers conferred upon the ABA by the Broadcasting Services Act 1992, this framework allows the ABA to determine whether a particular service constitutes a broadcasting service, a datacasting service or any other form of applicable service. To do this, the ABA must consider both the physical attributes and dominant intent of the service. This, however, places no limitation on the ABA’s power to consider any other relevant attribute or matter related to a service in making a determination on the nature of that service. The framework also confers on the ABA the ability to provide a non-binding preliminary determination as to the nature of a particular service when requested to do so by the holder of a broadcasting licence or the holder of a datacasting licence.

In summary, we are of the view that the approach of the government to the definition of datacasting is too narrow, too restrictive. It seriously risks making stillborn an emerging industry, an industry which we are of the view is of high value, high skills, uses creative and technical talent and requires large amounts of capital investment. Almost without exception, witnesses to the Senate inquiry were critical of the genre based approach.
They were critical of the restriction of entertainment value of datacasting making it commercially unattractive to datacasters and undesirable to consumers. Restrictions were likely, they said, to stifle innovation. They objected to the genre based approach as being too extensive, and they said the degree of technological specificity prevented datacasting from responding to technical advances. So the approach of the opposition has been to define datacasting on the basis of its known physical characteristics, an approach in principle supported by a large number of witnesses to the Senate inquiry.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.05 p.m.)—It might be helpful if I indicate that one of the fundamental problems with the Labor Party’s approach in this issue is that they duck the question: ‘What is broadcasting?’ They adopt the definition from the Broadcasting Services Act. They say that datacasting is to be defined as, ‘other than a broadcasting service’. If you look at the Broadcasting Services Act you find that ‘broadcasting service’ means:

... a service that delivers television programs ...
What is a ‘program’? A program is:

... matter the primary purpose of which is to entertain, to educate or to inform an audience ...

So on one view the definition of broadcasting can be very wide indeed. It follows that if datacasting has to be ‘other than a broadcasting service’ datacasting might be very narrow indeed. For example, the government’s genre rules include educational programs and information only programs; under Labor’s definition these may not be able to be provided by a datacaster. The conditions set out in subclause 13(1) are even more limiting. They state:

Each datacasting licence is subject to the primary condition that the licensee will not transmit matter that, if it were broadcast on commercial television or radio, would be a broadcasting service.

Again, you are back at that threshold question of what is a broadcasting service. Again, much as I concede that many people have made honest endeavours to tackle this issue—and no-one pretends that there is a perfect solution and, particularly given the interests at stake, no-one is going to go out there and for a moment concede that there is anything like a perfect solution, so we are always going to end up with something imperfect if it is judged by the reactions of players, who will see it through a particular financial prism—as a result, what you again find is maximum uncertainty.

The great virtue of the genre approach, much as some might say it goes too far or is too prescriptive, is that it at least gives you a higher degree of clarity than any of the other alternatives, which not only are very discretionary but lend themselves to ad hoc interpretations. Again, I think that is part of the problem that the ABA would face if it were put in the position that the opposition seeks to place it in. For example, if one looks at the simplified outline, the distinction is based on the attributes of the service. But a number of those attributes, as spelt out in clause 3—and they are cumulative—are not clear in meaning. Non-contemporaneous and non-linear may mean things that very significantly overlap with what might be allowed via the Internet or what might be allowed via a datacasting service that, at one level, might appear to be permitted but, at another level, will not be permitted because the broadcasting definition could be very wide.

You get no assistance at all in determining what I believe is the starting point, and that is that, unless you know what broadcasting is, you cannot then look to see whether something qualifies under the datacasting regime. If you have already decided that the broadcasting is very wide, you have very little room to breathe, so you may end up with a very narrow definition of datacasting. You may end up with only the proceedings of parliaments and the courts, text and still pictures, interactive computer games and electronic mail. Again that would be a very poor quality outcome and it would have arisen largely because the parliament was not prepared to grasp the nettle and do its best to define this up-front in order to give certainty to those who have to make the significant investments.

Our concerns are manifold in relation to this approach which throws the whole genre regime out of the window and replaces it with a regime that is much less certain and in
some respects illogical. In clause 13.1, for example, if datacasting is not broadcasting, there is no point in having the provision in clause 13.1 that datacasters must not transmit matter that would be a broadcasting service. You have to answer that threshold question up-front. If they are not broadcasters, then they are datacasters by definition, so presumably they are allowed to go out and transmit a range of other material. Our datacasting regime would allow datacasters to provide Internet carriage services. Labor’s conditions in clause 13 do not appear to allow this to happen. There is no reference to datacasters being allowed to provide such services, although ‘Internet carriage services’ is given a meaning in the definitions. But this suggests that, because there is no reference, the general prohibition in subclause 13.1 may prevent it. Further, as I say, the list of attributes is cumulative, which suggests that a datacasting service must have all of the attributes at the same time. It is not clear whether that is intended, but that may well be a very onerous demand, one that could fail on one count only and then render the service not a datacasting service. It may not be a broadcasting service—you may have got over that hurdle—but is still fails to be a datacasting service, so you end up in no-man’s-land.

The cross-references to enforcement provisions in schedule 6 do not seem to be there. For example, the amendments do not insert references to the datacasting model in the main provisions in clause 52 which make it an offence to provide a service without a licence. This has the effect that there are no enforcement provisions applying to the Labor model. Labor’s list of definitions does not include a number of important definitions which are used elsewhere in schedule 6—for example, ‘advertising and sponsorship’, which is used in their subclause 13.3, and ‘interactive computer games’, which is used in subclause 13.4. There is not a definition of ‘engaging in conduct’, which technically is crucial to the enforcement provisions in the bill in relation to datacasting. The proposal could also mean there would be two different definitions of ‘datacasting’ in the Broadcasting Services Act. Clause 6 refers to a person who applies to the ABA for a determination. Presumably that means a person who proposes to provide a datacasting service, but it is not clear in what circumstances those sorts of rulings could be made.

For all those reasons, much as I acknowledge that the opposition has endeavoured to come up with an alternative approach, it founders in the same way that the other approaches we looked at foundered. It does not provide the certainty and it does not give you a clear picture of what you are allowed to do and what you are not allowed to do. We all know that there are reviews built into this whole process and we all know that the technology keeps changing. I did not think anyone is out there seriously suggesting that they cannot tell the difference between a television set and a PC, so the age of convergence has not quite overwhelmed us. While those distinctions are very valid, the fact is—and I am not sure whether Senator Brown is a party for these purposes—that both the Democrats and the Labor Party are on the record as saying that they want to adhere to the spirit of the digital conversion legislation. If you are serious about doing that, you have to do your best—imperfect though it may be—to give all of the stakeholders every opportunity to know what it is that they are allowed to do and not simply give them a form of words which will lead to endless wrangling in meanings and interpretations and which may lead you down the same path that we canvassed a little earlier in terms of litigation. I simply say that the government could not accept this approach. It is a very radical one and it is not in any way consistent with the spirit of the earlier decision. That being the case, it is not acceptable to the government.

Senator BOURNE (New South Wales)

(8.14 p.m.)—by leave—I move:

(1) Clause 2 of Schedule 6 (definition of Internet carriage services), omit “, unless the same content is available simultaneously on the Internet”.

(2) Subclause 13(1) of Schedule 6, omit “that, if it were broadcast on commercial television or radio, would be a broadcasting service”, substitute:

of the following kinds:

(a) matter that, if it were broadcast on television or radio, would be a broadcasting service; or
(b) matter in the form of video programming that is provided on a store-forward basis to function as a video-on-demand service; or

c) matter in the form of video programming that is provided on a store-forward basis and, if automatically or manually combined with other video material or with other material that contains a mechanism that triggers the activation of material after a specified or calculated period of time, would substantially be, or include, a broadcasting service if transmitted by a radio or television broadcaster.

These are amendments to Senator Bishop’s amendments and are found on sheet 1850. From reading through Senator Bishop’s first amendment, opposition amendment No. 17, I think he did not realise that the effect of part of his amendment would be that all political and election material under schedule 2—the broadcasting of political and controversial material—would just be allowed without anything stopping any of it. We know we have good rules for the broadcast of election and political material for very good reasons, and I think he would probably want to keep those rules.

The other things we think would be exempted under his amendments would be: the ABA telling the licensee what to do—this is if stuff comes off the Internet—so political and election material would be things the ABA would say not to do; the material classified as RC, X and NVE by the Classification Board; and material classified as R by the Classification Board unless the content had been modified, as mentioned in paragraph 28(4)B, or access to the program was subject to a restricted access system. I am pretty sure that is part of it. It is probably something he missed out on and did not expect to be a consequence of one of his amendments, but I think it is. My amendment No. 1 on sheet 1850 would fix that problem.

Concerning my amendment No. 2, the main problem in Senator Bishop’s amendment No. 18 is that it allows what is virtually a broadcast channel to be stored forwards; that is, to be stored onto a hard drive of a black box sitting on the top of somebody’s television set or in the back of the television, depending on the technology, and then viewed as a broadcast channel. As Senator Alston said, that would go against the spirit of what we all agreed on a couple of years ago. I believe that my second amendment would stop that. It would also stop the possibility of automatically chopping and changing between channels so that you create a broadcast channel by automatic changing. I am explaining this extremely badly, but I am sure that Senator Bishop understands what I mean. The object of my amendment would be to make sure that, as far as we can, a broadcast channel could not be shown accidentally through the use of Senator Bishop’s amendments.

Apart from those two things, I acknowledge that I, too, have a few fears about the way this could possibly lead to court challenges. But I have to say that my amendments or the minister’s genre rules and probably any rules on the face of this earth would lead to court challenges. Senator Alston put it very eloquently: these are people with a lot of money; these are people who really want something. And I think that court challenges will be absolutely inevitable, no matter what we go for: whether we go for this one, whether we go for my one—which, I must say, I thought was a better one; well, we have lost that one—or whether we go for the genre rules. I think that is something we will have to live with, no matter what.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.19 p.m.)—There are degrees of difficulty in all these matters. The more uncertain it is, the more you are likely to invite litigation. The object of the exercise should not be to eliminate, because I accept that you probably will not be able to do that, but you can certainly minimise. I will give you an example from the telecommunications industry in America, where litigation is a very common business tool. It has not proven to be the case here because of the very different legislative approach we have taken. There are degrees of difficulty in all these matters. The more uncertain it is, the more you are likely to invite litigation. The object of the exercise should not be to eliminate, because I accept that you probably will not be able to do that, but you can certainly minimise. I will give you an example from the telecommunications industry in America, where litigation is a very common business tool. It has not proven to be the case here because of the very different legislative approach we have taken.
a walled garden format, I cannot see how she can possibly support it, unless she were absolutely confident that her amendments would stop that happening. The vice of this amendment is pretty much the same vice I have been canvassing all along. It becomes a circular argument if you say that a datacaster could not provide matter that would be a broadcasting service if it were broadcast on television, unless you knew what a broadcasting service was—and that is the problem. It does not solve your difficulty; it simply highlights the concern you would have, quite rightly, about the Labor model. But it does not go in the direction that you want it to go, which is to endeavour to identify the characteristics of a broadcasting service.

You have an outmoded definition. This is not a criticism of the legislators of the time; it simply reflects the fact that technology has moved on unrecognisably since television was first introduced in 1956 and evolved thereafter. It has now reached a point where definitions of broadcasting are not of any great assistance in interpreting what is meant by datacasting. To simply say that it is the opposite is not at all helpful. That is the problem with this type of patch-up on the run. The only sensible way you can do it is to have a genre approach. You might say, as I have said before, that some of those categories are too prescriptive or that there might be a capacity to overlap to some extent. I think we can do with that where there are the minor infractions. But to say that, because you have concerns about a couple of categories at the margin, you therefore reject an approach which is very clear in its definition and substitute it with something which is entirely uncertain just underlines the fact that, much as everyone has been looking for a better approach, there isn’t one. One might emerge down the track and all might become clear, all might be revealed with the march of technology; but, at this point in time, the best you can do is to try to identify the essential characteristics of television and spell them out in advance. Then people will know what it is they are not allowed to do. That then tells them what datacasting involves. To simply say that a datacaster cannot be a broadcaster is not doing much more than restating the principle that we all established a couple of years back. It does not take the matter any further in terms of interpretation or prescription, and I think it is the responsibility of the parliament to do just that.

Senator MARK BISHOP (Western Australia) (8.22 p.m.)—I just want to make a few comments on Senator Bourne’s amendments Nos (1) and (2). Just briefly, their effect is to amend the ALP’s framework approach. If content is simultaneously available on the Internet, the opposition are of the view that it should also be available to datacasters. That might strike some as either a radical or a novel position to hold. The question becomes: why do we hold to that particular view? The genesis of our view is really in the debate we held some 12 months ago on the broadcasting services bill—almost at this time last year—when the government sought to regulate and was eventually successful in regulating access to offensive material. During that debate, there was an extensive discussion among all interested parties concerning material derived from ISPs located within Australia, which could be regulated by Australian law, and material received from ISPs located offshore. In that discussion, we had the policy and conceptual arguments, but there was also extensive reference to a CSIRO report commissioned by the government. That report found that at that time it was not technically feasible to regulate content coming into this country from offshore.

The same argument applies here now. With the Internet, there is potentially the ability to receive material from thousands and thousands of sites all around the world. The opposition are aware that the government, through the ministerial council on gaming, has commissioned another inquiry or report on the technical feasibility of regulating material from offshore, and the opposition made reference to it in our minority report on the online gambling issue. We said then—and we repeat it now—that when that report came down we would examine it with interest. At the moment, the opposition are of the view that it is not technically possible to regulate material coming in via the Internet offshore and, if it is available simultaneously, datacasters should have access to the material so that they can put it out. We do recognise
the problem that the minister referred to of the walled garden, whereby material from a range of Internet sites might be aggravated and put out as a commercial product. We do recognise that as a serious problem, and I made reference to that in the opposition’s second reading speech.

The problem with the Australian Democrats’ amendment is that it destroys the integrity of the Internet content, it does not address the problem of walled gardens and things that derive from that, and the restrictions it places are potentially more restrictive than the government model. Democrat amendment No. (2) in particular would prohibit any form of Internet data stored at the user end, which even the government framework would allow. As such, the opposition are of the view that the Democrat amendments impose restrictions that are unacceptable, and at the appropriate stage we will not be supporting those amendments.

Senator BOURNE (New South Wales) (8.26 p.m.)—I make one comment about Senator Bishop’s comments. He has mentioned that there is potentially the ability to receive thousands and thousands of channels on the Internet. That is true of the Internet, but I am sure he is aware that, as far as datacasting channels go, you would get quite a few if you had pure text and it was as boring as hell, but I do not think that is going to happen. The most likely thing is that you will get 50 channels, or something like that, and 50 Internet channels. I am sure it is possible to regulate to make sure that there is no R- or X-rated material and to make sure that there is no political or broadcasting material where it is inappropriate. I do not think that that is really an appropriate argument for what we are looking at right now. I take your point that it could get much bigger once compression comes in and you can get much more on seven megahertz, but I think that at the moment it is perfectly possible to regulate those 50 probable datacasting channels.

