CONTENTS

MONDAY, 14 AUGUST

Workplace Relations Amendment (Unfair Dismissals) Bill 1998—
Second Reading ................................................................. 16173

Questions Without Notice—
Education: Funding ............................................................. 16190
Economy: Growth ............................................................... 16191
Budget Surplus ................................................................. 16192
Economy ................................................................. 16193
Radio Australia ............................................................ 16194
Aboriginal and Torres Strait Islanders: Stolen Generation Case .... 16195
Education: Funding ............................................................. 16196
Nuclear Waste: Storage ........................................................ 16197
Research and Development ............................................ 16198
Private Health Insurance Lifetime Health Cover .................... 16198
Unemployment: Government Policy .................................. 16199
Genetic Information: Legislation ....................................... 16200
Australian Taxation Office: Tax Ombudsman .................... 16200
Education: Literacy and Numeracy .................................... 16200
Defence: Air Training Corps Cadets ................................ 16202

Answers To Questions Without Notice—
Indonesia: Ambon .............................................................. 16202
Education: Literacy and Numeracy .................................... 16203
Genetic Information: Legislation ....................................... 16208

Petitions—
Copyright Amendment (Digital Agenda) Bill 1999 .................. 16209
Workplace Relations Amendment Bill 2000 ......................... 16209
Export Trade in Live Animals ............................................... 16209
Great Barrier Reef: Prawn Trawling ................................... 16209
Genetically Modified Food: Labelling ................................ 16210
Goods and Services Tax: Price Displays ......................... 16210
Australian National Flag .................................................. 16210
Goods and Services Tax: Sanitary Products .................. 16210
Live Sheep Exports ......................................................... 16210
Goods and Services Tax: Repeal .................................... 16210

Notices—Presentation ...................................................... 16211
Business—First Speech ..................................................... 16214

Committees—
Environment, Communications, Information Technology and the Arts
References Committee .................................................. 16215
Extension of Time ............................................................. 16215
Foreign Affairs, Defence and Trade Legislation Committee .... 16215
Meeting ................................................................. 16215
Superannuation and Financial Services Committee ............ 16215
Meeting ................................................................. 16215
 Notices—Postponement .................................................... 16215
Olympic and Paralympic Games ....................................... 16215
East Timor: Interfet ......................................................... 16215
Select Committee for an inquiry into lucas heights replacement reactor
Proposal—
CONTENTS—continued

Establishment .............................................................................................. 16216
Suspension of Standing Orders ................................................................. 16216
Documents—Tabling .................................................................................. 16217
Documents—Advance to the President of the Senate ................................. 16232
Business of the Senate ............................................................................. 16232
Auditor-General’s Reports ......................................................................... 16232
Report No. 4 of 2000-01 .......................................................................... 16232
ABC On-line ............................................................................................ 16232
Fiji and Solomon Islands .......................................................................... 16232
Grey Headed Flying Fox Colony: Melbourne Botanical Gardens ............. 16232
Sudden Infant Death Syndrome................................................................. 16232
Budget 1999-2000—Consideration by Legislation Committees .................. 16233
Additional Information ............................................................................ 16233
Budget—Consideration by Legislation Committees ................................. 16233
Additional Information ............................................................................ 16233
Committees—Corporations and Securities Committee .............................. 16233
Report ....................................................................................................... 16233
Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000...
Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 2000
Renewable Energy (Electricity) Bill 2000
Renewable Energy (Electricity) (Charge) Bill 2000—
 First Reading .............................................................................................. 16238
 Second Reading.......................................................................................... 16239
Copyright Amendment (Digital Agenda) Bill 2000—
 First Reading .............................................................................................. 16245
 Second Reading .......................................................................................... 16245
Assent to Laws .......................................................................................... 16248
Workplace Relations Amendment (Unfair Dismissals) Bill 1998—
 Second Reading .......................................................................................... 16249
 First Speech ................................................................................................ 16255
Workplace Relations Amendment (Unfair Dismissals) Bill 1998—
 Second Reading .......................................................................................... 16258
Environmental Legislation Amendment Bill (No. 1) 2000—
 Second Reading .......................................................................................... 16270
In Committee ............................................................................................. 16284
Adjournment—
 Drugs: Swedish Study ............................................................................. 16296
Aviation Fuel Contamination ................................................................. 16298
North West Shelf: Joint Environmental Management Study .................. 16299
Mandatory Sentencing ............................................................................. 16301
Documents—
 Tabling ....................................................................................................... 16303
Indexed Lists of Files ................................................................................ 16308
Proclamations ........................................................................................... 16308
Questions on Notice—
 Sport and Tourism Portfolio: Agency Boards (Question No. 2160) ....... 16309

REP R E N T A TIVO S M A I N C O M M I T TEE
CONTENTS—continued

Surveillance Warrants (Question No. 2196) ................................................ 16309
Sport and Tourism Portfolio: Agency Boards (Question No. 2218) .......... 16310
Department of Transport and Regional Development: Rents Paid
(Question No. 2236) .................................................................................... 16311
Department of the Treasury: Rents Paid (Question No. 2237) .......... 16311
Department of the Environment and Heritage: Rents Paid
(Question No. 2239) .................................................................................... 16312
Department of Family and Community Services: Rents Paid
(Question No. 2242) .................................................................................... 16313
Department of Education, Training and Youth Affairs: Rents Paid
(Question No. 2247) .................................................................................... 16313
Asian Development Bank: Debt Management (Question No. 2256) .......... 16314
Australian Rock Lobster: Tariffs (Question No. 2285) ............................... 16315
Lamb Industry Development Fund: Market Program Funding
(Question No. 2292) .................................................................................... 16320
Eden Hill, Western Australia: Aboriginal Sacred Site
(Question No. 2298) .................................................................................... 16321
Goods and Services Tax: Assist Certificates (Question No. 2300) ............. 16322
Australian Quarantine and Inspection Service: Contracts with the
Department of Health and Aged Care (Question No. 2302) ............. 16322
Department of Education, Training and Youth Affairs: Fringe Benefits
Tax Paid (Question No. 2315) ..................................................................... 16323
Department of Industry, Science and Resources: Fringe Benefits Tax
Paid (Question No. 2316) ............................................................................ 16324
Department of Agriculture, Fisheries and Forestry: Fringe Benefits
Tax Paid (Question No. 2319) ..................................................................... 16325
Department of Sport and Tourism: Fringe Benefits Tax Paid
(Question No. 2323) .................................................................................... 16326
Stone, Mr Shane: East Timor (Question No. 2327) .................................... 16327
Age Pension: Recipients (Question No. 2330) ............................................ 16327
Australian Electoral Commission: Provision of Electoral Rolls
(Question No. 2355) .................................................................................... 16328
Aboriginal and Torres Strait Islander Commission: Consultants
(Question No. 2387) .................................................................................... 16328
The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 12.30 p.m., and read prayers.

WORKPLACE RELATIONS AMENDMENT (UNFAIR DISMISSALS) BILL 1998

Second Reading

Debate resumed from 3 December 1998, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator JACINTA COLLINS (Victoria)

(12.31 p.m.)—The temptation was clear to refer to the Hansard of previous occasions in relation to this particular bill as it is the third occasion on which I will give a second reading contribution on this piece of legislation. It was in an alternative form before the last parliament and is now named the Workplace Relations Amendment (Unfair Dismissals) Bill 1998. Let me remind the Senate, as I am sure others will, that this bill has already been rejected twice by the previous parliament and has been the subject of two inquiries, both of which found the legislation wanting. Comprehensive minority reports by both Labor and, separately, the Democrats indicate clear opposition to the bill.

The minister is well aware from the two minority reports on the February 1999 inquiry that the bill will not be passed. So the minister is either a glutton for punishment or is cynically introducing this bill to give the government a potential election trigger. A number of comments from the minister himself in the press seem to indicate that the minister is either ignorant of Senate procedures or is being duplicitous in relation to his rationale for the introduction of this bill. A newspaper article appearing in the Herald-Sun on Monday, 19 June indicated:

Mr Reith may offer the Democrats a compromise with his new Bill by reducing the size of exempt businesses.

So I ask: has this compromise been made? Where is this compromise? I certainly have not seen it and I have not heard the Democrats refer to it, so I think it may just be another piece of Mr Reith’s duplicity or game playing that the Senate is now dealing with.

The PRESIDENT—Senator, I think the word ‘duplicitry’ should be removed.

Senator JACINTA COLLINS—I withdraw that comment, Madam President. The question that needs to be raised is: is there an amended bill which deals with issues such as the size of an exempt business, or is there not? The other question that needs to be raised is: where does this bill fit with the Workplace Relations Amendment (Termination of Employment) Bill 2000 which is before the House of Representatives? Does that not represent the government’s agenda in relation to termination of employment? If it does and if the minister is still pursuing matters related to the size of a business, then why isn’t he pursuing those in the context of the legislation for termination of employment? The reason is fairly clear: the minister is pursuing this legislation as simply a trigger, counting on a rejection at second reading within the Senate. I do not think he will be disappointed.

This government’s cynicism in relation to dealing with unfair dismissals and other employment matters is not new. When the government introduced their first attempt to amend the unfair dismissals legislation in 1997, Senator Murray said in his minority report on that occasion:

It remains my belief that the Coalition introduced this single issue Bill encapsulating gross unfairness to provoke the Senate to absolute rejection.

He went on to say:

It remains my belief that this Bill was conceived to achieve a double dissolution trigger. And in that act of creation is exposed the Coalition’s utter heartlessness.

Senator McGauran—You are frightened of that. That really scares you.

Senator JACINTA COLLINS—I am glad you join with me in that, Senator. Senator Murray went on:

It would create job insecurity and arbitrarily discriminate against one to two million employees for a political end.

Senator McGauran—That’s right, it is a double dissolution trigger. You got it.
Senator JACINTA COLLINS—I am glad that Senator McGauran agrees with me. Senator Murray’s concerns about the coalition’s heartlessness would appear to apply as much to the government’s current ambit as it did in 1997, because the aims of this bill have not really changed. Let me revisit them. The government’s unfair dismissals bill seeks to require a six-month qualifying period of employment before new employees other than apprentices and trainees can access an unfair dismissal remedy under the Workplace Relations Act. Let me remind the Senate that Minister Reith does not believe that the independent umpire, the commission, is the appropriate place to determine issues such as periods of probation; he thinks that these things should be written into the act. We disagree with him.

The second aim of the bill is to exclude new employees of small businesses, other than apprentices and trainees, of 15 or fewer employees from the unfair dismissal remedy under the Workplace Relations Act. Let me remind the Senate that Minister Reith does not believe that the independent umpire, the commission, is the appropriate place to determine issues such as periods of probation; he thinks that these things should be written into the act. We disagree with him.

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asked, ‘What, if any, significant efficiency change would you like to make at your workplace but are unable to?’ The leading responses were to improve or change buildings and equipment—21 per cent; improve technology—16 per cent; change staff numbers—nine per cent; increase productivity—seven per cent; have an enterprise agreement—seven per cent; and other significant efficiency changes—20 per cent. The response ‘change unfair dismissal laws’ was provided by only six per cent of the small business respondents.

The most relevant piece of AWIRS 1995 survey evidence, which was unpublished under the current government but reported in an ACCIRIT reference, was a survey into the reasons for not recruiting employees during the previous 12 months. Some 66.2 per cent of small business respondents indicated that they did not need any more employees. Twenty-three per cent listed insufficient work as the major impediment. Only 0.9 per cent of respondents nominated that they had not recruited employees due to unfair dismissal legislation.

On reviewing the previous report, the reference to the data that stuck in my mind most was a reference made by Senator Murray. He said that the Queensland experiment had failed. The claims by COSBOA, ACCI and the government that employment would be generated by these measures were blatantly false. The experiment conducted in Queensland, with the exemption that was put in place and later withdrawn, showed no change in the generation of employment. The government has to face the fact that its experiment in Queensland has failed. So why on earth would we extend it federally?

This government has already gone too far in relation to unfair dismissal matters. The government has already implemented measures that make it more difficult for employees to seek remedies for unfair dismissal. To go further is totally unfair and unnecessary. There are a number of limitations within current provisions. Most significantly, the onus of proof has changed so that the employee must prove that they have been subjected to unfair, harsh or unjust treatment in the dismissal process. While costs have been reduced for applicants by having hearings in the commission rather than in the Federal Court, costs may now be awarded against the employee if it is considered that the claim was vexatious or frivolous. The commission is required to assess not only whether an employee has been dealt with unfairly or unjustly, but also whether or not the employer is able to viably deal with any costs or award of damages. Probationary employees and employees on term contracts are denied access to unfair dismissal laws and casual employees cannot access the legislation unless they have been employed for a 12-month period.

Now the government seeks to go even further, despite the fact that Mr Reith stated in 1996 that we have delivered a workable system for dealing with unfair dismissal. With respect, the minister cannot have his cake and eat it too. The old reference by Mr Howard that ‘no employee will be worse off’ needs to be put in this context. The government’s industrial relations reforms have been based around a guarantee that no worker will be worse off. This is looking more and more like a non-core promise. This bill clearly discriminates against workers employed by small businesses and workers who have been employed for a period of less than six months. It may not be retrospective in its application but, given the transferral rates that occur within the work force and the number of people in the work force who move around between small businesses, obviously we are affecting current rights which affect workers who are likely to be engaged by small business. I therefore indicate that the Labor Party will be opposing this legislation at its second reading.

Senator MURRAY (Western Australia) (12.44 p.m.)—I will refer listeners and those who are interested in this debate to the Hansard record of the previous debates on this matter. It covers many of the arguments which do not need to be recapped. I will also refer interested persons to my minority report of February 1999 to the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 which still provides the backbone of the Australian Democrats’ opinion on this matter.
Thirdly, I would ask an attendant to collect from me for distribution to the chamber a graph and some figures I have on federal unfair dismissal cases which later, once senators have had a chance to examine them, I will seek leave to have incorporated into the record. This is the third time Minister Peter Reith has brought this bill to the Senate. We rejected it in 1997 and in 1998. We will reject it again today for the third time, and I expect when it returns in three months we will reject it a fourth time. I expect the bill will be rejected a fourth time in three months because we think that this bill is Minister Reith wasting the Senate’s time to establish a double dissolution trigger. The government wants to be in a position to threaten Labor and the Democrats with a double dissolution election. The Democrats were not cowed on Telstra, we were not cowed on Wik and we were not cowed by this bill last time. We will never be cowed by any threats of a double dissolution.

Having said that, it is obviously good housekeeping for the government to have a double dissolution trigger in the bottom drawer. This is particularly necessary because, if they have an election before 1 July next year, it must be either a double dissolution election or a House of Representatives only election. The latter option has not happened in Australia since 1972. I am sure the government would not want to use that election as a precedent, given that it involved the election of the opposition, which became a Labor government. So if the Prime Minister wants the option of calling an election before 1 July next year it must be a double dissolution election. This bill, and perhaps a few more like it, will provide a trigger. I do not think there is serious disagreement between the two houses on this bill because I do not think the government are terribly serious about this bill. It is a legal contrivance to create a double dissolution trigger. They cannot be terribly serious because they know the thoughts and views of the Senate on this matter. Since the matter was last raised, the composition of the Senate has not changed to a degree whereby this bill would have any serious chance of success.

Turning to a double dissolution, there are three problems with having a double dissolution election in the first six months next year. First, under the Constitution the terms of senators will have to be backdated to 1 July 2000. That would mean that the next federal election would need to be held within two years, not three—by May 2003—to elect half the Senate. So the government, if they chose to go early, would only gain a two-year term out of it. I am sure the Prime Minister’s successor would not be very pleased with that prospect.

Second, it also means that the Prime Minister and other ministers with an eye for history fail to get to re-enact the 100th anniversary of the first federal parliament, set down from 9 May to 10 May next year. May the 9th also happens to be the last day on which a double dissolution election can be called. So it is either re-election or the re-enactment. Thirdly, the government would have to get re-elected. Going to an election six to eight months early for a maximum two-year term is likely to test the patience of the Australian population. Indeed, the only double dissolution in the first six months of the year in the last half century was in 1983, and that was an election that the Liberals lost.

With regard to this bill, is there a major dispute between the Senate and the House of Representatives? In the term of this parliament, the Senate has passed 305 bills presented by the government, 75 of which were amended, including its biggest policy items of tax reform. The Senate has rejected only five bills—this will be the sixth—and passed only one with amendments that the House would not agree with. There are seven other bills where the House has yet to advise the Senate as to whether Senate amendments have been agreed to. To put that in perspective, the Senate has passed 98 per cent of the bills presented to it by the House. This is hardly the basis to argue Senate obstructionism, although I must say to the government that their constant harping in the past on Senate obstructionism has resonated with some of the population, who still seem to believe that it is possible for the Democrats or Labor on their own to block bills. In short, the bill is little more than a political stunt. It is about providing the government with the option of a double dissolution election for early next
year, an option that I would describe as a suicide option. I doubt this government will be foolish enough to take it.

Having dealt with the real motive of this bill—and we must bear in mind that the minister moving the bill is also the Manager of Government Business and therefore has a real eye on political matters—I will now deal with the actual subject matter of the bill. The bill seeks to deny employees the right to challenge an unfair dismissal if they work for a small business. It sets up employees of small business as second-class citizens, denied the right available to other workers to challenge unfair treatment. It seeks to set a precedent for the states to follow where under their legislation nearly all unfair dismissals occur, particularly nearly all unfair dismissals in small business.

The Democrats see this as a fundamental justice issue, an issue of workplace justice. Just because unfair dismissal occurs in a small business does not make it any more fair. Being unfairly sacked is unfair, irrespective of whether the employer is large or small. This government promised a fair go all round on unfair dismissals. Where is the fair go in saying that the 2.7 million employees under federal and, mostly, under state legislation who happen to work in small businesses, 44 per cent of the private sector workforce, are second-class citizens where the fair go only flows to the employer, not to the employee? The government claims that this measure is an employment measure, that it is designed to fix the problem with unfair dismissals for small business. I ask: what is the problem and where is the evidence that the problem is preventing small business employment growth? Once again, I would refer the Senate to my minority report which deals with that issue at length.

In the last two years, small business employment has grown by 246,000 jobs or 10.1 per cent. Big business employment in the same period grew by just 5.6 per cent, which is half the rate of small business employment. Further, as Senator Collins clearly outlined, the evidence from Queensland, where this exemption under the laws of the previous government was trialled by small business for a period, is that small business employment did not take off at all. So where is the evidence that the law is preventing small business employment growth?

The Democrats acknowledge that the 1994 Brereton changes to unfair dismissal laws—that is the Labor laws—caused a lot of concern for small business. Unfair dismissal applications skyrocketed to over 21,000 both state and federally in 1996, or 2.57 unfair dismissal claims for every 1,000 employees; but since then it has dropped off sharply. In 1999 applications under the federal act were just half those for 1996, before the Workplace Relations Act. Even when the state applications are taken into account, applications nationally are down 29 per cent on 1996, and there are now 1.74 unfair dismissal claims per 1,000 employees in Australia, which is down from 2.57 three years ago.

Madam Acting Deputy President, I seek leave to incorporate in Hansard the graph and the tables circulated in my name.

Leave granted.
The Coalition’s Workplace Relations Act commenced 1/1/97, and was passed after amendment by the Democrats.

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Senator MURRAY—I thank the Senate. I would remind the Senate that those are all federal unfair dismissal cases—not just small business. In short, the reforms in the 1996 Workplace Relations Act—the fair go all round legislation—fixed the unfair dismissal process problems that existed under Labor’s law. The bias towards most of the legalistic process that was proving such a boon for unscrupulous employees in the 1994 act was removed. It is worth highlighting very briefly some of the changes in the 1996 act that redressed the balance. Most important was the change in onus of proof. No longer did an employer have to prove a valid reason to dismiss an employee. An employee now has to prove that the dismissal was unfair. That is the same rule that applies in the state tribunals. Hearings were moved from the legalistic Federal Court to the more practical and commonsense Australian Industrial Relations Commission, which has resulted in less haggling for legal process and procedural fairness. Vexatious applications were discouraged with a $50 application fee, a limited threat of costs awards, and the requirement for the commission to give assessments after conciliation. And if damages are to be awarded, the viability of the small business employer needs to be considered.

Of the cases that have gone to the commission, 22 per cent were withdrawn or dismissed before conciliation; 70 per cent were settled either at the conciliation phase or before arbitration; and only eight per cent were either arbitrated or were awaiting arbitration. Of those that were arbitrated, 63 per cent were decided in favour of the employee and 37 per cent in favour of the employer. That is hardly evidence of a system out of control. If anything, it is evidence of a system delivering a fair go all round. However, I will acknowledge to the Senate that the Democrats have recognised that there are still process issues and process problems attached to the unfair dismissal applications, and we have recommended that the process area be further reviewed for some minor reforms.

It is also worth noting that 34 per cent of all unfair dismissal applications are from small business employers, which is almost identical to the small business 35 per cent share of the total work force. In short, there is no evidence that legislation is adversely affecting small business, adversely affecting small business employment growth, or that it is particularly clogged. The problems that small business had with the 1994 act were fixed by the 1996 act, which was agreed to between the coalition and the Democrats. That was a fair deal and one which Minister
Peter Reith should stick to. There is no good case now to attempt to deny small business employees who fall under the federal legislation and the majority of small business employees who fall under state legislation—2.7 million altogether—the right to an unfair dismissal application when small business employment growth is running at almost twice the rate of big business employment growth.

In our view, this legislation should be rejected as harsh, unfair, unnecessary, unbalanced and unjustified. The Democrats will vote the bill down and we will keep voting it down because the government has not made out its case for it. We will also vote it down because it offends a fundamental principle that all Australians should have the same rights, the same freedoms and the same responsibilities. This bill seeks to differentiate between classes of Australians; it also seeks to differentiate between not only large and small businesses but between state and federal jurisdiction. That principle is utterly wrong. Whether it is to do with unfair dismissals, sexual congress or mandatory sentencing, it is wrong. Australians should enjoy the same rights, the same freedoms and the same responsibilities wherever they are.

Senator HUTCHINS (New South Wales) (12.58 p.m.)—I note that the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 has been here on a few occasions and that it has been rejected—and Senator Murray has just assured us that it will be rejected again. My experience in dealing with unfair dismissals goes back a fair way in history. As an official of the Transport Workers Union in the eighties, before this legislation was changed, I remember that there was the opportunity to lodge unfair dismissal applications before the Arbitration Commission. If the commission was able to set a date to hear the case and you were successful in winning that case and you had an order placed on the employer to reinstate that man or woman, the employer did not have to take that decision into account at all. You had to go through another step—the Federal Court—to make an application for the commission’s ruling to be sustained. I do not think any fair or reasonable person could argue that that process allowed for the fairness and balance in the system that we have now had available to us for some years. That was simply unfair and unjust because many honourable men and women, for a variety of reasons, lost their jobs. When they went before the commission to have themselves reinstated because they felt they had been unfairly and unjustly dismissed, the process of justice was so delayed and so prolonged that often the opportunity for those people to be reinstated in their previous jobs was no longer there.

In my years as a union official I saw many occasions when, because the employer and employee had fallen out over some silly thing, some action would be taken by the employer and he or she would dismiss that employee. We would then go to the commission and, after a lot of discussion, we would generally have employees put back on through conciliation. Often in those cases the employees stayed with the company, and from my experience in those areas they stayed until they retired. It is just that there was a bit of a breakdown in the relationship and, fortunately, we had an opportunity through that system to be able to at least have conciliation and put people back into the jobs they held at the time.

As has been mentioned on a few occasions, this legislation is very unfair in that it sets a probation period of six months for people, which I think is far too long. Secondly, it excludes any businesses that have fewer than 15 employees. Once again, I think that is unfair. As you may be aware, Madam Acting Deputy President, larger workplaces are generally unionised and generally have a procedure for resolution of grievances. They have these things in the medium and larger sized workplaces. Often in smaller workplaces that is not the case, because there is a lot more hands-on work required by small business operators than in the larger firms where they have established grievance procedures and people who professionally handle them. So I think that is quite unfair and, as set out by Senator Murray, it has not led to a great division or winding back of employment by the small business sector. I am reminded of a speech made by Sandra Nori, who is the Minister for Small Business in
New South Wales. At a gathering of the Parramatta Chamber of Commerce, of which I am a member, Ms Nori said that new jobs were created more by economic growth than by anything related to the unfair dismissal laws. In fact in the Industrial Relations Commission of New South Wales the number of unfair dismissal applications fell by 14 per cent between 1997 and 1998, and they fell a further 19 per cent between 1998 and 1999. In New South Wales unfair dismissal claims affect about 0.2 per cent of the New South Wales work force whilst 94 percent of unfair dismissal claims are conciliated or settled, and reinstatement or re-engagement occurs in about 0.7 per cent of cases. So there are strong arguments against this discriminatory law that is being introduced by the government because the number of unfair dismissals is not causing small businesses the heartache it has been made out to be. As Ms Nori said, the jobs will be created by economic growth, not by any sort of fiddling with unfair dismissal laws.

So we have had some interesting aspects of this legislation highlighted and, as I said, some unfair and unjust aspects of it have been highlighted as well. In looking for where one might see a different aspect of this legislation I found that one of the original pieces of labour legislation introduced by the House of Commons was in fact a bill called the Statute of Laborers, introduced in 1351. This bill was introduced during a labour shortage that occurred in England because of the Black Death. Unfortunately for the lords and ladies of England at the time, because there was a shortage of labour, the labourers, the carters, the dairy maids and all the rest of the agricultural classes decided to use this opportunity to flex their muscle and they started to demand extra wages and conditions. This was so upsetting to the lords and ladies of England at the time, because when there was a shortage of labour, the labourers, the carters, the dairy maids and all the rest of the agricultural classes decided to use this opportunity to flex their muscle and they started to demand extra wages and conditions. This was so upsetting to the lords and ladies of the time that they petitioned Edward III to enact this legislation, which in many ways was very harsh in the way that it dealt with people. For example, if you did not stay on the land and work for the lord you could be put in the stocks or you could be arrested and sometimes have to serve three months, six months or 12 months, depending upon how rowdy you must have been. In fact it got to a stage in 1389, when they used these laws against the working men and women of England, where there were something like 800 prosecutions in the County of Essex alone because the people were commanding extra money and conditions so that they could live in some relative harmony. There is some other interesting information about that time in that the people who were supporting the labourers—in 1356 one of them was the Vicar of Albury in Hertfordshire and another was a local hermit—were preaching that there should be no laws that would restrict the people of England from getting their proper rates of pay and conditions.

I want to just finish with one group of people who, as usual, always seem to benefit when something like this happens. Looking at it, the lords and ladies were not making much out of it; they had to enact this legislation in 1351. The agricultural classes were not making much out of it; they were being oppressed and taken to the cleaners by the lords and ladies. But somehow or other there was one group that did manage to get through and improve its position, and that was the lawyers. Once again, the lawyers seemed to be able to make a motser out of this. An article on the Black Death said:

By the same token, the plague provided the incentive and opportunity for the lawyers to establish a new modus vivendi with the political establishment. The thinning of the ranks of the lawyers gave the leaders of the profession the opportunity to consolidate, to increase the distance between the men who strutted at the bar and the rank-and-file of legal practitioners, and to dominate access to the upper levels of the profession through the Inns of Court. At the same time they developed, or acquiesced in the development of a career structure which led in most cases to appointment to the bench.

So, as we have said on numerous occasions in here, no matter where you go or where you look in history there is always going to be a lawyer win.

Senator GEORGE CAMPBELL (New South Wales) (1.09 p.m.)—It is very difficult to get serious about this debate in this chamber knowing full well that the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 is back not because of any genuine or serious concern by the government to deal with pressing problems in the community,
business or industry, where wrongful dismissal laws are causing major problems in the workplace, but essentially because this government is going through a process of political positioning in order to open up as many fronts as possible and as many election strategies as possible that may be available to it in the next couple of years. Senator Murray outlined a range of what those options might be, and I do not want to go through and repeat them. But let us observe what might be coming down the road, when small businesses, in particular, at the end of October or early November, have to start putting in their business activity statements and making the first payments on the pay-as-you-go taxation under the GST. When they start to run into major cash flow problems, small businesses are going to have a lot more concerns about those issues than they are about the issue of whether or not they have the right to terminate the employment of their employees. The fact that this legislation is back before this chamber has more to do with that sort of political scenario than with the legitimacy of what is happening in the working environment.

Let us look at a bit of the history of unfair dismissals and why the topic keeps bobbing up as a major issue. It is true that the Keating government introduced legislation between 1993 and 1996 to expand the access of employees in the federal jurisdiction to pursuing unfair dismissal claims. There are a number of categories of employees who were covered by that specific legislation. But all it did in that process was extend to some classes of employees under the federal jurisdiction what had already been in existence in most of the state jurisdictions for 20 to 30 years previously. In New South Wales, Western Australia, South Australia and Queensland employees always had access to pursuing unfair dismissal claims in the state jurisdiction. All that occurred through that legislation in 1993 or 1994 was the extension of that right, that entitlement as an employee, into certain classes of employees in the federal jurisdiction.

The reaction and response from employer organisations verged on the bizarre over that period. I have been involved in the industrial relations environment for a very long time, stretching back into the mid-1960s. Maybe I should not be giving hints about my age, but it goes back as far as that—a little bit beyond it even. It is the only time in my 30-odd years of experience in the industrial relations field, particularly as a practitioner, that I have seen the employer organisations actually run an effective campaign. ACCI, the Australian Chamber of Commerce and Industry, ran a very effective campaign in opposition to the unfair dismissal laws. They frightened the living daylights out of small business proprietors all around this country about what dastardly acts, deeds and problems they were going to be confronted with if this law was enacted. The reality is that we have experienced nowhere near the problems that were anticipated by the ACCI. Those sorts of problems have not emerged. It is true that the number of claims went up; it is true, as is always the case in these circumstances, that the legal profession, which is well and truly represented on the other side of this chamber and in the lower house, made a motser out of the system—drove a lot of the claims into a quasi-legal environment with quasi-legal arguments. Instead of allowing the issues, which were essentially, in most cases, industrial relations type issues, to be resolved within the purview of the Industrial Relations Commission, in those areas they drove those claims into the legal jurisdiction. I know of a number of instances where members of my own union came to see the union about some of these unfair dismissal claims and said that legal representatives had said not to settle but to pursue the case in a higher court. The legal representatives said, ‘We’ll get a better settlement for you down the line and it won’t cost you a zack because we’ll do it on a no-win, no-pay basis.’ We know a lot of that goes on in the legal profession in a range of these areas.

When I was a union official, I had a number of discussions with the then president of the commission about the ways that sort of approach could be circumvented and the traditional commission processes brought to bear in helping to resolve a lot of these issues rather than allowing workers to fall into what many regarded as the hands of the philistines
when pursuing their claims under this particular legislation.

It is true that prior to 1996 this government made a major issue of the unfair dismissal laws, following the response it saw ACCI getting from the small employer sector of our economy, and it ran pretty hard on the unfair dismissal laws. But it is also worth drawing the attention of this chamber and the Australian people to what the Prime Minister and Peter Reith, the minister for industrial relations, said after they got some changes through the parliament after the 1996 election. In a ministerial statement in response to the Bell report on 24 March 1997, John Howard said, ‘We have swept away Labor’s job destroying unfair dismissal laws.’ In a speech on the return of the bill from the Senate on 21 November 1996, the Minister for Employment, Workplace Relations and Small Business, Peter Reith, said, ‘We have delivered a workable system for dealing with unfair dismissal.’ That was their description of the current laws. If John Howard believes that the government ‘swept away the job destroying unfair dismissal laws of the previous Labor government,’ and that it has delivered ‘a workable system’, why have we seen this bill back in here on three occasions now? Is it because there is a major problem occurring out there in industry? Is it because small businesses are knocking at the door of Parliament House seeking this change? No, it is not. It is simply for the purposes of allowing this government to run a rhetorical campaign to try to demonstrate to the small business community that ‘We’re doing something about protecting your interests,’ when it knows it is doing nothing at all.

You will recall the campaign when Peter Reith became minister for small business. The government was going to cut red tape for small business by 50 per cent. When we asked representatives of the Department of Employment, Workplace Relations and Small Business at Senate estimates how they were going to do this, they said, ‘We don’t know.’ When we asked them how they were going to measure this 50 per cent, they had no idea. Again, they were rhetorical statements for which this minister is famous. When you deal with Peter Reith, you will learn very quickly to separate the rhetoric from the substance—you will always find that he is long on rhetoric and very short on substance. If you were to look back through his political career, you would not have to go very far to see those constant threads running through.

A couple of aspects of this bill are bizarre, and the worst one is not the exemption of workplaces with fewer than 15 employees—although, from what I understand of the Australian economy, that would just about exempt 80 per cent of the workplaces. Setting that aside, it is a provision in the bill to establish a six-month probation period for all new employees before they can access the unfair dismissal system. In many sets of circumstances, that is meant to facilitate a turnover of employees. We all know that, even with the simplest of jobs, it probably takes two or three weeks for a new employee to find their feet—to find their way around the factory or to find their way around the department store or wherever, before they are able to give some return on the organisation’s investment. After two, three or four months, that investment would be returned and, after six months, the employee would be regarded as being virtually permanent and would have accrued some rights within the workplace. I have to say that, if you give a six-month exemption period, there will be the greatest turnover of labour occurring in this country that you have ever seen. We think job insecurity is a major issue of concern for people in the work force at the present moment. It is: people are concerned about the security of their jobs; they are concerned about the security of their factories; and they are concerned about whether their workplaces will exist in 12-months time. If this legislation is put in place, you will have not just an insecure work force but a work force that is operating on terror—they will be terrified that, having worked in an environment for up to six months, they can be summarily dismissed without any justification from the employer as to why they have been deemed to be unsuitable after the six-month period.

Essentially, this bill is about providing trigger mechanisms to the government to open up its election opportunities over the next two or three years. Despite all the rheto-
ric, there is a considerable degree of nervousness at the other end of this building about what is likely to happen in two or three months’ time. There are very strong rumours around the Sydney establishment that we could be looking at an election as soon as the end of October or early November and that this is under very serious consideration by this government. When some of the stuff that we know is happening out there starts to feed through into the political process, you would have to say that keeping all his options open is a pretty smart position for the Prime Minister to take, because it may be a question of his having to go sooner rather than later to have any chance at all of the people on the other side retaining the Treasury benches.

The irony of all of this is that once again we see ordinary workers, who are battling for survival and battling to maintain the employment they have and are anxious to ensure they retain their jobs and the capacity to feed, educate and look after their families, being subjected to what will again be seen as a fear and intimidation campaign by this government. They will be subjected to rhetorical arguments which have no substance in terms of any real beneficial change in industry or in enterprises but which are being used to talk up the election chances of this government within the small business community. When the small business community starts to feel the impact of the application of the GST, the impact of having to return the business activity statements and the impact on their cash flow of meeting the payments under the pay-as-you-go taxation system they are now confronted with, it is going to take more than the unfair dismissal legislation being promoted by this government to save the government’s hide in the small business community—if it has not already reached the point in time where it is beyond saving. As I said in my opening comments, it is hard to get serious about this discussion in this chamber, because we know that this legislation is not here for a serious purpose; it is here for one purpose only, and that is about opening up opportunities to enhance this government’s election prospects in the future.

Senator HOGG (Queensland) (1.24 p.m.)—Following on from my colleague Senator George Campbell, I point out that I myself had the experience of being a trade union official for some 20 years. One of the interesting things I found during that period of time was that there were very few, if any, dismissals that found their way to the commission for arbitration. That was in the state system which I am very familiar with in Queensland. Most of the dismissals, whether they were by large or small employers, were invariably settled by way of discussion with the employer and appealing to good sense and good reason as to why the employee had been unfairly and unjustly dismissed. Those matters were resolved at that level. There were occasions when matters went to conciliation hearings before the Industrial Commission and, with the guidance of the Industrial Commission, those matters were resolved. On the few occasions that those matters were not resolved, arbitration was resorted to and then one copped the decision of the industrial tribunal.

But none of that in any way impaired the rights of employees to seek redress for unjust, unfair, harsh and oppressive dismissal. That right was not denied to them at all. As Senator George Campbell outlined, the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 seeks to do that—it seeks to withdraw a fundamental right that should be, must be, available to ordinary people at their place of work in Australia. The one thing that is fundamental to people is that they have a right to security in employment as an element in retaining their personal dignity. If security in employment cannot in any way be guaranteed, people lose their dignity. One thing this legislation does is remove from people their basic right to challenge unfair, harsh, oppressive and unreasonable dismissal by the employer. As my colleague Senator George Campbell said, this piece of legislation has no basis other than it may down the track provide this government with a double dissolution trigger. That, and that alone, is a very cynical approach to the dignity of people, particularly the dignity of people in the work force in Australia. There is no logical basis to this bill again coming back to this chamber.
If one looks at the bill one sees that it gives no right to employees in their first six months. As my colleague espoused, all we will see as a result of this is a churning of the labour force because the employers will have firmly in their minds the expectation that, if they do not get rid of the employee by the end of the six-month period, they are open to the employee, if dismissed after the six-month period, pursuing a claim for dismissal in the appropriate industrial tribunal. One might say that there is no real precedent for this, but my memory takes me back almost 20 years when there was an employment program that guaranteed a certain additional privilege to the employer for employing an unemployed person for a period of up to six months. The strange thing about that particular scheme—the 'sweet pea' scheme, as it was called, the SYETP scheme—was that we invariably found that, at the end of the six-month period, lo and behold, the employee was dismissed. Surprise, surprise: the employer found some fault. Sometimes it was major, sometimes it was minor, but invariably, in the last few weeks of employment, the employer set about constructing a case whereby they could no longer extend that person's employment and reasonably employ them in the wake of the training they had received. Then they moved on to another new employee. There was a churning process. It was absolutely and patently obvious that employers were prepared to exploit that scheme whilst it was a training scheme to ensure that they kept their options open for getting low paid and, of course, in that case subsidised employees.