Senator MARK BISHOP (Western Australia) (8.27 p.m.)—I will just respond very briefly to that point. Senator Bourne is correct. The comments I was making were in the context of the future of, potential of and development of the industry with the various techniques that would allow transmission via the Internet of a number of sites significantly in excess of 50.

Senator HARRADINE (Tasmania) (8.28 p.m.)—I assume, therefore, that the Labor Party is not going to pursue its amendments. It has been acknowledged by Senator Bishop that what Senator Bourne has stated is quite accurate. There is an opportunity and an ability on the part of the regulatory body to ensure that this material is not provided on datacasting services. After all, under this particular part of the legislation, which the Labor Party is not quibbling about, a datacasting service provider must hold a datacasting licence. Obviously, through the licensing mechanism, the regulatory authorities will be able to ensure that this applies and that R- and X-rated material is not available through datacasting.

I invite honourable senators to consider the problem. You have interactive services as well. You can have very seriously violent material with an R rating. If you have the interactive services, you establish a situation which is quite damaging not only to the people involved but also to the integrity of the system itself— if it does have any integrity. I am surprised that we are going along the path anyhow. Let us face it: when you speak to the ordinary person, the ordinary family, they are not interested in digital television at all. If you have a look at the evidence given to the committee, it is most interesting to note that the crucial factor in the submissions that were supporting the rapid introduction of digital television was money. What a surprise. Almost all of those who were pressing the case for this new medium were saying that this will generate activity in electrical stores and in television stores, and so on, and that it will generate a demand for this new technology in the home. And so it will.

You can imagine the peer group pressure that will be applied by many senior school students and university students, and so on, on their struggling parents. This is what it is all about: the pressure for people to expend their money unnecessarily on something that has been found in one or two countries to be a failed system. This is a problem at the moment. The gap between the poor and the
well-off is widening and, with this sort of pressure on the poor people, it is going to widen even further. They will go into debt, they will go into hire purchase and the gap will grow wider. The report of the Environment, Communications, Information Technology and the Arts Legislation Committee indicates on page 3:

1.12 In evidence to the Committee, FACTS was strongly supportive of HDTV as a driver for encouraging the take-up of digital television:

High definition will be very significant in promoting digital television, although we would not expect large numbers of high definition sets to be sold in the very early years …

… We think HDTV will be very important early on to promote digital television generally. We think, without HDTV, we would have a huge uphill battle to get anyone into an electrical goods store.

It is all about money and pressure on people who cannot afford it. I am surprised that the Labor Party, the workers party, would so readily go along with this go-getting, money grabbing exercise. This nation has more to spend money on than digital television, for crying out loud.

I am sorry, I digress. Now that it has been eloquently pointed out to the opposition by Senator Bourne, I assume they recognise the problem that will be created if these amendments are carried. To repeat: the regulatory authority can ensure that X and R material is not transmitted through datacasting services by the control the regulatory authority has over the providers through the issue or withdrawal of licences.

I want to ask the minister if he would give his definition of the word ‘genre’. According to the *Macquarie Dictionary*, it means ‘genus; kind; sort’ and I wonder why that word is not being used. Could the minister inform the committee as to what is meant by ‘sort’ or ‘kind’ of material if it is different from what is left over after you take out broadcasting? If the minister has a definition of datacasting, I ask whether he could apprise us of that as well.

**Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.37 p.m.)**—I am just not sure whether Senator Brown has being paying attention to any of this discussion if he thinks that one should be providing a definition of datacasting on the run.

**Senator Brown—**Not on the run; I want the standard definition.

**Senator ALSTON—**The whole thrust of the Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000 and the purpose of this exercise is to say that the meaning of the term ‘broadcasting services’ is quite uncertain in this day and age—it has been in the Broadcasting Services Act for a long time. Because datacasting services are new and different and have not been allowed to take off in this country as yet, they have to be defined by reference to broadcasting. The way in which you therefore define broadcasting is critical. You do not attempt to define datacasting; you attempt to define broadcasting.

The term ‘genre’ is nothing more than another word for category. You will see that clause 13 of the bill on page 62 lists a number of programming categories which constitute a best endeavour to replicate the suite of program offerings of a conventional commercial television service. I do not know why you would say we should have used ‘kind’, ‘sort’ or ‘genus’ instead of ‘genre’. In terms of familiarity of terms, people would be more comfortable with ‘genre’ because I think we know instinctively what it means. It is defined here for the benefit of everyone as simply ‘a series of categories of television programs’. That is really the basis on which this whole construct proceeds.
I will move to some of the concerns that have been expressed by Senator Bourne. In Democrat amendment No. 1 on sheet 1850, the deletion of ‘unless the same content is available simultaneously on the Internet’ takes you back to where the government is, because that gives you the government’s definition of ‘Internet carriage service’. I cannot see—I may be wrong—where the Labor model provides for an Internet carriage service. Even though they adopt a definition, I do not see where that definition then brings another section into play. It does look to me as though they do not allow for an Internet carriage service, meaning that whatever you brought in direct—in other words, it was not intercepted by the datacaster; it was simply allowed to flow across onto your television screen—would be banned, irrespective of the fact that most web sites are quite innocuous and do not infringe against the genre restrictions. There would, however, be some that might. You might have read a piece in the Financial Review the weekend before last which said there were literally dozens of television web sites springing up in the United States. It is certainly not beyond the wit of major content owners to construct a web site so that, in a sense, the difference merges very quickly. If you allow someone to put any Internet web site onto your television screen, then you are driving a B-double through any limitations that you might think you are placing on broadcasting services being datacasting services.

Under our regime, we do firstly permit Internet carriage services. They are subject to the overriding provision in the Broadcasting Services Act that they should not amount to a television service—again, accepting there are some doubts about at what point you satisfy that definition. But, crucially, we have a general anti-avoidance provision, which is lacking in the Labor approach. In other words, by simply relying on attributes, they do not deal with the question of distinguishing between some web sites and others in terms of Internet carriage services, because they appear not to allow it, full stop.

However, when it comes to the walled garden, under our regime that has to comply with the genre restrictions; under the Labor approach it does not seem that it does. That, again, is a much more likely way of driving a big truck through any regime. It is part and parcel of the business case of those wanting to be in the entertainment business that they would simply enable you to select from a carousel that is drawn from a number of web sites which in themselves would not constitute a television service but which aggregated, packaged and re-presented could replicate a television-like service very quickly indeed.

None of those very serious concerns—which, of course, make a mockery of the spirit of the 1998 legislation—are addressed by the Labor approach. That is why I say the Democrats first amendment takes you back to where we are. Unless you then proceed to adopt the genre approach with its built-in anti-avoidance mechanisms and its ultimate subservience to the Broadcasting Services Act—if you simply tack it onto an attributes approach or model—you do not have any of those safeguards. You do not allow Internet carriage services when there is a case for allowing some of them and you do not then deal with the ones that should not be allowed in because you have banned everything— and, when it comes to the walled garden, again you have gone far too far.

I simply say that, much as I think your first amendment is innocuous because it takes us back to where we were in the bill, it does not go any distance at all to solving the fundamental deficiencies of the opposition’s alternative model. That being the case, much as I understand Senator Bourne’s reservations about any ultimate regime, I think we should all be striving for maximum certainty—not absolute certainty, but maximum certainty. We should be prepared to give that approach a go, recognising that there will be plenty of opportunities for it to be assessed in the marketplace as well as formally by way of review. Then we can respond down the track, if we need to. But I think it would be the height of folly to embark on a new regime if no-one really had any sense of where it would take us, whereas the genre approach does give us that certainty. Much as people might criticise it, they know what it delivers, and it does
deliver a clear understanding of what a broadcasting service is.

**Senator MARK BISHOP** (Western Australia) (8.45 p.m.)—I want to respond briefly to a couple of the issues raised by Senator Harradine. At the outset, I would say that the opposition is of the view that it is probably correct that, if you wanted to impose a condition or a set of conditions on an activity a datacasting licensee might choose to engage in, it could quite easily be done. You could simply make it a condition of the licence that it cannot datacast X- or R-rated material. For those licensees resident in Australia and datacasting from Australia, if that were a condition of the licence the mischief raised by Senator Harradine would probably be addressed. So, to that extent, that is correct, but it does not address the real problem at the kernel of this debate.

The issues raised by Senator Harradine go to material that is brought in from offshore in relation to the Internet being able to be accessed through a datacast via one click on a TV screen. There is no ability to control that material. The government in its bill does not seek to; the minister’s second reading speech and the explanatory memorandum make it quite clear that the government does not seek to regulate content put out by datacasters coming in from offshore. The government makes the point that it has legal advice that that is not comprehended within the definition of the Broadcasting Services Act and, hence, is probably regulation free at this stage. That is why it proposes at a later stage to have a review of video and audio streaming material and why the opposition is also going to be moving an amendment to bring forward that review.

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Senator BROWN (Tasmania) (8.49 p.m.)—If we were having a debate here about ownership across the board, that would be one thing; if we were to have a debate about content across the board and how it might be restricted, that would be another thing. The problem with this debate and this legislation is that we are trying to define, restrict and trammel new technology by monopolistic ownership of what is termed ‘broadcasting’ in an old technology. We cannot come to a satisfactory conclusion while that restriction, that impediment, stands in the way.

The minister said that you cannot define datacasting on the run, although I thought that was the term he used to, in a way, anchor the discussion we are now having. He said that you cannot define datacasting but attempted to define broadcasting, having just told us that the definition of broadcasting had moved, even since this chamber was last debating the issue. It just points up that really this is an effort to shore up the monopoly of those who have the broadcasting licences at the moment and to restrict the new technology in a policy of leftovers. That is totally unsatisfactory. That is the problem that we have here. This is an opportunity to broaden ownership in Australia, to allow new players
into the whole field, but it is being stymied by the confines of the mistake of 1998. Obviously, in these circumstances, we will not be able to move to get around that block. All I am left to do here is to try to work out which of the three sets of opinions is the most affable, at least to the Australian public. So I will do the best I can.

Senator HARRADINE (Tasmania) (8.52 p.m.)—I would like to have a response by the minister to the comments by Senator Bishop that the government does not, and does not intend to, attend to the mischief that was referred to by me and then consequently referred to by Senator Bishop. I do not know that I am necessarily in order at the present moment in doing this, but it is germane to the amendments that have been moved by Senator Bishop and the amendments moved thereto by Senator Bourne. Page 54 of the legislation states:

Datacasting licensees will be allowed to provide the following types of content:

(a) information-only programs (including matter that enables people to carry out transactions);
(b) educational programs;
(c) interactive computer games;
(d) content in the form of text or still visual images;
(e) Parliamentary broadcasts;
(f) ordinary electronic mail;
(g) Internet content.

I was wondering whether the minister may indicate to the chamber whether any of that material which would be classified by the Classification Board as X, R or refused classification would be permitted to be transmitted by datacasting providers. I would be most grateful if the minister responded to that.

Secondly, I did mention in my previous comments that in a general sense this matter is not of great concern or not of great interest or merit to the public of Australia, particularly the working poor, because these things are at the present moment out of their range. As I understand it—and you can correct me if I am wrong—one statement was made to the committee that you would have to pay $20,000 for a unit for digital television. Sony I think said it would cost $8,000. In the minds of the people who are concerned that this is coming in and is not needed is the concern that they will be pushed into keeping up with the Joneses, and quite clearly that is the aim of those who will be holding the licences. I wonder whether Minister Alston would be kind enough to respond to my questions in relation to page 54, which of course is datacasting services part 1, item 1.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.56 p.m.)—I think the answer to Senator Harradine’s question is really contained in the general conditions attaching to a datacasting licence, which are set out on page 70 of the bill and which state:

(e) the licensee will not transmit datacasting content that has been classified as RC, X or NVE by the Classification Board ...

That makes it plain that any datacaster is subject to that requirement by way of licence conditions.

Senator HARRADINE (Tasmania) (8.57 p.m.)—I acknowledge that. That is in respect of RC, X or NVE. I was most interested in the provisions contained in paragraph (f) which states:

(f) the licensee will not transmit datacasting content that has been classified R by the Classification Board unless:

(i) the content has been modified as mentioned in paragraph 28(4)(b); or
(ii) access to the program is subject to a restricted access system (within the meaning of clause 27) ...

I am raising this matter because it does seem to me that datacasting is extending the propagation of this particular material beyond that which is through the Internet at the present moment. Under the provisions of the online services legislation, that required a restricted access provision for access to R. I do not agree with the suggestion that the conditions surrounding online services should be taken up and made the same for datacasting. I think, as the government has inferentially acknowledged, there is a difference between datacasting at this present point in time and the transmission of Internet content. Can I ask for some classification as to what is meant—unless I should not do it now; maybe I should leave it until we get to paragraph 28(4)(b) of the legislation.
Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.59 p.m.)—I do not think I could add much to what Senator Harradine has said other than to refer to clause 27, which does provide for a restricted access system. It states:

... the ABA must have regard to:

(a) the objective of protecting children from exposure to matter that is unsuitable for children; and

(b) such other matters (if any) as the ABA considers relevant.

A restricted access system is presumably a conditional access arrangement and you are not allowed to transmit datacasting content classified R unless you do have that conditionality regime. Beyond that, perhaps we can wait until we get there if there are other more specific matters.

I think it is worth noting the opposition’s approach on this matter. If one endeavours to identify where a walled garden would be permitted, it is presumably under the definition of ‘Datacasting services’ in clause 3, if you assume that a combination of those attributes gives you that ability, but there does not seem to be any safeguard to protect against what we all clearly anticipate as a very likely model of downloading into a walled garden environment where you simply pick out a number of TV-like web sites. One could argue that they are caught up under the prohibition, or what is contained in brackets—(other than a broadcasting service). But, again, it is not at all clear that, in the first instance, a walled garden is permitted. You have to infer that definition 3 amounts to permission. If you get to that stage, it is not at all clear that sites that are clearly TV-like sites are banned.

It seems to me that this attributes model suffers very much from the vagueness that led me to criticise earlier proposals and particularly because that walled garden is a much more effective way of replicating a television service than simply an Internet carriage service. Our approach, by making walled gardens subject to the genre restrictions and then having a general anti-avoidance provision, in my view, provides you with a much more secure arrangement. It gives you a lot more confidence that you are able to deal with what we would all instinctively acknowledge are broadcast services. If you adopt the Labor model, you do not get any of that certainty at all. You simply have, at best, some definitions that you hope might amount to those sorts of limitations.

The TEMPORARY CHAIRMAN—The question is that the amendments moved by Senator Bourne on behalf of the Australian Democrats to opposition amendments (17) and (18) be agreed to.

Question resolved in the negative.

The TEMPORARY CHAIRMAN—The question is that opposition amendments (17) and (18) be agreed to.

Question resolved in the negative.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.03 p.m.)—I table three supplementary explanatory memoranda relating to the government amendments to be moved to this bill. The memoranda were circulated in the chamber on 27 June 2000. I move government amendment No. 2 on sheet EK215:

(2) Schedule 1, item 2, page 3 (lines 7 to 11), omit the item, substitute:

2 After paragraph 3(1)(a)

Insert:

(aa) to promote the availability to audiences and users throughout Australia of a diverse range of datacasting services offering education and information; and

2A After paragraph 3(1)(b)

Insert:

(ba) to provide a regulatory environment that will facilitate the development of a datacasting industry in Australia that is efficient, competitive and responsive to audience and user needs; and

2B After paragraph 3(1)(f)

Insert:

(fa) to promote the provision of high quality and innovative content by providers of datacasting services; and

This amendment more explicitly acknowledges the role of datacasting services and the objects of the BSA and, in particular, the
central role of education and information in datacasting and the role of datacasting in providing high quality innovative content.

Senator MARK BISHOP (Western Australia) (9.05 p.m.)—I move:

Paragraph (aa), omit ‘offering education and information’.

Paragraph (aa) is in respect of the objects of the act. It is appears to the opposition that, if we retain those words ‘offering education and information’, it tends to limit the object of the act in promoting the availability to audiences and users throughout Australia of a diverse range of datacasting services. It limits that broad range of datacasting services offering education and information, and not the other matters that are contained in the definition that is now going to be the framework of the act that the government has allowed or the whole myriad of additional services that might be offered in the future as this industry develops and becomes (1) more technical and (2) much more commercial with the focus on consumer wants.

While there is nothing wrong in principle with having a diverse range of datacasting services offering education and information—and we certainly applauded that—including it in that sentence as part of the object of the act appears to the opposition to limit the breadth of the act. As we all know, this whole industry is developing at a rapid pace. There is a convergence issue that we will all be facing in the not too distant future. The government has indicated that there is going to be a whole range of reviews over the next three or four years. The opposition seeks to have some more reviews and to bring the start and finish dates of those reviews forward. We are of the view that, whilst to extend the object of the act in this way is okay, if we take out the words ‘offering education and information’, we broaden the scope of the purpose of the objects—and that, in a developing environment, is a worthwhile thing.

Senator BOURNE (New South Wales) (9.08 p.m.)—The Democrats would agree with pretty well everything that Senator Bishop has said. We agree with the government’s amendment, except that we also believe that if you put into (aa) ‘a diverse range of datacasting services offering education and information’ we think that does restrict it to just education and information, and we would not want to see that done. So we would be in support of Senator Bishop’s amendment and then in support of the amended objects, as Senator Alston has moved.

Senator HARRADINE (Tasmania) (9.08 p.m.)—I would be interested to know what the minister has to say about that. I thought that this was one of the things the government was putting forward in support of its legislation, that here was an opportunity to have datacasters providing content which will enhance the education and information available to the public. We have heard this time and time again over the last two years. That is how this whole thing has been sold. It has been sold on the basis that the datacasting licensees would be able to transmit material in that genre and will improve the education and information available to the Australian public. The legislation on datacasting, schedule 6, sets out what types of content will be available. It states:

(a) information-only programs (including material that enables people to carry out transactions);
(b) educational programs;
(c) interactive computer games;

Presumably that was sold on the basis that it would be material that was informational and educational. That would be a very fine tool not only in classrooms but also in an increasing number of homes where there is home schooling. It goes on:

(d) content in the form of text or still visual images;
(e) Parliamentary broadcasts—

Well, I do not know whether that is educational or informational or both—or neither. I would like to hear the government’s response, the minister’s response, to this. I do not know whether the opposition has just decided to do this, but I am rather disappointed. If huge amounts of money are going to be spent on it, under those circumstances we should, at least at this particular stage, have as our objective ‘to promote the availability to audiences and users throughout Australia of a diverse range of datacasting
services offering education and information’. I would support that. Why not try that? The opposition, the Democrats and the government have referred to the fact that we are going to have some reviews of the legislation, and the earlier that can take place after the trial period the better. Why not just stick with what the government has here until such time as the reviews take place and the public and interested organisations can make submissions to those conducting the reviews as to whether there are other user needs which should be satisfied?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.13 p.m.)—To respond to Senator Harradine’s concerns, we have always taken the view that datacasting provides the opportunity to deliver new information and education services in contradistinction to the commercial television sector, which is noted for its emphasis on entertainment. That has been the essential dichotomy. You are quite right in saying that time and again we have advocated the virtues of datacasting as offering those new opportunities. That is why we have put forward this new object to try to specifically identify the benefits that attach to offering new education and information services. I presume that Labor and the Democrats accept that but subsume it into a wider object and take the view that you ought to go for maximum diversity which may, certainly over time, extend beyond mere information and education. So I do not think they are telling us that they no longer think education and information are paramount or that they will not be the dominant aspect of datacasting; they are really arguing for maximum diversity. I prefer my form of words. That is why we put the new object forward. We do think the emphasis ought to be clearly and explicitly on the alternative to the entertainment sector, which is capably represented by commercial television interests. We want to see a new and different approach emerge, and that is why we have specifically anointed education and information. But, as I say, we have put it forward. We would like it to be supported. It does not sound as though it is going to be.

Senator MARK BISHOP (Western Australia) (9.14 p.m.)—To further help the committee, not only are education information services going to be available through datacasting—we acknowledge that they are certainly going to be part and parcel of the new world—but we also confirm Senator Alston’s point that we are seeking to broaden the definition. It is not just services that are going to be available through datacasting. Other tools will be available. Tools have utility: for example, you will be able to get word processing services and email devices through datacasters. So our concern is that, by retaining the words ‘education and information’, you limit the range of services and the utility of the range of tools that will be available through the new facility.

The TEMPORARY CHAIRMAN (Senator Bartlett)—The question is that the opposition amendment to government amendment No. 2 be agreed to.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—The question now is that the government amendment, as amended, be agreed to.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—We move on to Democrat amendment No. 1.

Senator BOURNE (New South Wales) (9.16 p.m.)—I believe that the amendment we are discussing now is where the Democrats proposed to add another subsection to 3(1) to the objects, and this is on sheet 1827. We have circulated an amendment. After discussions with the opposition, I would like to move our amended amendment:

(1) Schedule 1, page 3 (after line 11), after item 2, insert:

2A At the end of subsection 3(1)
Add:

;and (n) to ensure the maintenance and, where possible, the development of diversity, including public, community and indigenous broadcasting in the Australian broadcasting system in the transition to digital broadcasting.

I am pretty sure that that is what they were happier with. The difference from my original amendment, which I had done a couple of
days ago, is that it actually spells out public, community and indigenous broadcasting as being included in the intended diversity of the broadcasting system in Australia. While we do have a community broadcasting system in place and, I hope, expanding, the indigenous television broadcasting system is extremely fledgling. Having looked at the Productivity Commission report on broadcasting, we would hope that that would have the room to expand and grow within Australia. It is probably a very sensible idea of the opposition’s to include public, community and indigenous broadcasting spelt out in the objects of the act and also as part of the intended diversity of the broadcasting system in Australia.

Senator BROWN (Tasmania) (9.18 p.m.)—I would go along with that. I think it would be improved if it were ‘in particular’ in instead of ‘including’. I ask Senator Bourne if she would mind taking note that I would have a preference for the words ‘in particular’ instead of ‘including’. I want to comment on the direction that we are going in with the whole amendments here. It seems to me that what has happened is that the opposition and the Democrats have knocked each other out as far as the major amending provisions are concerned. If that continues, the government is going to have its way as far as this legislation is concerned. The only way that we are going to bring this back to the intention of the major parties on this side of the house is for a no vote on the third reading so that the whole matter can be looked at again and improved. Otherwise, the opposition and the Democrats are effectively saying that the government has the best alternative. I do not think that is the intention. It is certainly not what is being said by either party, but that is the result of what we have just seen. I think that the opposition and the Democrats should, overnight, reflect very much on that and ask if it is really their intention, through inability to find a common formula which is better than the government’s, to leave the government to have the day on this matter—because that is the worst outcome of the lot.

Senator HARRADINE (Tasmania) (9.20 p.m.)—Mr Temporary Chairman, could I, through you, ask Senator Bourne a question about the running sheet? Are we dealing with sheet 1827? There must be another 1827, because some of the words that were read out by Senator Bourne—

Senator BOURNE (New South Wales) (9.21 p.m.)—Yes; I have amended it, Senator Harradine. I was reading out my amendment to that amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.21 p.m.)—I suppose that we are dealing with amendment upon amendment, as Senator Harradine has rightly identified. It does seem to the government that, whilst it is laudable to seek to identify all the various interests that might be represented in the debate, in itself it does not necessarily lend itself to being included in the objects clause, particularly in the context of talking about a transition. In other words, if the objects are there on a lasting basis—as one assumes they are—then one would, quite understandably, aspire to see datacasting made available to the maximum number of individuals and groups in the community.

Senator Bourne’s amendment upon her amendment does not really express it in those terms, but rather in a transition arrangement to develop sectoral diversity which is then subcategorised into three different groupings. I would not die in a ditch on it, but it seems to me, with respect, it is a little clumsy in an objects clause. Certainly I think the point can be made on the way through in a number of other places that each of those interests is very important and should have access wherever possible. But whether it is appropriate to be in the objects clause is, I think, a moot point.

The TEMPORARY CHAIRMAN (Senator Bartlett)—The question is that the amendment moved by Senator Bourne in amended form be agreed to.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—The next amendment on the running sheet is Senator Brown’s amendment, which I think is identical to Senator Bourne’s original one. Do you want to proceed with that, Senator Brown?
Senator BROWN (Tasmania) (9.23 p.m.)—I will withdraw that because of the passage of Senator Bourne’s amended amendment.

The TEMPORARY CHAIRMAN—We proceed to Democrat amendment No. 2, on sheet 1827, dealing with national broadcasting services.

Senator BOURNE (New South Wales) (9.23 p.m.)—I am just looking this one up, if I could seek the indulgence of the committee once again.

The TEMPORARY CHAIRMAN—While Senator Bourne is being indulged, perhaps, Senator Brown, you might like to speak.

Senator BROWN (Tasmania) (9.24 p.m.)—I would like to add a little to my earlier comment. I would like to know from the opposition and from the Democrats what the intended outcome now is as far as the passage of this legislation is concerned. I think it will make a great deal of difference to how the committee deals with further amendments and, indeed, what conclusion we come to tomorrow. I am puzzled, to say the least, by the phenomenon of the opposition and the Democrats seeming, on the face of it, to have a complementary viewpoint vis-a-vis the government, but in fact knocking each other out to allow the government to have the day. One can only take from that that the intention is to allow the government to have the day; that there is some withdrawal from the position publicly stated by the two parties. I find that hard to fathom, and I would appreciate some clarification.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.25 p.m.)—Mr Temporary Chairman, you granted indulgence to Senator Bourne to enable her to collect her thoughts, but instead you provided an opportunity for Senator Brown to do a bit of additional grandstanding. He has twice tried to make a second reading point when we are dealing with committee stage amendments. If he wants to go outside the chamber and rabbit on in his usual fashion he is perfectly entitled to, but in the committee stage of the debate he should not be permitted to make gratuitous observations that have nothing to do with the amendments before the chair.

The TEMPORARY CHAIRMAN—Thank you, Minister. I think others can choose to respond if they want to. Senator Bourne is now ready to move her amendment, in any case.

Senator BOURNE (New South Wales) (9.25 p.m.)—Yes. Thank you, Mr Temporary Chairman. I am sure Senator Brown knows that is not the case, but we can speak about that afterwards, I am sure. On to my next amendment. This is one part of three amendments, and the other two—I would seek leave to move them together—are amendments Nos 52 and 53. Those three amendments put together would put the datacasting regime for the ABS and the SBS into their own acts. They may still be under the ABA, but what happened to them would be within our own acts. So the ABC’s datacasting regime, even if it were still under the ABA, would be in the ABC’s act, and SBS’s datacasting regime, even though it may still be under the ABA, would be in the SBS act.

The TEMPORARY CHAIRMAN—Is leave granted for those three amendments to be moved together? Is there any objection?

Senator BOURNE (New South Wales) (9.27 p.m.)—To clarify, it might be easier if we move Democrat amendment No. 2 down, because there seems to be some confusion—
mine included. If we move it down to where we look at Nos. 52 and 53, I think those two amendments would go with this amendment. That would give people time to look at it and make sure that it is doing what we think it should be doing.

The TEMPORARY CHAIRMAN—Are you suggesting not moving Democrat amendment No. 2 either at the moment?

Senator BOURNE—Yes, Mr Temporary Chairman. I am suggesting that it be moved later on, in conjunction with Nos. 52 and 53 when we get to them.

The TEMPORARY CHAIRMAN—The proposal is not to proceed with Democrat amendment No. 2 at the moment, but to group that with amendments Nos. 52 and 53.

Senator MARK BISHOP (Western Australia) (9.28 p.m.)—Senator Bourne, Democrat amendment No. 2 is relatively simple. It extends the datacasting to the national broadcasters. We support it. Let’s do it.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.28 p.m.)—There is still an opportunity to reflect on it. The combination of these three amendments would impose different regimes in terms of obligations on the commercial sector—in other words, ordinary datacasters—and on the ABC and on the SBS. We do not support three different regulatory models for datacasting. It seems to us that you ought to have a common regime. It ought to be overseen by a single regulator—the ABA. If the ABC and SBS regulate their own datacasting, then there is a risk that their boards may apply different interpretations of the rules than the ABA does for commercial datacasters. It is certainly not beyond the bounds of possibility that, if the national broadcasters are effectively able to regulate themselves and indulge their own interpretations, they will go much further than the ABA would allow the commercial sector to go, and that is neither a coherent nor a desirable public policy outcome.

Whilst there may be other ways in which there can be embedded recognition in the ABC and SBS acts, I would strongly urge the Labor Party to consider the implications of this combined proposal, because it does quite clearly result in three different regulatory regimes. I make the point again: it does result in three potentially quite different regulatory regimes. You have all of the non-national broadcaster datacasters being governed by the ABA—which provides its own interpretation of the regime, as it should, because this is a new model and you ought to have a regulator charged with responsibility for coming up with consistent interpretations—but alongside that the last thing you want is to have the ABC and the SBS, with the best of goodwill one would assume, going off on frolics of their own without any serious constraints. So we do not support different regulatory models.

I should also say that in the government’s view the amendment has a major technical flaw, as consequential changes are not made to the relevant transmitter licence provisions in the Radiocommunications Act, which requires the national broadcasters to hold a BSA datacasting licence before the transmitters can be used to transmit a datacasting service. It is not clear to me why the Democrats indeed want three different and potentially conflicting regimes.

Senator BOURNE—Sit down and I’ll tell you.

Senator ALSTON—All right. I will sit down and give you go.

The TEMPORARY CHAIRMAN (Senator Bartlett)—Senator Bourne, can I just clarify you are wishing to proceed now with amendment No. 2.

Senator BOURNE (New South Wales) (9.31 p.m.)—Yes, but can I clarify first that I think the minister is discussing my amendment No. 41. I do not think that we have that problem at all with amendment No. 2.