I put to you that in this particular case it will be no different: come the end of five months, you will find employers—surprise, surprise—finding that the employees in question are either lazy, indolent or abusive. They will find something wrong with them—they do not look the right way, talk the right way or walk the right way. It will be nothing necessarily of substance but it will act purely and simply as the trigger for the dismissal of those employees. Of course, under this proposed legislation, those employees would have no rights whatsoever—that is in major companies; we are not talking about small companies, we are talking about large and small alike—and no opportunity to maintain their security of employment purely and simply because of this piece of legislation.

It gets worse when you get to the situation where there are no more than 15 employees working for a particular employer. There is no rhyme nor reason why the number 15 should have been chosen or could have been chosen; it is purely and simply an arbitrary number. Why, based on an arbitrary number, those people should have their rights dismissed not only for six months but forever is completely beyond me. If one goes to the explanatory memorandum of this bill, one finds that there is an attempt to clarify the choice of 15 for the number of employees. I noticed that in the minister's second reading speech he said that this was an attempt to overcome some of the previous difficulties of this bill. I do not think it overcomes the difficulties at all, because if you look at point 9, where it is referring to the 15 employees, you will see it says:

Firstly, for the removal of doubt, the subsection will provide that the employee whose employment was terminated is to be counted.

Big deal! It says:

Secondly, the new subsection will provide that any casual employee is not to be counted, unless that employee has been engaged on a regular and systematic basis for a sequence of periods of employment of at least 12 months (that is, the employee had been engaged on a regular and systematic basis at least 12 months before the time at which the employees are counted, and the employee was still engaged on a regular and systematic basis at the time at which the employees are counted).

We are going to have people with their abacus out trying to work out how many employees there are in the place and whether the casuals are, in effect, going to be counted. If they are not regular and are not working on a regular and systematic basis for a sequence of periods of employment of at least 12 months before the time at which the employees are counted, and the employee was still engaged on a regular and systematic basis at the time at which the employees are counted.

We are going to have people with their abacuses out trying to work out how many employees there are in the place and whether the casuals are, in effect, going to be counted. If they are not regular and are not working on a regular and systematic basis, the real likelihood will be—no, the fact will be—that they will not be counted. So immediately we start to go to a number beyond 15, because the 15 applies only to those who work on a regular and systematic basis if they are casuals.

If you look at some of the industries that I have been associated with over the years—the fast food industry, the retail industry and, I know from others who have been involved
know from others who have been involved in it, the hospitality industry—you will see that they are very heavily dependent on casual labour. There is a great preponderance of casuals who work within those industries and it would not be too hard to construct a place of employment of substantial size where there are a substantial number of employees who do not work regularly and systematically. If you look at the industries we are talking about—the fast food industry, the hospitality industry and the retail industry—we are dealing with industries where there is a reasonable proportion of high school students, university students and the like who take up employment in those industries and are not necessarily able to work on a regular and systematic basis, purely and simply because of their workload at school or their commitments at university. So we now open up a whole new era of employing people where employers will make sure that the hours are not regular and systematic and that they can have as many employees as they like and avoid the provisions of the bill that is being proposed here today. Simply, it does not spell out natural justice; it spells out the encouragement of practices that will cause people a great deal of angst and pain in their employment and give them no predictability in terms of their income and no stability in terms of their capacity to earn a livelihood. What we have here, in effect, is something that strips ordinary workers of their right to the dignity that they are entitled to. Of course, the qualification that has been made in the explanatory memorandum does nothing to assist the confidence of young people in fronting up for jobs in the fast food, hospitality or retail industries.

Even if one did accept the number of 15 and that there were going to be no casual employees in that place of employment, one then finds that the figure of 15 will become a limiting factor for small business and that it will actively discourage small business from employing beyond 15 employees. As I said during the earlier part of my speech here today, the figure of 15 is quite artificial and it will quite clearly act as a disincentive rather than as an incentive for small business employers to employ people. Having reached that magic mark of 15, the small business employer will find no need to go above that number because, if they do, they then are no longer able to access this piece of legislation. In that sense, it is a very cynical piece of legislation indeed. The legislation goes no way towards improving the dignity of the individual.

In his second reading speech, the minister stated:

The introduction of a six month qualifying period provides a fairer balance between the rights of employers and employees in this statutory cause of action.

How anyone could arrive at that conclusion is absolutely beyond me, because the balance in the employment relationship is always heavily weighted towards the employer. The claim that putting in a six-month qualifying period will in some way make for a fairer balance is completely and utterly wrong. What it will do is completely tip the scale in favour of the employer. The employer not only will have the whip hand in terms of employment but will also have the future of the employee completely in their grasp, because the employee has no right to redress unfair dismissal for the first six months. To me, the statement put in this debate that the balance will be fairer between the employer and the employee is completely untrue.

Another claim in the minister’s second reading speech is that the legislation will deter frivolous claims. Of course, that is a nonsense. As I said, my long experience in the arena of industrial relations has shown me that frivolous claims invariably do not go anywhere anyway. My colleague Senator George Campbell said in this respect—and rightly so—that lawyers who poke their noses into this arena and want to make money out of it may well promote frivolous claims. But those of us who have experience and knowledge in this area and are involved in the industrial relations arena have never been about promoting frivolous and vexatious claims for the simple reason that it only clutters up one’s time. Deterring frivolous claims will not be a consequence of this legislation. The legislation will not have any effect on frivolous claims. The only ones who will promote frivolous claims are the lawyers.
Another thing that the minister said in his second reading speech was that the Council of Small Business Organisations of Australia claimed that the passage of this legislation would allow the creation of 50,000 jobs. That is a highly emotive claim and there is no basis to it whatsoever. It is absolutely without any underpinning validation. It is purely and simply something that the minister has clutched on to and tried to promote as being one of the consequences of this bill. If this bill goes into force—and I believe it will not—then I believe we will see the opposite happen: we will see a churning of employment and the destabilisation of the employment relationship for so many people. Rather than see additional jobs being created, we will see additional misery being created for people. There is no basis for the figure of 50,000 jobs. And even with that figure, they do not say what types of jobs—full-time jobs, part-time jobs or casual jobs? If there are 50,000 casual jobs, based on the government’s own explanation in the explanatory memorandum, then many of those jobs will not be worth while because the employers, to avoid the provisions of this legislation, will ensure that the casuals do not work on a regular and systematic basis but work on an irregular and a non-systematic basis.

As my colleagues before me have said in the debate, this bill is nothing more than a sham. The only thing that will promote true employment is good economic growth. The provisions of this bill will not in any way give additional employment to people in the community; all they will do is create misery. They will remove the dignity of the individual in our society—dignity which is so important to the individual in their working life.

Senator GIBBS (Queensland) (1.44 p.m.)—Senators would be forgiven for having a sense of deja vu. We have been here before debating the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 and, given this government’s lack of forward vision for Australia, I am sure we will be back here again in the future doing exactly the same thing. This government does not have any plan for the future direction of Australia. All it knows is the past. This government has no notion of the challenges that will confront Australia and its work force into the 21st century. This government is stuck in an ideological time warp, delivering social and economic policy that is date stamped ‘circa 1950’. This government has no notion of providing progressive social and economic policy for a changing country. It has no idea how to provide legislation that is fair to both employers and employees. The government does not have any new or innovative policies so it is forced to resurrect failed old ones.

Having lost on almost every single issue the government has put before this parliament, Mr Reith seems to think he can wear us down with repetition. He is wrong. No matter how many times he puts these measures before us, no matter what steps he takes to disguise them, the Labor Party will reject them. The Labor Party will reject them because they are unnecessary and they are unfair. If introduced, the Workplace Relations Amendment (Unfair Dismissals) Bill would require a six-month qualifying period of employment before new employees, other than apprentices and trainees, could access unfair dismissal remedies under the act. It would also exclude new employees, other than apprentices and trainees, of small businesses with 15 or fewer employees from having the unfair dismissal remedy under the act.

These regulations have quite a long history, and it is probably worth going over that history because it demonstrates how desperate this government and this minister have become. The government introduced the Workplace Relations Amendment Act in 1996. The act amended the previous Labor government’s unfair dismissal laws. Regulations to exclude access to the unfair dismissal laws by employees who had less than 12 months continuous employment and those who worked for a business with 15 or fewer employees were introduced by the government in mid-1997. The Senate disallowed the regulations. The Workplace Relations Amendment Bill 1997 proposed a permanent exemption for small businesses with 15 or fewer employees from the unfair dismissal laws. It was introduced into the Senate in September 1997 and referred to the Senate Economics Legislation Committee for in-
quiry and report. The minority reports of the Labor and Democrat members recommended that the bill not be passed. It was defeated in the Senate in October 1997. Another bill with identical provisions was introduced into the parliament in November 1997 and was defeated in the Senate in March 1998. On 12 November the government introduced the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 into the House of Representatives. So here we are again, beholden to a government that is devoid of any original policy initiatives.

A few weeks ago the Labor Party held its national conference. We discussed positive policies in education, health and employment that would lead Australia into the future. What were the coalition senators doing while we were there? They were polishing their speeches on a piece of legislation that has been before this place in one form or another four times—a piece of legislation that has been before us time and time again and was rejected each time.

The Labor Party has three main concerns with this bill. The first concern is that the amendment contravenes the Prime Minister’s key commitment to the Australian people that under his government employees would not be worse off under the government’s industrial relations legislation. In the run-up to the 1996 federal election, Mr Reith publicly promised that all employees would have access to appeal if they thought they were dismissed unfairly. On 28 February 1996 Mr Reith said:

‘Look, our position is very clear. If you have been unfairly dealt with at work you should have a right of appeal.

And if the minister’s own words were not good enough, the commitment was reflected in the coalition’s pre-election policy, Better pay for better work, which said:

The Coalition believes that employees should have access to a fair and simple process of appeal against dismissal, based on a principle of a fair go all round.

In his second reading speech Mr Reith made much of the so-called mandate from the 1998 federal election, saying:

These initiatives were specifically outlined by the coalition parties during the recent federal election campaign in our workplace relations policy, More Jobs, Better Pay. We have a specific electoral mandate to proceed with their implementation as a matter of priority. In regard to the small business exemption we have a fresh mandate, given the rejection by the Senate of similar proposals during the first term of the Howard-Fischer government.

This is a spurious argument, demonstrated by the fact that the coalition obtained less than 50 per cent of the House of Representatives vote and about 40 per cent of the vote in the Senate. These amendments clearly discriminate against workers who are in a small business with 15 or fewer employees. They also discriminate against those new employees that are on a six-month qualifying period. It is blatantly obvious that these employees will be worse off under the legislation. It takes away from a substantial group of employees the right to access proper protection from unfair dismissal. It makes an absolute mockery of claims by this government that workers will not be worse off under this legislation and have received ‘a fair go all round’.

Our second main concern, and our ultimate concern really, is that the exemption remains unfair. As Labor senators noted when the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee first looked at this bill, the exemption is discriminatory and arbitrary and will lead to increased job insecurity. The bill did not address these issues when it was subsequently put before us and it does not address them now. Evidence to the inquiry further emphasised the unfairness involved. A number of case studies presented by various groups highlighted the unjust behaviour that would be allowed without recourse if we passed this bill.

The alternative to unfair dismissal regulations is that workers may be forced to sort out their problems in the courts. Will we be subject to the types of litigation we see in the United States where people are regularly awarded millions and millions of dollars because of problems arising from workplace dismissal? Surely it would be better for us to provide a regulatory framework to solve as many of these problems as possible before they go to court. Not offering that facility to employees and employers in the small business sector may involve high costs for both
groups. There is also a legitimate concern about some companies creating shelf companies to avoid their obligations to workers. Setting the exemption at 15 employees could encourage unscrupulous employers to structure their company arrangements to avoid obligations to provide secure employment.

The third main concern with this bill is that, in reality, the exemption is unnecessary. The government has delivered a lot of rhetoric about why the small business exemption is warranted—a lot of rhetoric, but little solid evidence. There are three basic reasons why the proposed exemptions are unnecessary. The first comes from the government itself. The government has already amended the unfair dismissal laws and told us that no further change is needed. The original changes to the Workplace Relations Act came into effect on 1 January 1997. At the time, Mr Howard said:

We have swept away Labor’s jobs-destroying unfair dismissal laws.

And Peter Reith said:

We have delivered a workable system for dealing with unfair dismissal.

Surely those statements by the Prime Minister and Mr Reith demonstrated that the government believed that further amendment to unfair dismissal laws was unnecessary. What changed between 1997 and 1998? The Democrats also believed that further exemptions for small business were not necessary. In his minority report in October 1997, Senator Andrew Murray said about the unfair dismissal provisions of the Workplace Relations Amendment Bill 1997 that:

The federal government now has the law it wanted in these respects, with only minimal changes. Indeed, the new federal law is even more attuned to the needs of small business than the pre-Brereton 1993 state laws.

The Democrats have delivered what we think is a fairer balancing between the rights of employers and employees. To go further would be to create a new unfair dismissal problem in reverse—the same sort of situation which in 1993 led to the campaign for federal laws on unfair dismissals in the first place.

The government commissioned a task force into small business which concluded that the small business exemption was unnecessary. The Bell task force, chaired by Mr Clarrie Bell, concluded that an exemption was not needed. After an extensive report, the only recommendation that the task force came up with in relation to unfair dismissal laws was that the unfair dismissal laws should be reviewed after 12 months operation to ensure that they were delivering a more balanced and flexible approach to small business. The further reality is that the changes already put in place have affected the unfair dismissal claims and made further amendment unnecessary.

In evidence to the Economics Legislation Committee, which examined the 1997 workplace relations bill, the Department of Employment, Workplace Relations and Small Business produced the following data in relation to the effect of the original amendments to the unfair dismissal laws. As a result of the amendments, there has been a significant decrease in the number of applications made under the federal unfair dismissal legislation. In the first 37 weeks, there were 10,408 applications under the then Industrial Relations Act 1988. In the 37 weeks up to 12 September 1997, there were 4,801 applications under the Workplace Relations Act. That is a decrease of 54 per cent. This decrease is not just the result of the change to the scope of the federal jurisdiction; combined totals of federal and state applications, excluding applications in Queensland in either federal or state jurisdictions, decreased by 20 per cent for the period from January to July 1997 compared with January to July 1996.

Data available as recently as last year was provided by the Department of Employment, Workplace Relations and Small Business in its submission to the Employment, Workplace Relations, Small Business and Education Committee on 21 January 1999. From December 1996 to December 1997, in the first 12 months of operation of the new provisions, 7,461 applications for unfair dismissal were filed. This was a 49 per cent reduction in claims compared with the same period in 1996. From January to December
1998, there were 8,186 applications in respect of termination of employment that were within the federal jurisdiction. This was a 44 per cent decrease compared to the same period in 1996. This reduction had a direct impact on small business as the number of small business claims has remained in proportion to their share of the work force during this decline. There is also no credible evidence to suggest that unfair dismissal laws actually need to be changed.

Data from the 1995 Australian workplace industrial relations survey addressed the question of whether the unfair dismissal laws prevent small business from employing new staff. In response to a survey which asked, ‘Why haven’t you recruited new employees?’ 68 per cent of businesses responded that they did not need more employees. A total of 33 per cent provided as their reason insufficient work, lack of demand for their product or low profitability. Unfair dismissal laws did not rate a mention but may have been a fraction of the six per cent response of ‘high employment costs’. The most relevant piece of the survey evidence—it was unpublished but was reported in several places—was the survey into reasons for not recruiting employees during the previous 12 months: 66.2 per cent of small business respondents indicated that they did not need any more employees and 23 per cent listed insufficient work as the main impediment. Only 0.9 per cent of respondents nominated that they had not recruited employees due to unfair dismissal laws. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

QUESTIONS WITHOUT NOTICE

Education: Funding

Senator CROSSIN (2.00 p.m.)—Madam President, my question is addressed to Senator Ellison, the Minister representing the Minister for Education, Training and Youth Affairs. Minister, how does the government justify proposals to provide $102 per annum to students with disabilities in government schools but $522 to each student with a disability in non-government schools?

Senator ELLISON—I welcome the opposition raising these sorts of questions because at their national conference recently they said absolutely nothing about what they were going to do in relation to education.

Senator Faulkner—What about the question?

Senator ELLISON—In relation to public school funding, there has been an increase of 18 per cent in real terms. In fact, of the $16 billion provided annually in public funding from the state and federal governments, $12.5 billion or 78 per cent goes to government schools. The opposition ought to take stock of these figures and not create a fear campaign or beat this issue up; they should acknowledge what this government is doing in relation to education. Government schools will receive an extra $1.4 billion over the next four years compared with the last four-year period.

Senator Faulkner says, ‘What about the question?’ I am dealing with the question. The question is: what is being spent on government schools? We are spending more money on government schools. This is something the opposition just does not want to hear. I might just mention the national numeracy and literacy plan which affects those students whom Senator Crossin mentioned. We have benchmark testing for disadvantaged students, including an additional $131 million to help disadvantaged students across Australia. This is a lot more than Labor did when it was in government. It has not addressed this at all in its policy statements at its recent national conference. It has been great on rhetoric but wanting on the detail. We are spending more money on government schools than previously.

Senator Crossin—Madam President, my question actually went to students with disabilities as opposed to disadvantaged schools. I ask as a supplementary question: can the minister confirm that the government’s changes to its targeted programs for students with disabilities will see a reduction in the grant for Commonwealth secondary school students from $126 to $102—that is, a reduction of $24 per student? When the government says that no school will be worse off under its new funding arrangements, does it really mean that this guarantee will not apply to government schools?
Senator ELLISON—I have already mentioned that government schools are going to get $1.4 billion more than in the previous four-year expenditure period. That is a great increase in funding for government schools in this country. This government stands on its record in relation to education in this country and its targeted programs in relation to disadvantaged students, numeracy and literacy. The Jobs Pathway Program is assisting teachers to deal with the problems that Senator Crossin mentions through our Teacher Quality Program—$70-odd million there, something which Labor neglected when it was in government. We are committed to improving the chances of Australian children to improve their education and their future, and we are spending more money to help them do it.

Economy: Growth

Senator FERGUSON (2.04 p.m.)—Madam President, my question is to the Assistant Treasurer, Senator Kemp. Will the minister inform the Senate of how the latest unemployment figure of 6.3 per cent confirms the strong performance of the Australian economy under the Howard government? Minister, how is the government’s historic tax reform, successfully implemented on 1 July, further boosting the Australian economy?

Senator KEMP—I thank Senator Ferguson for that very important question. As Senator Ferguson said, this government has a very good record. In fact, Australia is one of the world’s great growth economies. This has happened because this is a reform government. This is a government which is prepared to take decisions, often tough decisions, which will ensure that it produces real benefits for all Australians. If you survey recent years, the record of performance on reform has been very impressive. First of all, we were able to get the budget back into surplus. As many in this chamber will know, we inherited a huge deficit from the Labor Party. In recent years we have been able to work on the massive debt that Labor left us and we have been able to halve that debt. We have been able to bring about major changes in the area of industrial relations. As referred to by Senator Ferguson, we have been able to deliver the biggest tax reform in Australian history.

Senator Sherry—What about interest rates?

Senator KEMP—At every step we have been opposed by the Labor Party—every step of the way. The benefits from this government’s management of the economy have been truly impressive. We have had 12 consecutive quarters of an annualised GDP growth of over four per cent. We have historically low inflation, historically low interest rates and historically high productivity growth. Senator Sherry, you and I remember that when Labor was in office—

Senator Sherry—What were they when you took office and what are they now?

Senator KEMP—Many of the ministers who were in the Keating government still litter the front bench of the Labor Party.

Senator Sherry interjecting—

The PRESIDENT—Senator Sherry, if you have some questions you want to ask, I am sure there will be an opportunity later in question time for you to do so. You should not be shouting them out at this stage.

Senator Faulkner interjecting—

Senator KEMP—Thank you, Madam President. Senator Faulkner said they were very fine ministers under the Labor government. These were the ministers that presided over a massive deficit and record high levels of interest rates and, of course, gave us the famous Labor Party recession.

Back to the positives: our record is extremely impressive. Unemployment levels have now fallen to a 10-year low of 6.3 per cent. Some 75,000 jobs were created in July. As I have said, these very positive outcomes are no accident. They have come about because of the reforms that we have been able to deliver. On 1 July a very important reform was the massive tax cuts that are currently being enjoyed by Australian workers and their families, as well as the real rises in pensions and benefits. We have replaced Labor’s wholesale sales tax. We have removed the burden of taxes on our exporters. We have cut the company tax rate. We have reduced diesel costs by some 24c per litre. We have
increased pensions and allowances. These benefits have been brought about by a government that is prepared to pursue a reform agenda, always with the object of delivering real benefits for Australian people. What do we see from the Labor Party? We see obstructionism the whole way. (Time expired)

Budget Surplus

Senator COOK (2.09 p.m.)—My question is directed to Senator Kemp, the Assistant Treasurer. Can the minister explain what happened to the $11 billion surplus that the government predicted in the 1997-98 budget for the 2000-01 year that has now turned into a structural deficit of $2 billion? Is this the type of loose fiscal policy that the RBA Governor was warning against when he stated, ‘Fiscal policy is something we are going to be watching very closely’? Is this the same loose fiscal policy that has contributed to interest rates going up by 1.5 per cent since December, for which the Howard government denies any responsibility?

Senator KEMP—To get this question from Senator Cook, of all people, is truly astonishing. Senator Cook is famous for one or two things—not necessarily things which he would take some pride in. He is certainly famous for giving a forecast, I think in November 1995—Senator Cook will correct me if I am wrong—in which he said that the Labor Party’s budget was in surplus. The truth of the matter, as we discovered when we got into government, was that Senator Cook had told—and I will put this very delicately—an untruth. I am not using the sort of language that Senator Cook is used to. I am saying that he misled this parliament.

For the Labor Party to be talking about being fiscally responsible is truly astonishing. In the last five or six years of the Labor Party they chalked up deficits in the order of $70 billion to $80 billion. These were the ministers who, as I said in my first response today, still litter the front bench of the Labor Party. They ran up massive debts. Senator Cook stands up in this chamber and tries to pretend that somehow the Labor Party will adopt a fiscally responsible policy. Senator Cook, we all have memories and we well recall how the Labor Party performed when they had the chance to have their hands on the so-called levers.

Astonishingly, we read today that the shadow Treasurer, Mr Crean, has said that the Labor Party would deliver bigger surpluses than the coalition. To believe—when you have a Labor Party with the sort of form that we have seen under the Keating and Hawke governments—that the Labor Party could ever run a tight budget is a joke. They promised higher surpluses and a roll-back—the ‘R’ word which they never use these days—which they would have to finance. They promised very big spending programs. We read in the newspaper this morning that Mr Crean was going to promise larger surpluses. If you are going to spend more, if you are going to have tax cuts, you have to explain to the Australian public just how it is possible to deliver a larger surplus. I would advise the Senate to take note of some of the thoughts and writings of a former senator, Mr Peter Walsh. In the old days he used to say that you went to the bottom of the garden and there were fairies there. The fairies were the Democrats. I believe today that if you went to the bottom of the garden the person you would find would be Simon Crean.

Senator COOK—Madam President, this is devastating stuff! I notice that the minister did not answer the question so I will ask a supplementary question. I ask whether the government stands by the Treasurer’s statement in Brisbane recently when he said:

... so far as the surpluses are concerned Labor has designs on them, but we’ve got news for them, we’re going to spend them.

Is this the type of fiscal irresponsibility that caused the RBA Governor to warn Mr Costello that such recklessness will lead to higher interest rates, or is Mr Costello just being honest in admitting that the Howard government plans to buy itself back into office, regardless of the impact it will have on the mortgages of millions of Australian home owners?

Senator KEMP—You have again attempted to mislead the Senate, Senator. The Reserve Bank Governor did not attack the government’s stance on fiscal policy. In fact, he made that very clear in a statement that he made. I urge the public to look very closely
The budget will be balanced and in surplus. Our budget will continue to move into greater surpluses.

This is Senator Cook, a minister in the last government, immediately before the 1996 election—only to be outdone by Mr Beazley, then finance minister, now aspiring to be Prime Minister of this country. What did he say?

We are operating in surplus and our projections are surpluses for the future.

That is when they were running a deficit of $10 billion. Over their period in office they ran up debt of some $80 billion. That is Labor. This was despite putting up taxes on petrol, on tobacco, on alcohol and on motor vehicles as well as increasing the wholesale sales tax and the Medicare levy. Same old Labor—high debt, high taxes. What happened when the coalition came to government? Labor then opposed every measure that we brought in to bring the budget back into surplus.

What do we hear from the shadow Treasurer? Mr Crean has been out there positioning himself for the Labor leadership, doing interviews over the morning coffee with the Financial Review. The modern Simon Crean, as he now dubs himself, has told the Financial Review that Labor will run bigger surpluses than the coalition. When he is asked how he would guarantee a bigger surplus, what was his response? ‘Well, we’ll just have to wait and see how it pans out.’ That is supposed to be a constructive and genuine alternative—‘We’ll just have to wait and see how it pans out.’ This is the man who Labor wants to put in charge of the nation’s books.

What is Labor going to do? It is going to roll back the GST, pay more to the states to compensate them, increase spending on health and education, not cut spending anywhere and deliver a bigger budget surplus. No wonder Senator Cook is smiling. And Mr Crean wants us to believe no-one is going to have to pay for it. Right, Senator Cook? Magic, Senator Cook. Who does he think he is kidding? We know, because Labor have got form. They will blow the budget surplus as they did before, they will run us into debt as they did before, and they will bump up taxes on everything in sight. The alternatives are
there: responsible economic management, giving all the benefits that we have been talking about today, or returning to irresponsible Labor, with all the misery that existed before we came to office.

Radio Australia

Senator SCHACHT (2.19 p.m.)—My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts. Given the government’s decision last week to spend $9 million to resurrect Radio Australia, half of which will be needed to lease transmission time, will the minister admit that his earlier actions of virtually destroying Radio Australia and selling off its transmitter, particularly at Cox Peninsula, were short-sighted and costly mistakes?

Senator Alston—that is Labor’s fiscal policy—just say yes.

The PRESIDENT—Senator Alston, I haven’t called you. Senator Alston.

Senator ALSTON—I am delighted to hear that Senator Schacht still harbours ambitions in the communications portfolio. I am sure that is very good news for a lot of other people on your side, but there will be plenty of opportunities in the years to come to play around with the shadow portfolio.

As far as Radio Australia is concerned, the original decision that was taken was very widely understood as being necessary, particularly because of the $10 billion budget deficit that you want to keep quiet about. As you would know, even Mr Macdonald, the Chairman of the ABC, said recently—on 7 June, from memory—that about that time Radio Australia did not have too many friends inside or outside. That was because the ABC’s own submission to the Mansfield inquiry, the submission from the Department of Foreign Affairs and the recommendations of the Mansfield report themselves all showed that 20-year-old technology was not delivering the goods in the current age.

I do not know if you have read a letter to the editor of the Australian today, but you will see that there are still very serious doubts about the effectiveness of transmitting signals into Indonesia when you cannot measure the audience reach, when you cannot determine what audiences you are catering for. I know that Senator Schacht was particularly disappointed that he was not able to pick up the AFL when he was travelling around the region, but unfortunately this was never designed to cater for expatriates. It was designed to play a part in ensuring that a message could be got out to the wider region, and that is what has happened.

There have of course been developments in recent times which have caused us to reassess the way in which those funds are allocated, but it does not for one moment detract from the validity of the original decision. It does put Radio Australia—

Senator Schacht interjecting—

Senator ALSTON—Radio Australia was saying all through last year that they were more than effective in delivering the goods. In fact, they were boasting about the number of hits on their web site, and we have given them another $147,000 to assist in that process. So, quite clearly, Radio Australia—

Opposition senators interjecting—

The PRESIDENT—Order! There is far too much noise on my left.

Senator ALSTON—I do not think I have anything further to add, Madam President.

Senator SCHACHT—Madam President, I have a supplementary question which I will put to the minister after that appalling first effort. Will the minister give a guarantee that the ABC will be provided with sufficient funding to support independent regional broadcasting? Does he agree with the editorial in the Australian on 10 August, which states:

This must not be left at the whim of ministers who are blinded by self-importance and blind to our place in the region.

Senator ALSTON—I certainly agree that that is not a proper basis for decision making, and in our case it never has been. That sort of substitute for rational argument does not really advance your case very much. The government has reassessed the political dynamics of the region.

Senator Schacht—Reassessed!

Senator ALSTON—You may not be aware of what has been happening in the region, Senator Schacht. You may not have
been following events both close to us and further afield. You may not be aware of things that are happening in places like Fiji, but I can assure you that things have changed quite a bit since 1977. So it is appropriate that additional funding of approximately $9 million over three years will enable a significant strengthening of the current short wave services to the Asian region. As we know, there have always been services provided to Indonesia from the Brandon and Shepparton transmitters, and the ABC itself has been leasing transmitters from Taiwan. Services have been provided to meet the needs—(Time expired)

Senator Schacht—That will go down well on the Radio Australia network tonight—on the news service.

The PRESIDENT—Senator Schacht, you are disorderly.

Aboriginal and Torres Strait Islanders: Stolen Generation Case

Senator RIDGEWAY (2.24 p.m.)—My question is to the Minister representing the Prime Minister, Senator Robert Hill. Minister, a conservative estimate of the number of stolen generations matters already lodged in the Australian courts is about 1,000 cases. If we conservatively estimate that each of these cases will cost about $3 million and not the $12 million as in the Gunner and Cubillo case, then isn’t it true that taxpayers would be expected to pay some $3 billion to fight the stolen generations and their right to compensation for past injustices? Minister, how can the government seriously argue on economic grounds alone that this is a prudent and responsible course of action to take? Surely, in human terms, the government’s determination to wage a war of attrition in the nation’s courts will cost this country a lot more in real terms?

Senator HILL—I do not think that is a valid way to look at the matter. What we are talking about is whether the Commonwealth is liable for damages. So we are talking about payment of Commonwealth taxpayers’ money when the Commonwealth is legally liable. The advice that the Commonwealth received was that it was not legally liable in these cases and, therefore, it should not concede and it should not pay up; and it did not do so. It was found that the cases were not proven—each for different reasons, which I do not think there is any need for us to go into. But if the honourable senator is now saying that, even though in future cases the advice that the government might receive is that it is not liable and that it should nevertheless expend taxpayers’ money in such circumstances where it is not liable—if that is what is being put to us—then we do not agree with it.

Senator RIDGEWAY—Madam President, I ask a supplementary question. I thank the minister for his answer. I am not sure whether he has read the judgment, which clearly opens the door to further litigation. Minister, ABS statistics indicate that potentially we could expect to see some 17,000 stolen generation cases lodged in the future. Wouldn’t it be wiser, given the Gunner and Cubillo judgment, to set aside half or even less of the estimated $3 billion it will cost to hear those claims already lodged in the nation’s courts? Would it also mean that, rather than taking a gamble that the other 17,000 potential claimants will never seek their day in court, the government should seek another morally acceptable option, including the need to establish a national compensation fund and a reparations tribunal? Minister, how can the government justify its current position on economic grounds alone?

Senator HILL—If the honourable senator is saying: ‘Should the government make some ex gratia payment?’ then we do not think that is the right path to go down. The advice of the Bringing them home report was that family reunion—not cash compensation—is ‘the most significant and urgent need of the separated families’, which is why the government committed some $63 million to a range of reunion, counselling and support services. The government does not see any need to change from that course. Obviously the government sympathises with those who have suffered as a result of separation from their families, but what this government has been interested in looking at is the sensible and practical ways in which it can assist them, and the advice of the report was that this could be achieved through reunion,
counselling and support services. That is the advice that this government took, and it set aside funds to do so.

**Education: Funding**

_Senator CARR_ (2.28 p.m.)—My question without notice is to Senator Ellison representing the Minister for Education, Training and Youth Affairs. Is the minister aware of the Victorian study by Professor Richard Teese which shows that 43.4 per cent of students failed year 12 English in Melbourne’s outer west, and that in one school the failure rate was 80 per cent. Given the starkness of these statistics, how can the government justify taking away money from disadvantaged government schools through its unfair enrolment benchmark adjustment?

_Senator ELLISON_—Senator Carr, who comes from Victoria, ought to have a look at that state’s performance in relation to education and training, because we have seen a drop-off in relation to recent apprenticeship numbers.

_Opposition senators interjecting—_

_The PRESIDENT_—Order! Senators on my left will cease shouting and will make less noise in the chamber.

_Senator Conroy interjecting—_

_The PRESIDENT_—Senator Conroy, I have just drawn the attention of the Senate to the standing orders and behaviour.

_Senator ELLISON_—You just have to look at the performance of the Victorian government in relation to education and training to see where it is going—that is, downwards. Senator Carr, who comes from that state, should realise that the figures released by the NCVER recently show that there has been a decrease in relation to the take-up of apprenticeships in Victoria. What we have is a situation where the state is winding down a system that previously, under the Kennett government, was one of the best in the country. I have already stated today that we have increased public school funding by 18 per cent in real terms by 18 per cent. In fact we have targeted funding in relation to literacy and numeracy at disadvantaged students, which includes those students with a disability. What Labor did was to look at the school, not the student. With its disadvantaged schools policy, it merely said, ‘That school must be disadvantaged; therefore it gets funding.’ What we are looking at is an outcomes based funding program where we look at the individual student. We target those students who are disadvantaged and who have that need. We are looking at the outcomes, not just throwing money at an area where we think there might be a disadvantage. We are looking at those students who have a disadvantage and we are targeting our funding to them. That is what we are doing for disadvantaged students, and that includes disabled students. But you just have to look at Victoria’s poor performance to see where it is going. It is all very well for Senator Carr to talk about the schooling arrangements but I notice he did not talk about the training arrangements as well, which go hand-in-hand with schooling. Training provides a future for those 70 per cent of students who do not go on to university. Let us hear Senator Carr talk about Victoria’s fall-off in performance in this area.

_Senator CARR_—Madam President, I ask a supplementary question. These figures I quoted were based on outcomes under the Kennett government. I ask the minister how he can possibly justify the Commonwealth’s failure to end this stark disadvantage faced by students in government schools in working-class and rural areas of Australia. I also ask how the government justifies the seven per cent fall in Commonwealth funds going to government schools over the last four years.

_Senator ELLISON_—I have already answered that question because I said that we have increased public school funding by 18 per cent in real terms since coming to office—that is, since March 1996. I repeat it for the benefit of Senator Carr: we have looked at new programs that have focused on outcomes rather than just thrown money in a general direction. You will notice that Senator Carr said there is disadvantage in working-class areas. It does not necessarily follow: you have to look at whether the student is disadvantaged, not just the area. Because some of our best results come from areas where you would not otherwise expect them, and that is quite natural. You get results from the individual, not just from an area. We are not into dividing Australia into classes, as
Senator Carr might want. We are looking at approaching the education of Australian students by looking at their individual needs.

**Nuclear Waste: Storage**

Senator BROWN (2.33 p.m.)—My question is to the Minister for Industry, Science and Resources regarding his announcement today of a low-level nuclear waste dump for South Australia. How does the minister dare say he has taken the opinion of stakeholders into account when an opinion poll in the Adelaide *Advertiser* just two days ago showed that 87 per cent of South Australians are totally opposed to just this type of nuclear dump in their state? Secondly, is the minister’s description of this dump as ‘government owned and regulated’ deliberately concocted to leave the door open for a private controller of this dump, such as Pangea, to be co-located with a later, bigger international nuclear fuel dump facility?

Senator MINCHIN—As usual, Senator Brown appears not to have got his facts correct before coming into this place and asking questions. I did not announce today a high-level nuclear waste dump in South Australia. Just to remind Senator Brown of the history of this matter: the Keating Labor government quite sensibly in 1992 decided to establish a national repository for Australia’s inventory of low-level radioactive waste. Mr Crean, the then minister for resources, announced a nationwide search for the best site for such a repository for Australia’s low-level radioactive waste. That search concluded in 1998 when the central-north region of South Australia was chosen as the preferred region, Mr Crean had short-listed that region in 1995 after a scientifically based technical search for the most appropriate site in Australia for this national facility. Since that decision, announced by my predecessor former Senator Warwick Parer in 1998, my department has been engaged in extensive test drilling in the central-north region to determine the single preferred site for this repository. That process over the last two years has involved extensive consultations, through a regional consultative committee, with communities affected in the central-north region of South Australia. This is a national facility that is supported through the Commonwealth-state consultative committee by all state and territory governments. It is supported by the state government of South Australia. It will be purpose-built by the Commonwealth and owned and regulated by the Commonwealth in order to store safely, properly and responsibly Australia’s 40 year inventory of low-level radioactive waste. I also announced last week that a similar nationwide search will commence for a site for our national inventory of intermediate-level radioactive waste and that no decision has been made to co-locate such a facility with the low-level radioactive waste repository.