The TEMPORARY CHAIRMAN—Perhaps you can move amendment No. 2 and then speak to it.

Senator BOURNE—I move Democrats amendment No. 2:

(2) Page 5 (after line 23), after item 17, insert:

17A Paragraphs 13(1)(a) and (b)

After “broadcasting services” (wherever occurring), insert “and/or datacasting services”.


The effect of amendment No. 2 is that, with both the ABC and SBS, whenever it mentions ‘broadcasting services’ it would also add ‘datacasting services’ to what they are able to do. It is amendment No. 41, I think, that you are thinking of, Minister, where the ABC and I think SBS boards would have the responsibility for regulating their own datacasting regimes. That is neither amendment No. 2 nor amendment No. 52 or No. 53. But when we get up to amendment No. 41, I am sure we will be interested in hearing that speech again.

Senator MARK BISHOP (Western Australia) (9.32 p.m.)—I think there is a bit of confusion here. Broadly, in terms of the minister’s argument in terms of one regulatory regime to regulate the ABC and the SBS, the opposition does not demur. I had thought there was common ground. In respect of Democrats amendment No. 2, we are simply dealing with extending ‘broadcasting services’ to ‘datacasting services’.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.33 p.m.)—Could I perhaps just ask for some further advice on this matter. It may be self-inflicted, but there is some confusion, certainly on my part, as to whether we are in fact dealing with the matter that Senator Bourne thinks I should be dealing with.

Senator BOURNE (New South Wales) (9.33 p.m.)—My amendment No. 2 would amend the Broadcasting Services Act to add ‘datacasting services’ wherever ‘broadcasting services’ appears behind ABC and SBS. That will be needed—which is one of the reasons I thought we possibly should have done it while we were doing Nos 52 and 53—if Nos 52 and 53, and I understand particularly No. 52, are passed. It has nothing to do with that ‘third regime,’ as you called it; that is my amendment No. 41.

My advice, for example, is that 13(5) of the Broadcasting Services Act says:

Except as expressly provided by this Act, the regulatory regime established by this Act does not apply to national broadcasting services.

What Senator Bourne is seeking to do is to add in ‘datacasting services’ to subclause (1), so that would say:

National broadcasting services are:

(a) broadcasting services and datacasting services ... If you then go down to subsection (5), you find that the regulatory regime does not apply to datacasting. On the face of it, that seems to be a nonsense. Therefore, I would be more comfortable if we could reflect on it. Thank you.

Senator MARK BISHOP (Western Australia) (9.35 p.m.)—We will also reflect upon that.

Motion (by Senator Bourne) agreed to:
That further consideration of amendment No. 2 be postponed.

Senator BOURNE (New South Wales) (9.36 p.m.)—I move Democrats amendment No. 3:

(3) Schedule 1, item 20, page 6 (line 2), omit “6 MHz or”.

As senators will know, there is currently a six megahertz lump of spectrum in the middle of the broadcast spectrum. Six megahertz pieces of spectrum cannot be utilised properly under the hardware that we expect to have in Australia for seven megahertz pieces of spectrum, which is what will be allocated for datacasting and eventually for broadcasting.

This amendment seeks to stop any possibility of the government utilising the six megahertz piece of spectrum as an entity. It will be available, because it is in the middle of what is currently in the analog spectrum—there may be others around that they are thinking of doing, but the one I am thinking of is in the middle of the analog spectrum—and we think it would be sensible if that were not available for use because it probably cannot be picked up by any of the equipment that will be available in Australia in the near future anyway, and it will also become part of that very large piece of spectrum which will
be available to be divided up once the analog services are turned off. I do not think it will have any huge impost on the government if this happens. There will be some small cost because it cannot be auctioned off, but I cannot see why too many people would want a six megahertz piece of spectrum anyway.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.38 p.m.)—It is not a big deal, I suppose, in one sense, because it probably is highly unlikely that the ABA would ever allocate a six megahertz channel but this is probably a classic example of where planning decisions should be taken by the experts and not by the parliament on the run. I do not think any of us necessarily understand the full implication of a provision of this sort. I think it should be left with the ABA to make its own judgment on it. As I understand the way in which the spectrum is configured, datacasting services and broadcasting services will only be available via the same seven megahertz spectrum band. If that is the case then it would suggest that six megahertz will not be particularly useful for current purposes. But, at the end of the day, that is just the second-hand advice you get. I would probably feel more comfortable if the ABA made that judgment.

Senator MARK BISHOP (Western Australia) (9.38 p.m.)—The opposition supports the Democrats amendment. The government is proposing to effect spectrum clearance and have a review to enable the government to plan quarterly on this issue in the future when the issue becomes whether to clear the six to seven or to remain with the seven megahertz. We will await the review, but we support the amendment at this stage.

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.39 p.m.)—by leave—I move government amendments (3) to (11) on sheet EK 215:

(3) Schedule 1, item 23, page 7 (lines 15 and 16), omit “commencement of this section”, substitute “designated time for the licence area”.

(4) Schedule 1, item 23, page 7 (line 34) to page 8 (line 1), omit “commencement of this section”, substitute “designated time for the licence area”.

(5) Schedule 1, item 23, page 8 (line 5), omit “commencement of this section”, substitute “designated time for the licence area”.

(6) Schedule 1, item 23, page 8 (line 11), omit “commencement of this section”, substitute “designated time for the licence area”.

(7) Schedule 1, item 23, page 8 (line 27), omit “commencement of this section”, substitute “designated time for the licence area”.

(8) Schedule 1, item 23, page 10 (line 21), before “the licensee”, insert “if the licence area for the licence is wholly outside a remote licence area (within the meaning of Schedule 4)—”.

(9) Schedule 1, item 23, page 10 (line 27), omit “2004.”, substitute “2004; and”.

(10) Schedule 1, item 23, page 10 (after line 27), at the end of subsection (18), add:

(c) if any part of the licence area for the licence is within a remote licence area (within the meaning of Schedule 4)—the licensee will commence to provide the commercial television broadcasting service concerned in SDTV digital mode (within the meaning of Schedule 4) by the time that is notified in writing to the licensee by the ABA, being a time that is not earlier than the date determined by the ABA in relation to the remote licence area as mentioned in subclause 6(6A) of Schedule 4.

(11) Schedule 1, item 23, page 11 (after line 30), at the end of section 38B, add:

Designated time

(26) In this section:

designated time, in relation to a licence area, means:

(a) if the licence area is wholly outside a remote licence area (within the meaning of Schedule 4)—the commencement of this section; or

(b) if any part of the licence area is within a remote licence area (within the meaning of Schedule 4)—the time determined by the ABA in relation to the remote licence area for the purposes of this paragraph.

The purpose of these amendments is to correct the existing provisions in relation to the allocation of section 38B licences in remote two-station licence areas to reflect the de-
Amended commencement dates in remote areas. Currently, the bill requires that if a licensee in a two-station market wants to apply for a third commercial broadcasting licence, it must notify the ABA that it intends to do so within 90 days of the commencement of the provisions in this bill. Given that there are no relevant dates in relation to remote areas, it may well be that digital services will not commence for some years and, in those circumstances, it would make a nonsense of the requirement for notification within 90 days of the commencement of the bill. The amendments as proposed will restrict the application of paragraph 18(b) to a licence area which is not a remote licence area and will make a new provision which requires the licensee to commence the service by the time notified by the ABA.

Amendments agreed to.

Senator BOURNE (New South Wales) (9.42 p.m.)—by leave—I have been working off the old running sheet which would now have the ALP reviews but I think that has moved to our EPG regime. I move Democrats amendments Nos 4, 13, 14, 18, 38, 40 and 42 to 44 on sheet 1827:

(4) Schedule 1, page 19 (after line 20), after item 69, insert:

69A After subclause 7(2A) of Schedule 2

Insert:

(2B) Each commercial television broadcasting licence is also subject to the condition that the licensee will provide information to another commercial television broadcasting licensee, a subscription television broadcasting licensee or a datacasting licensee:

(a) in a timely manner; and

(b) at no cost; and

(c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;

if required to do so by that other licensee for the purpose of compiling information for an electronic program guide.

69B At the end of clause 10 of Schedule 2

Add:

(2A) Each subscription television broadcasting licence is also subject to the condition that the licensee will provide information to another subscription television broadcasting licensee, a commercial television broadcasting licensee or a datacasting licensee:

(a) in a timely manner; and

(b) at no cost; and

(c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;

if required to do so by that other licensee for the purpose of compiling information for an electronic program guide.

(13) Schedule 1, item 94, page 27 (line 31) to page 28 (line 3), omit paragraph (24)(a), substitute:

(a) a schedule of the television programs provided by:

(i) the commercial television broadcasting service transmitting the matter; or

(ii) each of the commercial television broadcasting services and each of the national television broadcasting services; or

(14) Schedule 1, item 94, page 28 (line 21), at the end of subclause (24), add:

; or (e) a combination of:

(i) a schedule covered by paragraph (a); and

(ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief and in the form of text; and

(iii) a facility for the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule; and

(iv) a schedule of the programs provided by any or all holders of datacasting licences issued under Schedule 6;

and the matter complies with the following rules:
(f) if a licensee transmits an electronic program guide containing information about any programs transmitted, or services offered, by a third party (the third party service), the licensee must transmit equivalent information about programs transmitted by itself and by each other service that is the same type of service as the third party service;

(g) if a licensee transmits matter in accordance with paragraph (f), the licensee may organise the matter in the electronic program guide as the licensee sees fit provided that the electronic program guide gives equal prominence to information about each third party service and the licensee's own services;

(h) if a licensee transmits matter in accordance with paragraph (f) that provides click-on access to the services about which it provides information, click-on access must be provided to each of those services by an equally easy to use method.

(25) For the purposes of subclause (24), the following services are the same type of service as a third party service:

(a) if the third party service is a free-to-air broadcasting service—all other free-to-air broadcasting services;

(b) if the third party service is a datacasting service—all other datacasting services;

(c) if the third party service is a subscription broadcasting service—all other subscription broadcasting services.

(26) In subclause (25), free-to-air broadcasting service means:

(a) a commercial television broadcasting service; and

(b) a national broadcasting service.

(18) Schedule 1, item 115, page 36 (line 16), at the end of subclause (24), add:

; or (e) a combination of:

(i) a schedule covered by paragraph (a); and

(ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief and in the form of text; and

(iii) a facility for the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule; and

(iv) a schedule of the programs provided by any or all holders of datacasting licences issued under Schedule 6;

and the matter complies with the following rules:

(f) if a national broadcaster transmits an electronic program guide containing information about any programs transmitted, or services offered, by a third party (the third party service), the national broadcaster must transmit equivalent information about programs transmitted by itself and by each other service that is the same type of service as the third party service;

(g) if a national broadcaster transmits matter in accordance with paragraph (f), the national broadcaster may organise the matter in the electronic program guide as the national broadcaster sees fit provided that the electronic program guide gives equal prominence to information about each third party service and the national broadcaster's own services;

(h) if a national broadcaster transmits matter in accordance with paragraph (f) that provides click-on access to the services about which it provides information, click-on access must be provided to each of those services by an equally easy to use method.

(25) For the purposes of subclause (24), the following services are the same type of service as a third party service:

(a) if the third party service is a free-to-air broadcasting service—all other free-to-air broadcasting services;

(b) if the third party service is a datacasting service—all other datacasting services;

(c) if the third party service is a subscription broadcasting service—all other subscription broadcasting services.

(26) In subclause (25), free-to-air broadcasting service means:
(a) a commercial television broadcasting service; and
(b) a national broadcasting service.

(38) Schedule 1, item 140, page 68 (after line 6),
after Division 1, insert:

DIVISION 1A—ELECTRONIC PROGRAM GUIDE CONDITION

20A Electronic program guides

For the purposes of this Division, an electronic program guide is matter transmitted using a digital modulation technique, where the matter consists of no more than:

(a) a schedule of programs provided by a broadcasting service or a datacasting service; or
(b) a schedule covered by paragraph (a) and either or both of the following:

(i) items of factual information, and/or items of comment, about some or all of the program in the Schedule, where each item is brief and in the form of text;
(ii) a facility, the sole purpose of which I to enable an end-user to select, and commence viewing, one or more of the programs in the schedule.

20B Condition relating to electronic program guides

(1) Each datacasting licence is subject to the condition that the licensee will not transmit an electronic program guide except in accordance with the following rules:

(a) a licensee may transmit an electronic program guide containing information about the programs transmitted by the licensee;
(b) if a licensee transmits an electronic program guide containing information about any programs transmitted, or services offered, by a third party (the third party service), the licensee must transmit equivalent information about programs transmitted by itself and by each other service that is the same type of service as the third party service;
(d) if a licensee transmits matter in accordance with paragraph (b), the licensee may organise the matter in the electronic program guide as the licensee sees fit provided that the electronic program guide gives equal prominence to information about each third party service and the licensee’s own services;
(e) if a licensee transmits matter in accordance with paragraph (b) that provides click-on access to the services about which it provides information, click-on access must be provided to each of those services by an equally easy to use method.

(2) Each datacasting licence is also subject to the condition that the licensee will provide information to another datacasting licensee, a commercial television broadcasting licensee or a subscription television broadcasting licensee:

(a) in a timely manner; and
(b) at no cost; and
(c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;
if required to do so by that other licensee for the purpose of compiling information for an electronic program guide.

(3) For the purposes of this clause, the following services are the same type of service as a third party service:

(a) if the third party service is a free-to-air broadcasting service—all other free-to-air broadcasting services;
(b) if the third party service is a datacasting service—all other datacasting services;
(c) if the third party service is a subscription broadcasting service—all other subscription broadcasting services.

(4) In this clause, free-to-air broadcasting service means:

(a) a commercial television broadcasting service; and
(b) a national broadcasting service.

(40) Schedule 1, item 140, page 73 (after line 18),
after paragraph (3)(b), insert:

(ba) clause 20B; or

(42) Schedule 1, item 140, page 87 (line 30), after “16”, insert “20B.”.
Can I ask for advice just in case my amendments do not happen to get up and the ALP’s do? I would also want to amend the ALP’s by seeking to put in one of the amendments I am moving now as an amendment to theirs. Could I still do that, even though I have just moved it?

The TEMPORARY CHAIRMAN (Senator Hogg)—Yes.

Senator BOURNE—Thank you. Let me explain my own. The electronic program guide, as we know, is a very important part of any broadcasting or datacasting system. I am sure, as honourable senators know, when we move to digital you will be able to see on the screen of your television what is available and what the program will be for the day you are looking at, or possibly for the week—probably the day. Having looked at experience mostly in the UK, where this was started and has been amended, we have looked at the amendments that they moved and expanded on those a bit. The idea would be that if you were a free-to-air broadcaster you could put up your own program guide, or you could put up the program guides of all free-to-air broadcasters but you could not pick and choose amongst others.

If you wanted to put up a datacasting logo so that you could go to a datacasting channel, you could put up your own datacasting logo or, if you wanted to put up more than one, you would have to put up all of them so you could see what was available. There is probably no schedule as it would be pretty asynchronous with the datacasting, but we think it is important that you are able to see which datacasting services are available outside the one on the channel that you have selected. We would include that. Also, if anybody wanted to include a pay channel on their datacasting system, that would have to be included. It is basically a matter of putting up one channel—your own—or all channels in free-to-air, datacasting and pay, if that is available. The amendment to clause 69A makes commercial broadcasters have to provide information to people providing the EPG. It would be very standardised, and it would be very simple. I commend these amendments to the Senate.

Senator MARK BISHOP (Western Australia) (9.46 p.m.)—The opposition has given consideration to the amendments circulated by Senator Bourne, and we will be opposing those amendments. We are much more attracted to the UK model, where broadcasters will have three options in the provision of EPGs. I know the Democrats addressed that—more than in passing—in their minority report. We are attracted to that proposition: you have no EPG, you show guides only for your own programs or you show all other broadcasters’ programs using comment standards. For those reasons, the opposition opposes the Democrat amendments, as foreshadowed, and will move their own in due course.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.47 p.m.)—I simply indicate that the government opposes these provisions because they are selective and discriminatory. It seems to us, as a matter of commercial reality, that players ought to be able to make their own arrangements and that, if they are prepared to build an EPG that serves their purposes, they should not be required to somehow solicit on behalf of the opposition. In those circumstances, we oppose the approach put forward by Senator Bourne.

Senator BOURNE (New South Wales) (9.48 p.m.)—Minister, you will be glad to hear that that is not what we are doing at all. We are not making anybody solicit on behalf of the opposition. If you want to put up your own broadcasting EPG, that is fine. But if you want to put up one other, you would have to put up all others. I may have missed something that Senator Bishop said, but I think what he was describing is what I have put up, with the addition, in my own EPG amendments, of the datacasting logos. If you put up your own datacasting logo, that would be fine but, if you put up more than one, you would have to put up all of them. From what I understand, he probably has a small problem with the datacasting part of it, but I think that what he is saying is covered in my amendments.
Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.49 p.m.)—It was not my intention to indicate that there was any compulsion in the sense that, if you choose to go it alone, you can. My understanding is that, if a broadcaster chooses to carry another broadcaster, it is required to provide an EPG for all broadcasters. But I am not clear whether that then means you have to carry datacasters as well—or if it is only that if you carry one datacaster that you have to carry all other datacasters? So that applies, presumably in reverse, to a datacaster: if a datacaster operates as a sole trader, it presents its own EPG; if it carries one broadcaster, it has to carry all other broadcasters; if it carries one other datacaster, it has to carry all other datacasters; if it carries one of each, it has to carry the lot. Is that the way you put it forward?

Senator Bourne—You carry one other.

Senator ALSTON—As I say, I think it imposes a degree of compulsion that I do not think is justified by the commercial realities. It may well make sense for some to combine with others, but does that mean you ought to be required to offer your competitors a programming guide? We do not think so.

The TEMPORARY CHAIRMAN (Senator Hogg)—The question is that the amendments moved by the Democrats be agreed to.

Question resolved in the negative.

Senator MARK BISHOP (Western Australia) (9.51 p.m.)—I move opposition amendments Nos 41 to 44 and 53 to 56 on sheet 1823:

(41) Schedule 1, item 94, page 27 (line 29), omit “a digital”, substitute “a uniform digital”.

(42) Schedule 1, item 94, page 27 (line 31) to page 28 (line 3), omit paragraph (24)(a), substitute:

(a) a schedule of the television programs provided by:

(i) the commercial television broadcasting service transmitting the matter; or

(ii) all of the commercial television broadcasting services and all of the national television broadcasting services; or

(43) Schedule 1, item 115, page 35 (line 24), omit “a digital”, substitute “a uniform digital”.

(44) Schedule 1, item 115, page 35 (lines 26 to 31), omit paragraph (24)(a), substitute:

(a) a schedule of the television programs provided by:

(i) the commercial television broadcasting service transmitting the matter; or

(ii) all of the commercial television broadcasting services and all of the national television broadcasting services; or

(53) Schedule 1, item 140, page 68 (after line 6), after Division 1, insert:

DIVISION 1A—ELECTRONIC PROGRAM GUIDE CONDITION

20A Electronic program guides

For the purposes of this Division, an electronic program guide is matter transmitted using a digital modulation technique, where the matter consists of no more than:

(a) a schedule of programs provided by a broadcasting service or a datacasting service; or

(b) a schedule covered by paragraph (a) and either or both of the following:

(i) items of factual information, and/or items of comment, about some or all of the program in the schedule, where each item is brief and in the form of text; and

(ii) a facility, the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule.

20B Condition relating to electronic program guides

(1) Each datacasting licence is subject to the condition that the licensee will not transmit an electronic program guide except in accordance with the following rules:

(a) a licensee may transmit an electronic program guide containing information about the programs transmitted by the licensee;

(b) if a licensee transmits an electronic program guide containing information about any programs transmitted by a commercial television broad-
casting service or a national television broadcasting service, the licen-
see must transmit equivalent information about programs transmitted by itself and by each other commercial television broadcasting service or a national television broadcasting service.

(54) Schedule 1, item 140, page 87 (line 30), after “16”, insert “20B.”.
(55) Schedule 1, item 140, page 89 (line 10), after “16”, insert “, 20B”.
(56) Schedule 1, item 140, page 89 (line 20), after “16”, insert “, 20B”.

By way of summary, the outcome we seek in these amendments is that the EPGs, the electronic program guide rules, operate similarly to the way we understand they operate in the United Kingdom. Accordingly, if the amendments get up, broadcasters will have three options in the provision of EPGs. Firstly, they will have no EPG if they choose to go down that path. Secondly, they will show guides only for their own programs. Thirdly, they will show all other broadcasters’ programs using common standards—the key there being the phrase ‘using common standards’. The amendments seek to avoid anticompetitive conduct through the selective display of competitors’ guides so that, if programming guides are to be displayed, the datacaster has three options. Our emphasis is to avoid non-disclosure of information, an activity which is used as a tool to gain market advantage. Our amendments are limited to commercial and national broadcasters, and only if a datacaster puts up a broadcast will that come into play. They are the amendments before the chair.

Senator BOURNE (New South Wales) (9.53 p.m.)—I am sure Senator Bishop is aware that his amendments are almost the same as the amendment I just put up, which he voted down, but the significant difference is that in his amendments free-to-air broadcasters do not have to carry datacasters, whereas in my amendment they do. Everything else is very similar. I propose to amend Senator Bishop’s amendments by again moving Democrat amendment No. 4 on sheet 1827.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.54 p.m.)—Could I inquire of Senator Bishop whether it is the intention or the effect of his amendments that, where a datacaster carries one broadcaster, they are then required to carry all broadcasters?

Senator Mark Bishop—The answer to that is yes.

Senator ALSTON—Again, I think the degree of compulsion attached to all of this is not desirable in principle.

The TEMPORARY CHAIRMAN (Senator Hogg)—We have a bit of minor confusion here. Senator Bourne, can you tell us precisely what your amendment No. 4 is amending? We are a little bit confused.

Senator Mark Bishop—The answer to that is yes.

Senator ALSTON—Again, I think the degree of compulsion attached to all of this is not desirable in principle.

The TEMPORARY CHAIRMAN (Senator Hogg)—We have a bit of minor confusion here. Senator Bourne, can you tell us precisely what your amendment No. 4 is amending? We are a little bit confused.

Senator BOURNE (New South Wales) (9.55 p.m.)—My amendment No. 4 would be an addition to Senator Bishop’s amendments on EPGs.

The TEMPORARY CHAIRMAN—So it is not amending any of his amendments?

Senator BOURNE—No, it would be an additional amendment.

The TEMPORARY CHAIRMAN—We will dispose of the amendments moved by Senator Bishop, then we will move to your amendment, Senator Bourne. We understood originally that yours was an amendment to Senator Bishop’s amendments. Now that has been clarified, that might help with some of the things you wish to say as well, Minister. We have before the chair the amendments moved by Senator Bishop. The amendment foreshadowed by Senator Bourne will be taken up after we have disposed of Senator Bishop’s amendments.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.57 p.m.)—I was really making the point that imposing a set of restrictions which have automatic effect—if a player moves into an alliance with any other player at least to the extent of any EPG activities concerned—seems to me to be a very artificial construct. A better way of doing it is to leave it to the ACCC, which will always have overarching responsibility for ensuring that the players do not engage in anticompetitive activity. I presume that is really what
this is designed to achieve. For that reason, the government does not favour this approach. One matter that I would appreciate some clarification on is the use of the word ‘uniform’. It is not clear what changing the definition of an electronic program guide in the bill to refer to a uniform digital technique means in practical terms. The current reference in the bill is simply there to describe EPGs as part of a digital service, not to stipulate that they should be in any particular format. If Senator Bishop could indicate what the use of the word ‘uniform’ does, I think we would all be much the wiser.

**Senator MARK BISHOP (Western Australia)** (9.58 p.m.)—In response to Senator Alston, the change seeks to achieve in general terms what Senator Bourne’s later amendment seeks to do in more specific terms—that is, the provision of information.

Senator Alston—I asked you about the use of the term ‘uniform’.

**Senator MARK BISHOP**—We made the provision of EPGs to be in a standard form.

**Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts)** (9.59 p.m.)—Again, that is really second-guessing the market big time, is it not? If someone gets in first, does that mean that they then determine the structure? It is not a matter of format, presumably. Is it that the technical requirements would have to be uniform?

**Senator MARK BISHOP (Western Australia)** (9.59 p.m.)—It is not a matter of format, arrangement or process. It is the provision of information to users in a standard form.

**Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts)** (10.00 p.m.)—What is really being said is that, to the extent that you choose to present a quantity of information, you would be entitled to get the same information from all other players, and it would then be presented in that format. Even though someone else might have a shorthand EPG and you have a longhand one, one of the two is effectively going to be imposed on the other; is that what it is saying? I do not quite know why you want to ensure that degree of uniformity. It may well be that you have a whole bunch of players presenting themselves quite differently—some taking the view that you do not need much more than the name of the show, others wanting a couple of lines to excite your interest and others having a click-on site that enables you to view an extract.

**Senator HARRADINE (Tasmania)** (10.01 p.m.)—My question is directed to both the minister and to Senator Bishop, since it is his amendment. Are the provisions of standards for content to be applied to the EPGs?

**Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts)** (10.01 p.m.)—My advice is that the community standards would govern the EPG, as it is within the definition of content on a datacasting or broadcasting service. For the benefit of Senator Bishop, my advice is that there appears to be a technical error in the drafting of the Labor amendment No. 44, paragraph 24(a)(i), which refers to ‘a commercial service’. We believe that should be a reference to a national broadcasting service.

**Senator MARK BISHOP (Western Australia)** (10.03 p.m.)—I seek leave to amend amendment No. 44 by, in paragraph (i), omitting ‘commercial’ and substituting ‘national’.

Leave granted.

Amendments, as amended, agreed to.

Amendment (by Senator Bourne) proposed.

Schedule 1, page 19 (after line 20), after item 69, insert:

69A After subclause 7(2A) of Schedule 2

Insert:

(2B) Each commercial television broadcasting licence is also subject to the condition that the licensee will provide information to another commercial television broadcasting licensee or a datacasting licensee:

(a) in a timely manner; and

(b) at no cost; and

(c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide:
if required to do so by that other licensee for the purpose of compiling information for an electronic program guide.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.05 p.m.)—This is quite a significant infringement upon the intellectual property rights of licensees. A lot of innovation is likely to occur as various broadcasters—and, indeed, datacasters—seek to distinguish their product and to present it in an attractive format. To obligate a commercial broadcasting licensee to simply hand over information to its competitors in this way seems to me to be not only dumbing down but also applying very onerous obligations which can only cramp innovation and which would be quite unjustified in a normal marketplace activity. It is not at all clear why one player should have to provide information to another to provide those services, and we strongly object to it.

Senator BOURNE (New South Wales) (10.06 p.m.)—In response to the minister, the players we are talking about provide this information to television guides all the time. This is a matter of providing program guide information. I cannot understand why the minister finds it so extraordinary and so outrageous that people would be asked to provide standard information in a way they already do but in an electronic form. I do not think it is outrageous at all. It is basically what is already happening, only it is being asked for in an electronic form.

The reason that Senator Bishop put up his amendments and the reason I put up mine is to ensure that any program guide information is fair to all players in any specific regime so that within the free-to-air broadcasting regime or elsewhere no-one could be excluded. It would be very difficult—or impossible under this regime—to make your own information much more prominent, dazzling or glitzy than another broadcaster’s information. It is merely a matter of standardising information, as happens in program guides now which are printed or even on the Internet. I know you can get them on the Internet as well. It is a matter of saying that, if program information is requested or required by one broadcaster, under Senator Bishop’s amendments that have gone through, that broadcaster should not be prevented from putting up the whole program guide—as they would be required to do under Senator Bishop’s amendments—by a second or third broadcaster not giving them the information that they need in a timely manner. I do not think there is anything extraordinary about it at all.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.08 p.m.)—It is really the compulsion that I think concerns the government. It is one thing to say that information is readily available in the green guide or elsewhere and you are able to accumulate that for your own purposes; it is another to say that because one of the national broadcasters might choose to provide information to a datacaster that then has a knock-on obligation on other commercial networks to provide information to datacasters.

Senator BOURNE—No.

Senator ALSTON—You are saying that is not right?

Senator BOURNE (New South Wales) (10.09 p.m.)—That is not what this amendment says at all. The datacasters concerned do not have to put up information given by a commercial free-to-air or a national broadcaster; they do not have to put up any of that information. They can put it up. But, if they have to put one up, they have to put them all up. A commercial free-to-air or a national broadcaster can put up their own or they can put up everybody’s. We have just agreed to that as an amendment—that that would be the case.

There is the possibility that one of the others could ensure that a rival was not able to put up all the program information that they are required to do by not providing their own information because we have now required them, as we have accepted Senator Bishop’s amendment, to put up either only their own information or everybody’s information. So this is designed to stop that happening: it will stop one broadcaster stopping everybody’s information going up by just not providing their own information. That is why there is the compulsion there. We have already agreed to Senator Bishop’s amendments.
That is why we need these amendments to not allow one of the broadcasters to stop another of the broadcasters from putting up a whole program guide.

Senator MARK BISHOP (Western Australia) (10.11 p.m.)—The opposition accepts the amendment put forward by Senator Bourne. I would just indicate to the minister that, prior to the third reading of the bill, the opposition would be amenable to a suggestion re the provision of schedules on request. The government might care to entertain those discussions prior to the third reading.

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.12 p.m.)—by leave—I move government amendments Nos 13, 16 and 51 on sheet EK215:

(13) Schedule 1, page 20 (after line 22), after item 76, insert:

76A Clause 2 of Schedule 4
Insert:

national radio broadcasting service means a national broadcasting service that provides radio programs.