Senator BROWN—Madam President, I ask a supplementary question. Does the minister acknowledge that there was a poll two days ago that showed that 87 per cent of South Australians are opposed to just this facility—a low-level nuclear waste dump in South Australia? What is the minister’s reaction to that 87 per cent of people in South Australia? I ask again: is the deliberate leaving out of the word ‘operated’ in the words ‘government owned and regulated’ leaving open the door for a private operator such as Pangea for this facility? Finally, does this not pave the way for a high-level nuclear waste dump co-located with the dump that the minister has announced today?

Senator MINCHIN—Again I remind Senator Brown that Australia does not produce high-level radioactive waste, nor do we import it; it is a prohibited import. We produce only low-level and intermediate-level waste, not high-level waste, so there will be and is no plan to have high-level waste in this country. The poll conducted by the *Advertiser*—not two days ago but I think about two or three weeks ago—asked ‘Do you want a nuclear waste dump in South Australia?’ Unsurprisingly, in response to that poll, some 87 per cent of the respondents said no. I am well aware of the results of that *Advertiser* poll. If South Australians had been asked ‘Do you want your radioactive waste left lying around in the basements of hospitals and universities, even on North Terrace in South Australia and in Sydney and other capital cities, or put in a purpose-built national facility?’ I suspect that the answer to the question might have been different.
Research and Development

Senator GEORGE CAMPBELL (2.39 p.m.)—My question is to Senator Ellison, representing the Minister for Education, Training and Youth Affairs. What is the Howard government’s response to the dramatic fall in Commonwealth government investment in research of six per cent since 1996-97, a drop of 15 per cent in business investment in research and development between 1995-96 and 1998-99, and a cut of nine per cent in Commonwealth investment in human resources devoted to research since 1996-97?

Senator ELLISON—We have a record number of students and full-time student unit places, a record number of Australians in undergraduate training in this country today. That has come about as a result of sound policies in relation to the higher education sector. In fact, in relation to the higher education sector, we have funding—

Senator Faulkner—What about the question?

Senator ELLISON—Senator Faulkner said, ‘What about the question?’ This is the question. It is what we have made available to the higher education sector, which is squarely what Senator George Campbell’s question related to. That comes about as a result of funding from government, private enterprise investment, and also the ability to charge fees. That has resulted in a record figure of funding being available to the higher education sector in this country. What we have looked at is not just relying on government funding, but providing tax incentives to those people who want to give to universities and the higher education sector. That was an initiative we brought in in this term of government. We have looked at funding so that we have a record number of full-time places for undergraduate students. All that spells good news for those Australians who want to go into higher education.

Senator GEORGE CAMPBELL—Madam President, I have a supplementary question. Given the urgent need to reverse the serious decline and decay in Australia’s re- search effort, why has the government delayed until 2002 the implementation of its white paper reforms, especially the introduction of the new institutional grants scheme, designed to encourage greater industry funding for research and also to increase funding efficiency?

Senator ELLISON—What I have just outlined to the Senate includes that very subject of research, because what we have got is a stronger higher education sector which deals with the question of research. That deals with the question of Senator George Campbell. Under this government we have seen an advance in all aspects of higher education in this country. The opposition talk about a knowledge nation. We just saw how they got rid of Barry Jones, their national president, a man who was well acknowledged as contributing a great deal to the education sector of this country. They got rid of him—a man who was widely acknowledged by Australians as having expertise in the area of education. That is what they did in relation to the knowledge nation—they got rid of their national president, who had the ability to make a contribution.

Senator Kemp—He was sacked.

Senator ELLISON—As Senator Kemp said, he was sacked. They ought to look at themselves before they raise any questions about education.

Private Health Insurance Lifetime Health Cover

Senator EGGLESTON (2.43 p.m.)—My question is to Senator Herron, representing the Minister for Health and Aged Care. Will the minister outline the government’s outstanding achievements in encouraging private health insurance, and is the minister aware of any alternative health proposals?

Senator HERRON—I am very pleased to get that question from Senator Eggleston, knowing his lifelong interest in the matter of private health insurance. Once again, we have good news. That is that the government’s 30 per cent rebate and Lifetime Health Cover have proved an outstanding success. The Private Health Insurance Administration Council figures for the end of June 2000 show that, including veterans gold card cov-
The proportion of the population with private health cover has risen to 41.2 per cent. Nearly eight million people are now covered by private health insurance. That means that more than 1.700,000 Australians have taken out private health insurance in the past quarter. That is an increase of 9.1 percentage points since the end of March this year. The proportion of the population with private hospital cover, including veterans gold card coverage, has risen to 41.2 per cent, 7.9 million people, an increase of nine percentage points. The increase in coverage of 1,747,426 is the largest increase in membership coverage over any quarter since PHIAC started recording these statistics in 1989. This is a return to the days before Labor started to destroy private health insurance. It is an outstanding achievement. It is a return to the level of coverage that existed in June 1992, just before Brian Howe’s policies to dismantle private health insurance began to bite. The Howard government has restored the balance between the private and public health systems to what they were when Medicare was first conceived.

The opposition may not like to hear their former health minister, former senator Graham Richardson, when he said in 1993, ‘It must be remembered that Medicare was always intended to coexist with the private health system, not to replace it. Initial estimates of the cost of Medicare assumed that at least 40 per cent of Australians would maintain their private cover.’ We have now reached and gone beyond that level. Private health insurance membership was at 50 per cent when the Labor Party were in office. By the time they left office, they had reduced the number of Australians in private health insurance to an alarming 34 per cent. Under Labor, Australians were dropping private health insurance at the rate of two per cent every year, and a Labor Party government would do the same again. They are ideologically opposed to private health cover. They are opposed to Australians having freedom of choice. Labor are determined to roll back the 30 per cent rebate for private health insurance. Labor have persistently failed to rule out means testing the 30 per cent rebate, despite having been given every opportunity to do so.

The coalition have always been committed to a strong health care system. We have turned the tide in private health insurance decline with the introduction of Lifetime Health Cover and the 30 per cent rebate. This government’s vision for Medicare is well founded—a practical plan that provides all Australians with universal access to high quality health services under Medicare and the opportunity to choose a dynamic and affordable private health care sector. The coalition’s vision is working. The excellent results of the 30 per cent rebate and Lifetime Health Cover are evidence of our success. The coalition government is the best friend Medicare has ever had.

Unemployment: Government Policy

Senator FAULKNER (2.46 p.m.)—My question is addressed to Senator Newman, the Minister for Family and Community Services. Does the minister fully support the Minister for Employment Services when he said that, amongst the long-term unemployed, there is ‘a subculture of the job snob’? Does the minister endorse Mr Abbott’s claim that ‘too many Australians have been too fussy for too long when looking for work’? Does the minister agree that unemployed people in rural areas should move to the cities to get work? Minister, just who is determining the government’s welfare policy—you or the Minister for Employment Services?

Senator NEWMAN—The answer to the senator’s question is: the government will determine the response.

Senator FAULKNER—Madam President, I ask a supplementary question. Obviously, the Minister for Family and Community Services thinks she is already the Governor-General and does not have to answer questions, but this is a serious question. Does the minister support the Minister for Employment Services when he said that amongst the long-term unemployed there is ‘a subculture of the job snob’? Do you support the Minister for Employment Services when he said that? Minister, do you support the same minister’s claims that ‘too many Australians have been too fussy for too long when looking for work’? That is the question, Minister. Could you please try to answer it?
Senator NEWMAN—This is the opposition staking out their issues before the release of the welfare reform group’s final report, and they are trying to carve out a bit of territory for themselves. I ask whether Senator Faulkner would agree with the statement that, if people are capable of working, the government should live up to its end of the bargain and that if people are capable of working, the government has to provide the opportunities, and the individual has a responsibility to participate. I agree with those sentiments entirely, and those are the statements today of the shadow minister for family and community services.

Genetic Information: Legislation

Senator STOTT DESPOJA (2.49 p.m.)—My question is addressed to the Minister representing the Attorney-General. Is the minister aware of a survey released today by the New South Wales Genetics Education Program Unit that shows 54 cases of people who feel that they have been discriminated against on the basis of genetic tests? Are these the real, practical examples that a government spokeswoman last week said did not exist? Can the minister inform the Senate what protection these citizens have from genetic discrimination while the government is pondering this issue? Will the government introduce an interim moratorium on the use and disclosure of genetic information for any purposes besides personal, medical and positive employment discrimination cases?

Senator VANSTONE—No, I am not aware of that survey, and I do not have advice from the Attorney with respect to it. I will take all of your answer on notice, and I will get you an answer as soon as I can.

Senator STOTT DESPOJA—Madam President, I ask a supplementary question. Minister, was the Treasurer or the Assistant Treasurer responsible for tax administration at any stage advised that the Tax Ombudsman’s funding had been threatened by the ATO? If so, what action, if any, did he take?

Senator KEMP—Senator Sherry, I refer you to the first part of my answer. I have answered that question. As I said, if there is a genuine complaint we would expect that to be appropriately advised through the appropriate channel. As far as I am aware, that has not happened. But I will check on your behalf.

Education: Literacy and Numeracy
Senator PAYNE (2.53 p.m.)—My question is directed to the Minister representing the Minister for Education, Training and Youth Affairs, Senator Ellison. Would the minister please inform the Senate of the Howard government’s initiatives to increase literacy and numeracy levels and training opportunities for young Australians? Would the minister indicate to the Senate whether he is aware of any alternative policy approaches on this issue?

Senator ELLISON—We recognise that 70 per cent of Australia’s schoolchildren do not go on to university and that they have to be looked after. We are looking at developing a training situation in this country which can give them a great outlook for the future. That is why we have a record number of people in training in this country at the moment. Over 260,000 Australians—most of them young Australians—are in training now. That is a far cry from when we came into government, when there were only 135,000 in training and apprenticeships were on a downward spiral under Labor. We have resurrected apprenticeships and traineeships in this country, and you can see them now on an upward trend, which is good news for Australians, particularly young Australians.

Senator Payne quite rightly mentioned literacy and numeracy. What we have done with our national numeracy and literacy benchmarking plan is to provide testing for disadvantaged children, which I mentioned earlier. This involves an additional $131 million to help disadvantaged children. We want to target those disadvantaged children and give them the outcomes that they need to achieve a better life. We have also announced funding of over $70 million for our quality teacher program so that we can deliver those outcomes that we need for Australia’s schoolchildren.

But, of course, 30 per cent of school students go on to university. We now have a record number of people at university. We have over 460,000 full-time equivalent students in university, which is an increase of 42,000 from when Labor was last in government—and they have the cheek to come in here and question our higher education policy. Labor claimed at their national conference that we had cut funding to universities. But what do we have? We have a record number of full-time positions at universities in this country. As I mentioned earlier in my answer to one of their questions, we also have a record funding amount of $9 billion going to universities today—made up of government funding, private funding and fee paying students. We have made available to universities in this country for the first time ever a record amount of funding from a pool made up of those various sources. It is estimated that this will increase. In fact, we have provided $1 billion to Australia’s regional universities. It is very important that we provide that opportunity in the regions, which Labor just do not recognise. As I mentioned, between 1996 and 1998 research funding has been increased by 13 per cent. That spells good news for the higher education sector. We are not content to just look at the higher education sector; we are looking at all sectors to give young Australians a great future.

At their recent national conference, the Leader of the Opposition said, ‘An awful lot can happen to a person in four or five years—it is ample time to make or break a person’s progress, or a family’s or a country’s.’ Well, in the short time since 1996, we have increased opportunities for young Australians and increased opportunities for Australians in relation to training from that disastrous situation in 1996 when we took over from Labor where the number of apprenticeships and traineeships was falling. We now have that number on the rise, and a record number of Australians, particularly young Australians, are in training. These figures speak for themselves and they spell good news for Australia. (Time expired)

Senator PAYNE—Madam President, I ask a supplementary question. Minister, you referred to the achievement of the first national literacy and numeracy benchmark in this country agreed to by the states and the Commonwealth. Minister, can you provide further advice about the increasing support for education in this country and the opportunities for young Australians that this has led to?
Senator ELLISON—For the first time ever we have had national literacy benchmarking in years 3 and 5. For the first time ever we have been able to assess how this country stands in relation to literacy and numeracy. We recognised early that some 30 per cent of Australian students did not have appropriate levels of literacy and numeracy and we had to address this. We have done that by national benchmarking. This gives us the ability to plan a direction for this country’s young children and students for the future because, without an adequate basis in relation to literacy and numeracy, they will not achieve the outcomes they need for a better life.

Defence: Air Training Corps Cadets

Senator O’BRIEN (2.59 p.m.)—My question is to Senator Newman, representing the Minister for Defence. Has the minister instructed his parliamentary secretary, Senator Abetz, to withdraw his instruction that he be forwarded personal data on all newly enrolled cadets at the Air Training Corps? If not, why not?

Senator NEWMAN—As you can imagine, the minutiae of the Defence department not being my responsibility, I will see if there is an answer for you—but I could hear Senator Abetz saying in the negative behind my back just now. Otherwise I cannot comment on that question.

Senator O’BRIEN—Madam President, I ask a supplementary question. If the minister—

Honourable senators interjecting—

The PRESIDENT—Senator O’Brien, just a moment. Two senators are shouting across the chamber.

Senator Abetz interjecting—

The PRESIDENT—Senator Abetz! Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left will come to order. Labor senators should recognise that Senator O’Brien seeks to ask a supplementary question.

Senator O’BRIEN—Thank you, Madam President. My supplementary question is this: while the minister has that inquiry to the Minister for Defence for an answer to the question, perhaps these matters could also be pursued. I would like to know, and I am sure the Senate would like to know, whether the minister believes that a personal letter of welcome from Senator Abetz justifies the cost of the resources involved in providing him with personal details of all new cadets at the Air Training Corps. Can the minister assure the Senate that the Air Training Corps is the only Defence organisation singled out for this unusual treatment?

Senator NEWMAN—I will make inquiries but I would remind the Senate that, if it comes to wasting Defence dollars, the record—and it will last for years—goes to the former ALP government. Whether you are talking about over-the-horizon radar, whether you are talking about Collins class submarines or whether you are talking about buying rusty ships from the Americans and spending millions and millions of dollars to fix them, they are the real wastes of government money—a real waste of the Defence budget—and, if I were you, I would be much more concerned about your record than you appear to be.

Senator Hill—Madam President, I ask that further questions be placed on the Notice Paper. 3.02 p.m.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Indonesia: Ambon

Senator HILL (South Australia—Minister for the Environment and Heritage) (3.02 p.m.)—I seek leave to have incorporated in Hansard an extra part to an answer to a question asked by Senator Bourne in the last session relating to North and South Maluku and raising issues of the problems therein at international bodies.

Leave granted.

The document read as follows—

Senator Bourne Asked:

Madam President, I ask a supplementary question. I thank the Minister for that answer, and I am encouraged by many of the things he said. But I ask also if he could perhaps get some information—I do not know whether he would have it here—on whether the Government has been raising this in any other forums, perhaps the United Nations, perhaps ASEAN; but in any international forums
where we could suggest some sort of International or regional response?

Response:
I have been advised by the Foreign Minister, Mr Downer, that Australia is concerned about the problems in North and South Maluku. The Government has provided humanitarian assistance and has encouraged the Government of Indonesia to take prompt and effective steps to end the conflict and to secure the safety and well-being of all residents in the region. The issue has been raised by the Government of Indonesia itself at the recent ASEAN Regional Forum (ARF) in Bangkok. The Government of Indonesia explained to members of the ARF the efforts it was undertaking to resolve the conflict.

Education: Literacy and Numeracy
Senator CARR (Victoria) (3.03 p.m.)—I move:

That the Senate take note of the answers given by the Special Minister of State (Senator Ellison), to questions without notice asked by Senators Crossin, Carr and George Campbell today, relating to the funding of education and research.

Today we heard of some staggering figures, which have been developed by Professor Richard Teese, looking at the year 12 results from a number of Victorian schools in the western regions of Melbourne and comparing those regions with the rest of the state. These are individual figures about individual students in the period of the Kennett government. What they show is that there were disastrous and shameful rates of failure by students in a number of government schools, particularly in the west of Melbourne. In the north-west of Melbourne, half of all boys in government schools failed the easiest mathematics subject. In one government school, 80 per cent of boys failed English. Generally speaking, the failure rates in government schools in working-class suburbs in some regional areas far outstripped those in both Catholic and non-Catholic private schools.

These issues are pursued not because the opposition would like to highlight in the government’s mind the failure of government schools but because it would like to highlight the enormous inequalities that are developing within this country as a direct consequence of the failure of the government to fulfil its policy obligations to all Australians. What we have seen under this government is a decline in the level of government support—that is, Commonwealth government support—to government schools of between seven and eight per cent over the period from 1996 through to the year 2004. When this government came to office, 42 per cent of Commonwealth moneys went to government schools. This figure will now fall to 33 per cent by the year 2004. What you have seen is a policy of social engineering being pursued by this government; a policy which is predicated upon assumptions about where people should send their children to school and which then provides them with financial support to support those assumptions. What you have seen is policies such as the enrolment benchmark adjustment, which has already taken $60 million from government schools, despite the fact there has been an increase in enrolments of 26,000 students. What you have seen is 26,000 more students in government schools yet this government takes $60 million out of government schools and directs that money to private schools.

We, as senators of this country, have to ask ourselves: what sort of society is it that tolerates these levels of inequality? What sort of society that calls itself democratic would allow these levels of injustice to continue? I think you have to ask: what sort of government is it that actually encourages, through its policies of social engineering, a position whereby these inequalities are in fact exacerbated? What we are seeing, of course, is the wealthiest people in this country enjoying huge advantages under this government. They are enjoying huge advantages because their schools are being provided with enormous support by this government. What we are seeing is a new bill introduced to the parliament—the states grants bill, which we will have an opportunity to debate in detail later on—which in fact exacerbates this view of society of the have-s and have-nots.

It has been a tradition in the Commonwealth of Australia for the Commonwealth government to act as the vehicle by which the doors of inequality are unlocked. This is a government that inverses that. This is a government that has a philosophy of ensuring substantial increases in the level of Com-
monwealth government support for private schools. You are going to see the wealthiest people in this country get the greatest advantage out of this government’s policies. They are policies of social engineering pursued by an ideologically blinkered government which seems to be blind to the social costs of the policies it is overseeing—policies that will blight the futures of a generation of Australians. Quite clearly, we will see a whole series of Australians seriously disadvantaged as their opportunities in life are cut short by the failure of this government to meet its obligation to ensure that all Australians get a fair go. Quite clearly, that is not happening under this government.

Senator TIERNEY (New South Wales) (3.08 p.m.)—I am delighted that education has moved centre stage in the debate in the Senate today. It has taken the opposition over four years to discover education as an issue, and you wonder why. In this post-GST issue era, the reality is that they are thrashing about trying to find something else. They thought that the GST was going to be the issue that they would run with from this point, but there has been a great acceptance of that policy and it has settled down. So the agenda of the Labor Party, which was going to be on the GST for the next six to 12 months, has totally evaporated. You can tell by the despondent looks on the faces of the members opposite at the start of question time that they have nothing to run with, not a feather to fly with. That is why they thought, ‘Well, let’s go and find another issue.’ They have decided that maybe it is education. I am delighted that they have picked education because it gives us a chance to remind the people of Australia of the appalling record of the former Labor government on the issue of education. I want to go through some of those points as we go on today.

Let us have a look at the issue of universities. In question time, they told a whole lot of lies and fibs and made a whole lot of incorrect statements about the whole area of higher education. The reality is, as the minister points out, that there are far more students in higher education now than there were at the point when Labor left government—42,000 more students. Public funding has gone up, and total funding has gone up by a considerable amount. They keep trying to con people into not recognising that modern universities these days are not funded just by public funding; they are funded by a mixture of private and public funding. I was in the university sector when it was totally publicly funded, during the Whitlam years and beyond that. What happened was that everything got cut back—it was all dependent on the budget. We have moved beyond that. Even the Labor government got mugged by reality on this one; they were the ones that introduced fees and HECS. They were the ones that put the fees up. The reality is that you need other sources of funding.

The universities have grabbed this challenge, and they have increased their range of funding via overseas students, via collaboration with industry, via student fees and via public funding. That whole mix has risen considerably over this period of time. There are more students than ever in the universities, and there is more money now than there ever has been. Senator Carr was not in parliament during the early 1990s and he forgets that 50,000 students missed out each year. When universities started the year, 50,000 people were turned away, and that was the fault of the Labor government. The Labor government tried to catch up with places at that time; they did increase the number of places, although not by enough. But guess what they did: they did not increase the funding. The universities had to work with the same amount of money but with 40 per cent more students. Labor do not tell you that. They do not remind you of that when they come in here in their sanctimonious way and talk about public funding for universities.

Let us have a look at TAFE. Senator Carr has set up an inquiry into this, but the last Labor government had an absolutely appalling record on TAFE. Apprenticeships dropped off and dropped off under 13 years of Labor government. I challenge Senator Carr to a debate in this place anytime on Labor’s record on apprenticeships over their 13 years in government compared to what we have done in the last four years. Through the New Apprenticeships system, our govern-
ment has had record numbers of people moving into apprenticeships.

Let me move to the issue of schools. One of the great areas of neglect under the last Labor government was of course literacy and numeracy. They did not want benchmarking. They did not want national testing. National testing and benchmarking have come in under this government, and there has been a rise in literacy and numeracy levels. These things are the key to the future as we move towards an information society. Of course, Mr Beazley is now saying that the knowledge nation is going to be his big thing. It is a pity that was not his view when he was the minister for education. He hated the portfolio when he was minister; he did not want it. He wanted finance or the defence forces; he was not interested in education. Now he comes up with the slogan ‘knowledge nation’—why doesn’t he use ‘clever country’? Do you remember that one, folks? That was the slogan of Bob Hawke, and Labor did not deliver on that either. They did not create that because they did not have the interest and they did not put the resources in. Under the so-called knowledge nation, that will not happen either. (Time expired)

Senator CROSSIN (Northern Territory) (3.13 p.m.)—I rise to take note of the answers from Senator Ellison today in relation to all of the aspects of education that were under scrutiny during question time today. They go to the issue of students with disabilities in government schools as opposed to non-government schools. It was the very first question after the break which I delivered to the Minister representing the Minister for Education, Training and Youth Affairs, and he seemed to get quite confused in his mind over the difference between funding students with disabilities and funding for disadvantaged schools. There is quite a significant difference; they are funded significantly differently and they are treated differently. Obviously, this is a senator who is not across the portfolio for which he has responsibility in the Senate and he got fairly confused in his answer. We were not able to get any answer as to why $102 per annum is given to students with disabilities in government schools while over five times that amount, $522, is given to students with disabilities in non-government schools.

We also asked questions about completion rates. In a Victorian study done under the Kennett regime, we have a failure rate of 80 per cent for year 12 English, but we still have the unfair enrolment benchmark adjustment program under this government. There was also Senator George Campbell’s question in relation to research and development and the delaying of the white paper on research.

It will stand before the people of this country at the next election that this government has failed on education in all spheres, no matter where you look, no matter where you turn. In indigenous education, in rural and remote delivery, in TAFE and in VET, in higher education and in schools, there is abject failure in terms of delivering equitable and quality education. This is a government that is not interested in educating all people—not just those whose fat wallets can afford it but all people, despite your income and despite where you live. In contrast, the Australian Labor Party two weeks ago released the start of a terrific plan for this country in relation to education, with its priorities zones, its commitment to teacher development and to universities and a whole range of other initiatives. It will not be forgotten that at the last budget the increase in spending from this government was no more than 86c per child in additional funding. You would be lucky if 86c could get you even a Bic biro or a pencil these days, let alone be enough to put computers in classrooms, to provide teachers who can actually teach these kids with disabilities on a one-to-one ratio or to put resources into schools so that students are actually equipped with the information that is needed to take them into this new century.

This government has done nothing except reignite the old state aid debate, a debate that I thought we had forgotten many years ago. This government has actually delighted in reigniting that debate, and it has been done through dividing funding to government schools and non-government schools, created with the division in the enrolment benchmark adjustment. Senator Carr is correct in saying that $60 million has been injected into this
policy area from this government. This is money that is actually taken out of the public system when a student moves from the public system into the private system. The money goes in a one-way street to the private sector, to the non-government school sector—it does not flow back again. If a student leaves the private system and re-enrols in the government system, that funding does not flow back. This is a government that has delighted in highlighting that divide simply through that policy—a policy that we announced two weeks ago the Labor Party will abolish.

In my remaining time, let us turn, as Senator Tierney said, to the issue of funding for universities and let us place the spotlight on the Northern Territory University, which has significantly gone under water and is drowning under the policies of this government. The Northern Territory government, not the Commonwealth government, has had to bail this university out in the last six months by providing it with $7 million over three years just so it can keep its head above water. Why? Because the removal of the operational funding, the way in which the government has treated undergraduate and postgraduate funding in regional universities, has seen this university sink. (Time expired)

Senator FERRIS (South Australia) (3.18 p.m.)—What an amazing litany we heard there: unfair benchmark adjustments, Labor senators’ comments on our alleged failure to address education and to look at individual schools’ achievements and indigenous education, and the absolutely ludicrous suggestion that this government is not interested in education. It is very clear that nothing could be further from the truth. Our spending record on education shows that.

Senator Crossin—When are you going to respond to the report on indigenous education?

Senator FERRIS—Given that I am now about to give some very important information to the Senate on Commonwealth government expenditure on education, I do hope Senator Crossin will take the opportunity to take note of it.

Australian schools will receive $5 billion in Commonwealth funding in 2000, this year, an increase of 8.5 per cent or more than $393 million on the spending in 1999. Government schools will receive almost $2 billion in direct Commonwealth funding in the year 2000, an increase of 5.8 per cent or $107 million on the expenditure last year. Non-government schools will receive over $3 billion in direct Commonwealth funding, an increase of more than 10.4 per cent or $286 million since last year. Direct Commonwealth funding for Australian schools in the year 2000 has increased by more than $1.4 billion, or 39.7 per cent, since 1996, the last year of the Labor government. How interesting it is that Senators Carr and Crossin, both of whom consider themselves to be very important education spokespeople for the opposition, have now chosen to leave the chamber when these very important figures are being made available to them. Perhaps I am not surprised. Let me continue. Direct Commonwealth funding for government schools has increased, which is completely opposite to the comments that were made by Senator Crossin. Direct funding for non-government schools from the Commonwealth during this year—a very important figure—has increased by $1 billion, or more than 50 per cent, since 1996, the last year of Labor. Looking at my own state of South Australia, government expenditure for schools in South Australia is now 22.7 per cent higher than in the final year of the Labor government—that is, $28,350,000. The non-government figure has also increased by 48.6 per cent.

One of the other areas that Senator Crossin suggested that our government were not interested in is the issue of indigenous education. Can I say, as somebody who is very interested in this issue, that education is considered a priority by indigenous women all over this country but, in particular, indigenous women in South Australia, when I meet with them at my roundtables, always rate improved education facilities and procedures as among the most important of all the issues that are addressed by the government. We have reflected those priorities in our spending programs. We have tied spending to outcomes in our education programs for indigenous children by establishing performance targets and reporting frameworks so that edu-
cational progress and achievement can be measured—a very important change.

Our year 12 retention rates for indigenous students have now risen from 29.2 per cent in 1996 to 34.7 per cent in 1999, a significant increase. This represents a 2.6 per cent jump over the 32.1 per cent recorded in 1998. There is a very clear trend here. There are now record numbers of indigenous students undertaking tertiary study, a 17.6 per cent increase on the number in Labor’s last year in office, taking the total number to 8,001 students. It is very clear that, far from having no interest in education, this government has a demonstrated interest, has a demonstrated financial commitment and is delivering.

I want to refer particularly to funding for students with disabilities. As was pointed out in the question to the minister—which he did not answer—it is clear that there is a significant imbalance in this government’s proposals to provide funding to students with disabilities in non-government schools compared with those in government schools. Currently, the level of per capita funding for students with disabilities provides the greatest level of Commonwealth assistance to the wealthiest schools and it tapers off to nothing for those in the neediest category—category 12. This government proposes to provide increases—up to $522 per student—for students with disabilities in non-government schools, but for students in government schools the current rates provided for primary and secondary students will be replaced by a single rate of $102 per student. That is a reduction of $24 per student with a disability in a government school and is an absolutely stark and glaring example of where this government is massively favouring students with disabilities in private schools compared with funding made available for students with disabilities in government schools.

For the life of me I cannot understand how you can do that. What possible reason can you have for such an inequitable and discriminatory approach? Surely, kids with disabilities, whether they be students in government schools or in non-government schools, should be provided with equitable assistance. Their parents suffer the same difficulties. The students suffer the same difficulties, whether they be in a government school or in a non-government school. How you can do this is beyond me. For this minister to stand up and say that his government is making great strides in education and to try to attack the record of the Labor government in the past is an absolute nonsense. I will point out one fact in respect of that. When we came into office, high school retention rates
for students in Australia were below 50 per cent. When we left office in 1996, they were of the order of 80 per cent, a massive improvement. (Time expired)

Question resolved in the affirmative.

Genetic Information: Legislation

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.28 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Vanstone) to a question without notice asked by Senator Stott Despoja today, relating to reports of discrimination on the basis of genetic testing.

I use the word ‘answer’ very loosely in this case. The government has been caught on the hop; no-one can deny that. For the first time in Australian history we now have documented cases of discrimination on the basis of someone’s genetic information. As some senators may be aware, this morning there was a report of a research project in New South Wales which demonstrated that 54 people indicated that they had been discriminated against on the results of genetic testing. I understand, from the minister’s answer to me, that she was not aware of that report. That is why I asked the minister whether she was aware of the other cases which have been brought to light over recent weeks. This is not a new issue which has arisen over the last few weeks.

I expect Senator Vanstone to cover up her non-response with humour, or an attempt at humour, as she did, just as I expect Senator Patterson and Senator Ian Macdonald to interject with abusive or silly statements as they did on this occasion. This is not a ‘silly’ question or issue, as referred to by Senator Ian Macdonald. This government has been caught out for failing to ensure that people’s rights are protected when it comes to the issue of genetic testing. There is no legislation provided by the government, either in draft form or in current law, that ensures that people are protected, that the privacy of that information is protected and that they are prevented from being discriminated against on the basis of their genetic information.

I use three cases as an example. A 34-year-old ophthalmologist was refused a bank loan for equipment unless he took out income insurance. The insurance company required him to pass a genetic test for myotonic dystrophy, a muscle disease that runs in his family. He took the test, they discovered he did not have the gene and he got the loan. The second case was of a 37-year-old quality assurance manager who was refused an increase in an income assurance policy after a genetic test showed that he had a predisposition to Charcot-Marie-Tooth disease, or CMT, which is a hereditary progressive neuromuscular disorder that primarily affects the feet, legs and hands. An 18-year-old school leaver was refused a Public Service job—so we are talking about the Australian Public Service being culpable on this issue—unless he took a test for late onset Huntington’s disease. Having seen his mother suffer, he did not want to take the test because he preferred not to know. After appealing twice, he was eventually offered the job but with reduced superannuation benefits. These are cases that have been documented already. Today there was news that I would have thought would have sparked government action: 54 people out of a survey of, I believe, 1,000 indicated that they felt they had been discriminated against. I think that is worrying information for this government.

Of course, I am used to getting those slapdash responses from the minister because I have asked her about this three times in total. I have asked three times about what this government is going to do about the issue of genetic discrimination, and I have been told it is unnecessary or futuristic and, today, ‘silly’. I think Senator Patterson indicated that it was a ‘loser’ question. For three years the Democrats have been talking about this issue because for many more years they have been talking about it around the world, including in the United States, where nearly every state legislature has passed some form of legislation to ensure that people’s rights are protected, whether it is to do with privacy or with discrimination. In the United States, President Clinton has ensured that federal agencies are prohibited from discriminating against employees on the basis of their genetic information. We are lagging behind.
As people in this place know—although the minister seemed not to—the Democrats had a private member’s bill on the table on this issue in March 1998. We referred it to a Senate committee, which reported in March 1999, and still nothing has happened. Over the last month the Democrats have been saying, ‘I told you so.’ It is not a nice situation to be in when people’s livelihoods, bank loans and Public Service positions are on the line. I acknowledge those media outlets that have paid more attention to this than has this government: *A Current Affair*, the *7.30 Report* and even the *Sydney Morning Herald*, which has backed our claim for a moratorium on genetic testing except in cases where it is personal medical information or positive discrimination situations in employment. I acknowledge that the government has belatedly, at the eleventh hour, announced an inquiry into some of these issues. But it is not confirming whether or not it will actually investigate these cases of proven discrimination. We are yet to hear the specific terms of reference and who the players in this particular debate will be.

I put on record the concern of my party that this issue is still being dealt with in a slapdash manner, even being ridiculed. Today I was stunned. I thought the government might have at least boasted about its piece-meal action—the fact that it is holding an inquiry. Whoopy-do! But there has been no indication as to when we are going to see legislation. There are no guidelines, no ethical considerations and certainly no moratorium or interim measures to ensure that people are protected. *(Time expired)*

Question resolved in the affirmative.

**PETITIONS**

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

**Copyright Amendment (Digital Agenda) Bill 1999**

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

The petition asks that the Senate should consider the proposals contained in the *Copyright Amendment (Digital Agenda) Bill* and the Advisory Report on the Copyright Amendment (Digital Agenda) Bill.

Your petitioners request the Senate, in considering the Digital Agenda Bill, to have regard to the interests of library users to ensure that in the new digital environment, Australians are ensured equality of opportunity in accessing information without undue restriction or expense. In particular Australians should not be required to pay to view information on a computer screen.

by Senator Reid (from 15 citizens).

**Workplace Relations Amendment Bill 2000**

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

This petition of the undersigned draws to the attention of the Senate the unfairness of the Workplace Relations Amendment Bill 2000. This Bill, amongst other things, would restrict Australian workers from exercising choice in the manner of industrial agreement they wish to pursue at their workplace.

Your petitioners therefore request of the Senate that when this Bill is presented before the Senate, it is rejected as it is not in the interests of Australian Workers.

by Senator Reid (from 50 citizens).

**Export Trade in Live Animals**

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

The Petition of the undersigned oppose the resumption of the live animal export market. We believe carrying live animals on long journeys prior to slaughter is a cruel, unnecessary and unhealthy practice. A carcass-only export meat trade is preferable and would create abattoir employment in Australia. The Coalition government, the Australian Live Exporters’ Council, Livecorp, the Sheepmeat Council of Australia and Meat and Livestock Australia want to supply Saudi Arabia alone with up to one million sheep a year.

Your petitioners ask that the Senate oppose the resumption of the live animal export market. The Government will be monitoring six trial shipments to determine whether the live sheep trade could be opened up. The first trial shipments of 60,000 live sheep left Australia for Saudi Arabia in January 2000.

by Senator Bartlett (from 24 citizens).

**Great Barrier Reef: Prawn Trawling**

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

The Petition of the undersigned shows strong disappointment in the Australian Government’s inadequate protection of the Great Barrier Reef
World Heritage Area from the destructive practices of prawn trawling. Prawn trawling destroys up to 10 tonnes of other reef life for every one tonne of prawns while clearfelling the sea floor. There are 11 million square kilometres of Australia’s ocean territory of which the reef represents just 350,000 square kilometres.

Your Petitioners ask that the Senate support the phasing out of all prawn trawling in the Great Barrier Reef World Heritage Area by the year 2005.

by Senator Bartlett (from 116 citizens).

Genetically Modified Food: Labelling

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

The Petition of the undersigned shows that unsafe practices are being followed in Australia, namely the sale and distribution of genetically modified foods that have not been labelled as such.

Your petitioners request that the Senate should take all actions within its power, to prohibit the sale and distribution of all unlabelled genetically modified foods.

by Senator Bourne (from 224 citizens).

Goods and Services Tax: Price Displays

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

This petition of the undersigned draws to the attention of the Senate that under current legislation the GST will not be included on docket s and that consumers will not know how much GST they are being charged, or whether they are being charged correctly.

Your petitioners therefore request the Senate that when a business provides a consumer with a receipt or docket issued in respect of a taxable supply the receipt or docket must separately include:

(a) the price of the goods or services excluding the GST;

(b) the amount of the GST; and

(c) the total price including the GST.

by Senator Faulkner (from 36 citizens).

Australian National Flag

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

The Petition of the undersigned respectfully sheweth that:

We the undersigned wish to signify our strong opposition to any change in the design or colour of the Australian national flag.

We believe that the current flag has served Australia well and will continue to do so in the future and represents a true manifestation of the nation’s history.

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

by Senator Kemp (from five citizens).

Goods and Services Tax: Sanitary Products

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

We the undersigned Australians request that the Senate reject the Government’s proposed plan to impose GST on tampons and sanitary pads. We find it absurd that sunscreen, condoms, personal lubricants for men and women and incontinence pads are all to be GST free, on the basis that if one did not use them, one would suffer a ‘disability’, yet menstruation products will not.

We think that women not using tampons or pads would cause more than a ‘disability’ it would cause a furore!

We do not believe that women should carry an additional burden of a 10% GST on a product that women have no choice but to purchase, and for which men have no equivalent. It is discriminatory and unfair.

by Senator Newman (from 137 citizens).

Live Sheep Exports

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

The People Against Cruelty in Animal Transport (PACAT) and the other undersigned residents of Australia are deeply concerned at the continuation of the live sheep trade for the following reasons:

It is inhumane in the extreme

Is a contributing factor to unemployment within Australia

Has adverse effects on residents, and

is environmentally harmful.

Your petitioners, therefore humbly pray that the Senate call upon the Australian Government to ban the export of live sheep immediately and actively pursue the frozen carcass alternative.

And your Petitioners, as duty bound will ever pray.

by Senator Bartlett (from 9,150 citizens).

Goods and Services Tax: Repeal

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

The petition of residents of the nation of Australia draws to the attention of the Senate that:
1. A majority of electors in the 1998 federal election were not in favour of the GST
2. Alternative taxation regimes were not properly considered.

Your petitioners humbly ask the Senate to repeal the GST legislation and to instigate an inquiry to thoroughly investigate alternative taxation regimes.

by Senator Harris (from 149,332 citizens).

Petitions received.

NOTICES

Presentation

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

That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate on 31 August 2000, from 6 pm, to take evidence for the committee’s inquiry into telecommunications and electro-magnetic emissions.

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

That the time for the presentation of the report of the Select Committee on Superannuation and Financial Services on the provisions of the Financial Sector Legislation Amendment Bill (No. 1) 2000 in respect of proposed changes to the Superannuation Industry (Supervision) Act 1993 be extended to 30 August 2000.

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

That the Legal and Constitutional References Committee be authorised to hold public meetings during the sitting of the Senate on 17 August 2000, from 3 pm to 8 pm, and on 31 August 2000, from 4 pm to 6.30 pm, to take evidence for the committee’s inquiry into the Government’s response to the recommendations of the report, Bringing Them Home.

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

That the time for the presentation of the report of the Economics Legislation Committee on the Financial Sector Legislation Amendment Bill (No. 1) 2000 be extended to 30 August 2000.

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

That the Economics References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on 16 August 2000, from 3.30 pm to 5.30 pm, in relation to its inquiry on mass marketed tax effective schemes and investor protection.

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

That the Economics References Committee be authorised to hold a public meeting during the sitting of the Senate on 16 August 2000, from 6 pm to 8 pm, to take evidence for the committee’s inquiry into the provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999 and the practice of multi-site franchising by oil companies.

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

That the Senate—

(a) notes that:

(i) the number of federal public servants aged under 25 has fallen by 80 per cent over the past 10 years, from 161,168 in 1989 to 3597 in 1999,

(ii) the Public Service Commissioner has warned that this lack of young, talented public servants poses a threat to the Public Service’s capacity to maintain an experienced and capable workforce in the future, and cope with retirements, and

(iii) this lack of young workers represents a current deficiency in policy expertise; and

(b) urges the Federal Government to take immediate measures to rectify this problem, to recruit and retain talented young graduates and workers.

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

That the Parliamentary Joint Committee on Corporations and Securities be authorised to hold a public meeting during the sitting of the Senate on 16 August 2000, from 9 am to 1.30 pm, to take evidence in relation to the provision of bank statements to customers.

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

(1) That a select committee, to be known as the Select Committee for an Inquiry into the contract for a new reactor at Lucas Heights, be appointed to examine and report by 4 December 2000, on the following matters:

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

(1) That a select committee, to be known as the Select Committee for an Inquiry into the contract for a new reactor at Lucas Heights, be appointed to examine and report by 4 December 2000, on the following matters:
(a) the need for a new research reactor, including:

(i) the validity of science and industry enhancement claims of the Australian Nuclear Science and Technology Organisation (ANSTO) and the Commonwealth Government,

(ii) the adequacy of supply, and the cost, of radioactive sources and nuclear medicines used in diagnosis and treatment,

(iii) the opportunities for alternative sources of nuclear materials for medical applications, such as additional cyclotrons at appropriate locations,

(iv) the validity of nuclear expertise and national interest claims of the Department of Foreign Affairs and Trade, the Australian Safeguards and Non-Proliferation Office, ANSTO and the Commonwealth Government for the replacement reactor, and

(v) consideration of alternative approaches and means through which Australia’s national interests in nuclear disarmament and non-proliferation and nuclear safety can be supported and advanced;

(b) the process leading up to the signing of a contract in June 2000 with INVAP of Argentina for the construction of a new nuclear reactor at Lucas Heights, with particular reference to:

(i) the quality and accuracy of information relied on in assessing the tenders, including a review of how the economic, environmental and public health impacts were considered,

(ii) the probity of the tender arrangements and the accuracy of the cost assessments,

(iii) the checks made of the record of the preferred tenderer, INVAP, and its capability to undertake the project safely and economically and its record in matching international best practice in other projects, and

(iv) public access to information about the proposal and the consideration of issues raised through the public consultation process;

(c) the nature of the contractual commitments entered into and the degree to which they are binding on the Commonwealth, including in the event that not all approvals are obtained and all other preconditions met, or that a future Government decides not to proceed with the reactor, with particular reference to:

(i) the timeframe and process to be followed by the Australian Radiation Protection and Nuclear Safety Agency in considering the issue of a construction licence and an operating licence, and the consequences under the contract if such licences are not issued,

(ii) any other requirements for approvals from the Commonwealth, state or local governments and the consequences if such approvals are not obtained,

(iii) the consequences if preconditions set in the Environmental Impact Statement and other previous inquiries are not met at the time of granting of a construction licence,

(iv) the nature of any provisions in the contract related to the ability of either party to terminate the contract prior to completion and the provisions in relation to compensation for termination, and

(v) whether all or part of the contract and other documents created during its consideration and approval should now be made public;

(d) whether the preconditions set by previous inquiries and assessments into this proposal have been adequately met prior to the contract being entered into, with particular reference to:

(i) fulfilment of each of the conditions for approval set out in the draft Environmental Impact Statement and its supplement report, including requirements for waste management,

(ii) whether the recommendations of the Economics References Committee inquiry into the Lucas Heights proposal which reported in
September 1999 have been adequately responded to,
(iii) the adequacy of occupational and public safety protection procedures, and
(iv) the adequacy of nuclear incident plans and emergency procedures; and
(e) the adequacy of proposed fuel and waste management provisions in the contract (or yet to be finalised), with particular reference to:
(i) the specific fuel proposed to be used and its source, the type of fuel rods and where they will be manufactured,
(ii) the proposed spent fuel management arrangements during operation,
(iii) the arrangements made to ensure that spent fuel rods can be reprocessed, stored and ultimately disposed of safely,
(iv) whether the new reactor is subject to negotiation of satisfactory contracts for international reprocessing of spent fuel rods; and, if so, which countries will be involved and will these contracts be subject to a provision which requires the return of Australian waste as is the case with some of the existing Lucas Heights fuel rods, and
(v) the timing of any requirement for the provision of an Australian long-term waste storage facility for rods from a new reactor.

(2) That the committee consists of 7 senators, 3 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, and 1 nominated by minority groups or independents in the Senate.

(3) That the committee proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and not withholding any vacancy.

(4) That:
(a) the chair of the committee be elected by the members of the committee;
(b) in the absence of agreement on the selection of a chair, duly notified to the President, the allocation of the chair shall be determined by the Senate;
(c) the deputy chair of the committee be appointed by the chair from the committee immediately after the election of the chair;
(d) the deputy chair act as chair when there is no chair or the chair is not present at a meeting; and
(e) in the event of the votes on any question before the committee being equally divided, the chair, or the deputy chair when acting as chair, have a casting vote.

(5) That the quorum of the committee be 4 members.

(6) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any such subcommittee any of the matters which the committee is empowered to consider, and that the quorum of a subcommittee be a majority of the senators appointed to the subcommittee.

(7) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place and to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives.

(8) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee, with the approval of the President.

(9) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

(10) That the committee may report from time to time its proceedings and evidence taken or any interim conclusions or recommendations arising from this inquiry, and may make regular reports on the progress of its proceeding

Senator Brown to move, on the next day of sitting:
That the Senate calls on the Australian Government to abandon the Australia-China bilateral dialogues on human rights because the
dialogues are not transparent and there has been no practical or positive outcome for human rights in China or Tibet since the dialogues began.

**Senator O’Brien** to move, on the next day of sitting:
That the Senate—
(a) notes:
(i) the disastrous impact on regional Australia generally, and Flinders Island in particular, of contaminated aviation fuel distributed by Mobil Australia,
(ii) that Mobil Australia:
(A) has acknowledged its liability in the matter by offering, and providing, compensation to aircraft operators who have suffered financial loss as a result of the contaminated fuel,
(b) has acknowledged that it recognised financial loss was also suffered by non-aviation businesses, and
(c) gave indications that the company was seriously contemplating providing compensation to non-aviation businesses, and
(iii) that despite recognising the disastrous impact of the contaminated aviation fuel on non-aviation businesses, Mobil Australia has now refused to provide these businesses with financial compensation; and
(b) condemns Mobil Australia for its failure to properly compensate all businesses that were severely affected as a result of its distribution of contaminated fuel.

**Senator Brown** to move, on the next day of sitting:
That the Senate—
(a) notes:
(i) that AMP, through its fully-owned subsidiary Stanbroke Pastoral Company, has permits and applications to clear 140,900 hectares of woodlands in Queensland, and
(ii) that the company has placed a temporary moratorium on the clearing of 8,822 hectares of old-growth woodland, but has made no such commitment for the balance of 132,000 hectares of regrowth, all of which is at least 10-years-old and potentially decades older;
(b) considers that clearing on such a massive scale, with potential impacts on biodiversity, salinity, land degradation and greenhouse gas emissions sets a highly irresponsible model, by a company which is showcasing itself to the world as insurance partner to the Sydney 2000 Olympic Games; and
(c) calls on AMP to:
(i) protect all remaining old-growth vegetation on its properties in perpetuity; and
(ii) halt all regrowth clearing on its properties until a thorough environmental assessment has been completed.

**Senator Allison** to move, on the next day of sitting:
That the Senate—
(a) notes:
(i) that Mr Vinny Lauwers has become the first disabled person to sail unassisted around the world, and
(ii) Mr Lauwers, who lost the use of his legs in a motorcycle accident in 1990, has sailed 21,600 nautical miles during his 8-month solo voyage since leaving Melbourne in December 1999;
(b) congratulates Mr Lauwers for his efforts in undertaking a major journey during which he raised $40,000 for his charity PARASAIL; and
(c) commends Mr Lauwers for being an inspiration for all disabled people to overcome the difficulties and challenges they face in their daily lives.

**BUSINESS**

**First Speech**

Motion (by **Senator Ian Campbell**)—by leave—agreed to:
That consideration of the business before the Senate this day be interrupted at approximately 5 p.m., but not so as to interrupt a senator speaking, to enable Senator Brandis to make his maiden speech without any question before the chair.
COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Extension of Time
Motion (by Senator Allison)—by leave—agreed to:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on global warming and the Convention on Climate Change (Implementation) Bill 1999 be extended to 4 October 2000.

Foreign Affairs, Defence and Trade Legislation Committee

Meeting
Motion (by Senator Calvert, at the request of Senator Sandy Macdonald)—by leave—agreed to:

That the Foreign Affairs, Defence and Trade Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 8 pm, to take evidence for the committee’s inquiry into the provisions of the Veterans’ Affairs Legislation Amendment (Budget Measures) Bill 2000 and a related bill.

Superannuation and Financial Services Committee

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

That the Select Committee on Superannuation and Financial Services be authorised to hold a public meeting during the sitting of the Senate today, from 7.30 pm, to take evidence for the committee’s inquiry into the provisions of the Financial Sector Legislation Amendment Bill (No. 1) 2000 in respect of proposed changes to the Superannuation Industry (Supervision) Act 1993.

NOTICES

Postponement

Items of business were postponed as follows:

General business notice of motion no. 624 standing in the name of Senator Stott Despoja for today, relating to the establishment of a select committee on the Lucas Heights replacement reactor proposal, postponed till 16 August 2000.

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 15 August 2000, relating to the reference of matters to the Finance and Public Administration References Committee, postponed till 5 September 2000.

OLYMPIC AND PARALYMPIC GAMES

Motion (by Senator Allison) agreed to:

That the Senate—

(a) notes:

(i) the Olympic Roads and Transport Authority has sought from the Human Rights and Equal Opportunity Commission an exemption under section 55 of the Disability Discrimination Act in order to procure from New South Wales, Queensland, South Australia and Victoria the required numbers of accessible buses, coach drivers and support staff for the Olympic and Paralympic bus task, and

(ii) this commandeering of wheelchair buses from the states for the 9-week period from 2 September to 4 November 2000 will severely diminish or remove altogether from the current users of those facilities the necessary transport for work, school, college, cinema, shopping or any daily activities;

(b) condemns:

(i) the failure of the authority to plan properly for an entirely predictable event, which has been known and understood in Australia for at least the past 4 years, and

(ii) the expectations of the authority that the disability community should go without transport in other areas of Australia during this time; and

(c) calls on state governments to ensure that the needs of the disabled for accessible transport in their own communities are not disregarded during the Olympic and Paralympic Games.

EAST TIMOR: INTERFET

Motion (by Senator McKiernan) agreed to:

That the Senate—

(a) recognises and applauds the role that was played in supporting the Interfet force
The DEPUTY PRESIDENT—If you have indicated that you have not postponed it, it is not postponed. You are seeking that notice of motion No. 624 be taken as a formal motion. Is there any objection to this motion being taken as formal?

Leave not granted.

Suspension of Standing Orders

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.43 p.m.)—Pursuant to contingent notice and at the request of the Leader of the Australian Democrats, Senator Meg Lees, I move:

That so much of the standing orders be suspended as would prevent Senator Lees moving a motion relating to the conduct of the business of the Senate, namely, a motion to give precedence to general business notice of motion No. 624.

Senator O'BRIEN (Tasmania) (3.43 p.m.)—The opposition is opposed to taking this motion as formal. The Senate can see that there was clearly an understanding that the matter would not proceed today, although that may not have been shared by Senator Stott Despoja and her whip. The simple fact of the matter is that it would be better, in our view, if there was further discussion about this matter. We would again urge Senator Stott Despoja, rather than to pursue this matter, to adjourn it. In the case that she pursues it, we will not be voting for a suspension at this time.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.44 p.m.)—We will oppose the motion on the basis that to make this chamber work efficiently, or to work at all, you need to have understandings through procedures such as the whips meetings. From time to time there are communication breakdowns. The general thing to do if that occurs is to adjourn matters and to try to resolve them outside this place so that we can get on with business. We got a clear understanding at the whips meeting that this matter would be postponed. If the matter is not adjourned we will also oppose the motion for the suspension of standing orders.

deployment in East Timor by Australian civilian ships;

(b) welcomes the letter dated 15 October 1999 that was sent to the Maritime Union of Australia by Commander Peter Cosgrove suggesting that, without the help of Australian civilian ships, the deployed forces’ logistics build-up would have been severely hampered;

(c) acknowledges that the role of Australian civilian ships in East Timor continues the significant and enormous role that the Australian Merchant Navy has historically played in the ever increasing peacetime carriage of trade, both internationally and domestically;

(d) recognises that this role has not been without enormous cost, particularly in the Merchant Navy’s service in two world wars, where one in every eight seafarers lost their lives and many more disappeared unrecorded in the ships of many nations;

(e) applauds the International Maritime Organisation’s support and recognition of maritime workers and merchant shipping, including Australian coastal shipping through the celebrations of Maritime Day on 24 September and believes that World Maritime Day be regarded as a day of maritime pride and history; and

(f) requests that the Government promote the flying of the Australian flag rather than flags of convenience.

SELECT COMMITTEE FOR AN INQUIRY INTO LUCAS HEIGHTS REPLACEMENT REACTOR PROPOSAL

Establishment

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.42 p.m.)—Madam Deputy President, I understand that a notice of motion standing in my name for today, No. 624, has been postponed. I did not do that. It is a mistake.

The DEPUTY PRESIDENT—The whip lodged a notice of postponement with the Clerk. That is how it came to be read out.

Senator STOTT DESPOJA—I seek leave to withdraw that and to proceed with the general business notice of motion standing in my name.
Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.44 p.m.)—I acknowledge that there has been some confusion. Obviously it is news to me that this was postponed, and I apologise for any inconvenience or misunderstanding. I had indicated quite clearly to the relevant people in the debate that I presumed that we would have—namely, Senators Bolkus and Forshaw, who have actually contacted me directly as to whether or not this debate was going ahead—that it was. I presumed that their whip had been informed by then that this debate was going ahead. I also thought that my instructions to the whips meeting were that this matter would proceed. But I apologise if I have got that wrong. This issue has gone on for a long period of time. The debate about whether or not we have an inquiry into the new nuclear reactor at Lucas Heights is a pressing and important matter.

The DEPUTY PRESIDENT—Senator, I thought you were making an explanation. You have already moved your suspension motion, technically speaking. I thought you were making a clarification comment. Unless you seek leave, you do not have a right to speak.

Senator BROWN (Tasmania) (3.45 p.m.)—I support Senator Stott Despoja in moving for a debate on this. She is obviously in control of this motion. We obviously have been aware of this motion since she gave notice on 29 June. It is not the substance of the motion that is being debated here; it is the substitution of the motion by a Labor Party one brought in today. That is the real matter here. I would have thought this was the grand opportunity for the Labor Party to say why the motion that they have brought forward is superior to the one that the Democrats’ spokesperson has had before the chamber now for a couple of months. I think that matter ought to go to a debate, but quite clearly it will not because Senator Stott Despoja and I do not have the numbers here. However, I think that would have been the best way for this to proceed. It is a bit difficult to know exactly what is going on here because the Labor Party motion is not available to us yet. Having heard it read out, we are still having a debate without having it in written form. So be it.

Question resolved in the negative.

DOCUMENTS

Tabling

The DEPUTY PRESIDENT—Pursuant to standing orders 38 and 166 I present documents listed on today’s order of business at item No. 11 which were presented to the President, the Deputy President and a temporary chair of committees since the Senate last sat. In accordance with the terms of the standing orders, publication of the documents was authorised.

The list read as follows—

COMMITTEE REPORTS PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE

1. Legal and Constitutional References Committee—Errata and submissions to the report entitled Humanity diminished: The crime of genocide – Inquiry into the Anti-Genocide Bill 1999 (presented to the President on 3 July 2000)

2. Community Affairs References Committee—Inquiry into public hospital funding—First Report: Public Hospital Funding and Options for Reform (presented to the Deputy President on 11 July 2000)

3. Foreign Affairs, Defence and Trade References Committee—Australia and APEC: A Review of Asia Pacific Economic Cooperation (presented to the Deputy President on 21 July 2000)

REPORTS OF THE AUDITOR-GENERAL PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE


GOVERNMENT RESPONSES TO COMMITTEE REPORTS PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE

1. Government’s response to the report of the Joint Standing Committee on Migration on the deportation of non-citizen criminals (presented to the Deputy President on 17 July 2000)

2. Government’s response to the report of the Select Committee on the Socio-Economic Consequences of the National Competition Policy—Report entitled Riding the waves of change (presented to the President on 10 August 2000)

GOVERNMENT DOCUMENT PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE


The DEPUTY PRESIDENT—In accordance with the usual practice and with the concurrence of the Senate, I ask that the government responses be incorporated in Hansard.

The responses read as follows—

GOVERNMENT RESPONSE TO THE REPORT OF THE SENATE SELECT COMMITTEE ON THE SOCIO-ECONOMIC CONSEQUENCES OF THE NATIONAL COMPETITION POLICY RIDING THE WAVES OF CHANGE

August 2000

RESPONSE TO THE REPORT OF THE SENATE SELECT COMMITTEE ON THE SOCIO-ECONOMIC CONSEQUENCES OF THE NATIONAL COMPETITION POLICY

National Competition Policy (NCP) is an important element of the Government’s economic policy which is delivering strong economic and employment growth to Australia. The overall aim of NCP is to improve the efficiency with which resources are used and hence to maximise the community benefits from economic activity through raised living standards, wider choice of products and services and lower prices for consumers.

The Government welcomes the contribution of the Committee’s report to the discussion and understanding of NCP. Evidence provided to the Committee supported the Productivity Commission finding in its Report on the Impact of Competition Policy Reforms on Rural and Regional Australia that, overall, NCP has brought benefits to the community. The Committee was concerned though that the benefits that flow from NCP generally flow to larger businesses and to those people resident in metropolitan areas (or the larger provincial areas) whereas the greatest costs appear to be generally borne by smaller businesses and those resident in smaller towns.

The Commission also found that the direct costs of some NCP reforms to date have tended to show up more in country areas than in the cities and there has been more variance in the incidence of benefits and costs of NCP reforms in rural and regional Australia compared with metropolitan areas.

At the same time, the Committee’s deliberations also revealed that there is some misunderstanding of the benefits of NCP since it is often associated with economic changes which are due to other factors such as social and technological change or other Government policies. The Committee concluded that governments have at times contributed to the confusion by citing NCP as a reason for the reduction of funding for an activity, for the rejection of infrastructure projects, and for policies such as compulsory competitive tendering. The Government agrees with the Committee that such actions bring NCP into disrepute.

Similarly, the Commission also found that NCP was not responsible for a range of (state) government policies that were the cause of concern in regional areas. These included: asset sales and privatisation, compulsory competitive tendering, contracting out, removing community service obligations, local government amalgamations, and reductions in welfare or social services.

Much of the implementation of NCP is the responsibility of State and Territory governments. The Prime Minister will write to Premiers and Chief Ministers, asking them to give due consideration to the issues raised in the Report.

The following are the Commonwealth Government’s responses to the recommendations. For this purpose the recommendations are grouped by subject.

COAG OVERSIGHT

Recommendation 26: That as a matter of urgency, COAG should determine and implement the post 2000 agenda for NCP.

Recommendation 34: That there be a review of NCP by COAG to ensure that its economic and social objectives are being met, and that the policy be subject to ongoing monitoring by COAG.
Recommendation 17: That the issue of the distribution of tranche funds should be a matter addressed by COAG in the review of NCP.

Government Response
The inter-governmental agreements underpinning the National Competition Policy (NCP) provide for the agreements to be reviewed during 2000. A Working Group of Commonwealth, State, Territory and local government officials is undertaking a review and will report to COAG through Commonwealth Senior Officials.

The review is examining the terms and operation of the Conduct Code Agreement, the Competition Principles Agreement (CPA) and the Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement). The need for, and operation of, the National Competition Council (NCC), including the roles the NCC should undertake and its relationship with COAG is also being considered.

The Implementation Agreement provides for the Commonwealth to make NCP payments to those States and Territories meeting scheduled reform commitments. How these NCP payments are used is a matter for the State or Territory Government concerned.

However, the Commonwealth would encourage the States and Territories to share with local government, industry and community groups the benefits of competition reform through the competition payments they receive. These payments give the States and Territories the capacity to directly address the impact of competition policy reforms on specific industries, regions or parts of the community.

The Commonwealth, State and Territory Governments will be able to consider the NCP framework to apply post-2000 in the light of the Working Group’s report.

PUBLIC INTEREST TEST

Recommendation 1: For the purposes of measuring outcomes of the policy, a method of assessment be agreed by COAG which will provide a numerical weighting that can be attributed to environmental, social, and employment factors wherever possible.

Government Response
The review of the NCP agreements is considering the application of the public interest test established by the relevant clauses of the CPA. However, the Government does not favour the application of numerical weightings to particular matters which may be taken into account in the public interest test. In practice, it would be difficult to agree on the relative numerical weight to be assigned to particular matters. Even then, it may not be desirable to constrain the weighting which a Government may consider appropriate in a particular case.

The CPA establishes that jurisdictions are free to consider a range of factors in examining various reform options. In addition to efficient resource allocation, these issues may include, but are not limited to, those associated with employment growth, regional development, the environment, consumer interests, welfare and equity. This provides for the full range of benefits and costs to be considered in establishing whether a particular course of action will provide a net benefit to the community as a whole. This process essentially embodies the public interest test. This flexibility provides that jurisdictions may apply different emphasis to particular factors contained within the public interest test.

Recommendation 2: That the NCC publish a detailed explanation of the public interest test and how it can be applied and produce a listing of case histories where the public interest test has been applied as a regularly updated service of decisions. This may form part of the information available through the proposed ‘one-stop-shop’ advisory service.

Government Response
The Government supports the availability of detailed information regarding the scope and application of the public interest test.

It notes that the NCC released a publication entitled Considering the Public Interest under the NCP in November 1996. The Centre for International Economics and the NCC released a further publication outlining a general framework for conducting NCP legislation reviews in February 1999. In addition, a number of jurisdictions have documented their own arrangements. For example, Queensland released public benefit test guidelines in October 1999.

The application of the public interest test is described in each jurisdiction’s annual report on the progress made in implementing legislation review commitments. This information is generally reflected in the NCC assessments of jurisdictions against scheduled reform commitments, which are publicly available. Furthermore, at the Commonwealth level, the Office of Regulation Review provides an annual assessment of Commonwealth compliance with legislation review requirements. (See also the responses to Recommendations 5 and 19.)

Recommendation 3: That COAG agree on a standardised public interest test procedure to be
used in cases where a review has implications across state or territory borders

Government Response

The CPA provides that where a review raises issues with a national dimension or effect on competition, or both, the party responsible for the review will consider whether the review should be undertaken on a national (inter-jurisdictional) basis. Where this is considered appropriate, other interested parties must be consulted prior to determining the terms of reference and the appropriate body to conduct the review. National reviews do not necessarily require the involvement of all jurisdictions.

The Government considers that the current arrangements for the application of the public interest test on a national or inter-jurisdictional basis are appropriate. Considerable work is undertaken through the COAG Committee on Regulatory Reform (CRR) in identifying and ensuring consistency of outcomes for those reviews with national implications. Governments have charged CRR with coordinating NCP legislation reviews that have national or cross-jurisdictional impacts. This provides for a consistent review process and, at a minimum, a sharing of information between jurisdictions undertaking similar reviews.

National reviews have been, or are in the process of being, conducted in relation to the mutual recognition agreements, agricultural and veterinary chemicals legislation, pharmacy legislation, food acts, drugs, poisons and controlled substances legislation and the regulation of architects.

At the Commonwealth level, the public consultation process associated with legislation reviews allows for contributions from any interested party, including other jurisdictions.

**Recommendation 5:** That a ‘hotline’ service be set up for organisations seeking information and assistance on how to use the public interest test and review processes. This service should be reviewed after twelve months.

**Government Response**

It is each jurisdiction’s responsibility to establish review processes and, as noted in the Government’s response to Recommendation 1, to apply the public interest test in a manner that is appropriate to the particular circumstances in that jurisdiction.

While the provision of information about the public interest test and review processes is also a matter for each jurisdiction, the NCC currently provides assistance regarding the NCP review process. It is also able to provide a referral service to the various competition policy units within each jurisdiction.

At the Commonwealth level, the Office of Regulation Review advises on the conduct of legislation reviews. The model terms of reference for legislation reviews developed by the Office specify that the terms of reference should be made publicly available and include requirements to advertise the review in newspapers, consult with key interest groups and affected parties, to specify a reporting date (depending on the complexity of issues to be considered), and to publish the findings of the review.

**PUBLIC EDUCATION**

**Recommendation 4:** That the NCC and state and territory agencies with responsibility for implementing NCP, undertake expanded public education programmes about the policy and how it is to be implemented.

**Recommendation 19:** That the Federal Government in consultation with local government and industry and community bodies and the NCC, create a ‘one-stop-shop’ advisory service to provide local government, industry bodies, individuals, companies and community groups with advice which will enable them to tackle competition policy issues.

**Recommendation 20:** That this service should also be a mechanism by which concerns or complaints can be channelled to the appropriate authority for resolution.

**Government Response**

The Government recognises the importance of improved public awareness of the need for reform for the realisation of NCP objectives.

The responsibilities of the NCC include the promotion of competition reform. The Commonwealth Government provided the NCC with additional funding, commencing in 1999-00, for this purpose.

The Government will draw Recommendation 4 to the attention of the State and Territory Governments.

With regard to Recommendations 19 and 20, the NCC can respond to requests for advice concerning the handling of competition policy issues and assist in channelling complaints to the appropriate authorities for resolution. However, this is also a function for each jurisdiction’s competition policy unit and other relevant bodies. Consequently, these Recommendations need to be considered by the State and Territory Governments.

In relation to the application of competitive neutrality, each jurisdiction has established a formal complaint mechanism. Independent prices over-
sight arrangements for government business enterprises have also been established. Although, in some instances issues need to be referred to such tribunals for them to look at the prices of certain industries.

(See also the Government’s responses to Recommendations 2 and 5.)

Review Processes

**Recommendation 6:** That all reviews be undertaken in a fully transparent way with opportunity for contribution from the public at all stages.

**Recommendation 7:** That review panels be required to actively seek out contributions from all interested groups and represent the range of views in the report to government.

**Government Response**

The Government agrees that legislation reviews need to be comprehensive and accessible to those who are affected by outcomes. Improved community understanding will assist in ensuring that reviews are based on genuine public input. In turn, open and transparent reviews will help inform the community of the nature and effects of the NCP reforms. Public awareness of, and participation in, a review is critical to the success and ultimate acceptance of its findings.

As noted in response to Recommendation 5, the Commonwealth’s legislation review requirements include that the terms of reference should be publicly available, that the review is to be advertised nationally and that there should be consultation with key interest groups and affected parties. A reporting date is to be specified (depending on the complexity of issues to be considered) and the findings of the review are to be made public.

In most cases, in addition to the opportunity to make submissions, the public will have the opportunity to comment on a draft report.

**Recommendation 8:** That all reports be made public at least 30 days before the government is to consider the review.

**Government Response**

The Government agrees that all review reports should be made public. However, where it is appropriate, the Government will continue the established practice of releasing reports at the time of the announcement of the Government’s response to the report recommendations.

**Recommendation 9:** That CSO commitments be publicly acknowledged, monitored, and regularly reported on.

**Government Response**

The Government agrees that CSOs should be reported and monitored. It considers that, wherever possible, information relating to specific CSOs, including the cost of provision, should be provided in the annual reports of each Commonwealth government-owned entity, including the Departments responsible for that particular CSO. Commonwealth authorities and companies must include details of CSOs in their corporate plans, including the strategies and policies to be followed to carry out those obligations, as required under the Commonwealth Authorities and Companies Act 1997.

**Recommendation 10:** That the NCC no longer be required to carry out legislation reviews; and that Governments, through COAG, undertake to agree broad systems and processes for reviews, including mechanisms for proper consideration of the submissions and views of any interested parties, in the formulation of the initial recommendations.

**Government Response**

The role and functions of the NCC were agreed by the Commonwealth, the States and the Territories in the CPA. The Government notes that the conduct of legislation reviews by the NCC may overlap with the Council’s more significant function of advising the Commonwealth Government on jurisdictions’ compliance with NCP obligations.

The review of the NCP Agreements is examining the roles the NCC should undertake and its relationship with COAG. The Commonwealth has decided that no further legislation reviews will be referred to the NCC pending consideration of this matter by the inter-governmental review of the NCP agreements.

**Recommendation 11:** That other governments be provided the opportunity for input to each others reviews as a way to contribute to impartial outcomes based on national rather than state or regional perspective.

**Government Response**

At the Commonwealth level, there is a requirement for all legislation reviews to be advertised on a national basis and for submissions to be invited from all interested parties, which may include other jurisdictions. (See also the Government’s response to Recommendation 3.)

**Recommendation 12:** That reviews and public interest tests must include Employment and Community Impact Statements.

**Government Response**

The CPA establishes those factors that may be considered in assessing the public interest. These include, but are not limited to, economic and regional development, employment and investment growth, the interests of consumers generally or a
class of consumers, and social welfare and equity considerations. This will require that both positive and negative impacts of proposed NCP reforms on regional communities continue to be assessed and identified in the application of the public interest test to which all NCP legislative reviews are subject. (See also the response to Recommendation 1.)

**Recommendation 28:** That, where a case can be made for assistance in meeting the costs of reviews that community and industry groups are required to meet due to their involvement in prolonged or complicated industry reviews, such organisations should be able to apply to State and Federal NCP Units for financial assistance paid from the tranche funds on a discretionary basis (as determined by the State/Federal NCP Units).

**Government Response**
The use made of NCP payments is a matter for the State or Territory government concerned. However, as noted in the Government’s response to Recommendation 17, the Commonwealth encourages the States and Territories to share with the community the benefits of competition reform through the competition payments they receive.

**EMPLOYMENT AND TRANSITIONAL ARRANGEMENTS**

**Recommendation 27:** That the issue of the lack of data and information on the impacts of NCP be addressed in two ways:

. Governments should ensure information is gathered about structural adjustment needs in various sectors. Governments could commission specific studies or obtain this information from the NCC’s tranche payment assessment process from the states/territories and on advice from the states/territories. Local government should be encouraged to feed into this process with its own statistical information. Governments should commission studies where appropriate; and

. Where necessary, the Productivity Commission, under reference from the Commonwealth Treasurer should be directed to undertake specific studies where major impacts are envisaged and transitional arrangements/structural adjustment may be desirable: eg a major agricultural industry.

**Government Response**
At the Commonwealth level, information on the impact of specific reforms on particular sectors of the community or regions is required to be identified in legislation review reports.

Where appropriate, the Government will continue to refer regulatory and structural adjustment issues to the Productivity Commission for review.

**Recommendation 13:** That reviews of legislation consider and report on transitional arrangements, including compensation and re-training. The costs of such and how these arrangements are to be implemented should also be outlined.

**Recommendation 18:** That all reviews of regulations recommend action in regard to transitional arrangements, development programmes, and compensation when proposing change which will negatively impact on communities.

**Government Response**
The Government recognises that in some cases adjustment assistance may be desirable to facilitate the achievement of reforms which involve net benefits to the community as a whole. As noted in response to other Recommendations, Commonwealth legislation reviews are required to identify the different groups likely to be affected by the various reform options. While the Government considers that this information should be identified, it does not agree that review reports should address specific compensation and re-training measures as proposed in Recommendations 13 and 18. These matters need to be considered by Governments in the context of broader policy considerations, including general budgetary priorities.

**Recommendation 21:** That in reviewing legislation and arrangements which will involve environmental impacts, Governments should ensure that a broad interpretation of the public interest test is undertaken, including an account of environmental effects of changes to regulations or failures to change.

**Recommendation 22:** That greater rigour be applied to ensuring that the processes of reviewing legislation and assessing the public interest in areas involving impacts on the environment are as open and transparent as possible.

**Recommendation 25:** That jurisdictions ensure, that in implementing the public benefit test, environmental ‘externalities’, including greenhouse gas emissions, are appropriately considered.

**Government Response**
As indicated in the response to Recommendation 1, it is for each Government to apply the public interest test in a manner appropriate to the particular circumstances under review. The Commonwealth’s general approach is to provide for the open, transparent conduct of legislation reviews, which allows all potential costs and benefits of possible reform options to be identified. The public consultation process provides an
opportunity for specific input on environmental impacts by interested parties.

The Government notes that environmental externalities are a difficult issue. To assist jurisdictions in considering water-related externalities, including environmental, the ARMCANZ-ANZECC High Level Steering Group on Water has produced a guide to costing and charging for externalities in a broader sense such as for greenhouse gas emissions.

**Recommendation 23:** That the NCC work with Commonwealth and State environmental agencies to ensure that reviews of related legislation are coordinated. The aim of this is to eliminate anomalies in legislation and regulation that may lead to environmental degradation.

**Government Response**

See the response to Recommendation 3. The Government notes that the NCC received technical assistance from Environment Australia in relation to the second tranche assessment of State and Territory compliance with the COAG water reform commitments.

**Recommendation 24:** That the Government commission a review of subsidies and other incentives to use publicly owned natural resources which are inhibiting private investment in competing products, to the detriment of the environment.

**Government Response**

The Government notes this Recommendation. The Government has established a high level Ministerial Group to consider goals and policy directions for natural resource management.

**Infrastructure**

**Recommendation 29:** That the Commonwealth Treasurer have the power to impose a time limit or direct the NCC to complete an access evaluation recommendation within a certain time frame. The Committee believes that to be any more prescriptive would have the potential to hasten what may be a very complicated and delicate investigation.

**Government Response**

The Government does not support this recommendation. While the Commonwealth acknowledges the concerns about the time that may be taken in considering proposals for infrastructure access, it also notes that this may be attributable to the complexity and delicacy of the issues involved and to the availability of necessary information.

**Recommendation 30:** That a public consultation process be mandatory in relation to applications for access to major public infrastructure facilities.

**Government Response**

The Government does not support this Recommendation. The Government notes that competition between modes of transport is a policy matter for governments rather than the NCC. (See also the response to Recommendation 31.)

**Recommendation 31:** That the NCC address the issue of road-rail competition for freight as a matter of urgency.

**Government Response**

The Government does not support this Recommendation. The Government notes that competition between modes of transport is a policy matter for governments rather than the NCC. (See also the response to Recommendation 31.)

**Recommendation 32:** That issues relating to the regulation of infrastructure services are of serious concern and should be a matter for priority discussion by COAG.

**Government Response**

The Government is conscious of the need to ensure that regulation is appropriately co-ordinated and strikes a balance between protecting the interests of consumers and providing incentives for firms to invest.

The reforms to date in national energy markets have delivered clear benefits to Australian industry and consumers. The Government is keen to ensure that these benefits are built upon by ensuring that the regulatory structures that have been
COMMUNITY BASED WELFARE

Recommendation 14: That all reviews of legislation and changes to competitive arrangements in the social welfare sector adhere to the broad principles of the public interest and take account of the difficult to measure social factors rather than relying on narrow, more easily measurable, economic factors. That all contracting out arrangements and competitive tendering processes and documentation in the social welfare sector be public and transparent. There should be a presumption that all documents will be public and any claims of commercial confidentiality should be kept to a minimum and where essential.