(16) Schedule 1, item 107, page 31 (line 13) after “licences”, insert “or for the purpose of the transmission of national radio broadcasting services”.

(51) Schedule 2, page 102 (after line 3), after item 13, insert:

13A After section 100B
Insert:

100C NBS transmitter licences—authorisation of radio broadcasting services
(1) If:

(a) an NBS transmitter licence is or was issued to a particular national broadcaster; and

(b) the licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode using one or more channels;

the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting national radio broadcasting services in digital mode using those channels.

(2) In this section:

national broadcaster has the same meaning as in the Broadcasting Services Act 1992.

national broadcasting service has the same meaning as in Schedule 4 to the Broadcasting Services Act 1992.

national radio broadcasting service means a national broadcasting service that provides radio programs.

national television broadcasting service means a national broadcasting service that provides television programs.

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service.

These amendments enable the national broadcasters to transmit radio services on their digital television channels, which I think is generally supported. This was a recommendation of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee’s report into the bill, and the government accepts the committee’s recommendations.

The amendments will amend schedule 4 of the Broadcasting Services Act to allow the ABC and SBS to transmit national radio broadcasting services on their digital channels. The amendments will also provide for an amendment to the Radio Communications Act to authorise NBS transmitter licences, which can be used for transmitting a national television broadcasting service in digital mode, to be also used for transmitting national radio broadcasting services. The amendments will enable the ABC and SBS to use digital television transmission capacity to make the ABC and SBS radio services available in regional areas where these services have not been extended through AM or FM radio transmission.

Amendments agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.14 p.m.)—by leave—I move government amendments Nos 1 to 5 and 8 on sheet ER232:
(1) Clause 2, page 1 (line 11), after “137,”, insert “137A,”.

(2) Schedule 1, page 22 (after line 11), after item 85, insert:

85A At the end of subclause 6(3) of Schedule 4

Add:

: (n) the objective that, in allotting channels under the scheme or a digital channel plan, the ABA must have regard to:

(i) the need to plan the most efficient use of the spectrum; and

(ii) the other relevant policy objectives of the scheme.

(3) Schedule 1, page 23 (before line 22), before item 87, insert:

86A Before subclause 6(6) of Schedule 4

Insert:

(5D) For the purposes of paragraphs (3)(ha) and (n) and (5B)(c), in determining the most efficient use of the spectrum, the ABA is to have regard to:

(a) the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences; and

(b) such other matters as the ABA considers relevant.

(4) Schedule 1, page 31 (after line 13), after item 107, insert:

107A At the end of subclause 19(3) of Schedule 4

Add:

: (n) the objective that, in allotting channels under the scheme or a digital channel plan, the ABA must have regard to:

(i) the need to plan the most efficient use of the spectrum; and

(ii) the other relevant policy objectives of the scheme.

(5) Schedule 1, page 31 (before line 14), before item 108, insert:

107B Before subclause 19(6) of Schedule 4

Insert:

(5A) For the purposes of paragraphs (3)(ha) and (n), in determining the most efficient use of the spectrum, the ABA is to have regard to:

(a) the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences; and

(b) such other matters as the ABA considers relevant.

(8) Schedule 1, page 51 (after line 20), after item 137, insert:

137A After clause 59 of Schedule 4

Insert:

59A Reviews before 31 October 2000

(1) Before 31 October 2000, the Minister must cause to be conducted a review of the following matters:

(a) whether the ABA has sufficient powers to allow the most efficient use of the broadcasting services bands spectrum (including for the purposes of promoting the availability to audiences and users throughout Australia of a diverse range of datacasting services provided under, and in accordance with the conditions of, datacasting licences);

(b) if those powers are insufficient, what additional powers should be provided for in laws of the Commonwealth.

(2) The Minister must ensure that, in the conduct of a review under subclause (1), provision is made for:

(a) public consultation; and

(b) consultation with national broadcasters; and

(c) consultation with holders of commercial television broadcasting licences.

(3) The Minister must cause to be prepared a report of a review under subclause (1).

(4) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

(5) For the purposes of this clause, in determining the meaning of the expressions datacasting service and datacasting licence, it is to be assumed that
all of the amendments made by the Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000 had commenced at the commencement of this clause.

These amendments are designed to encourage efficient allocation of spectrum to enable the greater availability of channels for datacasting. They modify the policy objectives to which the ABA must have regard in relation to commercial and national television conversion schemes to include the need to plan for the most efficient use of spectrum.

These amendments also require the ABA, when determining whether spectrum is being used efficiently, to take into account the need for spectrum to be made available for allocation for purposes of the transmission of datacasting services. They also provide for a statutory review before 31 October this year in relation to the powers that the ABA has to allow the most efficient use of broadcasting spectrum, including for promoting the availability of datacasting services.

The amendments are aimed at strengthening the ability of the ABA to plan for the most efficient use of spectrum in the broadcasting services band, taking into account the need to increase the availability of channels for datacasting. Amendments Nos 2 and 4 modify the policy objectives to which the ABA must have regard when formulating the commercial and national television conversion schemes by adding an additional objective: the need to plan for the most efficient use of spectrum. Amendments Nos 3 and 5 require the ABA, when determining whether spectrum is being used efficiently, to take into account the need for spectrum to be made available for allocation for purposes of the transmission of datacasting services. I have mentioned the statutory review, and the report of that review would be tabled in the parliament.

Senator BOURNE (New South Wales) (10.15 p.m.)—The Democrats are well and truly in favour of these amendments. But I ask the minister whether he would undertake to act on the results of his review, and to act on them very swiftly.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.16 p.m.)—I suppose I could always give an assurance that we will act as expeditiously as possible. Whether I can give you an assurance that will rubber-stamp whatever comes out of the review process is another matter. Obviously we would expect that it will be a sensible, plausible and persuasive report and that there will be much in it to commend itself to the government. I cannot, as I say, give you a blank cheque. But certainly the whole object of the exercise is to acquire, as quickly as possible, an expert assessment of any deficiencies in the powers of the ABA and ways in which we can fill any gaps.

Senator MARK BISHOP (Western Australia) (10.17 p.m.)—This is a worthwhile amendment, and the opposition has no problems in supporting it.

Senator HARRADINE (Tasmania) (10.17 p.m.)—Mr Chairman, this may not be the time to raise this. But I would be most grateful to the government if it could indicate, at some stage of the discussions in the committee stage, how parliament is kept informed and is able to review decisions taken by the ABA in respect of not only these particular matters but also certain other matters. After all is said and done, this legislation will impose further obligations upon the ABA and enhance its powers. The question is: at some particular stage—and I do not know whether you could draw it all together—will parliament have an audit and, I suppose, a control role to play in these matters; and, if so, how? In other words, will we have that opportunity? I notice, for example, in some other parts of the—

The TEMPORARY CHAIRMAN (Senator Hogg)—Senator Harradine, could I just seek your advice on whether are you wanting an answer on these matters now before I put this question, or will you be seeking an answer after the question has been put?

Senator HARRADINE—I do not mind.

The TEMPORARY CHAIRMAN—Senator Harradine, I will put the amendment and then you can raise your issue. The question is that government amendments Nos 1 to 5 and 8 on sheet ER232 be agreed to.
Question resolved in the affirmative.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.19 p.m.)—Senator Harradine indicated that perhaps we might respond at a later time. But I think the general answer would be that the parliament is kept informed through a variety of means.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Order! It being 10.20 p.m., I propose the question:

That the Senate do now adjourn.

Human Genome Project

Senator COONAN (New South Wales) (10.20 p.m.)—I would like to make a brief contribution to tonight’s adjournment debate on the human genome project. Today’s landmark announcement of the working draft of the human genome project, said to be the genetic blueprint of who we are and what we are, offers almost unimaginable scientific possibilities. Simply because it is a scientific milestone, I believe the announcement should not go unremarked in the Senate. It has the potential to simply transform our understanding of how our bodies work and to cure all types of genetic diseases. But an understanding of the sequence of the chemical building blocks that make up our DNA also opens up some frightening scenarios. These range from commercial exploitation and who controls the technology to what Madeleine Bunting, writing recently in the Guardian, calls a ‘Pandora’s box of eugenic possibilities’.

As many senators would know, the internationally funded human genome project has been undertaken by two rival groups—one a publicly funded consortium and the other privately funded, Celera Genomics. In keeping with the extraordinary significance of the discovery, the two rival groups, interestingly enough, decided to share the glory of today’s announcement by President Clinton and Prime Minister Blair. Whilst the draft has completed a map of the estimated 120,000 genes in the human body, genetic scientists say that, although they now know the sequence of our genes, not much is known about what they actually do. Although it opens up a new world of discovery, the draft list is just the beginning of the journey. One of the remaining tasks is to distinguish between the genes that determine the growth, repair and death of the body—about three per cent—and the junk DNA genes thought to have no effect at all on the development of the human body—up to 97 per cent.

But determining how genes work, and how and for whom the knowledge will be used is the truly difficult part. Few of us would quibble with the benefits to humankind of eradicating fatal, disabling and painful diseases. The benefits of being able to identify what genes are involved in diseases or the risk of developing diseases such as Parkinson’s, Alzheimer’s and cystic fibrosis—just to mention a few—will give doctors the capacity to identify those at risk and to better target preventative treatment or, even better, to prevent the malfunctioning gene in the first place.

We can only marvel at and applaud the recent achievement of French geneticists who have been able, through gene therapy, to repair the immune system of affected children who have hitherto been forced to live in a bubble just to stay alive. It is, therefore, not fanciful I think to predict a future market for the rich and famous to engineer designer children. It is not beyond comprehension to imagine a world devoid of any so-called undesirable characteristics, either physical or mental. Eugenics, in my view, can be just as horrifying as state-sanctioned euthanasia. What is unacceptable and undesirable is entirely subjective and capricious. It can change, as do values and norms of different generations.

A subtext to all this is: who controls the information? The Celera company, which is privately held, restricts the information it has to subscribers—usually United States pharmaceutical companies that in turn apply to patent the information. Literally thousands of applications have now been filed seeking to patent pieces of genetic information. This raises the prospect that the true beneficiaries of this fabulous technology will be the new biotech billionaires, the generation that will follow the dot.com billionaires, and the in-
formation will not be freely available for the benefit of humankind.

Interestingly, a recent poll of 1,218 adults shows that almost two-thirds of Americans oppose patenting the human genetic code for commercial use. Respondents to the poll were also concerned that, while they could benefit from knowing about their own pre-disposition to disease, they wished to keep the information private—not surprisingly. Unfortunately, this is not an option that may be available in instances where disclosure of pre-existing or known conditions may be lawfully required as in, for example, an application for life or disability insurance. Such information may need to be provided, for example, to a medical practitioner for treatment, but that information may also be revealed if those records are compelled for production in any court process. There are simply no guarantees of non-disclosure even though the information may contain a window into what it is that makes a person genetically unique.

The crucial issue for us as legislators is to address what Madeleine Bunting has identified as ‘our capacity both at an institutional and government level to regulate the use and commercial exploitation of scientific discovery’. We are already facing these dilemmas in the context of genetically modified crops, the capacity for cloning and the ability to manipulate the environment. Our powerlessness to regulate much of this activity at a domestic level stems from the increasing pressures of globalisation and the rise of the World Trade Organisation as the arbiter of what comprises defensible precautions on the one hand and barriers to free trade on the other. There are, however, compelling moral questions that these issues require us to address that are far more profound than just enabling market access. We can worry about whether or not our privacy, insurance, employment and discrimination laws are adequate. That will matter little, I suggest, if this information is already available on some global genetic network or freely posted on the Internet.

The inevitable conclusion is that we are embarking on a genetic revolution with the capacity to transform what it means to be human. As legislators, lawyers, regulators and social scientists we are navigating this brave new world without a moral compass. We do need a debate in this country on the human genetic revolution and on how we should be both anticipating and responding to it. The sum of an individual is certainly more than his or her genetic profile, but if that is on display for all to see then the damage to an individual may well outweigh the benefits. This is a new and emerging field of human rights obligations, hopes and aspirations. We need to address these challenges as a matter of the utmost public importance.

Australian Federal Police: Accolade

Senator QUIRKE (South Australia) (10.29 p.m.)—I want to take a short moment here tonight in the Senate to reflect on an incident—

Senator Abetz interjecting—

Senator QUIRKE—It will not be very short: is that what you are saying, Eric? I am sorry, Senator, it will take a little while to develop this case, but I will be as brief as I can. I know you are thoroughly ready to listen. A rather interesting case was brought to my attention last Friday. Indeed, the purpose of this address tonight is to congratulate the Australian Federal Police on an operation that will receive virtually no recognition publicly, but one which made a little girl very happy and a father extremely happy. I think it has, at least until court proceedings go further, ensured that the right outcome, in the minds of most people in the community, has been obtained.

What happened basically is this: a child was taken away by her natural mother many months ago. During the process of a bitter custody battle for this particular child the mother disappeared with her de facto and went interstate. As I understand it, at that time there were court proceedings which may well have seen the father get custody of the child because the mother, unfortunately, had a severe drug problem. When a child disappears, or when any person disappears, it is very difficult sometimes to find out where they are. This case was referred to me, and I advised the natural father that a missing persons report needed to be made but that, effectively, until the child surfaced somewhere,
not much could be done about it. During the course of last week, the ‘de facto stepfather’—I suppose is one way to describe him—was arrested on armed robbery and drug charges in Darwin. He was wanted in South Australia and faced extradition, and I believe that process has now taken place. I make no further comment upon that—that is a matter now before the courts.

The mother was, effectively, with the stepfather, as I understand it, in the detoxification centre at the time. A very desperate family sought my assistance last Friday to see if something could be done very quickly. In fact, a court order was procured to give temporary custody, pending further court intervention, to the natural father. That court order was faxed through to my office late on Friday afternoon. I think it was about 4.30 or 5 o’clock—not very much time left before the close of business. Had that not happened, I think the mother probably would have disappeared somewhere else over the weekend with the child. That of course is the first problem: you have a court order and something has to be done about it. I contacted the Federal Police and spoke to their Brisbane office, which then put me through to the Darwin office and the officers on duty there. I do not want to name all of the officers concerned because I spoke to four of them as the night unfolded. But the purpose of this address here is to say what a first-class and sterling service these men and women did in Darwin. I explained the case to them. I sent it up in a written form and the judgment was faxed to them, as well. Indeed, within a matter of two hours the mother’s address was identified—the probable address of the girl—and the police assembled a team to go and execute the court order that had been given that afternoon. The police, in fact, sought the assistance of the Department of Family and Community Services, or the Northern Territory equivalent of that particular agency, the child was placed in protective custody at 9.30 that night, and during the next hour or so I organised an airfare for the child to come down to South Australia to meet the natural father. The father is an invalid pensioner. Ansett did a very good job proceeding with this booking. The police, with the relevant workers from Family and Community Services, delivered the child up to Ansett airlines for the appropriate flight, and by Saturday afternoon the reunion had taken place.

Quite often we get a lot of negative stories about the police and their response times in all of the states and federally. I think it is appropriate, when we see something which is done with such speed—and the only way in fact that this could have been carried out was with absolute haste, speed and professionalism—that we comment upon it publicly. This is probably one of many cases that the public out there will not, in the normal course of events, come across. In this instance, I think it is appropriate on the public record to congratulate the Federal Police and, in particular, the men and women who dealt with this case last Friday so expeditiously.

Wright, Ms Judith

Senator FORSHAW (New South Wales) (10.35 p.m.)—Last weekend saw the passing of one of the giants of Australian literature of the 20th century. I refer to the passing of Judith Wright. I am sure there is not a person in this parliament and probably not a person in this country over the age of about 30, maybe even younger, who at some stage in their life did not read some of Judith Wright’s poetry. It was on the syllabus of high school literature for as long as I can remember, and I am sure many of us recall learning off by heart the words to poems such as Bullocky or South of My Days.

Senator Coonan—Can you recite a bit, Michael?

Senator FORSHAW—No, time does not permit and my memory is not that good, but I do remember those wonderful references to ‘sinewy hands’. I had the pleasure of meeting Judith Wright on a couple of occasions during the early 1970s when I was studying literature at Sydney University. There was a course in Australian literature in either 1971 or 1972—I cannot recall exactly which year. We were fortunate to have as guest lecturers and guest tutors people such as James McAuley, Alec Hope, David Malouf—now a world renowned Australian author—and Judith Wright. I can still recall watching Judith Wright stand before a lecture theatre at Syd-
ney University, talking to us for about an hour about her ideas on poetry. She certainly left an incredible legacy in terms of not only the volume of her work over some 60-odd years or more of writing poetry but also her commitment to many other issues.

Her poetry, as has been reflected upon in articles written in newspapers and journals in recent days, celebrated the land, the harshness and the beauty of the Australian landscape. It celebrated the environment and pointed to how man has been the destroyer of the environment as well as reaping the benefits of it. Her poetry reflected on our history—the great aspects and the injustices, particularly those perpetrated upon the indigenous people. She was a conservative poet but she was never a conservative person in outlook. By ‘conservative’ I mean in the literary sense of someone who paid particular attention to form and substance. She was to poetry what Patrick White was to the Australian novel and Sidney Nolan and Drysdale were to Australian painting. They were people who were able to reflect, as Judith Wright did in words, on all that makes Australia great as a nation but equally those aspects that we have to focus upon and try to correct.

Whilst being, as I said, a conservative poet in terms of her style, she was at a very early age—indeed, in the 1940s—writing about personal relationships and touching upon subjects that did not become major political issues until the feminist revolution of the 1960s and 1970s. Indeed, many a critic has been astounded by the ideas and the issues that she raised in her work Woman to Man, published in 1949. Judith Wright, as people have clearly recognised in commenting upon her life, was a strong advocate for the environment, a lifelong member of the Australian Conservation Foundation and particularly a supporter for the cause of indigenous people. She was a supporter for that cause long before many of us saw the light and recognised that we had to do something about correcting the injustices of the past. I note, as her biographer, Sister Veronica Brady, noted in an article in the paper today, that one of the Judith Wright’s last public acts was to lead the Reconciliation Walk across the bridge in Canberra a couple of weeks ago.

I look back, like everyone I suppose, with fond memories of reading her poetry as a student at school and being forced to learn it off by heart, coming later to recognise what a wonderful contribution she has made to our literary history. As I said, she is the last of the giants of Australian literature of the 20th century. People like James McAuley and Alec Hope and others have gone before her, and Judith Wright represents the end of an era of great poetry and literature that we had in Australia in the middle and latter part of the last century. No doubt other younger and talented writers, authors and poets will continue that tradition. I think her contribution not only to Australian literature but also to the nation is probably best reflected in the captions of two articles in today’s Australian. One article written by Julian Croft is headed ‘Poet probed the nation’s soul’. The other article by Veronica Brady is headed ‘Guardian of the land and people’.

I make these comments tonight in the adjournment debate, which, I believe, is the appropriate place to do it. But I wish to make this point: I think it is a shame that there is a procedural impediment in this chamber so that we are not able to move notices of motion to honour the memory of people such as Judith Wright and their contribution. I know that in the past when people, including me, have moved notices of motion to pay tribute to somebody who has made an outstanding achievement in Australian life it has been said that, unless you can link that person’s contribution to something that this parliament or this chamber deals with, you cannot move it. Maybe I am wrong with regard to this situation, but I recall, for instance, when we have tried on similar occasions to reflect the achievements of sporting heroes or other heroes it has not been allowed. That is the advice I have received from the President. If it were possible to do it, I would have preferred to do it by notice of motion. I am getting nods from the chair. All I can say, Madam Acting Deputy President Knowles, is that I do not think the guidelines are that clear. If we are going to say that we can do it for some who have made a great contribution to Australian life but not for others, then I think we should sort that issue out.
In any event, I have appreciated the opportunity here tonight to place some comments on the record in the adjournment debate about the great contribution Judith Wright made to our culture, to our history—and, above all, to the Australian people and the Australian nation.

Senate adjourned at 10.45 p.m.
QUESTIONs ON NOTICE

The following answers to questions were circulated:

Attorney-General’s Department: Assistance to Gippsland Electorate
(Question No. 1882)

Senator O’Brien asked the Minister for Justice and Customs, upon notice, on 21 January 2000:

1. What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Gippsland.

2. What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.

3. What is the level of funding provided through these programs and grants has been appropriated for the 1999-2000 financial year.

Senator Vanstone—The Attorney-General has provided the following answer to the honourable senator’s question:

1. The Attorney-General’s Department funds the Commonwealth Legal Aid Program and the Commonwealth Community Legal Services Program. Both programs have the potential to benefit the people of Gippsland.

In relation to the Commonwealth Legal Aid Program, funds are provided to Victoria Legal Aid (VLA) for Commonwealth legal aid matters. These funds are used by the Commission to provide legal aid services in Commonwealth matters across Victoria. While it is not possible to identify how much of the funding is provided to the electorate of Gippsland, there is a regional office of the VLA located at Shop 10, Riviera Plaza, Bairnsdale, which provides a range of legal assistance services throughout the electorate.

In relation to the Commonwealth Community Legal Services Program, funding is provided to the Women’s Legal Service, the Disability Discrimination Law Advocacy Service and the Environmental Defender’s Office, which are located in Melbourne and which provide services across the whole of Victoria.

In the 1999-2000 Budget, the Commonwealth Government announced it would fund five new community legal services, including one in the Gippsland region, as part of the expansion of the Community Legal Services Program into regional, rural and remote areas of Australia. Anglicare Victoria was selected as the preferred tenderer for Gippsland and will operate as The Gippsland Community Legal Service, which will be located at Morwell.

2. The total Commonwealth grants paid to the VLA for the Commonwealth Legal Aid Program for the years sought are: 1996-97 - $35.302m, 1997-98 - $32.955m and 1998-99 - $27.750m.

As regards the Commonwealth Community Legal Services Program, funding provided to Victoria overall was $3.054m for 1996-97, $3.072m for 1997-98 and $3.251m for 1998-99.

3. The total Commonwealth grants to be provided to the VLA for 1999-2000 will be $27.750m.

An amount of $3.970m has been provided for the Community Legal Services Program for Victoria for 1999-2000.

The Gippsland Community Legal Service will be funded at $200,000 per annum (but on a reduced pro-rata basis in the first year). The Service may receive up to $100,000 for establishment expenses.

Register of Environmental Organisations: Taxation
(Question No. 2136)

Senator Brown asked the Minister representing the Treasurer, upon notice, on 5 April 2000:

1. Can the Minister confirm that all environmental organisations that are currently on the Register of Environmental Organisations, making gifts to them tax deductible, will automatically retain this status when they apply to the Australian Taxation Office for endorsement of their charitable status.

2. From 1 July 2000, who will be responsible for maintaining the register and deciding on additions and deletions.
(3)(a) How does the new tax legislation relate to the register; and
(b) Will organisations on the register, after 1 July 2000, continue automatically to receive gift-deductible status.

Senator Kemp—The Treasurer has provided the following answer to the honourable senator’s question:

(1) Organisations currently on the Register of Environmental Organisations will be automatically endorsed as deductible gift recipients when they apply to the Commissioner of Taxation (the Commissioner). These organisations would also be expected to be charitable, but separate application is required for them to be endorsed as income tax exempt charities.

(2) The Department of Environment and Heritage will continue to maintain the Register after 1 July 2000. Under the Income Tax Assessment Act 1997 (sections 30-280 and 30-285), either the Minister for the Environment and Heritage or the Treasurer may direct that an organisation be entered on, or removed from, the register.

(3) (a) From 1 July 2000, in order to retain gift-deductible status an organisation currently on the Register will need to do two things: i). be on the Register; and ii). be endorsed by the Commissioner as a deductible gift recipient. Applications for endorsement should be made to the Commissioner as soon as possible.

(b) The gift deductible status of organisations on the Register will continue from 1 July 2000, provided they apply to the Commissioner for endorsement as a deductible gift recipient and receive that endorsement.

Defence Portfolio: Agency Boards
(Question No. 2151)

Senator O’Brien asked the Minister representing the Minister Assisting the Minister for Defence, upon notice, on 10 April 2000:

(1) How many agencies within the Minister’s portfolio are administered by a board.

(2) Are all members of the above boards appointed by the Governor-General on the advice of the Executive Council, if not, who is responsible for making board appointments.

(3) In each case, does the Remuneration Tribunal have a role in setting the of the fees, allowances and other benefits for members of the boards; if not: (a) under which section of the relevant legislation are such fees, allowances and benefits authorised; and (b) how is the value of these fees, allowances and other benefits determined.

(4) In each case, what is the nature and value of fees paid to board members.

(5) What other benefits, such as mobile phones, home computers and home phone/facsimile machines, are provided to board members by virtue of their membership of a government board.

(6) What class of air travel, what standard of accommodation and what car allowances are paid to board members and, in each case, what is the value of these benefits and who determines that value.

(7) Are board members entitled to, or do they receive, any spouse benefits; if so, what is the nature and value of these benefits.

(8) (a) On how many occasions since January 1998 have the above fees, allowances and other benefits been varied, (b) what was the reason for each variation; and (c) what was the quantum of each variation.

(9) If variations to fees, allowances and other payments to board members were not determined by the Remuneration Tribunal, who determined the quantum and timing of each increase.

(10) Do board members qualify for, and are they paid, superannuation benefits; if so, are such payments additional to, and separate from, other allowances they receive.

(11) Do board members receive any additional allowances if they are appointed to board sub-committees; if so, are such additional benefits provided for in relevant legislation.

Senator Newman—The Minister Assisting the Minister for Defence has provided the following answers to the honourable senator’s questions:

(1) There is only one agency within the Defence portfolio, this being the Defence Housing Authority (DHA). The DHA is administered by a board.
In accordance with the Defence Housing Authority Act 1987, the Governor-General appoints the:
- Chairperson,
- four board members from the private sector, and
- one spouse of a Defence Force member.

The Defence Housing Authority appoints a full time Managing Director.

In accordance with the Defence Housing Authority Act 1987, the remainder of the board consists of:
- Four members of the Defence Force being the members holding the four appointments in the Defence Force designated by the Governor-General.
- A person engaged under the Public Service Act 1999 being the occupant of such office in the Department of Defence as designated by the Governor-General.

The Remuneration Tribunal sets fees and allowances for the Chairperson, the Managing Director and five other appointed members of the board. The ex-officio members, being members of the Australian Defence Force or the Department of Defence, do not receive sitting fees and any allowance entitlement is in accordance with their normal Defence entitlements.

(4) Sitting Fees and Salaries:
- Chairperson: $600 per day
- Appointed members: $550 per day
- Managing Director: $125,500 per annum

Travelling Allowances (Chairperson and appointed members):
- Meals: $50 per day
- Incidents: $30 per day
- Accommodation: $270 per night for Sydney, $210 per night for other capital cities, $120 per night for other locations
- Part day travel: $60

Other Out of pocket expenses directly related to attendance on DHA business are reimbursed.

Travelling Allowances (Managing Director):
The Managing Director receives travelling allowance entitlements identical to Senior Executive Service employees of the Australian Public Service.

(5) With the exception of the Managing Director, members do not receive such benefits.

(6) Air Travel: Business class for all members.

Accommodation: Accommodation allowance is paid to prescribed limit as per part 4. Members may choose to stay where they wish, but the value of the allowance does not change.

Car Allowances: The Managing Director receives a car allowance of $16,000 per annum. Other members do not receive car allowances, but costs (including taxi fares) of travel to and from board meetings are met by the Authority.

The Remuneration Tribunal determines the accommodation allowance, and the Defence Housing Authority determines the policy for class of air travel and the Managing Director’s car allowance.

(7) Appointed members do not receive such benefits. The Managing Director is entitled to spouse accompanied travel to the value of $7,500 per annum.

(8) (a) Since January 1998, part-time appointed members have received one increase in sitting fees (on 1 March 1999), and the Managing Director’s salary was increased twice – on 1 July 1998 and 31 March 1999.

(b) The variations occurred in line with normal determinations by the Remuneration Tribunal covering a range of similar offices.

(c) On 1 March 1999, the Chairperson’s fees increased from $553 to $600 per day, and the appointed members’ fees increased from $502 to $550 per day. On 1 July 1998, the Managing Director’s salary
was increased from $117,201 to $119,545 per annum, and again on 31 March 1999 the Managing Director’s salary was increased to $125,500 per annum.

(9) The Remuneration Tribunal determines allowances and variations to fees for Authority board members.

(10) The Managing Director and appointed board members are paid superannuation benefits and these payments are additional to, and separate from, their other allowances.

(11) No additional allowances are paid to members serving on board sub-committees. However sitting fees are paid for attendance in accordance with the Remuneration Tribunal determination.

Industry, Science and Resources Portfolio: Agency Boards
(Question No. 2154)

Senator O’Brien asked the Minister for Industry, Science and Resources, upon notice, on 10 April 2000:

(1) How many agencies within the Minister’s portfolio are administered by a board.

(2) Are all members of the above boards appointed by the Governor-General on the advice of the Executive Council; if not, who is responsible for making board appointments.

(3) In each case, does the Remuneration Tribunal have a role in the setting of fees, allowances and other benefits for members of the boards; if not: (a) under which section of the relevant legislation are such fees, allowances and benefits authorised; and (b) how is the value of these fees, allowances and other benefits determined.

(4) In each case, what is the nature and value of fees paid to board members.

(5) What other benefits, such as mobile phones, home computers and home phone/facsimile machines, are provided to board members by virtue of their membership of a government board.

(6) What class of air travel, what standard of accommodation and what car allowances are paid to board members and, in each case, what is the value of these benefits and who determines that value.

(7) Are board members entitled to, or do they receive, any spouse benefits; if so, what is the nature and value of these benefits.

(8) (a) On how many occasions since January 1998 have the above fees, allowances and other benefits been varied, (b) what was the reason for each variation; and (c) what was the quantum of each variation.