Government Response
The Commonwealth agrees that all legislation reviews, including those impacting on the social welfare sector, should give full consideration to the public interest. Reviews of Commonwealth legislation and changes to competitive arrangements currently, and will continue to, involve consideration of a wide range of issues including public interest and social factors. For example, the Government acknowledges the effectiveness of competitive tendering depends on the existence of, or the potential to create an environment for, competition. Where inputs are expensive and scarce, for example some medical specialists in rural areas, the scope to create competition may be limited. Accordingly, in rural areas, the Government has allocated considerable resources to developing collaborative, community-based approaches to the delivery of health and aged care services. National Competition Policy does not require competitive tendering and contracting in the area of welfare service delivery. In accordance with the Commonwealth Procurement Guidelines, competitive tendering processes are required to be open and accountable. On transparency the Commonwealth policy is:
- publicly available procurement opportunities must be notified consistently in ways that provide bidders with reasonable opportunity to:
  - meet any pre-qualification requirements for participation in government business; and
  - bid against particular requirements;
- the evaluation criteria for any particular procurement should clearly identify the relative importance of all relevant factors, and provide a sound basis for a procurement decision. Agencies should evaluate each offer applying only the evaluation criteria and methodology notified to bidders in the request for tender documentation; and
- agencies offer bidders a written or oral debriefing on why their offers were successful or failed. There is a need to classify some of the documentation as commercial-in-confidence when it is identified that specific elements of the document or information are confidential. This is done on a case-by-case basis.
In addition it would be normal for the agency to consult with contractors before disclosing confidential information.

Recommendation 15: That Governments critically examine competitive tendering processes for social welfare services with a view to ensuring that a sophisticated and flexible approach is taken to the provision of service. The process should consider as part of the public interest test: quality, consistency and continuity of service; the value of local co-operative arrangements and the personal nature of such service.

Government Response
In the areas of social welfare, the Government considers a wide range of issues including quality, consistency and continuity of services, the extent and nature of the market, transaction costs, public access, and externalities such as the impact on communities and volunteers. Consideration of this wide range of issues necessitates a flexible approach, with competitive tendering being only one of a number of possible mechanisms. (See also the Government’s response to Recommendation 14.)

Recommendation 16: That, where appropriate, the Commonwealth Departments of Health and Aged Care and Community Services, examine competitive tendering programs and determine which services are properly and efficiently competitively tendered and which may be contracted out on a benchmark of service basis. Particular attention should be paid to rural and remote communities where locally provided co-operative services may be integral to the success of service delivery.

Government Response
Where agencies undertake competitive tendering programs they must do so in accordance with the Commonwealth Procurement Guidelines: Core Policies and Principles and Competitive Tendering and Contracting: Guidance for Managers.
These documents provide considerable assistance to managers in identifying the scope for competitive tendering of services, and making decisions on which services should be contracted out. (See also the Government’s response to Recommendation 14.)

The Commonwealth Government attaches considerable importance to the successful delivery of services under Commonwealth programs to rural and remote communities. Over the last two budgets, for example, the Government has provided considerable funds to guide the delivery of innovative, flexible and integrated health and aged care services in rural and regional areas.

These services acknowledge the key role of collaboration and co-operation between communities and various levels of government in achieving real improvements in the quality of health outcomes.

The Commonwealth Procurement Guidelines state that the Commonwealth uses its procurement to support a range of policies and that Government purchasers should ensure that where projects:

- involve expenditure over $5 million ($6 million in the case of construction and/or facilities involved); and

- are in locations where there are significant indigenous populations and where there are limited private-sector employment and training opportunities for indigenous peoples;

that they:

- consider employment opportunities for training and employment for local indigenous communities and document the outcomes;
- consider the capabilities of local indigenous suppliers when researching sources of supply; and
- consult the Aboriginal and Torres Strait Islander Commission (ATSIC) and/or the relevant community council or group, as appropriate, in the planning stages of proposed projects.

ADDITIONAL RECOMMENDATIONS—Senator the Hon Bob Brown

**Recommendation 1:** That COAG commission an independent assessment of the extent to which consumers in different parts of Australia have actually benefited from NCP and related reforms, not only in relation to prices, but also factors such as choice, availability, service standards and convenience.

**Recommendation 2:** That COAG commission an independent assessment of the social and environmental impacts of NCP.

**Government Response**

The Government considers that the Productivity Commission’s Report on the Impact of Competition Policy Reforms on Rural and Regional Australia and the Senate Select Committee’s own Report already provide a comprehensive assessment of the impact of NCP.

**Recommendation 3:** That local government participate in the COAG 2000 review of NCP; and that local government be invited to recommend an appropriate form of representation.

**Recommendation 4:** That the COAG 2000 review should:

- assess the need to revise the agreements and legislation under which NCP operates;
- ensure that social and environmental goals are not compromised by NCP;
- address the need to compensate or otherwise ameliorate the impact on people who have been made worse-off by NCP and associated economic rationalist policies;
- guarantee that processes are transparent and accountable.

**Government Response**

Local government is represented at COAG by the Australian Local Government Association. Accordingly, a representative of the Association is a member of the Working Group undertaking the review of the NCP agreements.

The Government will have regard to Senator Brown’s other recommendations in considering the review of the NCP agreements.
GOVERNMENT RESPONSE TO THE JOINT STANDING COMMITTEE ON MIGRATION REPORT ON THE DEPORTATION OF NON-CITIZEN CRIMINALS

JSCM RECOMMENDATION

1. the Migration Act 1958 (the Act) be amended to:

   (a) provide the Minister with a power to set aside an AAT decision on deportation matters if the Minister regards this outcome as being in the national interest;
   
   Accepted.

   (b) require the Minister, when exercising this power, to table an outline of the reasons before each House of Parliament within 15 sitting days;
   
   Accepted in part.

   This is accepted to the extent of mirroring the present section 502(3) of the Act and section 501 C(8) contained in the new Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998 (the Character Act), both of which require that Parliament be notified of the making of the decision (rather than being notified of the reasons for the decision).

   (c) subject the exercise of this power by the Minister to a formal review by the appropriate committee of the Parliament three years after the tabling of this report.
   
   Accepted.

2. the ten year rule continue to be applicable to those who came to Australia under the age of 18; and the Ministerial Policy Statement be amended to take account of any particular hardship or potential injustice which might arise in relation to those who came to Australia as children.

   Accepted.

3. the Migration Act 1958 be amended to abolish the ten year rule in relation to those convicted of very serious offences. These offences can be specified in the Regulations and would include murder, serious sexual assaults, drug dealing, armed robbery and the other very serious offences contained in the draft Ministerial Policy Statement

   Accepted.

4. the Ministerial Policy Statement be amended to create an expectation that persons who were previously convicted of an offence and issued with a warning, and those who are convicted of another offence which indicates a pattern of continued criminal behaviour, should prima facie be deported.

   Accepted.
5. the Migration Act 1958 be amended to render non-citizens convicted of a second offence resulting in a custodial sentence of at least 12 months liable to deportation irrespective of when the offences occurred. A non-citizen convicted of a second or subsequent offence (even if the first offence occurred after the ten year period) should become liable to deportation.

6. DIMA continues to negotiate standard procedures with each state and territory government in order to:
(a) identify each non-citizen held in prison as a potential deportee subject to the criminal deportation process; and
(b) verify any citizenship information generated by prisoners with cross checking of available records

7. DIMA:
(a) commence the deportation inquiry when a criminal non-citizen has 12 months of his/her sentence remaining before the first possible release date;
(b) complete the deportation inquiry and advise those concerned of the decision within three months; and
(c) for sentences shorter than 15 months, complete the deportation inquiry within six months of sentencing.

8. DIMA clarify the legal position regarding its powers to obtain information from the states and territories on potential deportees.

9. DIMA formalise its relations with each state and territory government using a Memorandum of Understanding in order to:
(a) overcome deficiencies in current practices;
(b) ensure each party is aware of their agreed obligations; and
(c) clarify the exchange of information under the Migration Act 1958.

Accepted.

Accepted subject to implementation being consistent the Information Privacy Principles in the Privacy Act 1988

Accepted in part.
Due to the disadvantage to the majority of prisoners who will eventually not be deported, the government considers that where the case is clearly one not for deportation, the matter should be disposed of early in the sentence. Where the matter is likely to result in deportation, or the deportation issue is not clear without further input from the rehabilitation/parole/education systems in place in the prisons, then the decision making process will commence at a later date in accordance with the recommendation.

Accepted.

Accepted.

Accepted subject to implementation being consistent with the Information Privacy Principles in the Privacy Act 1988

Accepted subject to implementation being consistent with the Information Privacy Principles in the Privacy Act 1988
10. the current Ministerial Policy Statement acknowledge the interests of any children involved as one of the primary considerations in the deportation process. Accepted. However, the Government wishes to make clear that changes to the criminal deportation policy were not made to give effect to the decision of the High Court in Teoh’s case. The Government continues to rely upon the Executive Statements made by this and the previous Labor Government on 25 February 1997 and 10 May 1995, respectively. Also, the Government is proceeding with the Administrative Decisions (Effect of International Instruments) Bill as a legislative means to set aside the ‘legitimate expectations’ arising out of treaties identified in that case.

11. the Ministerial Policy Statement be amended to ensure that the views of the family members are considered in the deportation process, and that the weight to be given to those views follows the proposal contained in the draft Ministerial Policy Statement. Accepted. However, the Government wishes to make clear that changes to the criminal deportation policy were not made to give effect to the decision of the High Court in Teoh’s case. The Government continues to rely upon the Executive Statements made by this and the previous Labor Government on 25 February 1997 and 10 May 1995, respectively. Also, the Government is proceeding with the Administrative Decisions (Effect of International Instruments) Bill as a legislative means to set aside the ‘legitimate expectations’ arising out of treaties identified in that case.

12. the Minister revise: Accepted in part.
(a) the MSIs to require departmental officers to seek victims’ views and record those views in the form of Victim Impact Statements; and

Under sub section 16A(2) of the Crimes Act, a sentencing court may take a number of matters into account in passing sentence on a federal offender. Those matters include the personal circumstances of any victim of the offence and any injury, loss or damage resulting from the offence.

It is considered that where the decision maker decides that such views should be sought, appropriate mechanisms should be put in place to ascertain these views at the time of making the deportation decision.

While it is may be considered in certain instances by the decision maker that victim’s views form part of the decision-making process, the victim impact statement (VIS) is not considered a suitable vehicle for this. The VIS is intended to be used to assess the impact of crime on the victim rather than to obtain a view about possible deportation of the offender, in all probability, some years later. There is also a possibility of re-traumatising the victim unless (and perhaps even if) professional social workers are used to complete the VIS.

(b) the Ministerial Policy Statement to include the views of victims as a factor considered in the deportation process, as proposed in the draft Ministerial Policy Statement.

Accepted.

13. the Migration Regulations be amended to ensure that all non-citizens removed because of criminal convictions are subject to the same limitation that applies to criminal deportees.

Accepted.

Consideration will be given to whether implementation of this recommendation by the government may remove the need for inclusion of a clause in any future parole orders or licences relating to federal prisoners, which precludes the offender from returning to Australia during his or her parole or licence period.
14. the Migration Act 1958 be amended to expand criminal deportation to include consideration of mentally ill non-citizens who have committed actions that would normally be expected to attract a sentence of at least 12 months, and whose actions demonstrate their continuing threat to society.

Not accepted. Implementation of the recommendation in its current form lead to the deportation of a “non-citizen with a mental illness” in circumstances where a “non-citizen without mental illness” would not be deported. For ““non-citizens with a mental illness”, the trigger is the commission of acts that would normally be expected to attract a sentence of at least 12 months imprisonment. There is no indication of how or by whom the commission of the act is proven, or in what forum. Where intent is a constituent element of a criminal offence, and the intent is not proven, a criminal conviction cannot be imposed. Intent would therefore need to be proven in order to secure a conviction of a “non-citizen without a mental illness”, before he or she might be subject to deportation. This would not be the case for a non-citizen with a mental illness.

15. the Migration Act 1958 be amended to:
(a) combine the sentences of non-citizens convicted of multiple criminal offences for the purposes of calculating liability to deportation; and
(b) introduce a sentence threshold of 24 months or more (where each single offence is less that 12 months) when calculating liability to deportation.

Accepted.

16. the Migration Act 1958 be amended to delete all references to a “sentence to death” within its deportation provisions.

Accepted.

17. the Migration Act 1958 be amended to:
(a) provide the Minister with a power to grant, in the public interest or on compassionate or humanitarian grounds, a visa to a previously deported person;

Accepted.

(b) state that this power can only be exercised personally by the Minister and is not subject to either merits or judicial review; and

Accepted.

(c) provide that when making a decision under this power, the Minister advise Parliament of the reasons within 15 sitting days.

Accepted in part. This is only accepted to the extent of mirroring the present section 502(3) of the Act and section 501 C(8) contained in the new Character Act, both of which require that Parliament be notified of the making of the decision (rather than being notified of the reasons for the decision).
18. the Minister revise the current policy statement to identify all the factors that may be taken into account in considering a deportation case and clarify, as far as possible, the weight to be given to each factor.

Accepted

19. the Minister revise the Migration Series Instruction relating to criminal deportation to:

(a) expand the list of suggested sources who may be contacted to provide information about the non-citizen; and

(b) require DIMA staff to seek relevant information from those sources if recommending deportation.

Accepted in part.

It is understood that the intention of this recommendation is to assist potential deportees by ensuring that DIMA staff identify all persons who may be able to supply information in support of the non-citizen. However, where the source of the information has not been identified by the non-citizen, care is necessary to avoid inadvertent disclosures of sensitive personal information about the non-citizen to the source.

On this basis, the government considers that only those persons identified by the offender as being adversely affected by a deportation decision should be contacted to provide argument against deportation.

20. the Commonwealth continue efforts towards achieving bilateral (or multilateral) arrangements with other nations where practical deportation difficulties regularly arise.

Accepted.

It is considered that bilateral arrangements with other countries are an effective means of improving the deportation process. These arrangements ensure that signatories are aware of the obligations and responsibilities under the agreement and help to minimise the practical difficulties which cause delays to the process.

21. the Commonwealth continue its support for arranging deportations, in appropriate circumstances, to places other than the country of nationality of the deportee, subject to the deportee’s request or concurrence.

Accepted.
Ordered that the reports of the Foreign Affairs, Defence and Trade References Committee and the Community Affairs References Committee and the errata presented by the Legal and Constitutional References Committee be printed.

DOCUMENTS

Advance to the President of the Senate

The DEPUTY PRESIDENT—I present details of the amounts determined from the Advance to the President of the Senate for 1999-2000 and explanations of the requirement for use of funds from the advance.

Motion (by Senator Ian Campbell) agreed to:

That consideration in committee of the whole of the details of the amounts determined by the Advance to the President of the Senate for 1999-2000 be made an order of the day for the next day of sitting.

Business of the Senate

The DEPUTY PRESIDENT—I table Business of the Senate for the period 1 January to 30 June 2000 and a summary of questions on notice for the period 10 November 1998 to 30 June 2000.

Auditor-General’s Reports

Report No. 4 of 2000-01

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 4 of 2000-01, Audit Activity report, January to June 2000, summary of outcomes.

ABC On-line

The DEPUTY PRESIDENT—I present a letter from the Minister for Communications, Information Technology and the Arts, Senator Alston, relating to the interim report of the Environment, Communications, Information Technology and the Arts References Committee into ABC On-line.

Fiji and Solomon Islands

The DEPUTY PRESIDENT—I present a response from the Minister for Immigration and Multicultural Affairs, Mr Ruddock, to a resolution of the Senate of 6 June 2000 concerning Fiji and Solomon Islands.

Grey Headed Flying Fox Colony:
Melbourne Botanical Gardens

The DEPUTY PRESIDENT—I present a response from the Premier of Victoria, Mr Bracks, to a resolution of the Senate of 22 June 2000 concerning the flying fox colony in the Royal Botanic Gardens in Melbourne.

SUDDEN INFANT DEATH SYNDROME

Motion (by Senator Harris)—by leave—agreed to:

That the Senate—

(a) notes that:

(i) 30 June each year is Red Nose Day, a major highlight of the public awareness and fundraising campaign of SIDSaustralia and its member organisations,

(ii) Sudden Infant Death Syndrome (SIDS), or cot death, is defined as the sudden unexpected death of an infant or young child, unexplained by medical history, and is the most common cause of death in babies aged between one month and one year,

(iii) medical science does not yet know what causes SIDS,

(iv) research into SIDS in Australia is on the cutting edge of research in the world, with a large number of projects funded and encouraged by the success of Red Nose Day,

(v) since Red Nose Day began in 1988:

(A) more than $12,000,000 has been allocated to scientific research projects nationally, including financial support for post-doctoral research fellowships, and

(b) there has been a 65 per cent decrease in the number of infants dying from SIDS,

(vi) research must continue to establish the causes of SIDS and to identify guaranteed prevention methods, and

(vii) Red Nose Day has created incredible awareness of the tragedy of SIDS and that funds from Red Nose Day have improved counselling and support services for parents, families and other affected by the death of a child, and
supports the activities of SIDSaustralia and their endeavours to find a solution for SIDS.

BUDGET 1999-2000
Consideration by Legislation Committees
Additional Information
Senator CALVERT (Tasmania) (3.51 p.m.)—On behalf of Senator Gibson, I present additional information received by the Economics Legislation Committee relating to hearings on the additional estimates for 1999-2000.

BUDGET
Consideration by Legislation Committees
Additional Information
Senator CALVERT (Tasmania) (3.52 p.m.)—On behalf of Senator Eggleston, I present additional information received by the Environment, Communications, Information Technology and the Arts Legislation Committee relating to hearings and supplementary hearings on the additional estimates for 1999-2000 and hearings on the budget estimates for 2000-01.

COMMITTEES
Corporations and Securities Committee
Report
Senator CHAPMAN (South Australia) (3.52 p.m.)—I present the report of the Parliamentary Joint Statutory Committee on Corporations and Securities on the draft Financial Services Reform Bill, together with the Hansard record of the committee’s proceedings, tabled documents and submissions.

Ordered that the report be printed.

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

Leave granted.

Senator CHAPMAN—I move:

That the Senate take note of the report.

The draft bill is the culmination of an extensive reform program of the regulatory requirements applying to the financial services industry. The objective of the reform program has been to promote business and market activity leading to important economic outcomes, including increased employment, by enhancing market efficiency, integrity and investor confidence. The reform agenda has been based on the key principles of market freedom, investor protection, information transparency, cost effectiveness, regulatory neutrality and flexibility, and business ethics and compliance.

The draft bill is the legislative outcome of a number of recommendations of the financial system inquiry—the so-called Wallis report. It proposed that there be a single licensing regime for financial sales, advice and dealings in relation to financial products; consistent and comparable financial product disclosure; and a single authorisation procedure for financial exchanges, clearing and settlement facilities. The aim of the regime would be to achieve a competitively neutral regulatory framework which provides more uniform regulation, thus reducing compliance and administrative costs and removing unnecessary distinction between products. Further, consumers will enjoy a more consistent system of consumer protection.

The draft bill proposes a regulatory framework for the financial services industry that facilitates innovation and promotes business, while at the same time ensuring adequate levels of consumer protection and market integrity. The draft bill covers a wide range of financial products including securities, derivatives, general and life insurance, superannuation, deposit accounts and non-cash payments. The regime will apply to the activities of existing financial intermediaries such as insurance agents and brokers, securities advisers and dealers and futures brokers, as well as any other person carrying on a financial services business.

Following release of the draft Financial Services Reform Bill, the Parliamentary Joint Statutory Committee on Corporations and Securities resolved on 8 March 2000 to hold an inquiry into the draft bill. The committee advertised nationally inviting submissions from interested parties. Written submissions in all totalled 67. The committee held three public hearings. From the submissions and hearings, the committee concluded that there was general support for the principles and objectives of the draft bill, especially its uniform requirements within a single comprehensive framework. Several submissions referred to the draft bill as a mile-
stone or a watershed for Australian financial services. Almost all submissions, however, included detailed comments on individual provisions in relation to their application or technical drafting.

The committee isolated six main issues arising from the submissions and hearings in relation to the draft bill which highlight the more significant aspects of the practical implementation of the draft bill and some broader questions relating to financial regulation. The committee concluded that the draft bill imposed requirements on approved deposit taking institutions which would have a devastating effect on the services offered by agencies of these institutions in country areas. Forcing all counter staff in banks, credit unions, building societies and their agents to be trained to the level of a financial adviser is an onerous burden in terms of both cost and time, and one that will place undue pressure on banks to close their branches, particularly in regional Australia. This runs directly counter to the government’s policy and programs supporting regional services. It is unacceptable that there should be a legal requirement for tellers who give information and advice about basic banking products such as savings accounts to be trained to the level of a financial adviser. There is no issue of consumer protection, real or imagined, requiring this draconian imposition on financial institutions whose customers will bear the ultimate costs.

In addition, such a requirement moves the policy thrust of the Financial Services Reform Bill away from the recommendations of the Wallis report, which identified the need to differentiate between basic deposit products and investment products when developing a consumer protection regime. That is why a specific amendment is proposed in the committee report to make this differentiation. My proposed amendment restores the integrity of the Wallis recommendations. It explicitly removes basic deposit taking products from the training and conduct regime that covers investment products, thereby removing an unnecessary obstacle for credit unions, building societies, regional banks and the big four to service regional Australia. The amendment will also ensure that small business people in regional Australia are not discouraged from entering into commercial arrangements to deliver basic banking services for the communities in which they reside.

In the committee’s view, the e-commerce and other issues raised by Telstra and the important issues relating to the international competitive position of Australia and its role as a global financial centre raised by the Australian Stock Exchange should be addressed directly in the final bill—if appropriate, in that legislation or at least in the regulations or policy statements. In particular, it may be appropriate to reconsider the proposed commencement date of 1 January 2001.

The committee concluded that the disclosure of commissions on risk insurance products has the potential to impact unfairly on small business. The committee also concluded that the concerns expressed by the Law Institute of Victoria and the accounting bodies in relation to their members whose involvement in financial services is incidental to their main activity are valid. The committee believes that the final bill or the regulations should address these issues.

The committee noted that the draft bill fails to recognise that a typical Australian financial corporate structure is a conglomerate. The committee believes that no conglomerate should be exposed to additional costs, disruption or, especially, capital gains tax as a result of this apparent deficiency in the draft bill. The committee, therefore, concluded that the final bill should expressly provide exemptions in relation to the operation of related entities within a conglomerate.

The committee decided to report as early as possible to enable the government to include its response to the report in the final bill as presented to parliament. I thank my government colleagues and also Democrat Senator Andrew Murray for their support for the report’s findings and recommendations. However, it is disappointing that Labor committee members are so blinded by their interventionist commitment to regulation that it takes a higher priority than ensuring a commonsense, workable arrangement to ensure the maintenance of over the counter
banking facilities to the maximum extent in rural areas. Senator Conroy is quoted in the Adelaide Advertiser this morning on this issue as saying that banks want to:

... keep their dollars pushing financial products across the counter, but not have their staff trained to an appropriate standard.

The fact is that to require bank tellers and other counter staff, not to mention the staff of pharmacies, newsagents and supermarkets providing deposit-taking type services, to be trained to the level of financial adviser as defined by ASIC’s policy statement 146 and as provided in the draft bill is not an appropriate standard. It is unnecessary and costly overkill. The consequence will not be better consumer protection. The consequence will be even greater removal of banking services from rural areas. Labor really are out of touch with the concerns of Australians if they think they can legislate for banks to train all their staff to this unnecessary level. They will simply remove these basic services. If this is Labor policy then country people should understand the consequences. It is no wonder we have not heard much from Country Labor lately on this issue or, indeed, on any other matter.

Before I conclude, I would like to thank all of the individuals and professional bodies that made submissions and witnesses who appeared before the committee. My special thanks is offered to David Creed, secretary of the committee, and his staff for their tireless work in supporting the members of the committee during this inquiry. I commend the report to all honourable senators.

Senator CONROY (Victoria) (4.01 p.m.)—I rise to also support the broad general principles encapsulated in the draft bill. However, a number of points need to be made about the conduct of the committee. That was a fine speech by Senator Chapman, and I am sure it was an excellent rehearsal for his preselection, which he has to face soon, but it was short on content. This report lets the following institutions out of effective consumer protection: accountants, banks, insurance companies and real estate agents. Is there any group of branch members of the Liberal Party that is not covered by that particular let-out clause? I have to tell you: there are an awful lot of spivs who will be let loose following the recommendations of the majority government report.

I did say that I wanted to talk about the committee. It is unfortunate that the committee was put in the position where at no stage were even five members of the committee able to attend a hearing—any of the hearings. The highest number of committee members able to attend these hearings was four—four on two occasions, and on one ludicrous occasion only two members of a 10-member committee could actually attend one of the hearings. This made the committee hearings a farce. The committee hearings were not able to be conducted properly. Unfortunately, Senator Chapman—and I have some sympathy for you in this regard—we now have the minister going on television and saying, ‘The committee has held an inquiry; we won’t need another one.’ I have some bad news: that is not going to be the case. Not only did the government leave Senator Chapman in the lurch; it promised to put the bill on the table by 30 June, and then we could actually have conducted a proper forensic analysis of what is in the bill, which I am sure Senator Chapman would agree is necessary in this case. We still have not seen penalty provisions. We still have not seen transitional provisions.

This inquiry was turned into a farce by the government and by the fact that there was no consultation and cooperation in the setting of the dates for hearings. What happens with all other committees that I am a member of is that everyone says, ‘Bring in your diaries and we’ll work out when we can get at least 50 per cent of the committee members to attend.’ There was no consultation on this matter with this committee. All the other committees I am a member of say, ‘Look, here is a suggested list of witnesses. What about these people? Do you have any suggestions about who we should have at this inquiry?’ So we had a situation where no attempt was made to even consult the opposition as to who they thought should actually attend the hearings to give evidence.

CLERP 6, as it is affectionately known, or FSR, is a bill about consumer protection in the financial services area. You would have
thought it would have occurred to the committee to invite a consumer association to attend to give its views. But, no, there was no Australian consumer association and, most importantly, the one consumer body that actually deals with financial matters and specialises in financial matters, the Financial Services Consumer Policy Centre, which does excellent work in this area, was not even approached by the committee to put in a submission. The one major consumer association that actually deals in financial marketing, financial products, was not even invited to put in a submission.

Senator Chapman—They must be asleep.

Senator CONROY—This was an absolute farce of an inquiry. I do not blame Senator Chapman completely, although I have been critical. Senator Chapman and I have talked about that, and I acknowledge that Senator Chapman has attempted to work through some of those issues. But the government has left Senator Chapman and the government members of the committee in the lurch by not putting the bill on the table as it promised it would. And if it thinks it can now rush CLERP 6 or the FSR bill through parliament simply because this committee has looked at some of the issues revolving around the draft bill, as it was, then it has another think coming, because as every other committee would do. What they would have told you is that the current practice in many of the banks is to require a point system for each teller. You have to meet a points tally each month, and if you do not meet the points tally each month you get cautioned and counselled, and you get further training. And in the end, if you continually do not meet your points target, you get moved on—that is, sacked. What is happening is that tellers are being put in a position where they have to push financial product across the counter. I am sure many Australians have now experienced going into a bank and having a bank teller say, ‘Oh, you’ve got a couple of thousand dollars there; would you like to have a look at this product?’ That is happening all the time. Senator Chapman and the government members appear oblivious to this. Senator Ian Campbell may laugh and say, ‘Oh, that’s not much money,’ but that is how desperate tellers are to keep their jobs. They are prepared to push and mis-sell inappropriate product across the counter.

Recently I was going through a process of buying and selling a house. I actually ended up with a reasonable amount of money in my bank account because I sold before I bought. I got into a situation where I got three phone calls from the bank saying, ‘We would like you to put your money here.’ I would say, ‘Oh, look, I’m sorry, this is just buying and selling, and there is a window of a couple of months.’ They are very efficient at it now, because they have to be. They have to keep their jobs.

Commission disclosure, if you are fair dinkum, is about revealing this practice. No court in this country, at the end of the day, will make a call that 40 points to keep your job is not a de facto commission, and there—
fore must be declared. These tellers are not just saying it to you for the good of their health; these tellers have got to do it to keep their jobs. The more money a product makes for a bank, the higher points the teller gets towards their tally at the end of the month. Funnily enough, you might be able to quickly work out that the more money a bank makes from a product the less money you make from it. There is a fixed amount of money to be made in this situation; and, if the bank is taking a bigger chunk, that is a smaller chunk for the person with the product. If a teller is desperate, if a teller knows that they have to make their points target, and they have got a choice between pushing a product with high points for them but a lower overall return to a customer and they are desperate to keep their job, what do think they will try to sell to the customer? That is the sort of mis-selling that got the United Kingdom into a $10 billion payback in the industry.

On a flight recently I sat next to Mr Henry Bosch, a former head of the national Securities Commission, which has now become ASIC, the Australian Securities and Investments Commission. Since leaving that body, Mr Bosch has devoted himself to trying to improve the ethics of the corporate sector. I do not mean by raising this issue to say that there are no ethics in the corporate sector—indeed, I think Australia has done very well in this area. We have had legislation passed to help them do that. There is the anticorruption legislation, which I think Senator Coonan had much to do with, arising out of the Joint Standing Committee on Treaties. That has been effective to a large extent, but more needs to be done to ensure that things are done in as good and as ethical a way as possible. Mr Henry Bosch is invited to go around the country to speak to boards and universities to press the idea of ethics in the corporate sector. He has been pursuing that for some years now, and I would like to put on record my tribute to him for the efforts he has made in pressing ethics in the corporate sector.

Senator Conroy spoke about tellers and people who sell products. The banks did say that they should not have to have those people licensed—that the people are there simply to sell products, as if they were commodities such as sugar and cocoa. But in this case, it was advice that was being sold. It
was said that the only people who should be licensed are those who give a particular sort of advice. I found it very worrying that a distinction is made between giving advice about products and giving advice about financial matters when in fact the two blend together. If they do blend together, it seems to me that people should be accredited before they are able to give that advice.

One of the problems in this area is that branches of banks are closing down in the country and agencies are being opened up in places such as pharmacies. It was said in the course of the evidence that those pharmacists should not be accredited, because they are simply agents in the rural areas and that, if you had to accredit them, it would cost a lot of money. I think the amount of $100 million was mentioned by the banks as how much it would cost if they were required to train people to be tellers and agents in the bush. The thrust of it all was that big money would be involved.

What I find difficult about that proposition is that the banks closed down branches in the bush because they said they were not as profitable as they should be, and that it was not efficient to have branches there. They said, ‘We as banks will give that work to the agents, whether they be pharmacists or otherwise.’ Having taken away people who gave the financial services and given part of their duties at least, to places in the bush such as pharmacies, they now say that they should not be obliged to have these people accredited, because it costs too much and they are only agencies. That seems to apply a double jeopardy to the people in the bush. First of all, they take away the banks in the bush, and then they say that the replacement service does not have to be as good as it was before because ‘they are only agents’. In other words, the banks created the situation where there were only agents, and then they said that, since they are only agents, the banks should not be obliged to train them as much as they would otherwise.

To sum up, if everybody were to act ethically, and if everybody were able to act with full knowledge and full skills, you might not need accreditation. But people are not properly trained and there are lapses of ethics. Therefore you need this accreditation—you need this licensing. In my view, if people have to be licensed in the city to give financial advice, they should be licensed in the country to give financial advice.

Senator Conroy—They are second-class citizens in the bush.

Senator COONEY—We should not, as Senator Conroy said, sacrifice citizens in the bush. If the banks want to avoid accrediting them, they should take up the point Senator Conroy concentrated on. He said, ‘Don’t get people to push these products. If tellers simply act as tellers—that is, handle money and do not talk about products—the issue of financial advice will not arise in any event.’ It is not as if the banks have been denied the opportunity to have agents in the bush. If they agree to agents dealing with only mechanical financial matters—paying out money, taking deposits—and make sure they do not talk about products, the problem is solved.

Senator LUDWIG (Queensland) (4.21 p.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN AUTHORITIES) BILL 2000

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL (No. 3) 2000

RENEWABLE ENERGY (ELECTRICITY) BILL 2000

RENEWABLE ENERGY (ELECTRICITY) (CHARGE) BILL 2000

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.22 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have two of the
bills listed separately on the Notice Paper. I move:

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

Question resolved in the affirmative.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.23 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN AUTHORITIES) BILL 2000

Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000 proposes to amend the Defence Act 1903 to bring the framework for call out of the Defence Force in law enforcement emergencies up to date. I believe the bill provides a sound basis for the use of the Defence Force as a last resort in resolving such emergencies.

The drafting of this bill follows a process of examination of Australia’s counter terrorist capability and response framework that has been in place for over twenty years. The impetus for this examination was the Hilton Bombing which occurred at the time of the Commonwealth Heads of Government Regional Meeting in 1978 which, it may be recalled, led to the call out of significant numbers of the Defence Force to secure the town of Bowral. Following these events, the government appointed Justice Hope to carry out a Protective Security Review. Justice Hope produced a report which contained numerous recommendations relating to Australia’s counter terrorism preparedness. Many of those recommendations have been acted upon over the years, focusing on aspects relating to physical reaction capability, coordination amongst relevant authorities and intelligence capability.

Justice Hope made a number of recommendations regarding the use of the Defence Force assisting in law enforcement and he proposed that legislation be enacted to provide for the process, powers and accountability regime for when the Defence Force is called on in such circumstances. The Hope Report highlighted the unsatisfactory state of the existing call out framework, including anachronistic provisions. There was no express accountability to Parliament and there was a lack of authority vested in members of the Defence Force when called out. These concerns were also echoed by academic legal commentators at the time.

The existing legislation is not responsive to contemporary needs. Rather it reflects its 18th Century English origins which focused on riot control—at a time before modern police services were developed. This can be seen by the archaic references in this legislation to the presence of magistrates, the blowing of bugles and the reading of proclamations, requirements that do not assist, or may possibly even inhibit the resolution of modern day terrorist incidents.

The present legislative framework does not provide sufficient accountability to Parliament. Nor does the legislation provide members of the Defence Force with appropriate authority to perform the tasks they may be required to carry out either in an assault upon terrorists or in a related public safety emergency. Furthermore, there needs to be provision both for safeguards in the exercise of such authority and also accountability for the actions of individuals as well as government.

Our expectations for use of the Defence Force have been distilled over the years since 1978 in the National Anti-Terrorist Plan now in its sixth edition. This plan was formulated in coordination with all those agencies, State, Territory and Commonwealth, who are involved in counter terrorist response. Under the plan, the Defence Force will only be called out to assist State or Territory law enforcement agencies where they may not have the capability to resolve an incident.

Tasking for the Defence Force may include the use of specialised assault equipment and skills to deal with the more sophisticated security threats in order to release hostages, or to recover hijacked aircraft, ships, vehicles, offshore oil and gas installations and buildings. They may also be asked to perform tasks related to resolution of such incidents by providing cordons, assisting in evacuations, searching premises for and seizing and making safe dangerous items such as firearms and bombs, controlling of public movement, picketing and guarding and temporarily detaining suspects. Such support might be required in a situation involving a chemical, biological or radiological device where the assistance of the Defence Force is required to evacuate and secure a large area.
The response in other democracies has been varied. In many countries a third or paramilitary force has been created that has special legislation governing their actions. Examples are the GSG 9 in Germany, the Gendarmerei in France, the Carabinieri in Italy, the National Guard and Coast Guard in the United States. Such an option is not considered appropriate or necessary in Australia. Another option adopted by New Zealand, and Canada is to simply assign to members of their defence force the same powers, obligations and protections as are available to their police services.

This approach is not considered desirable as it encourages the view that the Defence Force is a substitute for the police force rather than to support them, the powers available to Defence personnel would be different from State to State and because it is preferable to make provision only for specific tasks the Defence Force might be asked to perform.

Other unique difficulties exist for Australia in relation to the nature of our Federal structure. Each State and Territory currently has different emergency legislation. In addition the Constitution specifically prohibits and precludes the exercise of control over Defence Force personnel other than by the Commonwealth. This situation makes it imperative for Federal legislation to provide a cohesive and clear framework for call out.

The concept behind this bill, therefore, is to modernise the procedures to be followed for call out of the Defence Force, set out safeguards including parliamentary supervision, and specify the powers and obligations of the Defence Force when used to assist the police, as a last resort, in the counter terrorist assault role and for related public safety tasks.

The bill itself amends the Defence Act 1903 by repealing most of section 51 and adding a new Part. The government also proposes to repeal those parts of the Australian Military and Air Force Regulations that deal with call out. Under the bill, call out may be initiated to protect Commonwealth interests, or on the application of a State or Territory to assist that State or Territory resolve a law enforcement incident. The proposed legislation is consistent with the obligation imposed on the Commonwealth under section 119 of the Constitution to protect a State, upon request to the Commonwealth, against domestic violence.

Call out will only occur if the Prime Minister, Minister for Defence and Attorney General agree that a State or Territory is not, or is unlikely to be able to protect the Commonwealth or itself against the domestic violence. In making or revoking an order the Governor-General acts on the advice of Executive Council or for reasons of urgency, he or she is to act with the advice of an authorising Minister. The Chief of the Defence Force is to use the Defence Force to perform the tasks set out in the Order. Subject to directions from the Minister, the Chief of the Defence Force will determine the composition of the force to be deployed and exercise command of it.