(9) If variations to fees, allowances and other payments to board members were not determined by the Remuneration Tribunal, who determined the quantum and timing of each increase.

(10) Do board members qualify for, and are they paid, superannuation benefits; if so, are such payments additional to, and separate from, other allowances they receive.

(11) Do board members receive any additional allowances if they are appointed to board sub-committees; if so, are such additional benefits provided for in the relevant legislation.

Senator Minchin—The answer to the honourable senator’s question follows:

(1) Within the industry, science and resources portfolio, ten agencies are administered by a board. They are the:

Australian Industry Development Corporation (AIDC)
Australian Institute of Marine Science (AIMS)
Australian Nuclear Science and Technology Organisation (ANSTO)
Australian Sports Commission (ASC)
Australian Sports Drug Agency (ASDA)
Australian Sports Foundation (ASF)
Australian Tourist Commission (ATC)
Commonwealth Scientific and Industrial Research Organisation (CSIRO)
Joint Coal Board QCB
National Standards Commission (NSC)
(2) Of the above boards, part-time members of AIMS, ANSTO, CSIRO and the NSC are appointed by the Governor-General on advice of the Executive Council. Part-time members of the boards of the AIDC, ASC, ASDA, ASF and the ATC are appointed by the minister.

The full-time chief executives of the AIDC, AIMS, ANSTO, ASDA, ATC, CSIRO and the NSC, under the enabling legislation for those organisations, are ex-officio members of the board. The boards of the AIDC, ASC, ASF ATC, ANSTO and the NSC appoint their chief executive. In the case of AIMS, the Governor-General makes the appointment of the chief executive on the recommendation of its Council. The Governor-General also appoints the chief executive of CSIRO. With ASDA, the minister appoints the chief executive.

In the case of the ASC and the ATC, a government official is a further ex-officio board appointment.

The ASF operates under the ACT Companies Act 1981. Responsibility for the running of the company rests with its board, including employing a chief executive.

The fully self-funded JCB is an authority established under joint legislation of the Commonwealth and NSW parliaments, the Commonwealth Coal Industry Act 1946 and the NSW Coal Industry Act 1946 (the Acts). The Acts provide for the Commonwealth minister and the NSW State minister to appoint or reappoint members to the Board. Both the Commonwealth Cabinet or the Prime Minister and the NSW Cabinet or Premier approve the appointments or reappointments.

The Board consists of 3 members: one member is to be appointed as Chairperson one member is to be appointed to represent coal industry employers one member is to be appointed to represent coal industry employees.

(3) Yes. In the case of the AIDC, fees and allowances for the chief executive are set by the AIDC Board following advice from the Remuneration Tribunal and are reviewable by the Board (see part 9). The remuneration of the chief executive of the ASF is determined by the board.

For the JCB, the remuneration for members is determined by the NSW Statutory and Other Offices Remuneration Tribunal.

(4) AIDC Chair: $50,000 per annum; member: $21,000 per annum.
AIMS Chair: $25,000 per annum; member: $12,600 per annum.
ANSTO Chair: $38,000 per annum; deputy chair: $25,000 per annum; member: $16,600 per annum.
ASC Chair: $31,500 per annum; deputy chair: $18,500 per annum; member: $12,600 per annum.
ASDA Chair: $350 per day; deputy chair: $325 per day; member: $250 per day.
ASF Chair: $18,000 per annum; member: $8,900 per annum.
ATC Chair: $50,000 per annum; deputy chair: $31,500 per annum; member: $21,000 per annum.
CSIRO Chair: $50,000 per annum. member. $21,000 per annum.
JCB Chair (full time): $178,130 per annum; employees’ representative (2 days per week): $5 6,5 10 per annum. employers’ representative (1 day per week): $28,25 5 per annum.
NSC Chair: $22,000 per annum. member: $250 per day.
(5) AIDC, AIMS, ANSTO, ASC, ASF: nil.
ASDA: Chair has a telephone and fax provided.
ATC: Managing Director has telephone rental and work-related calls reimbursed.
CSIRO: Chair has a mobile phone and home computer (to access e-mail network), no home phone or fax. The chief executive has a mobile phone, home phone and fax and a home computer.
JCB: Board members have access to mobile phones for business purposes and can have access to a computer to take home for business purposes.
NSC: The chair and interstate commissioners receive membership of the Qantas Club.
(6) AIDC Business class air travel. Accommodation at SES levels of the public service. Other than ad-hoc specific use, no car allowances are paid.
AMS Business class air travel. Travel allowance at rates set by the Remuneration Tribunal. Ground transport by taxi.
ANSTO Business class air travel. Travel allowance at rates set by the Remuneration Tribunal. No car allowances (members are issued with cab-charge vouchers for travel to and from airport).

ASC Business class air travel. Travel allowance at rates set by the Remuneration Tribunal. Cab-charge vouchers used for ground transport when attending meetings.

ASF Business class air travel. Travel allowance at rates set by the Remuneration Tribunal. No car allowance.

ASDA Business class air travel. Travel allowance at rates set by the Remuneration Tribunal. Taxis are used for ground transport when attending meetings.

ATC Business class air travel except for overseas flights which are first class. Travel allowance at rates set by the Remuneration Tribunal. Car allowance paid to chairman for trip from home to local airport at the rate set by the Department of Employment and Workplace Relations (currently 55.8 cents per kilometre). The Managing Director has a fully maintained company car.

CSIRO First class air travel. Travel allowance at rates set by the Remuneration Tribunal. No car allowances.

JCB Business class air travel and accommodation when on business away from home.

NSC All commissioners have elected to travel economy class. Travel allowance at rates set by the Remuneration Tribunal. At present, no vehicle allowances are paid to board members.

(7) No spouse benefits except in the following cases:

ASDA Spouses invited to attend official functions once every two years. ASDA meets travel and accommodation costs.

CSIRO The chief executive is entitled to spouse-accompanied travel in line with heads of government departments and agencies.

JCB The chair may take a spouse on one overseas trip per year when on business. Members may take a spouse on one overseas business trip after seven years.

(8) The rates appearing below are for part-time members of portfolio boards. Full-time members whose remuneration is determined by the Commonwealth Remuneration Tribunal had variations to their rates as of 1 July 1998 and 31 March 1999.

The initial change was an across-the-board lift of 2 per cent on the base 1994 determination. The subsequent variation amounted in most cases to around a 15 per cent increase over the previous determination.

AIDC
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair$48,500 to $50,000 per annum
Member$19,850 to $21,000 per annum

AIMS
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair$22,500 to $25,000 per annum
Member$325 per day to $12,600 per annum

ANSTO
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair$35,700 to $38,000 per annum
Deputy Chair$23,900 to $25,000 per annum
Member $15,950 to $16,600 per annum

ASC
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair$29,750 to $31,500 per annum
Deputy Chair$17,900 to $18,500 per annum
Member $12,130 to $12,600 per annum

ASDA
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair $325 per day to $350 per day
Deputy Chair $300 per day to $325 per day
Member $247 per day to $250 per day
ASF Nil. Initial Remuneration Tribunal determination effective from 6 April 1999.

ATC
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair $25,950 to $50,000 per annum
Deputy Chair $15,575 to $31,500 per annum
Member $10,450 to $21,000 per annum

CSIRO
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair $48,500 to $50,000 per annum
Member $19,850 to $21,000 per annum

JCB
Movements in the JCB members’ remuneration are indexed to movements in the equivalent NSW positions as determined by the NSW Statutory and Other Offices Remuneration Tribunal. Remuneration was adjusted in August 1998 and 1999.

NSC
Once, in March 1999 as per Remuneration Tribunal Determination No. 3 of 1999.
Variation: Chair $20,250 to $22,000 per annum
Member $247 per day to $250 per day

(9) All determined by the Commonwealth Remuneration Tribunal except in the cases of the Joint Coal Board (refer response to part 8) and the chief executive of the ASF and the AIDC. The latter’s fees and allowances are currently under review by the board.

(10) In all but ASDA, the JCB and the NSC, members qualify for superannuation benefits additional to and separate from their remuneration. In the case of ASDA, the annual level of remuneration is below the threshold for payment of superannuation benefits.

For the NSC, the chair is eligible for superannuation benefits. The remuneration for other members of the board is less than the threshold for payment of such benefits.

With the JCB, board members make their own arrangements for superannuation out of their remuneration.

(11) AIDC, AIMS, ASC, ATC, JCB, NSC. No.

For ANSTO and CSIRO, board members who are also members of their organisation’s audit committee receive an additional $5,000 per annum. This figure was determined by the Remuneration Tribunal.

In the case of ASDA, the Remuneration Tribunal Determination 1999/03 provides that a part-time holder of a public office in an authority shall be paid the daily fee specified in respect of such period, not less than three hours, on any one day on which he or she attends a formal meeting of the authority and/or is engaged on business of the authority.

In its Determination 1999/03, the Remuneration Tribunal announced that members of the ASF who are members of the Audit Committee will receive an additional $3,000 per annum.

Industry, Science and Resources Portfolio: Agency Boards
(Proposal No. 2212)

Senator O’Brien asked the Minister representing the Minister for Industry, Science and Resources, upon notice, on 4 May 2000:

(1) Do chairpersons of any boards that administer agencies within the Minister’s portfolio receive any payments, or other allowances, in addition to those paid to other board members; if so: (a)
what is the nature these additional payments or allowances. and (b) how is the quantum of these additional payments determined.

(2) On how many occasions since January 1998 have the above payments been varied, and in each case: (a) what was the reason for the variation; (b) who determined the quantum of the variation; and (c) what was the quantum of the variation.

Senator Minchin—The answer to the honourable senator’s question follows:

Refer to my response to question 2154.

Immigration and Multicultural Affairs Portfolio: Agency Boards
(Question No. 2213)

Senator O’Brien asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 4 May 2000:

(1) Do chairpersons of any boards that administer agencies within the Minister’s portfolio receive any payments, or other allowances, in addition to those paid to other board members; if so: (a) what is the nature of these additional payments or allowances; and (b) how is the quantum of these additional payments determined.

(2) On how many occasions since January 1998 have the above payments been varied, and in each case: (a) what was the reason for each variation; and (b) who determined the quantum of the variation; and (c) what was the quantum of the variation.

Senator Vanstone—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator’s question:

(1) (a)-(b) The Minister under Section 315 of the Migration Act appointed the Migration Institute of Australia (MIA) as the Migration Agents Registration Authority (MARA). The MIA is administered by a board which also administers the MARA. The MIA articles of association state that “the Board members may elect a chairperson of their meeting and determine the period for which such individual is to hold office”. The MIA Board of Directors elects a chairperson (known as a president) for a twelve month period immediately after the Annual General Meeting. This person is the chairperson of the MARA. As chairperson he is paid $450 per day spent on Authority business; other Board members are paid $385 per day. Board remuneration is authorised under section 317 of the Migration Act. The value of fees for Board members is set by the Board, on advice from an independent remuneration consultant.

(2) Since January 1998 the benefits have been varied once.

(a) The variation was a CPI increase in line with an increase in registration fees for migration agents.

(b) The variation was determined by the Board on advice from an independent remuneration consultant.

(c) The quantum of the variation was $5 per day for each member and the president.

Department of the Prime Minister and Cabinet: Rents Paid
(Question No. 2235)

Senator Robert Ray asked the Minister representing the Prime Minister, upon notice, on 24 May 2000:

(1) What amount of money has the department and any agency of the department paid so far in the 1999-2000 financial year for properties rented by the department and its agencies.

(2) What amount of money has the department and any agency of the department projected to spend on property rents for the remainder of the 1999-2000 financial year.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

I am advised by my department and portfolio agencies that as at 31 May 2000:

(1) $9,342,090

(2) $1,018,633
Department of Foreign Affairs and Trade: Rents Paid
(Question No. 2238)

Senator Robert Ray asked the Minister representing the Minister for Trade, upon notice, 24 May 2000:

(1) What amount of money has the department and any agency of the department paid so far in the 1999-2000 financial year for properties rented by the department and its agencies.

(2) What amount of money has the department and any agency of the department projected to spend on property rents for the remainder of the 1999-2000 financial year.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator’s question:

Austrade

(1) Austrade has paid $19,675,610.22 so far in the 1999-2000 financial year (from 1 July 1999 to 30 May 2000) for properties rented by it.

(2) Austrade has projected to spend $4,735,112.92 on property rents for the remainder of the 1999-2000 financial year.

EFIC

(1) The property rentals paid by the Export Finance Insurance Corporation (EFIC) as at 30 April for the 1999-2000 financial year is $176,480.

(2) The projected property rentals to be paid by EFIC for the remainder of the 1999-2000 financial year from 1 May is $31,072.

Department of Immigration and Multicultural Affairs: Rents Paid
(Question No. 2250)

Senator Robert Ray asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 24 May 2000:

(1) What amount of money has the department and any agency of the department paid so far in the 1999-2000 financial year for properties rented by the department and its agencies.

(2) What amount of money has the department and any agency of the department projected to spend on property rents for the remainder of the 1999-2000 financial year.

Senator Vanstone—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator’s question:

(1) Department of Immigration and Multicultural Affairs - $30.526 million
Migration Review Tribunal - $931,537
Refugee Review Tribunal - $1.2 million

(2) Department of Immigration and Multicultural Affairs - $3.2 million
Migration Review Tribunal - $35,230
Refugee Review Tribunal - $134,886

Austrade: Brochure
(Question No. 2296)

Senator Cook asked the Minister representing the Minister for Trade, upon notice, on 1 June 2000:

(1) Has Austrade recently produced a brochure entitled, Exporters and The New Tax System; if so what was the cost of: (a) preparing the brochure; (b) printing the brochure; and (c) distributing the brochure.

(2) (a) Who was the company contracted to produce the brochure; and (b) how much was the company paid.

(3) Was the production of the brochure put out to tender; if so was it an open or closed tender process.
(4) Has Austrade undertaken any other efforts to inform exporters of the Goods and Services Tax; if so (a) what are they; and (b) how much have they cost.

Senator Hill—The Minister for Trade had provided the following answers to the honourable senator’s question:

(1) Yes, Austrade has produced a brochure entitled Exporting and The New Tax System. Costs were as follows:
   (a) preparation $4,155.00
   (b) printing $4,611.00
   (c) cost of distribution $13,542.20

(2) (a) Insync Creative of South Australia was contracted to design the brochure. JS McMillan of the Australian Capital Territory was contracted to print the brochure.
   (b) Insync Creative was paid $4,155.00. JS McMillan was paid $4,611.00.

(3) Three companies were invited to quote for the design of the brochure. Printing was undertaken by Austrade’s preferred supplier, already selected through an extensive tender process.

(4) (a) Austrade has published four paragraph length articles in its monthly Export Update flyer and developed a tax reform Internet site Tax Reform, the GST and Exporters on Austrade’s website Austrade Online.
   (b) No external costs were incurred in carrying out these efforts. Approximately 100 days of Austrade staff time has been used in these efforts.