The Chief of the Defence Force must ensure that the Defence Force, while remaining under his command at all times, must assist and cooperate with the police force of the State or Territory. Members of the Defence Force will only be able to exercise such powers as are specified in the Order, which in turn may only be from those powers that are set out in the bill. As far as is practicable, members of the Defence Force will not be able to exercise these powers unless requested to perform a task by the police of the State or Territory.

The Order must state the nature of the Commonwealth interest threatened and the domestic violence. It must state that it comes into force when made and unless revoked earlier it will cease after 20 days. The Order must be revoked if the Ministers cease to be satisfied that call out is warranted or the State or Territory withdraws its application. When an Order or Orders cease to be in force then the Minister for Defence must as soon as practicable and within 3 sitting days table a copy of the Order or Orders and any declarations and report on the use of the Defence Force.

The Defence Force counter terrorist assault role will be provided for in Division 2 of the proposed new Part. This Division authorises the assault force to, among other things, rescue hostages and recapture premises. The Division also permits these personnel to do things related to this purpose such as detaining suspects until they can be handed over to a police officer, evacuating persons found in the premises, search the premises for dangerous objects and to seize and make safe such objects.

In relation to those tasks associated with public safety arising from an emergency, specified powers will be set out in Division 3. I should emphasise that these powers will only conferred on members of the Defence Force when a general or designated security area is declared by Ministers and only on those personnel called out. The fact of the declaration of a general or designated security area, the reasons for the declaration of such an area and the powers that the Defence Force may exercise in it must be advised to the public.

Within a general security area, if the Chief of the Defence Force or an officer authorised by him
believes on reasonable grounds that there is a dangerous object, such as a bomb, chemical weapon or firearm that could be used to cause death, serious injury to persons or serious damage to property on any premises in the area and it is necessary as a matter of urgency to make the dangerous object safe or prevent it being used, then members of the Defence Force may be authorised to search such premises. The authorisation requires the following matters to be set out including:

- a description of the premises;
- identification of the member in charge;
- state the names of the authorising Officer and other search members authorised to carry out the search;
- authorise the seizure of items believed on reasonable grounds to be dangerous object;
- authorise the search of persons near the premises who is believed on reasonable grounds to have a dangerous object in his or her possession;
- to seize that object; and
- state the time that the authorisation remains in force, which cannot be for more than 24 hours.

In acting under the authorisation the member of the Defence Force may use such force as is reasonable and necessary in the circumstances.

A copy of the authorisation has to be given to the occupier and the member in charge must identify themselves to the occupier and any person searched must be shown a copy of the authorisation. The occupier is entitled to observe the search provided the person does not attempt to impede the search.

Defence Force members may also be authorised to search a means of transport in the area if they believe on reasonable grounds that the transport contains a dangerous object, and may erect barriers and use reasonable and necessary force stop, detain and search the transport for as long as necessary to search it and to seize any dangerous thing. If there are reasonable grounds for believing that a person in the general security area generally in possession of a dangerous object Defence Force members may search the person and seize the dangerous thing.

Division 3 also introduces the concept of the designated area which the Ministers may declare to be in effect within the confines of the general security area. If such an area is declared it must once again be advised to the public including its specific boundaries.

Within the designated area a member of the Defence Force may use reasonable and necessary force to direct a person not to bring a means of transport, such as a car, into the area, to take it out of the area, move it to another place within the area or not to move it at all.

Within the designated area members of the Defence Force may erect barriers and remove or move any unattended means of transport. They may direct a person not to enter the area, to leave it or move from one place to another within it and enter and search premises or a means of transport for the purposes of directing any person found therein to leave the area. It will also be possible for members to make it a condition of entry that a person or vehicle be searched for any dangerous object.

Defence Force members will be authorised to make safe or prevent from being used any dangerous object seized under these provisions and, if practicable, will be required to issue a receipt for it. If it is suspected to have been used in the commission of an offence then it must be given to a police officer, if not then it must be returned to the owner. Someone who is suspected of having used the dangerous object to commit an offence may be detained and handed over to the police. In detaining such persons necessary force may be used and if practicable the person must be advised of the nature of the offence unless this is clear in the circumstances.

When exercising the authorities set out in Division 3 it will be an offence for a Defence Force member not to wear uniform and identification attached to the front of the uniform, except where the absence of identification is caused by the act of someone else. It will also be an offence to obstruct a member performing these duties. If a member fails to comply with any obligation in relation to the exercise of these authorities then they will be taken not to have been entitled to exercise them.

The bill has no effect on uses or authorities of the Defence Force under other legislation and powers such as customs, immigration and fisheries legislation. The bill also preserves the current prohibition set out in section 51 of the Defence Act regarding the use of Defence Force elements in connection with industrial disputes.

The bill attempts to provide for the changing nature of the terrorist threat, a threat that was not within contemplation when the Defence Act and its regulations were drafted almost 100 years ago. Today we must be on our guard against not only deadly military style conventional weapons but also the so-called weapons of mass destruction. When the sarum gas device was triggered in Tokyo the lack of control and capability at the scene resulted in around 5,000 people fanning out around the city to contaminate other persons and
The purpose of this bill is to give effect to an agreement recently made between two Aboriginal Land Trusts and the Central Land Council. The agreement will enable the grant to those two Aboriginal Land Trusts of land on which there are several redundant roads over which the public has a right of way. The roads are on land that is contiguous to the lands owned by those two Land Trusts. The lands are included in Schedule 1 of the Aboriginal Land Rights (Northern Territory) Act 1976 ("the Land Rights Act"). They were granted to the Trusts under section 10 of the Land Rights Act under the headings ‘Hermannsburg’ and ‘Haasts Bluff’ respectively.

As the Land Rights Act currently stands, only land other than that described in Schedule 1 can be granted to an Aboriginal Land Trust that holds contiguous land, when a previously existing right of way ceases to exist. A parallel section does not exist in case of Schedule 1 land.

The bill gives effect to clauses 15 and 31 of the agreement, which commit the parties to the agreement to requesting the Minister for Aboriginal and Torres Strait Islander Affairs to amend the Land Rights Act to correct this anomaly in respect of Schedule 1 land. The amendment will have the effect of enhancing the efforts of the Northern Territory government and the Land Councils to achieve the resolution of land disputes by means of written agreement rather than prolonged and costly disputation.

This bill reflects the on-going commitment by this government to assist in achieving negotiated outcomes in respect of the Land Rights Act and to improving the Act when and if required.

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

There are no financial implications arising from this bill.

RENEWABLE ENERGY (ELECTRICITY) BILL 2000

This bill is the primary legislation to implement the government’s mandatory renewable energy target.

This legislation brings into force one of Australia’s most strategic greenhouse response measures—a legal requirement for large buyers of electricity to source more of their electricity needs from environmentally friendly, renewable fuel sources.

The renewable energy target was originally announced by the Prime Minister on 20 November 1997, in the statement Safeguarding the Future: Australia’s Response to Climate Change.

On the eve of the third Conference of the Parties (COP3) under the framework convention on climate change, the Prime Minister announced that ‘targets will be set for the inclusion of renewable energy in electricity generation by the year 2010. Electricity retailers and other large electricity buyers will be legally required to source an additional 2% of their electricity from renewable or specified waste-product energy sources by 2010’.

This commitment was a cornerstone of the approach we took in Kyoto, an approach which was
widely acknowledged as delivering recognition for Australia’s special circumstances and in particular, our relatively high dependence on fossil fuels.

This legislation brings into effect that commitment. The strategic importance of this legislation is not only that it delivers on a key aspect of our commitment in Kyoto. It is not only that it achieves significant greenhouse gas reductions, of up to 7 million tonnes per year. It is also that it represents a big step along the road of ‘greening’ our electricity generation sector – a sector which represents the single largest contributor to Australia’s total greenhouse emissions.

Given Australia’s projections for growth under a business-as-usual scenario to 128% above 1990 levels, achieving our Kyoto target will require the implementation of some beyond no-regret measures. The government has been clear that this measure is one of those beyond no-regrets policies.

The fact that this government is prepared to introduce this mandatory measure demonstrates the depth of our commitment to reducing Australia’s greenhouse gas emissions. Of course, we do not take this step lightly. We have allowed a full two years of detailed consultation with industry, community interests and state and territory governments.

When it comes into force, this measure will see an additional 9,500 gigawatt hours of renewable energy being generated and consumed in Australia over the 2010 to 2020 period. This is equivalent to more than twice the annual renewable electricity generation output of the Snowy Mountains Hydro Electric Scheme—a scheme that took some quarter of a century to build and which represents, by general regard, one of Australia’s true nation-building achievements.

The fact that this target will call forward twice the amount of renewable energy that is generated by the Snowy Hydro Scheme, and do so in just 10 years, underscores the magnitude of the commitment we are making.

Now I noted that this measure is the result of a long process of consultation and technical investigation.

The progress with this measure has been closely followed, from its initial announcement in 1997, through the many phases, which led to the decisions taken by the government in November 1999 on the implementation approach for the measure. This measure has received a great deal of international attention. It is strongly supported by the renewable energy industry and has progressed more rapidly towards implementation than many other international commitments to support renewable energy which stemmed from Kyoto.

Extensive economic modelling has been conducted to demonstrate that this measure is able to be met in a cost effective manner and offers real benefits to our economy. These are benefits which go beyond simply the achievement of greenhouse gas reductions. An unprecedented amount of effort has been made to involve stakeholders and the public in the development process.

There is no denying that this measure has itself been a challenge to bring to this stage. Developing answers to the questions of: what does the target mean; how will the liable parties be identified; and what is the best way to implement the measure itself took a technical working group close to 15 months. Working with the States and finalising the measure within the federal government took a further 5 months. Of this two year timeframe, many months have been dedicated to seeking community and industry feedback. Many refinements were made to the implementation options to make the measure more achievable, more cost-effective and more industry-friendly—and the government thanks the community for the time and effort involved in providing input to the development of this measure.

Despite this, some industry groups continue to oppose its introduction. However, the support expressed for this target from other areas of the community, not just the renewable energy industry, demonstrates that the people of Australia value efforts made to increase the environmental ‘friendliness’ of our electricity supply.

While this measure imposes new obligations on purchasers of large amounts of electricity, industry will not be alone in meeting the obligations of this target.

The government has committed almost $1 billion towards greenhouse gas abatement measures—up to $362 million of which is directly aimed at supporting the renewable energy industry. This funding is predominantly directed towards competitive grants programs and rebate schemes, giving renewable energies the extra push that they need to become commercially competitive, both on a large and smaller (domestic) scale. These programs will result in many new installations of leading edge technologies, the advancement of a range of pre-commercial technologies and bring renewable energy generation to the people, through direct rebates for installations of renewable energy systems.
This supply side push, combined with the demand side pull of this measure, provides a comprehensive package to support the development of Australia’s renewable energy industry and the achievement of the measure’s multiple objectives of:

- accelerating the uptake of renewable energy in grid-based applications, so as to reduce greenhouse gas emissions;
- providing an on-going base for the development of commercially competitive renewable energy, as part of the broader strategic package to stimulate renewables; and
- contributing to the development of internationally competitive industries which could participate effectively in overseas energy markets.

This measure has already had an impact. Ever since the announcement of the final design parameters for the measure in November 1999, there has been an unprecedented amount of activity in renewable energy project development. So much so that there is even talk of manufacturing capability in renewable energy project development. So there has been an unprecedented amount of activity in renewable energy project development.

The government has set some boundaries on the terms under which they will be supported. Industry studies have shown that all of these offer significant potential. This potential will be harnessed if it is cost-effective to do so. The market-based mechanism adopted to meet the target should send strong signals to the most cost-effective renewable energy options and has proven to be widely supported in industry. The market-based mechanism adopted to meet the target should send strong signals to the most cost-effective renewable energy options and has proven to be widely supported in industry.

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The target will not be met by biomass alone, however. While this will make a low cost contribution towards meeting the target, the other, high tech and more costly technologies will not miss out. Particularly in areas which are not connected to the major grids, solar technologies offer electricity generation capabilities with low maintenance requirements and long working lives. In comparison to extending the grid to regional areas, or constantly trucking in diesel or oil for fuel, solar technologies can offer the most logical solution to the energy needs of our remote areas.

In combination with the rebates of up to $8,250 offered by this government for the installation of photovoltaic electricity generation systems on domestic and community use buildings, the PV industry has a lot to be excited about. The opportunities are there for the taking.

The government would not only like to see biomass and PV respond to this target though. A very broad spectrum of fuel sources have been included as eligible under this measure. This legislation, with its accompanying regulations, will also provide support for wind, ocean technologies, hydro, geothermal, biogases, biomass by-products from a range of industries, solar water heaters and fuel cells using renewable fuels. These can be used on or off grid, in small or large applications.

This measure also provides an incentive for the better use of our existing resources. This measure can provide maximum benefit to the economy if we take the necessary steps to use the fuels more efficiently. This may mean upgrades to existing equipment, introduction of new technologies, better storage techniques or faster movement towards co-firing renewables with fossil fuels.

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The market-based mechanism adopted to meet the target should send strong signals to the most cost-effective renewable energy options and has proven to be widely supported in industry. This legislation sets the broad ‘rules’ for meeting the target, but allows the market to make the selection of the projects which will be supported – and the terms under which they will be supported.

The government has set some boundaries on the cost that it is prepared to see the economy bear in meeting this measure, but with the understanding that if the market works effectively, this cost cap need not be reached. The flexibility provided through a market-based mechanism has shown time and time again that it will find innovative and cost effective solutions to the problem.
This legislation will work by placing the legal responsibility to meet the target on the wholesale purchasers of electricity—the very large electricity purchasers in the country. At the moment this is, and is likely to continue to be, a small group of companies – mostly our electricity retailers and large industrial customers.

It is by virtue of the size of their purchasers that these parties can send signals to the market that renewable energy generation projects must be supported.

This target sends a message to the ‘large end of town’ that we want to see industry lead the way in greenhouse gas reduction. Industry can make a difference – and that difference trickles down to the community.

This legislation supports a good and necessary policy outcome. This legislation provides one of the largest boosts to the renewable energy industry that Australia has ever seen. This legislation will help us chip away at the climate change problem.

In considering this legislation, I ask you to consider the merits of a policy designed to inject more greenhouse friendly fuel sources to our electricity supply mix. I ask you to consider the community’s desire to see this target implemented.

I also ask you to consider the great amount of consultation which has been undertaken in developing this legislation and the fact that this legislation meets many of industry’s needs, while still supporting Australia’s overall greenhouse gas abatement goals of achieving maximum abatement with modest impact on our rate of economic growth and international competitiveness.

I commend this bill.

RENEWABLE ENERGY (ELECTRICITY) (CHARGE) BILL 2000

This bill implements the penalty for non-compliance with the Renewable Energy (Electricity) Bill 2000.

The Renewable Energy (Electricity) Bill 2000 establishes a requirement for wholesale purchasers of electricity to purchase increasing amounts of renewable energy.

Parties who are not able to meet their obligation to secure sufficient renewable energy certificates will be able to elect to pay a shortfall payment to the government. This penalty will be redeemable if the shortfall is made up within three years from the shortfall being incurred.

The government believes that a penalty is essential if businesses are to be encouraged to comply with the legislation. The penalty has been set at a level to support compliance and at the same time impose reasonable limits on the costs faced by businesses.

I commend this bill.

Debate (on motion by Senator Ludwig) adjourned.

Ordered that the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000 and the Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 2000 be listed on the Notice Paper as separate orders of the day.

COPYRIGHT AMENDMENT (DIGITAL AGENDA) BILL 2000

First Reading

Bill received from the House of Representatives.

Motion (by Senator Ian Campbell) agreed to:

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

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.24 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 Copyright Amendment (Digital Agenda) Bill 2000 implements the most comprehensive package of reforms to Australian copyright law since the enactment of the Copyright Act 1968. In developing the legislation, the government has given all relevant interests extensive opportunities to put their views and comment on the proposed reforms. This bill represents the culmination of that exhaustive consultation process.

The reforms will update Australia’s copyright standards to meet the challenges and harness the opportunities presented by rapid developments in communications technology, in particular the expansion of the Internet. They have been designed to provide the copyright framework to successfully take our communications, informa-
tion technology, research and development, education and arts sectors into the 21st century.

The unifying theme that connects these sectors is the production of content and its delivery to end-users.

Content is the key commodity of the information economy and our copyright laws regulate both its commercial exploitation and accessibility. This government is committed to maintaining the balance between copyright owners and users so that the new economy will encourage research, innovation and the production of new material. The bill also recognises the key role of carriers and Internet Service Providers (ISPs) who are facilitating the delivery of content over the Internet.

The central aim of this bill, therefore, is to ensure that copyright law continues to provide incentives for the creation and production of content in the digital environment whilst at the same time, allowing reasonable online access by students, teachers, researchers, libraries, schools, universities, galleries and museums. The bill is also designed so that communications carriers and ISPs will have certainty about their rights and liabilities in providing access to content.

This bill is an integral component in the government’s strategy to develop a legal framework that encourages online activity and promotes the growth of the information economy.

Copyright Owners

The information economy is developing from the revolutionary new opportunities created by digital technology for the use, storage and transmission of information.

New business models are emerging to take account of the opportunities and challenges posed by online delivery.

This bill provides copyright owners with the tools they need for the commercial exploitation of their intellectual property in the digital age.

Among the major reforms proposed in the bill, the centrepiece is a new broadly-based technology-neutral right of communication to the public.

The new right will be an exclusive right in literary, dramatic, musical and artistic works, as well as in sound recordings, films and broadcasts.

It will replace and extend the existing technology-specific broadcasting right which applies only to ‘wireless’ broadcasts and replace the limited cable diffusion right.

The right of communication will also cover the new means of commercially exploiting content and will encompass the making available and transmission of copyright material online, so as to provide protection to material made available through on-demand, interactive transmissions.

Examples of the exercise of the right would be the uploading of copyright material onto a server connected to the Internet or display of art work on a website or transmitting copyright material via email.

New enforcement measures in the bill will also provide copyright owners with effective tools to combat online piracy.

Criminal sanctions and civil remedies will apply against those who manufacture and supply devices and services designed to circumvent copyright protection measures such as password protection or computer program locks.

Sanctions and remedies will also apply against the intentional tampering or removal of electronic rights management information (or RMI). RMI typically includes details about the copyright owner and the terms and conditions on which the use of the material is permitted. It is intended to include, for example, ‘digital watermarks’ which are attached to or embodied in copyright material in electronic form.

The bill also enhances copyright enforcement for broadcasters by providing criminal sanctions and civil remedies against the manufacture and commercial dealing in decoding devices for the unauthorised reception of their encoded signals.

Such devices, for example, allow the unauthorised reception of pay TV signals, or the reception of encoded free-to-air broadcasts outside their intended licence areas. The enforcement regime also provides a civil remedy in relation to the use of these devices for commercial purposes.

The rights of copyright owners such as film producers whose material is included in free to air broadcasts have also been augmented by the introduction of a statutory licence scheme to remunerate them when their work is retransmitted. This type of retransmission may currently occur by Pay TV operators without payment to the underlying rights holders.

Users

Having provided new rights and enforcement measures for copyright owners, the bill also provides users with an important package of exceptions to copyright and allows exemptions for the supply of decoding devices and services in closely defined circumstances.

As far as possible exceptions in the bill replicate the balance that has been struck in the print environment between the rights of owners of copyright and the rights of users.
The extension of this balance into the digital environment was one of the key principles enshrined in the 1996 World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

The fair dealing exceptions to copyright permit the use of copyright material in certain circumstances for purposes including research or study, criticism or review, and reporting news. These exceptions will apply to new digital uses.

The new legislation also extends the existing research and study exceptions for libraries and archives to the reproduction and communication of copyright material in electronic form. These exceptions have been carefully crafted and limited to ensure that an appropriate balance between copyright owners and users is achieved. The reforms take into account the need to preserve the commercial markets for copyright owners.

Universities and schools will be able to copy material electronically and make it available to staff and students. This will be subject to the payment of equitable remuneration to copyright owners, as is currently the case for photocopying and copying broadcasts.

To ensure these important exceptions are not overridden by the locking up of material by technological means, exemptions to the enforcement regime have been included so that circumvention devices and services may in effect be supplied for specific 'permitted purposes'.

The 'permitted purposes' relate to the operation of the exceptions for libraries and archives, educational institutions and government users, and the decompilation of computer software for the purposes of interoperability, error correction and security testing.

These exceptions for research and education areas are vital to promoting innovation in the information economy. The government recognises that a robust research sector is essential to encourage the innovation necessary for competitive Australian industries.

New technologies also provide great opportunities for users in remote and regional Australia to access the educational and cultural material more readily available in metropolitan areas. The Digital Agenda exceptions promote the uptake of technologies by libraries and cultural institutions to provide better access for all Australians. The extension of the exceptions for schools and universities to cover remunerated digital uses will allow online education to become a reality for a growing proportion of the community. The bill sets the framework to allow the education sector to work with copyright owners to deliver new innovative online educational services both in Australia and overseas.

Apart from the copyright owners and users, the government has also been mindful of the particular perspective of the new carriers and ISPs who are facilitating the delivery of content over the Internet. The bill responds to their concerns about the uncertainty of the circumstances in which they could be liable for copyright infringements by their customers.

The provisions in the bill limit and clarify the liability of carriers and Internet Service Providers for both direct copyright infringement and authorising copyright infringement.

The amendments address the 1997 High Court decision of APRA v Telstra, in which Telstra, as a carrier, was held to be liable for the playing of music-on-hold by its subscribers to their clients, even though Telstra exercised no control in determining the content of the music played. Typically, the person responsible for determining the content of copyright material online would be a website proprietor, not a carrier or Internet Service Provider.

Under the amendments, therefore, carriers and Internet Service Providers will not be directly liable for communicating material to the public if they are not responsible for determining the content of the material. This is a key underlying principle in the government’s approach to regulating the new technological environment.

The reforms provide that a carrier or Internet Service Provider will not be taken to have authorised an infringement of copyright merely through the provision of facilities on which infringement occurs.

Further, the bill provides an inclusive list of factors to assist in determining whether the authorisation of an infringement has occurred. This codification of authorisation principles provides greater certainty for all players in the digital environment.

The government has also acted to ensure that the technical processes which form the basis of the operation of new technologies in a networked world are not jeopardised.

The Digital Agenda bill clarifies that temporary copies made as of the technical process of making or receiving a communication will not infringe copyright.

There is a strong public interest in providing that temporary copies are not infringements in order to allow the effective, efficient and timely operation of communication networks.
The bill will commence 6 months after it receives Royal Assent. This period will allow affected parties to re-negotiate, where appropriate, current arrangements in light of the comprehensive amendments provided by the bill.

The amendments provided by this bill are at the cutting edge of online copyright reform, and clearly place Australia among the leaders in international developments in this area.

As a result, in certain areas of the bill we are entering uncharted waters. New technologies and business models are rapidly evolving, and we wish to ensure that an appropriate balance is maintained between the rights of copyright owners and the rights of copyright users.

The government therefore proposes that the operation of the legislation, particularly the extended statutory licence scheme for educational institutions and the new enforcement measure provisions, should be reviewed within 3 years of the commencement of the legislation.

This bill will update Australian copyright law for the 21st century and its passage will be a key milestone in the successful development of our information economy.

Debate (on motion by Senator Ludwig) adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.

**ASSENT TO LAWS**

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

- Family and Community Services Legislation Amendment Bill 2000
- Local Government (Financial Assistance) Amendment Bill 2000
- Health Legislation Amendment (Gap Cover Schemes) Bill 2000
- Petroleum (Submerged Lands) Legislation Amendment Bill (No. 2) 2000
- Transport Legislation Amendment Bill 2000
- National Health Amendment Bill (No. 1) 2000
- Taxation Laws Amendment Bill (No. 6) 2000
- Diesel and Alternative Fuels Grants Scheme Amendment Bill 2000
- Corporations Law Amendment (Employee Entitlements) Bill 2000
- New Business Tax System (Miscellaneous) Bill (No. 1) 2000
- Financial Management and Accountability Amendment Bill 2000
- Appropriation Bill (No. 1) 2000-2001
- Appropriation Bill (No. 2) 2000-2001
- Appropriation (Parliamentary Departments) Bill (No. 1) 2000-2001
- Customs Amendment (Alcoholic Beverages) Bill 2000
- Excise Amendment (Alcoholic Beverages) Bill 2000
- New Business Tax System (Alienation of Personal Services Income) Bill 2000
- New Business Tax System (Alienated Personal Services Income) Tax Imposition Bill (No. 1) 2000
- New Business Tax System (Alienated Personal Services Income) Tax Imposition Bill (No. 2) 2000
- New Business Tax System (Miscellaneous) Bill (No. 2) 2000
- New Business Tax System (Integrity Measures) Bill 2000
- A New Tax System (Tax Administration) Bill (No. 2) 2000
- Indirect Tax Legislation Amendment Bill 2000
- Compensation Measures Legislation Amendment (Rent Assistance Increase) Bill 2000
- Social Security and Veterans’ Entitlements Legislation Amendment (Miscellaneous Matters) Bill 2000
- Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No. 1) 2000
- Sales Tax (Customs) (Industrial Safety Equipment) Bill 2000
- Sales Tax (Excise) (Industrial Safety Equipment) Bill 2000
- Sales Tax (General) (Industrial Safety Equipment) Bill 2000
- Sales Tax (Industrial Safety Equipment) (Transitional Provisions) Bill 2000
- International Tax Agreements Amendment Bill (No. 1) 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
Senator GIBBS—You can roll it back.

Senator GIBBS—There are a lot of small business people out there saying to me, ‘I just love being a tax collector for this government. What am I getting out of it? Nothing but headaches.’ Small businesses are just starting to complete and return their first set of business activity statements. They are just starting to pay the federal government the first GST instalments. Do you think they are really concerned about unfair dismissals?

Senator Sherry—They are struggling with the GST.

Senator GIBBS—Absolutely. On the other side of the ledger we have steadily increasing interest rates. Each interest rate rise means another worry for small business operators. They are two of the major concerns for small business operators: the GST and interest rates. Unfair dismissal laws are way down the list, I can assure you. Ultimately, the government’s reintroduction of this bill is a clear demonstration that this government is tired and out of ideas. It has no forward looking plan for this nation. This legislation has been rejected before and we will reject it again.

Senator LUDWIG (Queensland) (4.28 p.m.)—I rise to speak on the Workplace Relations Amendment (Unfair Dismissals) Bill 1998. The bill amends the quite one-sided and awful Workplace Relations Act 1996. It actually seeks to, firstly, exclude new employees of businesses from being able to use unfair dismissal laws and stop employees from accessing the unfair dismissal laws of businesses with 15 or fewer employees. The bill has two refrains. One is to make employees understand that Mr Peter Reith is not a minister to help or assist employees in this country. Clearly, his mandate is to ensure not only that small business get an unjust leg up but also that all business in the federal sphere will get an unfair advantage at the expense of workers.

This bill seeks to take away from working people an avenue that they have for complaint and the redress of wrongs, one that is forced on them by this government. The first would probably be the GST.
so typical of our society: to be able to complain and to have an avenue for redress. To exclude this group of workers on arbitrary lines not only is unfair but smacks of privileges going to employers in our society and of workers’ rights being tramelled. The real shame of this bill is that, as Mr Reith said on radio this morning—I think it was on the ABC—he will keep trying to put this bill up, notwithstanding that it was rejected by the Senate as recently as 25 March 1998. Since that time nothing has happened to alter the view of Labor; nothing has occurred which would otherwise convince Labor that this proposal has merit. Mr Reith argues that he has had a renewed mandate to pursue this item since the October 1998 election. What a spurious argument! It is ridiculous to suggest that every piece of federal legislation should simply be agreed upon because in the House of Representatives the Liberal Party achieved a majority and could form government. Admittedly, the composition of the Senate has altered but not significantly and certainly not as far as the views of this house in relation to this bill are concerned. This house has a responsibility to ensure that bills are individually scrutinised and considered against a framework of what is fair. From my particular point of view, this bill is also against the terms of what Queensland workers covered by this legislation would consider to be fair and not good legislation.

This is not good legislation. It is ad hoc, arbitrary and is likely to cause unfairness and confusion over who is or is not caught by the bill. However, not content with trying this item again, Mr Reith has included another even more onerous and unfair provision that did not form part of the bill when it was last before the Senate. Of course, I am speaking about the six-month qualifying period for new employees. It is one of those matters that can only be described as having been plucked out of the air. It is a long period indeed. You would think a good employer, a decent employer or even perhaps a bad employer would be able to assess, certainly before six months, whether they were going to keep an employee on. In fact, I would go so far as to suggest that it seems to be nothing more than a device to ensure that there is churning in the labour market—job turn-overs—and that employers have the ability to hold employees for six months and then turn them over. Some persons are already excluded from seeking redress for unfair dismissal under the provisions of the Workplace Relations Act 1996. This act, in section 170CB, specifies those who can access the dismissal laws and by regulation has restricted certain other groups. That list includes high income earners, some temporary employees, some trainees and some contractors.

Quite apart from this, this bill has dubious value in achieving the stated claims of Mr Reith. Mr Reith has whipped small business into a frenzy about it. Now he finds himself in a position where he cannot step away from convincing small businesses that it will benefit them. He has put it on the record that it will benefit them and he has stated in his rhetoric that it will benefit them. Now he is caught in that land of not being able to resile from his own stated goals in respect of this legislation. Therefore we find ourselves once again having pushed to us from the House of Representatives this piece of legislation, which, in his own words, he knows has little prospect of success. Today in the second reading debate the Democrats advised that they would not support the bill. There is little hope of this bill in its present form passing though this house.

Some of the matters that are argued in relation to the bill for the maintenance of the exemption seem right out of the ark. It is simply unfounded to argue that these amendments are necessary. It is worthwhile going through some of the stated benefits that the bill is supposed to bring. One of them is to ensure the continued growth of small business. Already we have heard Senator Hill, in question time today, going through what the champions of this government are saying—that growth is on the up and up. If that is the case, this legislation is not needed. What he has also gone on to say is that it reflects the ‘special burdens’ carried by small business—in other words, we have to help small business by providing this short exemption process. That is ridiculous. There are better ways of dealing with small business in a more proactive and businesslike
manner than providing exemptions in dismissal legislation. The other issue that gets put up is that it is supported by surveys of small business. This is simply spurious.

Mr Reith has argued that it has been re-endorsed by the electorate. Again, the electoral mandate has been touted by this government, but nobody takes this seriously. It is a very narrow view. I suggest, to take industrial relations and deal with it by an exemptions process in the shorthanded fashion that this bill sets out. It is far better to deal with industrial relations proactively, something Mr Reith seems unable or unwilling to do. If there is a perception that small business is not performing well because of concerns about supposedly bad workplace practices or of being flooded by supposedly litigious employees seeking to take out unfair dismissal claims—claims, I might add, which do not add up, judging by the statistics from his own department—there are always more sensible ways of tackling the problem than by introducing inequitable and unfair legislation. It seems so typical of this government to address perceived problems by trying to legislate them out of existence. Assuming for a minute that there is a problem, this government cannot seriously think that the best way of tackling the problem is by amending the act in this way, by simply providing two exemptions—a small couple of amendments to a bill—and hoping that a broad-brush approach will provide job creation, jobs growth and an incentive for employment.

There is a raft of things that this government could do to ensure that small business can cope adequately with the issues that confront it. It is true that small business is confronted by many challenges, which can include lack of capital, lack of experience, lack of training, lack of access to markets and lack of time spent on improving the foregoing. To give small business a false halo will not assist it. Clearly, the other problems that confront small business will not vanish as a consequence of addressing this problem; they will continue. What can happen is a simple transferral of the problem to another area. Employees faced with a grievance and with nowhere to go to air the grievance will not simply let it go into the ether. Rather, they will transfer it to another area to try to resolve it. It might then manifest itself in another way. What will we then have? Government trying to address the transferred grievance. What do we see next? More legislation to try to address that problem—and so on and so forth.

In respect of the two artificial thresholds—that is, the six-month qualifying period for new employees and the ‘15 employees and under’ exemption—as I said earlier, they are artificial and arbitrary. As far as I can understand, no research has been done on whether or not there is going to be any perceived benefit at the end of the day, on whether those are the best amounts, on whether the figure of six months or 15 is the catch, on whether they discriminate badly against employers who want to employ 16 or on whether the legislation favours businesses that are highly capital intensive and use a very small labour force and discriminates against those employers that are service oriented and require more employees. It does not seem to even itself out. It appears to be simply based on the number of employees rather than on the business size, its turnover, the ability of the business to compete or even the type of business that it is.

One of the effects of the legislation is to encourage some businesses—and not very good businesses, I might add—to keep below the threshold, so the legislation might have the opposite effect to that envisaged. For whatever reason—perhaps due to poor judgment or perhaps because it might be better to work under the legislation—businesses might decide to constrain the growth in their business. They may believe that, because Mr Reith has set an arbitrary limit, they should abide by that to avoid the unfair dismissal laws. Rather than being pro job creation, I suggest the legislation could stifle job creation as businesses restructure their businesses to remain below that threshold. With some jobs, the legislation may also cause businesses to hire short-term employees rather than make commitments to longer term employees, thus simply adding to the churning of jobs in the labour market in order to keep below the threshold.
To think that businesses will not do this is very short-sighted. My personal experience of this was as an industrial inspector in the difficult area of trading hours. States sought to introduce and to regulate trading hours, with some governments seeking to deregulate them and to alter them. My experience of that has shown me that some firms, even large firms with many employees, will strive to restructure their businesses, even artificially, to obtain some perceived benefit. For example, some large firms split up their businesses into smaller trading entities in order to avoid the trading hours legislation in Queensland, legislation which was based on the amount of employees. You could have a large business with colour coded areas on the shop floor which belong to different trading entities so that each entity could keep under the employee limit in the legislation. So under the whole roof you could have far in excess of the limit on employee numbers that would allow the business to trade lawfully under the legislation, but they would be trading lawfully because they had split the floor into four or five different colour coded areas—splitting the business into subsidiaries and different trading entities to allow the business to continue. It was a sham, but it makes you wonder why they would go to that sort of length. They went to that length to ensure that they could meet some arbitrary figure that was set within legislation. That example demonstrates that it is not an argument to say that it will not happen; it has happened and it does happen. Businesses do set their size by the size that is in the legislation.

It seems ludicrous for them to try to obtain some perceived benefit. The perceived benefit is not there, but some businesses will believe it is there. They will believe the rhetoric of this government, and they will try to establish their trading entities under the limit. It is quite ridiculous. The labour market then gets skewed along these artificial lines to the detriment of the customers, the employees and, ultimately, the business itself as its structure becomes unworkable or is exposed as a sham. It would be far better for this government to spend time and energy improving the conciliation powers of the commission rather than introducing restrictive legislation such as this.

In truth, Mr Reith is promoting this legislation because he sees it as a way of promoting the powers of employers at the expense of employees. It goes too far and it is unnecessary. Changes were made by Labor in this field, and the balance has been addressed since 1994. Changes were made, and there is really no evidence to support making these changes and going beyond the current legislative position. In fact, there is argument that the current position is unnecessary and that it should be looked at once again. If anything, the introduction of the Workplace Relations Act in its current format went too far in respect of unfair dismissals. There has been a general decline in the application of unfair dismissals. I think businesses are starting to cope; they are starting to learn to deal with the legislation and are working harder and better to compete rather than worrying about the number of employees they should employ and for what qualifying period. The marginal utility of this bill must now be in considerable doubt. What we do know is that it sends all the wrong messages to both employers and employees. It sends the message of conflict, divisiveness and unfairness.

Mr Reith said during his second reading speech that he was determined ‘to generate strong and sustained jobs growth through sound economic policies and fiscal management, workplace relations reforms and initiatives to support small business’. We are still waiting for the bill that will actually do that. Mr Reith has introduced quite a different bill from the one that I have read. There is no support in this bill for job creation, there are no training initiatives for small business employers or employees, there is no industry assistance for small business to access markets and there is no assistance to help small business cope with changes in our society to ensure that they can address business imperatives. In contrast, in what came out of the Queensland industrial relations task force we do find a government in Queensland willing to sit down and address some of these concerns of small business and to work through them. We find that through
their wage line they are actually looking at the issue, trying to encourage employers to understand the legislation and trying to encourage employers to apprise themselves of the legislation and to work through dismissals, as unpleasant as they can be, in a proactive and positive way. I quote from one of the Queensland sources on dismissal legislation which I think highlights and encapsulates some of the contrast between this legislation and the Queensland position. It reads:

Queensland’s industrial relations law provides a fair and balanced system to deal with applications for unfair dismissals. It ensures that all employees have equal access to remedies for unfair dismissal.

It has in addition requirements for assistance to employers on what they should do. It reads:

To ensure dismissal is lawful, the employer should comply with the Industrial Relations Act 1999.

What they have also then done is provide some guidelines to set some ground rules to assist and to support employers in employment rather than simply trying to create a bill which detracts from employees’ rights.

In addition, during the time of the Senate inquiry into the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999—we remember it well—the Queensland state government produced a report for the Senate to examine. At 4.1 it highlights the difference between the two approaches. It states:

The issues dealt with in this section are fundamental to a healthy economy and society. The Queensland government recognises that a primary imperative for any civilised society is to encourage employment and training opportunities for those out of work, and that workers are less likely to be productive if they have fears about job security, if their terms and conditions of employment are under threat, if they do not have a right to fair treatment at work.

That underpins what a state Labor government is doing about employment, about small business and about job creation, in contrast to the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, which is divisive and simply throws up conflict in trying to introduce arbitrary provisions. The Queensland approach in dealing with this issue has proposed, particularly in relation to unfair dismissals, at 4.3 of that report:

The Queensland Government recognises the importance of fair and balanced unfair dismissal laws as a significant protection for the individual rights of employees in relation to job security. In essence, the law should ensure that employees are treated decently and fairly and they are afforded natural justice.

That is quite different from what this bill proposes to do. It is quite unfair and quite divisive in its import.

Senator FORSHAW (New South Wales) (4.49 p.m.)—I thank my colleagues Senator Sherry and Senator Cooney for allowing me to jump the queue, as it were, to make some brief remarks now on the Workplace Relations Amendment (Unfair Dismissals) Bill 1998—

Senator Ian Macdonald—It had better be worthwhile.

Senator FORSHAW—It will be. I am glad that I have the minister’s attention. For many years now the coalition parties and their ideological supporters within the business community have consistently argued that unfair dismissal laws are a barrier to employment. They have argued particularly that small business will not employ people or is reluctant to employ people whilst unfair dismissal laws remain on the statute books. This is an argument that the present Prime Minister and other ministers ran constantly when they were in opposition during the years of the Hawke and Keating governments, and it is an argument that they still want to put forward today. No doubt people like Senator Mason would continue to parrot what is in fact a nonsensical proposition.

I say it is nonsensical because the actual employment figures over many years put the lie to this argument that unfair dismissal laws are a barrier to small business employing more people. When this legislation first came before the parliament back in 1996 as part of the Workplace Relations and Other Legislation Amendment Bill, I referred to official statistics which showed that, rather than there being some decrease in employment in small business during the years of the Hawke
and Keating governments, there had in fact been a substantial increase. I pointed out that during that period, particularly in the early 1990s when the federal legislation was amended to pick up unfair dismissal provisions, there was a significant increase in employment at that time. This is quite contrary to the assertion that was parroted around the countryside day after day by the coalition and by spokespersons for the Australian Chamber of Commerce and Industry and so on that we would see increases in small business employment if only we got rid of those terrible unfair dismissal laws. It became such a mantra that even some people in the then opposition started to believe their own ideology. Mr Reith still continues to parrot this line, and he brings this legislation back again before this chamber in order to try and get it passed. Once again, I am confident that the Senate will reject it because it is founded on a totally false premise.

I do not wish to take a lot of time because many of the concerns which I and others have in regard to this legislation have been put on the record time and time again in previous debates but, for the benefit of honourable senators, I do wish to update some of the information which I put before the Senate in 1996. I refer to a table entitled ‘Employment by business size and sector’ which has been provided by the Parliamentary Library. Its source is ABS statistics for employed wage and salary earners and the labour force. I have spoken to the government representatives in the chamber and will be seeking leave to table this table at the conclusion of my remarks.

This table shows the growth in employment between March 1990 and September 1999. It is divided into private sector and public sector statistics. With respect to the private sector, it is in turn subdivided into figures for small business employment and figures for big business employment. Let me point out that between March 1990 and 1993, employment in small business in Australia grew by 5.3 per cent. Further, between March 1990 and March 1999, employment in small business in this country grew by 20 per cent. If you put that into figures, between March 1990 and March 1996, when the Labor government was in power, small business employment in this country grew by 450,000, from 3,171,200 to 3,621,200—a huge increase. In those six years during the 1990s, when the Labor government was in power and those supposed unfair dismissal laws were in operation, this government argued—when it was in opposition—and continues to argue today that those laws are a barrier to small business employment growth. Between March 1996 and September 1999, when the current coalition government has been in power, small business employment growth has continued and has grown by 185,000—that is, in a period when this minister has been seeking to reduce the rights of small business employees. Over that nine-year period from March 1990 to September 1999, small business employment has grown by a total of 635,000.

If you look at the figures for big business and the public sector—I will not go into those in detail—you will find that the growth in employment in big business has been less than it has been in small business. Over the nine-year period it has been some 18 per cent. In the public sector, growth has been negative. In fact, public sector employment has declined by 14.7 per cent over the same nine-year period. We are all aware that there has been a lot of downsizing in the public sector over the years through the 1990s.

The point I want to make in respect of this legislation is that there is absolutely no basis whatsoever for this furphy, this fictitious claim, this untruth, that the current unfair dismissal laws—which protect the rights of employees, particularly in small business where they do not have access to a lot of the resources that may be available to employees in a large company—restrict employment growth and that we need to tighten up in the area of unfair dismissal to make it easier for employers to sack workers. The government continues to put forward the argument that, if only we got rid of the unfair dismissal laws and made it easier for employers to sack workers, we would see an improvement in employment in small business. Well, employment in small business has been growing constantly right through the 1990s and there is absolutely no reason why rights for those
workers should be taken away. I seek leave to table this document.

Leave granted.

**FIRST SPEECH**

The **PRESIDENT**—Before I call Senator Brandis, I remind the honourable senators that this is his first speech. I therefore ask that the usual courtesies be extended to him.

**Senator BRANDIS** (Queensland) (4.59 p.m.)—Since the Senate last sat, we have marked an important anniversary. A century ago, a small delegation, led by Edmund Barton and Alfred Deakin, journeyed to London to secure the passage by the Imperial Parliament of the Commonwealth of Australia Constitution Act.

They arrived in London as colonial politicians. But when they returned to these shores, 100 years ago almost to this very day, they returned as the founding fathers of the Commonwealth. They brought back with them not just a Constitution, but all of the hopes, the aspirations and the ideals of both a new nation and a new century. Today, as we mark that centenary and as we stand at the dawn of our second century, it is appropriate to reflect on the achievements of our first.

It is appropriate to remember and to celebrate the fact that, although Australia may be one of the world’s youngest nations, it is now one of the world’s oldest democracies. And not only that—unlike most democracies, Australia has been a democracy from the moment it became a nation. There are very few countries which can make such a claim.

We can be proud that, for Australians, it was never necessary to achieve our democracy by violence; that from the time this nation was founded, not a drop of blood has been spilled by Australian fighting Australian in civil conflict.

We can be proud that for 100 uninterrupted years, the public business of our nation has been conducted decently and openly; that governments have been chosen peacefully and democratically; that our institutions have maintained the respect and confidence of the people; and that, all the while, despite enduring the suffering of depression and war, our country has continued to grow in prosperity, while fulfilling its social obligation to all of our citizens.

I know that in some circles it is regarded as fashionable to be cynical; to affect a world-weary contempt for traditional institutions and verities; to regard the expression of patriotism as philistine. At the risk of incurring the scorn of a deracinated intelligentsia, allow me to declare, Madam President, my firm belief that, when over the next few weeks tens of thousands of foreign visitors come to Sydney to see the Olympic Games, they will find themselves in one of the greatest cities, and the most successful nation, in the modern world.

The success of any nation depends upon many things. It depends upon the spirit of its people. It depends upon the wisdom of its governments. But not least of all, it depends upon its constitutional foundations. We should be slow to change that which has served us so well. At the very least, there lies a heavy burden of persuasion upon those who seek to displace our Constitution, to demonstrate that any replacement will work as well. The Constitution whose centenary we celebrate can, at least, make two claims that no other model can make: that it has stood the test of time; and that it has been the foundation of a great and prosperous nation.

I come to this place as a representative and an advocate of the liberal democratic tradition. There are, I believe, two great political traditions in Australia: the social democratic tradition, represented by our opponents, and the liberal democratic tradition, represented on this side of the chamber. Before I speak of our differences, let me dwell for a moment upon what we hold in common: the shared commitment of all sides of politics to the democratic form of government. We do well to remind ourselves from time to time that, as the Prime Minister once famously said, the things which unite us as Australians will always be more important than the things that divide us.

The things that divide us are, of course, two fundamentally opposed philosophies about the role of government in a democracy. As a liberal, I believe that one of the most important things a government can do is to understand its own limitations. There is a
great temptation among some who seek to gather political power into their hands, to use that power to right every wrong—whether the wrongs be real or imagined—to create a perfect society—to build a new Jerusalem.

Surely, if the 20th century has taught us anything, it has taught us the folly of utopianism. It has taught us that the desire to impose an ideologically conceived, rationally perfect structure upon society leads, by a short and wicked path, to the belief that individual men and women are just building blocks in a master plan—and, like building blocks, they can be hewn, moulded, tortured into shape; that an individual person, or a family, or a child, is nothing but an integer in some monstrous calculus, able to be traded, or sacrificed, merely in the name of an idea.

And with the fallacy of utopianism has come that other great evil—the fallacy of utilitarianism. The belief in the greatest good for the greatest number, while it sounds anodyne—even commonplace—can also lead, by a short and wicked path, to the belief that the rights of the few can be sacrificed in the interests of the many; that the end justifies the means; and that men and women are just means, not ends in themselves. It finds form in the excuse of every tyrant since the dawn of time—Bassanio’s advice to Portia: ‘To do a great right, do a little wrong.’ How many innocent lives have been sacrificed upon that pretext?

As a student at Oxford in the early 1980s, it was my privilege to sit at the feet of the man who I regard as the greatest liberal philosopher of the 20th century, Sir Isaiah Berlin. This is what he said:

If the essence of men is that they are autonomous beings—authors of values, of ends in themselves, the ultimate authority of which consists precisely in the fact that they are willed freely—then nothing is worse than to treat them as if they were not autonomous, but ... objects ... whose choices can be manipulated by their rulers. To treat men in this way is to treat them as if they were not self-determined. ‘Nobody may compel me to be happy in his way,’ said Kant. ‘Paternalism is the greatest despotism imaginable.’ This is so because it is to treat men as if they were not free, but human material for me, the benevolent reformer, to mould in accordance with my own, not their, freely adopted purposes ... To manipulate men, to propel them towards goals which you—the social reformer—see, but they may not, is to deny their human essence, to treat them as objects without wills of their own, and therefore to degrade them.

It follows from what I have said that the first duty of any government is to protect the liberty of the citizen to choose his own ends—and that includes protecting the liberty of the citizen from government itself. Australia has been relatively free of the abuse of political power. Yet, as those of us who lived in Queensland in the mid-1980s well know and will never forget, civil liberty is a fragile thing and, even in a democracy, political power is a dangerous elixir for some.

The liberal view of society demands respecting the right of citizens to choose, so long as they respect the equal rights of others, how they live their own lives. It demands respecting their right to hold and to express unpopular opinions. While society is entitled to require its citizens, in the sphere beyond their private lives, to conform to certain elementary norms of conduct, it has absolutely no business requiring its citizens to conform to any norms of belief or attitude.

I do not think that the argument of John Stuart Mill, when he wrote the second chapter of On Liberty 141 years ago, has ever been refuted: that a liberal society is only worthy of the name if its citizens enjoy an absolute right to hold, and to express, opinions which other members of society find outrageous. Any attempt to limit that right, whether by actual censorship of opinions or by the insidious new cultural tyranny sometimes called ‘political correctness’, is a fundamental violation of a free society. For as long as I sit in this place I will defend the absolute right of all citizens to the free expression of their opinions—no matter how unfashionable, ignorant or offensive those opinions may seem to others.

I have spoken so far of the need for governments to be conscious of their limitations, to circumscribe the use of political power even for what seem to them to be benevolent ends. But conservatism about the use of public power is not the same thing as minimalism, for there are some things which only governments can do, and do them they must.
All parties in this place accept that one of the fundamental obligations of government is to secure equality of opportunity. To speak of a society based upon the liberal ideal of freedom to choose entails the opportunity to make that choice worthwhile. Liberty is not an abstract notion. It is only in a society based upon equality of opportunity that the fruits of liberty can fairly be enjoyed by all.

But of all the obligations of government, perhaps the most fundamental is this—the obligation to protect the weak from the strong. It is a need as old as government itself—for men first formed themselves into civil society to protect themselves from predators without. They enacted the earliest of all types of law, the criminal law, to protect themselves from predators within.

In every age, in every society, the need to protect the weak from the strong manifests itself in new ways.

All of us who come to this place come shaped by the experiences of our own lives and careers. In my own case, as a trade practices barrister, I have seen many times at first hand the abuse of economic power and, in particular, the use of commercial and industrial power by monopolies, both of capital and labour, to damage or destroy small businesses.

No-one has made the case for free markets more persuasively than Adam Smith. But even the intellectual progenitor of modern capitalism was moved to write, in *The Wealth of Nations*:

People of the same trade seldom meet together, even for merriment or diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.

My own professional experience has taught me to share Adam Smith’s cynicism, even in regard to some of the most powerful boardrooms in modern Australia. It has also convinced me that an absolutely essential condition of any market based liberal democracy is the existence of strong laws to protect competition, enforced by a regulator with the powers to make that enforcement effective. We are fortunate, in Australia, to have such laws in Part IV of the Trade Practices Act and to have in the Australian Competition and Consumer Commission—which I have represented on many occasions—such a regulator.

It is not, in my view, merely the role of the Trade Practices Act to regulate market power. It is the role of the Act to protect against all forms of abuse of economic power, whether commercial or industrial, whether by companies or by trade unions. In that regard, I view with unconcealed horror the policy of the opposition to strip from the Act the protection given to innocent businesses by section 45D.

How can it be right that a business— invariably a small business, often a business upon which the livelihood of a family depends—should be able to be taken hostage in an industrial dispute in which it has absolutely no interest? How can it be right that if that business is wrecked—the livelihood of its owners destroyed, the jobs of its employees lost—they should be denied the protection of the law? How can it be right that it is unlawful for two companies to conspire with one another to damage the business of a third, but it is not unlawful for two trade unions to conspire with one another to damage that same business?

By threatening to emasculate section 45D of the Trade Practices Act, by depriving innocent people of the protection of the law against economic bullying, the Australian Labor Party have declared themselves willing to abdicate the most fundamental and ancient obligation of government—the obligation to protect the vulnerable from the powerful, to protect the weak from the strong.

Finally, I want to say a few words to my own party. At the beginning of this speech I described Alfred Deakin as one of the architects of this nation. But he was more than that. When on 2 June, 1909 he formed his third government, the ‘Fusion Ministry’ of liberals and conservatives, he joined with many who had been his lifelong opponents to create the basic architecture of liberal democratic politics in Australia. A generation and a half later, Sir Robert Menzies achieved a similar feat, putting bitter personal and ideological differences behind him to fuse the so-called ‘fourteen fractions’ into the modern Liberal Party.
History remembers Deakin and Menzies as the two great architects of Australian liberalism because they were uniters, not dividers; because they had the personal largeness to put past conflicts behind them; because they grasped that the fundamental obligation of political leadership is not to cower in a ghetto of like-minded souls but to embrace the widest constituency it can possibly reach; because they had the vision to devise, and the skill to summon into being, a new and greater political structure; and because they had the wisdom to see that the liberal democratic tradition in Australia rests upon two pillars, not one—the liberalism of Mill as well as the conservatism of Burke—and that its capacity to draw its intellectual capital from both of the great traditions of modern philosophy is not a weakness, but its enduring source of strength.

With those remarks, I conclude by expressing my gratitude for the confidence of those who sent me to this place, my profound awareness of the privilege of representing the people of Queensland, my deep respect for this institution, the Senate, and my pledge to serve the public good of this nation to the best of my ability.

WORKPLACE RELATIONS AMENDMENT (UNFAIR DISMISSALS) BILL 1998
Second Reading

Debate resumed.
Senator SHERRY (Tasmania) (5.19 p.m.)—I would like to congratulate Senator Brandis on his first speech. There are parts of it with which I can agree. I will take up his concept and definition of liberal democracy in my remarks a little later. The legislation before us deals with the proposed exemption of small businesses—defined as those where there are less than 16 employees—from the unfair dismissal remedies under the federal industrial relations act. It also requires a six-month qualifying period of employment before new employees, other than apprentices and trainees, can access an unfair dismissal remedy under the act. I emphasise that we are here talking about the federal industrial relations act, not state industrial relations acts. Effectively, it will not be possible for employees, no matter how harshly treated, to make application to an industrial tribunal—the independent umpire—on the grounds that the termination of his or her employment was harsh, unjust or unreasonable or on grounds including that ground if either he or she has not completed six months continuous service with the employer or his or her employer employs no more than 15 employees.

Before I go to the heart of my arguments against the legislation, I would like to deal with an issue which is somewhat technical but which is important—and I notice that the minister’s advisers are here in the Senate during this debate—the issue of casual employees. The legal definition of a casual employee is that each period of engagement stands alone. So when an employee walks onto the workplace, they are employed. When they leave the workplace they are technically no longer an employee. The minister may or may not be aware of this. There are literally, I suspect, millions of casual employees in this country who are employed on a regular basis. In other words, despite the legal definition that each period of engagement stands alone, practically they are engaged in continuous employment or regular employment as casual employees. The industrial tribunals in this country have treated regular casuals in terms of dismissal provisions in state and federal jurisdictions in the same way as permanent full-time or part-time employees. My question goes to the issue of these casual employees: is an existing casual employee a new employee for the purposes of this legislation? That is very important in the context of what I suspect are millions of regular casual employees. I confess that I cannot find the answer to this particular question. I would hope that the minister’s advisers could take that matter up and provide us with some response.

The legislation we are considering already has limitations with respect to access to unfair dismissal laws. Firstly, the federal law covers only those classes of employees listed in section 170CB of the Workplace Relations Act 1996. Further classes of work are then excluded by regulations such as high-income earners, some temporary employees, some
trainees and some contractors. Put simply, this means that not even all federal award employees have access to these provisions. The main groups that have access are Commonwealth public sector workers, employees who work in a federal territory or in Victoria, persons employed under a federal award and who are employed by a constitutional corporation, and certain defined classes of workers principally engaged in interstate and overseas trade and commerce.

In my earlier remarks I emphasised the fact that these amendments will only apply to federal legislation. The reality would be that, if the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 were passed, workers in state jurisdictions around the country—and this would be a majority of employees of small business—would still have access to state tribunals for the purposes of wrongful dismissal. It varies from jurisdiction to jurisdiction. However, they would still have access to argue their case if they believed they had been dealt with harshly or unfairly. So, if this legislation were passed, you would have an absurd situation that with respect to respondent employers to federal awards, where the employer employs fewer than 16 employees, their employees would be exempt from access to state tribunals or courts to argue their case that they have been unfairly dealt with. But with respect to employers who may be in the same class or industry, their employees would not be exempt from taking their case to a tribunal to argue that they had been unfairly dismissed. This is the first very serious contradiction and one of the major flaws in the principle that this legislation is trying to create.

It is unclear how many employees or workers are covered by federal unfair dismissal laws at the present time. I note that in the other place my colleague Mr McClelland, the shadow minister for industrial relations, asked the minister in question on notice No. 2940 what number of employees were affected by this proposed legislation. Minister Reith responded:

It is not possible to specify the number of small businesses which would directly benefit— he alleges—from the Government’s proposed exemption from unfair dismissal laws for small businesses, as the operation of the provisions, according to the criteria outlined above, would depend on the details of the interrelationship between federal and State legislation, in each State, at the relevant time.

The Australian Bureau of Statistics figures provide us with some important indication of the number of small businesses, and potentially the number of employees, who would be impacted. There are some 900,000 small businesses in Australia. They represent 97 per cent of all businesses and, according to the only data available on those businesses which employ fewer than 20 employees, they employ a total of 2,090,300 wage and salary earners as at May 1998. I am sure that there are later figures available.

If we make a best guesstimate—and that is all we can do from the available survey data—it is likely that less than 25 per cent of Australian businesses will be affected by the proposed small business exemption. This is again because most businesses with fewer than 16 employees are unincorporated sole traders and partnerships and are therefore not covered by federal unfair dismissal laws. What we can say is that the considerable majority of small business employees will not be covered by this legislation. The considerable majority will remain covered by state jurisdictions. I highlighted in my earlier contribution to this debate the absurd situation that this creates—that is, employees of a small business respondent to a federal award would have no rights in presenting a case for unfair dismissal before a tribunal, whereas the majority of employees of small businesses in the state jurisdiction would have the right to present a case before an industrial tribunal with respect to unfair dismissal.

I think the arguments from supporters of the proposal we are considering can be condensed into two main arguments. The argument presented by Minister Reith and others in the Liberal-National Party government is that, firstly, it is necessary to ensure the continuing growth in employment in small business; and, secondly, there are special burdens carried by small business in defending unfair dismissal claims. There are other arguments that are put up as justifications. I think they
fall into the minor, bordering on absurd justifications.

So let us deal with the two major issues of justification. Minister Reith has referred on a number of occasions to small business surveys. These surveys purport to show that 79 percent of proprietors thought that business would be better off if they were exempted from unfair dismissal laws and that 33 percent of small business reported that they would have been more likely to recruit new employees if they had been exempted from unfair dismissal laws, in 1996 and 1997. Minister Reith is fond of referring to these particular figures, and I will come back to them later in another context.

But the principal argument going to the unfairness of the changes we are considering is that they leave a significant section of the workforce without any basic protection if they are employed by a small business. It is here that I would like to go back to the remarks that we heard earlier during Senator Brandis’s first speech. In his first speech he referred to the Liberal democratic tradition of protecting the weak from the strong and protecting the vulnerable from the more powerful in our society. Senator Brandis is a new Liberal senator from Queensland; yet here we have a proposal from a Liberal-National Party government, a so-called liberal democratic government, that effectively takes away any right at all for an employee, no matter how badly treated an employee, to at least argue their case before an industrial tribunal. How does that stand up against the liberal democratic traditions and principles that Senator Brandis outlined earlier to the Senate?

The issue of the inconsistency with state jurisdictions I have already touched on, but there is also the argument put forward that the unfair dismissal laws have a significant impact both directly and indirectly on small business. But I put forward the view to the Senate today that the number of employees that a small business employs is overwhelmingly determined by the demand for labour, by the demand for the good or the service that the small business sells. Most small businesses, and large businesses for that matter, do not employ any more staff than they need to. They have to be productively employed, and that is a function of demand for their particular product or service. So I think the argument that there would be hundreds of thousands of new jobs created as a result of the legislation we are considering is demonstrably false.

I note that the Executive Director of the New South Wales Employers Federation, a Mr Brack, was reported as suggesting that anecdotal evidence indicated that the unfair dismissal laws may have dissuaded Australia’s small businesses from creating an extra 100,000 to 200,000 jobs. Presumably, given that we are considering a minority of employees and a minority of small businesses in respect of the federal legislation, logic would say that if you exempted small business from unfair dismissal laws in state jurisdictions you would be looking at the creation, on Mr Brack’s assertions, of between 300,000 and 600,000 new jobs. I note in passing that, even in states where we have Liberal-National Party governments, we have not seen similar pressures to change the unfair dismissal laws and exempt small business employers from the provisions of state acts. So I think this argument—and it is advanced not just by Minister Reith but also by many other senators and members on behalf of the Liberal-National Party—is clearly a false one.

The other issue relates to the alleged unfair burden imposed on small business in terms of the costs, the paperwork, the additional bureaucracy and the red tape allegedly associated with unfair dismissal laws. It is interesting to look at the number of unfair dismissal applications lodged in recent times. Comparing the period January to August 1997, under the first Minister Reith laws, with the period January to August 1996, you can see there was a decline of 20 per cent in the number of unfair and unlawful dismissal applications. In the federal jurisdiction the number fell from 9,864 to 4,492 in the period January to August 1997. Later figures comparing the first six months of 1998 with the first six months of 1996 show that the general decline in applications in the federal system continued, with a further fall of 46 per cent. So the number of small businesses
this legislation impacts on is very small when matched against the overall almost two million small businesses. We are not sure of the exact number of those small businesses in the federal jurisdiction but it is a very small proportion.

Of course, we have to match the rhetoric of the government, which professes concern for bureaucracy, red tape and legal costs with respect to unfair dismissals, even though a very small number of employers are actually caught up in the process, against its introduction of the GST. It is well known, and I think well accepted, that the GST is a new tax that is collected by small business. Small businesses have become tax collectors in this country for the first time. This has involved them in considerable costs for new hardware and software, accounting advice and legal advice. So we have to question the rhetoric of the government and its concern about small business paperwork in the context of the new costs it has imposed on every small business in this country with a goods and services tax.

For the reasons I have outlined, and for the reasons that many of my colleagues have advanced in this debate, we should not be exempting employees of small businesses—businesses under 16 employees—from the unfair dismissal laws. It is quite fundamental in this country that, if a person believes, prima facie, that they have been harshly and unfairly treated, they should be able to present a case for redress in the industrial tribunals of this country. That is a fundamental principle. You do have a right to present a case in a tribunal or in a court and seek redress. That is fundamental to Australian democracy and, as far as I know, fundamental to almost every Western democracy around the world. Yet we have this government presenting an extraordinary proposition to take away the rights of a class of employees who work for small business, to take away that fundamental principle, that fundamental right. I think that is highly questionable in principle—in terms of the principles that the Liberal Party say they hold dear and in the context of the liberal democratic traditions that we heard about earlier in the first speech from Senator Brandis. For the reasons I have outlined, the legislation that we are considering should not be passed by the Senate.

Senator COONEY (Victoria) (5.37 p.m.)—In this debate on the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, I continue the theme with which Senator Sherry finished. He was talking about, in effect, the rule of law and whether small business should be exempted from it. It leads me to ask why we seek to exempt small business only in respect of unfair dismissal. To make things easier for small business, why should we not exempt it from the traffic laws and from the parking laws? If small business people park their car outside their shop and get a parking ticket, why should they pay that parking fine? On the logic of this legislation, they ought to be excused, because it will impact on the business to have to pay that fine. If they do not pay their tax—

Senator Sherry—GST.

Senator COONEY—GST—why should they be punished? If you did charge them with not paying the GST, they might have to go to court, and there would be all these court costs. Why is it that, as legislators, we impose all sorts of obligations on small business—fine them for not paying their taxes, for parking their cars the wrong way—

Senator Sherry—Safety laws.

Senator COONEY—Breaking safety laws, breaking health laws? Why do we insist on fining them for that, punishing them for that, but not for this breach of the law that is being dealt with under the Workplace Relations Act? What is it about the Workplace Relations Act that imposes such a heavy penalty on small business that it leads to them being, in this legislation, excluded from the effects of the Workplace Relations Act? What is it about the Workplace Relations Act that does that when at the same time small businesses have to obey the Trade Practices Act, the Criminal Law Act, safety regulations, the street acts and so on? It is very strange that the government should seek to exclude the Workplace Relations Act from this impacting on small business but not other legislation. If we are going to have a law, it should apply to everyone. If a dis-
missal is unfair, it is unfair whether it is carried out by big business or small business. That is the proposition that has been put by many speakers before me.

One thing that has concerned me a bit about some of the earlier speeches is the fact that lawyers have been blamed for the heavy impact of this legislation upon small business, that somehow lawyers create a tidal wave of litigation. As you well know, Mr Acting Deputy President McKiernan, that is not right. I would have to confess, I suppose, to an interest here. The firm of my wife, Lillian, does a lot of these wrongful dismissal claims, and does them very well. My son Jerome, who is in that firm, does them too. He was speaking to me the other day and said, ‘There was one that came in and I advised the person not to go on with it because it was not a case that had sufficient merit to go on to court.’

Senator Carr—What about your other son?

Senator COONEY—The industrial officer does not do these, Mr Acting Deputy President. In any event, I declare my interest but in doing so I use my family as an illustration of those who make what many people would term a humble living out of pursuing these claims. The cases are not money-spinners—to use that phrase—in a big way; there are other areas of litigation that bring bigger fees than does this one. The lawyers, far from being condemned, ought to be praised, for two reasons: first, they put people’s claims forward; and, secondly, they filter out those that do not have sufficient merit to go on and then pursue the ones that do have merit.

A person who has been wrongfully dismissed is a person who is in a terrible position. It is not simply that he or she has lost an income, which would be bad enough. In many cases, he or she has lost a sense of worth. A person who has been dismissed, whether wrongfully or otherwise, is not going to be too happy about it, and they will feel a terrible burden on their sense of dignity. If that is done unfairly, that is a bad thing. To return to my earlier theme, it might be a bad thing to leave your car parked outside your shop, for which you will get a $100 ticket, and it might be a bad thing not to pay the tax you should, but it is worse to unfairly dismiss someone who should not be dismissed.

We have been talking here about the position of small business, and I understand the position of small business—small business is up against it oftentimes. Small business has many balls to keep in the air: it has to pay the rent, it has to pay wages, it has to obey all the laws, and now it has to collect the GST. For some people it is an extra burden to be fair to your employees; to other people it comes naturally to them to be fair. Nevertheless, on the other side is a person who depends on a particular wage for their livelihood and who depends on their job for their sense of importance in the community. It is quite disastrous for some people when they are dismissed. I would certainly hesitate before I would take a step like that, and I hope other people would as well. For us to pass legislation that would allow that sort of thing to be done without any regard to the situation would be absolutely terrible.

This legislation effectively says, ‘Yes, you have a case for unfair dismissal. It may well be that you have been dismissed wrongly, unlawfully or unfairly; nevertheless, we are concerned about small business.’ It is proper to be concerned about small business, but the concern for small business is manifest in the oppression of the rights of employees rather than that concern being shown by having a better regime—a better way for them to pay their GST, a better way for them to obey the laws about health or whatever they are doing in their business.

There is no doubt that myriad things are placed on small business by the three tiers of government, whether it be local government, state government or federal government. A lot of people go out of small business because they cannot cope. That is happening now; there is no doubt about that. But why should we as legislators try to relieve these more amorphous pressures by sacrificing somebody else’s life? Why should we say, ‘Even though there are all these pressures upon you, the one pressure we are going to relieve you of is the obligation to be fair to
the person whom you work with?’ And, being a small business, that is usually the situation—you work with them. In other words, we are saying, ‘You can treat this person who is before you as you will. Get rid of all your frustrations on this person. Dismiss them when you will—the law will do nothing about it, and parliament will do nothing about it. Parliament will do a lot about other things if you get out of line, but not about this.’ It just seems a very strange approach.

It is interesting that the government is willing to sacrifice people’s rights. I do not want to stray too far from this bill, but look at the way we are treating refugees from Iraq and Afghanistan. We say to them that they have broken the law in some way not specified, because they are refugees. These people are refugees, but we deny them the benefits that we might give others who come here legally, which means, ‘Come here according to our invitation. Even though your people are fleeing from Saddam Hussein—whom we do not like because we have all these sanctions on him—we are going to treat you very meanly because we want to exhibit our displeasure.’ So we sacrifice refugees and, in this case, we sacrifice employees. Workers and refugees are the sorts of people we pick on.

I would not be terribly proud to be a member of a party that took those people on, that sacrificed, for a particular policy, workers and refugees and that might well be sacrificing—and you would know about this, Mr Acting Deputy President McKiernan, because you have been heading very well a committee that has been looking into this—people who are called stolen children. With respect to people who, whether lawfully or unlawfully, have been put in dreadful situations and might need some sort of help, we have said we are not going to help them either. When we start looking at our record on employees, refugees and stolen children we see that it is not too good. I see in the chamber Senator Carr, who has been doing great work amongst the educational institutions of this country.

Senator McGauran—His faction didn’t appreciate it.
Sure, there are many harsh things to be said about the legal profession—some of them—but the legal profession, as I have witnessed in my own household, do some great work in this area and elsewhere.

Senator McGauran (Victoria) (5.57 p.m.)—I join this debate on the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 just for a very short time, because we have had a long litany of speakers from the opposition. We are debating the Workplace Relations Act 1996 with respect to the unfair dismissal laws. Let us get a few facts down about the purpose of this bill. Firstly, it is to exclude from federal unfair dismissal laws new employees, other than apprentices and trainees, of businesses with 15 or fewer employees. It establishes a six-month qualifying period of employment for new employees, other than trainees and apprentices, wanting to use the unfair dismissal regime. The bill will not affect the scope of any state unfair dismissal laws and will not affect the federal laws dealing with unlawful dismissal.

We recognise quite clearly that there are, of course, genuine cases, Senator Cooney. We recognise that having a job is the basis of a person’s economic and social wellbeing. The employers have to act with the utmost responsibility, with fairness and without prejudice and be conscious of the employees’ basic rights. Therefore, the right to challenge an unlawful dismissal should be upheld. There is access in this legislation to those rights in relation to race, colour, sex, age and religion. It should be noted that this has always been considered to be a fair and just remedy with regard to unfair dismissals. So I reject Senator Cooney’s heartfelt contribution this afternoon and his absurd attempt to link it to other rights and social rights. This is just the same well-trodden path that both sides of parliament have been walking. It is simply change with regard to industrial relations.

The government have been at the forefront, unashamedly at the vanguard, of changing our industrial relations laws from the archaic nature of the logjam that had been created before we came into government. Of course, we expect those in the opposition to be against every change in regard to industrial relations because they always have been, unlike the Democrats, who have been supportive of the government’s industrial relations changes from time to time. No less than Cheryl Kernot allowed the government’s first wave of changes to get through. There is a reason why we seek these changes to enterprise bargaining, unfair dismissal and sections of the Trade Practices Act. We have a philosophy—and we have proven, tangible evidence that it works—that a flexible labour market produces employment. I would have thought that one of the arguments against the government’s industrial relations reforms, whatever the form in which they come to you, would be that they create unemployment, not employment. But not one of the speakers on that long speakers list—and I listened to all of them—mentioned the good work the government have done towards the unemployment rate and the strides we have been making. It is now down to 6.3 per cent, the best unemployment rate this country has had in at least a decade. Should it reach six per cent, it would be the best unemployment rate this country has had, at least since the Menzies years.

That has just not come about; it has come about primarily because of our industrial relations laws changes, and it has not been easy to bring that about. I give full credit to Senator Brandis for his maiden speech today in which he highlighted significantly the importance of section 45D, which this government returned to the statute books. Without section 45D dealing with secondary boycotts, preventing unions ganging up on businesses, we would not have had strides in industrial relations. We would not have had the lowest strike rate that I think this country has had, at least since the Menzies years. We would not have had a revolution on the waterfront without the introduction of the secondary boycott section. Down in Hobart the Labor Party have stated in their policy that they want to abolish section 45D, to abolish the secondary boycott provisions. They want to wind back enterprise bargaining—in effect, to abolish it. In fact, they want to bring back the old unfair dismissal laws. So the debate we are having today is nothing more than the old industrial relations debate that both sides of the parliament have had since.
we entered government. Don’t try to dress it up in any other manner. Except we can say, after four years in government, that we now have the evidence—the jury is in, the evidence is on the table—that it works. Look at the unemployment rate—that is where it is all funneling to. Industrial relations itself does not produce that unemployment rate; of course, you need other reforms, and we have introduced them—fiscal reforms and the like. Senator Carr, I do not know whether you are getting up to speak—

Senator Carr—you can just about guarantee it now, can’t you? I will talk about sheep and the National Party.

Senator McGauran—the point, Senator Carr, is that this industrial relations bill should be supported by the Senate. The alternative is nothing short of a winding back of this government’s reforms, an attack on the strides this government has made in regard to employment, and a re-enshrining of the union movement. Nothing was more evident at the conference down in Tasmania than just how a Labor government would return the union movement to power. They would have section 45D abolished. They would have unions returning to collective bargaining. They would abolish individual bargaining rights. Union rights over non-unionists would be re-established, and they would expand union rights of entry. All these were discussed down in Hobart; these would be the future policies of a Labor Party government. As broad and as undetailed as they are, it is certain they would form Labor’s approach in government and that they would be their policies going into the next election. As I said, the short time that I sought to speak on this matter was simply so that I could put paid to the claims of, and to contradict, all the speakers on the other side. What we have before us is another proven, successful form of industrial relations from this government. The Senate should support it.

Senator Stott Despoja (South Australia—Deputy Leader of the Australian Democrats) (6.05 p.m.)—In rising to speak on the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, I note that it is one of a number of bills that have been placed before this chamber by the minister for workplace relations, Peter Reith. I note that this particular bill seeks to remove the protections that are available to workers in small businesses when it comes to the matter of unfair dismissal. I acknowledge Senator Cooney’s contribution in particular. He is right to acknowledge that this is an attack on workers that is part of a pattern by this government of picking on those either less fortunate or more disadvantaged. He had quite a tick-list; it was a checklist: the education institutions, workers, the stolen generation, refugees and overseas students—I think of Senator Carr’s work in that area—and the Democrats, I might add, got a look-in. He forgot, of course, to mention women. That is the latest area in which this government seeks to discriminate, primarily on the basis of marital status, so I am glad that Senator McGauran referred in his opening remarks to issues of discrimination.

As well as being familiar with the pattern of attacking those less fortunate or, more importantly, less powerful, we are very familiar with this bill. Its introduction to the Senate has almost become an annual ritual. The Senate has already rejected it twice—in 1997 and 1998—but I should acknowledge that we did get a break last year, in 1999. Perhaps Minister Reith was too busy campaigning against a republic! Nevertheless, it is 2000 and here it is again. As with so much of the legislation this minister produces, this bill is not about addressing a deficiency in our current workplace relations or about introducing measures designed to improve deficiencies the government may presume exist. Certainly Senator Murray, on behalf of the Democrats, has articulated on many occasions in this place why we are opposing this bill. This government is doing nothing to address the real concerns of Australian workers—concerns such as increasing job insecurity, the twin problems of overwork and underwork, workplace stress and, of course, disgracefully disproportionate income levels. Figures released last month by the Australian Bureau of Statistics revealed that the poorest Australians are worse off today than they were back in 1985 while the richest one per cent have increased their earnings by more than 30 per cent. The top
10 per cent now earn 1.7 times more than average income earners while the poorest 10 per cent earn less than two-thirds of average income. The gap between the poorest 10 per cent and average wage earners widened by 9.7 per cent between 1985 and 1998.

For almost a year this government has had a report from the Human Rights and Equal Opportunity Commission called *Pregnant and productive: It’s a right not a privilege to work while pregnant*. I think HREOC gave the participants in that inquiry nine months to work on that report. Despite a favourable government response to the recommendations in that report, thousands of women around the country are waiting for the government to implement the recommendations to make Australian workplaces more women friendly. There is no action by this government to redress the lack of access that Australian women have to maternity leave. We are among the lowest in the OECD now when it comes to providing access to maternity leave for Australian women. These are just some of the pressing workplace relations issues that require government action, but instead we are presented with the legislation that we have before us today—legislation which does not address any problem, legislation for which there is no need and which merely wastes the Senate’s time. This is about the government using an unjust and unjustifiable attack on the 2.7 million workers in small businesses in this country. It is basically utilising them, exploiting them, to get a double dissolution trigger. Whether the government will ever use this trigger is doubtful, but, as we know from Minister Reith’s leaked strategy paper from last year, a paper which portrayed the Senate as obstructionist, it is clearly a key component of his strategy. In his second reading speech back in November 1998, the minister claimed that this bill was an important step in creating more jobs. Like so many of his proposals, this is made in the absence of any evidence, and I would like to highlight the minister’s failure to implement any effective measures to create employment. He and his government—

Senator McGauran—What about the unemployment rate?

Senator STOTT DESPOJA—I will get to that, Senator McGauran. I also wish to highlight the insistence of the minister and his government on pursuing policies designed to attack workers and job seekers. Senator McGauran brought up the issue of recent statistics and, in particular, the ABS statistics showing the monthly unemployment rate at a low—and we acknowledge that it is low—6.3 per cent. Senator McGauran and others in the government have been very quick to pat themselves on the back, but the government knows full well that this is not the direct result of any employment policy that it has implemented. Sustained economic growth has delivered jobs to the job ready. We acknowledge that frictional unemployment is low, and the Democrats welcome the jobs growth which has occurred. We have consistently noted our concern that the jobs being created are predominantly casual or part-time in nature, and clearly this is a by-product of the government’s workplace relations changes. A recent Morgan and Banks survey predicted that half of Australia’s workforce will be working in casual jobs within 10 to 15 years. Up to 30 per cent of jobs currently being created in Australia are for casual workers. Also, ABS figures reveal an extraordinary increase in the growth of part-time work—from 16 per cent of the workforce in 1980 to 26 per cent now. Between August 1990 and December 1998, full-time jobs grew by just 169,000, which is 2.7 per cent, but part-time jobs grew by 542,000, or 33 per cent, making up three of every four new jobs.

The majority of casual workers are employed in low-paid jobs, whether they are full time or part time, and 40 per cent receive no superannuation, leave or other benefits. These figures explode the myth of the consultant living some kind of flexible lifestyle of his or her suiting. The true indicator of whether the government’s approach to the labour market and workplace relations is working is, of course, the long-term unemployment level, which remains almost as high as it was under the Labor government during the economic recession of the early 1990s. Long-term unemployment remains high at 27.7 per cent, and the ratio of job seekers to advertised vacancies remains at an
average of six to one. Yet the government continues to promote programs such as Work for the Dole, which does not even have employment assistance as its aim. The government acknowledges this; even though it is touted as a key component of the government’s employment strategy, the aim of Work for the Dole is not an aim to create any jobs. In the 1999-2000 budget, the federal government took approximately $80 million out of Intensive Assistance to expand Work for the Dole. This cut 25,000 desperately needed places from Intensive Assistance. This funding is desperately needed to provide targeted training and assistance to job seekers. At present, there are not nearly enough Intensive Assistance places, yet the government continues to expand Work for the Dole well beyond the limited demand. This is despite government figures which demonstrate that Work for the Dole is not performing as well as the Working Nation programs it has replaced and that the case management offered under Intensive Assistance remains the best way to get long-term unemployed people into work.

A number of reports have been released over the last couple of months, but two reports were released independently last week: one by ACOSS and the other by Professor Raja Junankar from the University of Western Sydney. They revealed that the vast majority of long-term unemployed are not getting the help they need, either through a lack of access or because they are receiving inadequate assistance. The minister must address these failings as a matter of urgency. The imminent release of the report of the government’s welfare review offers this government an opportunity to move away from the punitive approach it currently adopts towards job seekers.

Mutual obligation in this country is too much about the threat of abandonment if a range of strict activity and compliance measures are not adhered to. But no-one should be cut off, especially those in need of support and assistance. Achieving the goal of full employment will require more public investment in human capital, be it education and training or targeted labour market assistance. So a bigger role for government is required if structural unemployment is to be corrected. As Senator McGauran leaves, I do acknowledge his point about low unemployment—

Senator Carr—He is not leaving?

Senator STOTT DESPOJA—He has played his role in this debate, Senator Carr. But I do acknowledge the point he made and others made about reduced unemployment rates. He is back. I acknowledge those points but also put very clearly on the record the difference between frictional unemployment and structural unemployment, and we have seen minimal change in structural unemployment, particularly the long-term unemployment rate. That is why we need to tackle that issue, and hopefully the government will seek to do so. There is no reason why a combination of moderately flexible labour markets, strong welfare and worker protection systems and active labour market programs cannot perform as well in reducing unemployment as wage deregulation and welfare cuts. And in spreading the costs across society as a whole we should not be entrenching the disadvantage of the people we are meant to be assisting.

Investing in training and education and targeted labour market assistance is an investment in reducing future welfare costs. It pays for itself in the long run and it leads to increased social cohesion. In any review of welfare, compassion must be a component of any new measures to address social exclusion, not just coercion. We must remember those who will continue to remain outside the labour market and ensure that their alienation is not exacerbated by the growing tendency to blame and punish the unemployed for their lack of work.

This bill exemplifies the inappropriateness of the government’s current workplace relations and employment approach. Like so many Australians, I will be watching them very closely, and my party will be doing so, to see what approach they adopt in relation to welfare reform.

Senator CARR (Victoria) (6.17 p.m.)—This bill, the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, is set in a pattern of bills. We have eight currently
being presented to the Senate for consideration this session. They all go to matters in relation to amendment of the Workplace Relations Act. They include the workplace agreements procedures bill and the Workplace Relations Amendment Bill 2000 on pattern bargaining. Secret ballots for protected actions is another one; tallies and picnic days; termination of employment; unfair dismissals; superannuation; and more jobs, better pay, by which I think they really mean ‘more work, less money’. When we put that together with the further four bills that are being proposed for debate in the next session, we see that the government are attempting to establish a whole new framework of legislation which they know could lead only to a reduction in the living standards for working people in this country.

What this bill does as part of that pattern is continue a policy of this government which is effectively discriminatory and arbitrary and adds to job insecurity. A recent OECD report published last year highlighted the fact that there is no observable connection or correlation in any of the OECD countries studied between so-called labour market flexibility measures on the one hand and employment on the other. So the assertion that is made by this government that if you can reduce wages and conditions and reduce the living standards of Australians then somehow or other you will create more jobs is not borne out by empirical evidence anywhere within the OECD.

We see a pattern which has been developed by this government in claiming that Australia should be more like the United States rather than more like Europe in regard to its approach to the labour market and to questions of social security in terms of the social partnership. There is this constant appeal to follow the US example. We see in the United States, for instance, that the gap between the rich and the poor is the largest of any OECD country. We see that real earnings for workers continue to decline and have done so since the late 1970s. We see that, during the same period, 97 per cent of increases in household income have gone to the richest 20 per cent of all households. We have seen that, whilst there have been quite significant productivity increases, the rewards for those productivity increases have not been shared evenly throughout American society. We have seen that executive payments and rewards have gone up a staggering 360 per cent since 1980 and that company profits have gone up a massive amount as well while workers’ entitlements have actually declined as a percentage of the overall size of the American cake. We see in the United States a pattern where minorities are particularly disadvantaged and dispossessed. Whether they be black, whether they be Hispanics, they are extraordinarily discriminated against. The quality of life of those people is actually declining. This is the model that we are asked to follow.

What we are seeing is a pattern emerging where these types of bills, in particular on the question of unfair dismissal, have been presented to the Senate by the government on numerous occasions. We have seen it first in 1997 and 1998; we have seen it on a number of occasions. And the Senate has come back with the same proposition: that effectively in this country we do not need these sorts of discriminatory attacks upon the entitlements of people who just so happen to be working for small business. What we have seen in this country throughout the last century is efforts to develop a system of regulation with regard to the labour market that allows for some minimum protections for ordinary people, which this government finds quite obnoxious. This is a government that has no concern about procedural fairness. It does not believe it should be a mandatory requirement. It believes that there ought to be the power of capital to impose its will upon workers whenever it suits the owners of capital, irrespective of the broader considerations that might occur within any particular enterprise.

I have been a member of the Senate committee that has examined this issue throughout most of the time that it has been dealt with, and it remains our core concern that the bill essentially contravenes promises and commitments that have been made by this government over time. Remember the promise that no worker would be worse off? Remember that commitment? We were told...
that there would be no unfairness in the arrangements. Of course, this bill is precisely that: it is unfair. We maintain that this exemption is totally unnecessary.

Senator McGauran—What about real wages?

Senator CARR—What is occurring is that even in this country, as there are more and more people falling through the safety net—for instance, as we have seen for significant sections of the labour market in Victoria—real wages have fallen under this government. We see a series of people who are discriminated against because they are not able to seek the protection of a proper, effective, operating industrial relations system, which has been part of the government’s plan and has seen the so-called first wave reforms go through.

In our judgment, there is no need to amend the laws because there have been significant changes already accepted through this parliament. Therefore, further discrimination is totally outside what one would normally regard as procedurally fair or reasonable. Even the government’s own commissioned task forces—for instance, the Bell task force—have concluded that the exemptions were unnecessary and that there was no need for there to be further attacks on workers in that regard.

I would like to suggest to the Senate that this measure, along with the pattern of legislation that has been put before us, is part of a government ideological campaign. What we ought to be looking for, if we are talking about degrees of flexibility within the system, is to balance the needs of all citizens in this country. It is just not reasonable to say that persons can be dispensed with at will by employers without there also being in place a series of measures undertaken by government, by the state, to ensure that there is proper protection for workers. Of course, that is the European model. The European model suggests that if you are going to have increased labour market insecurity, increased flexibility, then there ought to be commensurate support within government operations to ensure that there is adequate housing, that there are adequate social security arrangements and that we do not have a system which allows individuals basically to be thrown on the scrap heap. Of course, that is the philosophy of this government.

In the few minutes before we rise for the dinner break, I suggest that this government’s real plan—it knows what the numbers are in the Senate on this matter—is not really motivated by great concern for small business. This is a government of big business. This government listens to the big end of town. This government is seeking to establish a mechanism whereby, if it so chooses, amongst these eight pieces of legislation it will have a double dissolution trigger for it to exercise. These are issues that go beyond any particular political advantage that might be presented by government at this time. What we do understand is that the rights of Australian citizens are being put in question as a result of this government’s attempt to develop a political strategy which it believes will advantage it in the short term.

Senator McGauran, as a person who is supposed to represent rural areas and the interests of ordinary people in rural areas—many of whom, one knows, particularly in Victoria, are particularly well off—one would have thought would have a better understanding of the needs of Australian citizens. One would have thought that the McGauran family, while it may once have been a great wealthy family in East Gippsland, would have learnt not to behave as the great barons who are able to direct their serfs at will. What we do understand is that, seen from the heights of the Collins Street towers, one gets a very distorted view of what is actually going on in rural Victoria. I am sure your constituents would appreciate that, if you spent a little more time with them, maybe you would have a better understanding of what their real needs are instead of aping the words of big business and meekly following the dictates of the Liberal Party. It is that philosophy and that policy in regard to the National Party in Victoria which I suggest to you has led to the destruction of the National Party. The failure of the National Party to stand up for the constituents, to stand by its past commitments to protect rural areas, has led to the significant decline of the National Party in that state.
What I have heard today makes it clear to me why that has occurred. Your failure is very much a part of that pattern.

Sitting suspended from 6.27 p.m. to 7.30 p.m.

The ACTING DEPUTY PRESIDENT (Senator Crowley)—Order! The question is that the bill be now read a second time.

(Quorum formed)

Question put.

The Senate divided. [7.38 p.m.]

(The Acting Deputy President—Senator R.A. Crowley)

Ayes……………… 30
Noes……………… 38
Majority………… 8

AYES
Abetz, E. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H *
Chapman, H.G.P. Coonan, H.L.
Crane, A.W. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Ferris, J.M. Gibson, B.F.
Heffernan, W. Herron, J.J.
Hill, R.M. Kemp, C.R.
Knowles, S.C. Lightfoot, P.R.
Macdonald, I. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Patterson, K.C. Payne, M.A.
Tambling, G.E. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E.

NOES
Allison, L.F. Barlett, A.J.I.
Bishop, T.M. Bolkus, N.
Bourne, V.W. Brown, B.J.
Campbell, G. Carr, K.J.
Collins, J.M.A. Conroy, S.M.
Cook, P.F.S. Cooney, B.C.
Crossin, P.M. Crowley, R.A.
Denman, K.J. Evans, C.V.
Faulkner, J.P. Forshaw, M.G.
Gibbs, B. Greig, B.
Harradine, B. Harris, L.
Hogg, J.J. Hutchins, S.P.
Ludwig, J.W. Lundy, K.A.
McKernan, J.P. McLucas, J.E.
Murphy, S.M. Murray, A.I.M.
O’Brien, K.W.K * Ray, R.F.
Ridgeway, A.D. Schacht, C.C.
Sherry, N.J. Stott Despoja, N.
West, S.M. Woodley, J.

PAIRS
Alston, R.K.R. Quirke, J.A.
Campbell, I.G. Lees, M.H.
Reid, M.E. Mackay, S.M.

* denotes teller

Question so resolved in the negative.

ENVIRONMENTAL LEGISLATION AMENDMENT BILL (No. 1) 2000

Second Reading

Debate resumed from 12 April, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator BOLKUS (South Australia) (7.42 p.m.)—I rise this evening to speak to the Environmental Legislation Amendment Bill (No. 1) 2000 and I do so with grave concern about the direction in which the Howard government has taken environmental protection in Australia over the last five years. A little over a year after the debate on the primary legislation before us was gagged, one of the most significant pieces of environmental legislation ever to face this parliament—the Environment Protection and Biodiversity Conservation Act—we are now faced with a government whose environment policies are, in one word, shipwrecked. In the last few months we have seen failure in administration accompanied by failure in leadership and failure in commitment. We see the minister’s legislation, rushed as it was a year ago, now unworkable and in need of major surgery. The cornerstone of this legislation was intended to be the bilateral agreements with the states. Yet a year after its rushed passage we do not have even one bilateral agreement in place and operating.

As a sign of this government’s incompetence, we now have before the Senate a raft of regulations, inadequate as they are, which were introduced at the end of the last parliamentary session. The government introduced them then in order to avoid parliamentary scrutiny before they were intended to come into force. This regulatory failure, this legislative failure, has been accompanied by administrative failure, for we have seen the minister fail to convince his colleagues of the need, in that most important area of government policy, for a greenhouse trigger. In fact, if one were to look systematically at this government’s achievements in greenhouse, one would find that they represent five wasted years—five years of a government in gridlock, five years of ministers not being able to agree, and five years of this minister...
being ambushed by other, less competent ministers. Furthermore, in more recent days we have even seen the minister fail to halt unregulated broadscale land clearing. He made a promise to the Queensland government to assist with finances and it was a promise that has been overturned by his cabinet colleagues to this day.

Also in recent days, this minister announced that greenhouse gas emissions are some 16.9 per cent above the 1990 levels and are growing at their fastest rate since 1990. As I say, it is a failure of policy, whether it is greenhouse, legislation or administration. It is a failure in leadership that reflects the failure of commitment by this government. Under the Howard government, the environment has suffered massive cuts to core environmental funding across the three key portfolio areas. That cut in funding has been in the order of some 40 per cent. Minister Hill has allowed his department to be eaten away under the guise of the Natural Heritage Trust, leaving an ongoing, long-term administrative mess. To compound it all, nor have we seen any leadership from the Prime Minister on any environmental issue over the last five years— the Prime Minister whom we most clearly and starkly remember taking the Australian Greens for a walk into the forest in 1996 before the election. In essence, he just left them there.

The bill before us now is an attempt to clean up some of the mess that was perpetrated through this parliament just over 14 months ago. It amends the EPBC legislation and the Environmental Reform (Consequential Provisions) Act of 1999 with what this government calls: a number of minor amendments... of a technical nature... intended to rectify a small number of operational anomalies and unintended consequences of drafting.

It is hardly surprising that there were operational anomalies, given the complexity of the legislation and the fact that some 511 amendments were settled behind closed doors and rammed through this Senate in less than 36 hours with absolutely no real opportunity for considered debate. Whilst some aspects of the bill before us this evening could be seen as consequential tidying up of the EPBC legislation, some of the clauses, despite the government’s clotting of them and presentation of them as being ‘minor and inconsequential’, go somewhat further in effect and raise legitimate concerns that need to be addressed in this place. We have ongoing, significant concerns with the EPBC legislation for many reasons, but primarily because it devolves national environmental responsibilities to uncertain and inconsistent state regimes. Looking at the regulations that are also probably going to be considered in this place in the not too distant future, one can see that the federal legislation does not in any way ensure that the state regimes are in any way adequate to fulfil the responsibility and the charter and objectives of this legislation.

The environment minister, on the other hand, continues to applaud this new act. He says it clearly defines Commonwealth responsibility in relation to the environment. Well, the only way it could do that is if the Commonwealth had clearly intended to abdicate responsibility in relation to the environment! What the minister does not say is that this legislation also allows a Commonwealth environment minister to delegate responsibility back to the states. These are the very same states that he continues to chastise for their continued failure to deliver on environmental outcomes. For instance, addressing the Insurance Council of Australia only last week, the minister sought to blame the states for his failure to bring greenhouse emissions under control. But what does he set out to do in this legislation and in the primary bill? Even the renewable energy bill that is due to be debated later this week includes an incentive to increase the woodchipping and non-plantation native forests for burning. This is a minister who continues to try to blame the states for his failure to deliver outcomes through the NHT.

We say to the minister as we said a year ago: where are this government’s national standards on land clearing? It is no good for Senator Hill to keep on pointing the finger at others without himself pursuing a positive agenda. What is he actually doing to encourage Queensland to enact all elements of their legislation? Where is the money that he
promised Queensland in order for them to do the job? That money is still being awaited by the Queensland government. This would be the most important single act this minister could do to ensure a reduction in greenhouse emissions, and he has not been able to do it because the commitment he made is one that he cannot get through the National Party in the federal cabinet. More and more questions fundamental to this debate need to be asked. In going to this particular point, the essential one is: if the states are not delivering on their areas of responsibility, why is this minister setting in place legislation that enables him and the government to give them additional responsibility—to give them more power that they won’t utilise? In essence, what we said a year ago about this legislation is true: what the EPBC Act gives to the minister it also allows the minister to delegate away—not just what it gives but also more. The legislation does not provide certainty and never has. It provides uncertainty and inconsistencies. It is short. It provides ineffectiveness.

I would like to spend a little bit of time covering specific areas of concern we have with this bill. This bill as it now stands would have a negative impact on environment protection. It would undermine what little protection is provided to the environment under the EPBC legislation. Not only would it have such a negative impact but this legislation also seeks to subvert the parliamentary process under way on the RFA legislation. At the time the Environment Protection and Biodiversity Conservation Act was passed, the government had envisaged that the 

Regional Forest Agreements Bill 1998

would be in force by the time the EPBC legislation commenced. As a result, certain forestry terms and exemptions within the EPBC Act were defined with reference to the RFA Bill. However, the RFA Bill has not passed through the parliament. It has not passed because Minister Tuckey has twice refused to accept the Senate’s most reasonable amendments—for instance, amendments including the insertion of an objects clause, amendments that ensure a requirement that RFAs signed after 1 March 1999 be subjected to limited public and parliamentary scrutiny—and I must say ‘limited’—amendments which provide for the clarification of the Commonwealth’s compensation liability and that provide for the establishment of a Wood and Paper Industry Council. On the government’s motion, these reasonable amendments have not been accepted and the RFA Bill has been set aside. The government now seeks to bypass the proper processes and through a backdoor mechanism—through this bill—it seeks to enact part of its original RFA legislation. This is not acceptable to us and on that basis we will be rejecting those amendments.

The government is also seeking to clarify the circumstances under which previously authorised or continuing activities are exempt from having to gain new approvals under this legislation. Labor supports the intention of these amendments, but we do not think they go far enough in order to ensure the adequate protection that is necessary. So we will move amendments to incorporate indigenous concerns and to broaden the definition of environmental authorisation. We support the government’s increasing the range of impacts that can be considered by strategic environment impact assessments under part 10 of the primary legislation. However, we are concerned about the introduction of a defence against the offences of killing, injuring or trading in listed threatened, migratory and other species where that act is provided for, and taken in accordance with, an accredited fishery management plan or fisheries regime. Although we recognise industry activity in the protection of listed threatened, migratory and other species, the legislation as it is currently drafted does not have sufficient minimum requirements for what constitutes a fisheries regime. So our amendments will provide for that definition, that clarity and that certainty necessary under the Fisheries Management Act 1991. We support, for instance, a defence for areas covered by a management plan, but we will seek to restrict the defence for an area not covered by a management plan to a period of two years to enable draft management plans to be developed in this time. We will also seek to remove the defence for intentional or reckless action.

When a management plan is not in operation for a Commonwealth reserve, subsection
354(1) of the primary legislation will not prevent a person undertaking a commercial activity in a Commonwealth reserve if the director of national parks determines that the action is consistent with the proclamation of the reserve. Clauses in this bill widen the scope for commercial activities in a Commonwealth reserve. They have the potential to act as a significant disincentive for management planning, so we do not support those clauses as they stand. We will move amendments to ensure that only pre-existing commercial activities may be permitted and to provide that the Commonwealth reserves without management plans must have them within 12 months. Furthermore, we will require that a pre-existing management plan prevail while new plans are being prepared.

Labor recognises that the reporting requirement placed on the Commonwealth bodies was one of the few positive concessions that the Democrats managed to achieve in their negotiations on this legislation last year. We support the extension of the scope of reporting as proposed in the Environment Protection and Biodiversity Conservation Bill 1998. But, even with the amendments I have alluded to, we believe the legislation will not adequately protect the environment or provide an ability for the federal environment minister to provide leadership initiatives of national environmental significance where the minister has delegated that responsibility. We still believe that the legislation is fundamentally flawed, as we expressed in last year’s debate. As we indicated then, we are committed to overhaul the legislation when elected to government and to seek to restore Commonwealth responsibility and national leadership. The legislation is now in force and there are elements of the act that cannot wait until we are re-elected to government. In this debate, therefore, we will move a small number of key amendments to provide environmental security in advance of a rewrite of this legislation.

These amendments are all based on the amendments we moved during the debate last year. We hope the Democrats will not reject them twice. We will seek to reintroduce a greenhouse trigger for projects that emit more than 500,000 tonnes per annum. We will reintroduce amendments that ensure that the legislation does not affect the rights or interests of indigenous persons under native title legislation. Our amendments will allow for the assessment of impact on world heritage properties, as well as values under the EPBC legislation. We will move amendments that remove the ability of the minister to delegate approval powers to the states for matters of national environmental significance. Further amendments include a national interest fall-back provision to allow for Commonwealth involvement in matters of national environmental significance. Finally, we will have amendments that will allow for expiry and review of delegated assessment by other Commonwealth agencies after five years—similar to the expiry of bilateral agreements.

In addition to these amendments, we believe that there are a number of other serious flaws with the legislation that Labor would seek to address in government. We will seek to broaden the scope of the legislation in accordance with the COAG agreement of 1992 and to limit exemptions in respect of matters of national environmental significance in order to maintain a meaningful role for the Commonwealth. We will reintroduce the reserve national power to protect the environment. We will strengthen public accountability and transparency of decision making, including by notification, participation and application of the laws of standing which have applied in New South Wales since 1982. Further, we will ensure precision and fairness criteria for the exercise of ministerial discretion and limitation on the scope of delegation by the minister. We will maintain adequate levels of enforcement provisions, including in some circumstances criminal penalties, as we signalled during the debate on the primary legislation. Land clearing is an issue which I mentioned earlier. Land clearing demands a national response. In the committee stage of the debate, we will move an amendment to provide for a national land clearing trigger in this legislation.

We believe that the EPBC legislation, as it now stands, is an ongoing monument to what was a quick, dirty and secret deal conceived between the government and the Australian
Democrats. It was not good policy; it still is not good policy. It does not provide adequate environmental protection. It surely does not provide adequate national leadership. It was part of a secret deal which, as well as producing environmental legislation which is porous in its protection, also gave us the inequitable and economically inefficient GST. We believe this legislation needs amendment—more than what the government signalled tonight—and we will do that in two stages: one in this evening’s debate and one on our return to government. But I must say for the government to pretend that the Environment Protection and Biodiversity Conservation Bill 1999 is minor and consequential in nature is once again one of those situations of Goebbels-speak. It is much more important than that: it tries to amend important legislation through backdoor mechanisms. We will attempt to amend it. Once again, I hope the Democrats do not oppose most of our amendments twice.

Senator McLUCAS (Queensland) (7.59 p.m.)—I also rise today to contribute to the debate on the Environmental Legislation Amendment Bill (No. 1) 2000, or ELAB 1, as it is most often referred to. As Senator Bolkus outlined, the reason we are here debating ELAB in the first place is that we in the Labor Party are seeking to reintroduce a series of amendments. We are here due to the fact that at the moment we have a deeply flawed piece of environmental legislation—that is, the Environment Protection and Biodiversity Conservation Act 1999. The act, that is, the Environment Protection and Biodiversity Conservation Act 1999. The act, the key piece of legislation that defines how we manage our fragile environment for future generations, is a piece of legislation that falls well short of what most Australians would consider acceptable. As we all know, it is the result of a government deal with the Democrats that was rushed through parliament in June last year. As a result of the haste that the government and the Democrats displayed, it contains errors, major omissions and, importantly and critically, no meaningful role for the government in environmental protection and conservation. It is an act so full of holes that you have to wonder what the point of patching it up is.

If the government had a real commitment to conservation and sustainable future for all Australians, we would not need to have today’s debate and we as the Labor Party would not be trying yet again to get this government to take its environmental responsibilities seriously. In 1999 the government described its Environment Protection and Biodiversity Conservation Act as a piece of ‘fundamental legislation’. It went as far as describing the bill as ‘the only comprehensive and fundamental attempt to reform environmental responsibilities in the history of Federation.’ It replaced five significant pieces of legislation, consolidating in one act the government’s responsibilities for environmental management, fundamental management responsibilities, including the power of the federal environment minister, the relationship between the Commonwealth and the states for environmental management and protection and the triggers for environmental intervention in actions that were likely to have significant environmental impacts. All these powers were collapsed into the EPBC legislation, but with one fundamental difference: the philosophical shift from a national regime of protection to a state based regime, with all the inherent flaws that such a transfer brings.

The EPBC Act is an act that any government committed to protecting and preserving our environment had to get right. Given this, it would have been reasonable to expect that a comprehensive and fundamental piece of legislation would have been introduced into the House and into the Senate with time for full, open and rigorous debate on its measures. Surely any government with a genuine commitment to safeguarding our environment would have wanted us all to understand the scale of the reforms proposed and the implications of the many proposed changes. The bill, after all, contained over 500 provisions.

As we all know, this government is committed to neither fundamental reform nor the environment. We know this because the act falls well short in the kinds of regulations required to properly protect the environment and because it was rushed through the parliament last year with virtually no notice of
amendments and very limited time for debate. The result is that we have now had to come back to this bill to patch up the short-comings and mistakes contained in the original legislation. It is not only the government that must take the responsibility for the sloppiness of this approach; I am afraid the Australian Democrats played a significant part in this too. As we heard earlier in this debate, they did a deal with the government that allowed basically bad law to pass through the Senate, enshrining bad law as our environmental safeguards. The government is proposing a range of amendments here today. If the government and the Democrats had allowed a proper debate last year we would not need to be here today, because they could have identified back then the error of their ways. But that is not the way this government operates. Unfortunately, the Democrats are weak enough to allow the government to get away with it.

The Labor Party supports in principle a number of the proposed amendments. However, we do not think they go far enough. Of particular concern is the government’s introduction of a new defence against the offences of the killing, injuring, trade and so on of listed threatened species. The defence essentially protects parties from prosecution where the actions resulting in death of a threatened species are taken in accordance with a fisheries regime or fisheries management plan. While such defences exist in a range of other circumstances, including where actions are taken in accordance with conservation management plans, the Labor Party is concerned that the proposed exemptions are too broad. They fail to define what a fisheries management regime actually is—that is, there are no formal requirements in relation to the content, notification or consultation undertaken in relation to developing a fisheries management regime. Even more alarming, the amendment fails to differentiate between a draft management plan and a final management plan.

The Labor Party is concerned that this amendment is not rigorous enough. The protection of endangered and threatened species is a matter that all Australians expect governments to take seriously. North Queensland, the part of Australia from which I originate, provides a perfect case in point. We have a large and beautiful coastline. Our waters include the Great Barrier Reef, the Torres Strait and the Gulf of Carpentaria—thousands and thousands of kilometres of sea and coast that support a range of competing interests and industries. There are three Commonwealth fisheries, six state fisheries and a large and growing recreational fishing sector, which all rely on our North Queensland coastline and seas. There is also extensive indigenous hunting and fishing and native title. There is the Great Barrier Reef Marine Park, with its network of protected areas and permits. The area is also home to a range of protected species—for example, birds, marine animals, green turtles and humpback whales. If all these separate interests are to coexist, there must be clear definitions of what actions are or are not to be protected when it comes to our endangered species. In heavily fished areas especially, we must know what the Commonwealth means when it allows the killing of protected species under a fisheries regime. The Labor Party’s amendments, which clarify this issue, should be supported because they are sensible and necessary. It should be noted that the defence will not apply to any killing of endangered species that is the result of intentional or reckless action.

The Labor Party is also proposing a series of other amendments, which are equally sensible, necessary and, regretfully, not in the original legislation. These are amendments like ensuring that the provisions of this act do not affect the rights of indigenous people under the Native Title Act. Indigenous people expect their federal representatives to acknowledge and respect their native title rights. Hunting and fishing are important elements of native title. It is not just about feeding a family; hunting and fishing have important cultural and ceremonial roles in contemporary Aboriginal and Torres Strait Islander communities. Given that native title does exist, we have to acknowledge the importance of hunting and fishing as a right for indigenous communities. This does not mean that we turn a blind eye to the impacts of indigenous hunting or fishing on our endangered species. We cannot do this, and in-
Indigenous communities would not expect us to do so. But native title holders must be at the table when we develop our management strategies. In areas where native title has been established, native title holders have rights which must be respected by law. They must be recognised in any legislation which impacts on their rights, just as the fishing industry or the conservation movement are. You cannot, as this government has tried to do, simply pretend that native title and the rights of native title holders just do not exist.

The Senate should support this important Labor amendment.

The Labor Party is also proposing an amendment which would address the critical issue of greenhouse emissions. It is a matter which this government appears to wish would simply disappear. Remember that this is the government which actually increased its greenhouse target at the 1997 Kyoto summit, in the face of opposition from developed countries and to the embarrassment of many of us here at home. All around the world, countries were making a commitment to either remain at 1990 levels or reduce levels by five to eight per cent. But not this government, which pushed for an increase by eight per cent over 1990 levels. To make matters worse, Australia has had the biggest jump ever in carbon dioxide and greenhouse gas emission levels—the largest jump ever. Yet we see the government continuing to trumpet its supposed commitment to greenhouse issues, boasting record sums of expenditure. Senator Hill just last week stated that ‘we shouldn’t under-estimate the Commonwealth’s determination to achieve its Kyoto commitment’. Yet the major and fundamental piece of environment legislation contains no mechanism for regulating greenhouse emissions. There is no trigger in the act that brings the Commonwealth into the greenhouse equation of industry needs and environmental protection. This government has no basis on which to claim that it has any commitment at all to pursuing genuine reduction in greenhouse emissions. But let us take Senator Hill at his word—that the government has a determination to achieve its Kyoto commitment. Labor’s amendment proposes a trigger for projects that emit more than 500,000 tonnes of greenhouse gases per year. Some would say that is a modest target; some would say it is realistic. I invite the government to support it and demonstrate to all of us here in the Senate that it is serious about meeting its international obligations.

I come from Queensland, a state which endured 17 years of Joh Bjelke-Petersen as its leader and his, shall we say, innovative approach to environmental protection. What protection was that, or what environment? It was perhaps simply the green bits between the freeways, between the mines and between the white shoe brigade developments that we had during those days. This was the regime which argued seriously that it was going to be okay to have oil drilling on the Great Barrier Reef because ‘as any schoolboy knows, oil floats on water and the coral grows under the water’. Thankfully, under successive Labor governments, that approach no longer holds sway in Queensland. We cannot rule out a return to the regressive National Party government, and the Bjelke-Petersen style approach to managing the environment.

While some states now may have some strong environmental protection, we cannot say that they will always do so. That is why the Commonwealth must have a continuing role in monitoring and protecting the environment. It cannot, as this government seeks to do, simply hand powers over to the states and then sit on the sidelines watching wholesale destruction. It is not enough for Senator Hill to do what he has done recently—as
recently as last week—and just stand around and wring his hands about the fact that the states are not doing enough to reduce greenhouse emissions. Think about it. Here we have a government that fast-tracked an act which effectively moved the Commonwealth and the federal environment minister out of any role in protecting the environment or regulating state activities on matters of national environmental significance, a government that wiped its hands of any strong continued role for the Commonwealth on matters like greenhouse, land clearing or salinity.

Yet, on the other hand, we have the same government and the same environment minister now running around the conference circuit telling audiences that the states' performance in one area at least has been 'abysmal', that the states are not meeting deadlines, that they are falling short of agreed targets and that they are failing to provide financial information on greenhouse targets.

And what are the government and the environment minister going to do about it? Absolutely nothing, because it suits them to be able to fire shots from the sidelines without entering the fray themselves. Worse, it enables them to actually stymie genuine attempts to address critical environmental issues as they have done in my state of Queensland. When it comes to the environment, this government always takes the easy way out: wipe your hands of the difficult issues and then snipe from the sidelines. The Labor Party is proposing an end to that approach.

Our amendments, if supported, will stop the environment minister delegating approval powers to the states for matters which have national environmental significance. The amendments propose a national interest fall-back provision to allow the Commonwealth to become involved in matters of environmental significance. They are reasonable and sensible provisions, and they are provisions which I think the majority of Australians would expect. Most Australians expect that the federal government will have the final say in major projects which may conflict with our international obligations or raise broader questions about the national interest. State governments are not, by their nature, in the best position to make decisions based on the national interest. That is the proper role for the Commonwealth government, and it is a role that the Labor Party, through these amendments, wishes to write back into the act.

I urge the Senate, and in particular the Australian Democrats, to have some vision for our environment and to support our amendments. I urge the government to take its responsibilities for environmental management seriously, and not just in the warm and fuzzy areas of threatened species but in the hard areas of greenhouse gases, land clearing, air quality and salinity. They are areas in which we desperately need decisive leadership. But I will not hold my breath.

Senator BARTLETT (Queensland) (8.16 p.m.)—I rise to speak on behalf of the Australian Democrats on the Environmental Legislation Amendment Bill (No. 1) 2000. The bill seeks to make a number of amendments to the Environment Protection and Biodiversity Conservation Act, which passed through this chamber a bit over 12 months ago and came into force last month. The Democrats have a number of amendments which we have circulated in the chamber— as have Senator Brown and the ALP. Given the extent of issues covered in those, and to save repetition, I will not speak at length at this stage about the bill as a whole, because I think we will be going into a lot of those issues in more detail in the committee stage.

It is important to give a general overview of the new EPBC Act as well as a few of the provisions. One of the key components and key areas of concern from the Democrats in relation to this bill concerns the potential impact on the environmental protection of areas covered by regional forest agreements. It is an ongoing area of concern. It is fortuitous that, for varying reasons, the flawed RFA bill, at the national level, has not passed through the parliament. The Democrats have
opposed that bill outright and will continue to do so because we believe that the RFA process, as it is now in place and is now operating at state level, is a flawed one which is clearly not adequately protecting biodiversity and our native forest reserves. It is of concern to us that an amendment contained in this bill may seek to weaken that protection further.

The new act, which the bill seeks to amend, is a major advance for Australian environmental protection at the national level. The Democrats, both when the bill was being passed and since, have quite clearly indicated a number of areas where there is a lot of room for improvement. This legislation should provide an opportunity to make significant improvements to that act. That is something that we have never denied and indeed have made a point of highlighting. We believe it is important to have a strong regime of legislative protection at the national level to protect our environment, but there are two components to that. The first is that, whilst there is still a lot of room for improvement in the EPBC Act as it now stands, there is no doubt that it is clearly a significant advance over the level of environmental protection that was in place previously under a range of differing acts brought in at different times with differing provisions, a lot of inconsistencies and a lot of gaps. So, whilst there is plenty of room for improvement still, what has now been put in place is nonetheless a step forward. From the Democrats’ point of view, as a party that has focused since its inception on getting results in terms of improving environmental protection, the most important component of the passage of that new legislation was that it was a step forward and an advance in overall environmental protection at the national level.

Perhaps what is more crucial is that even the best legislation in the world is of minimal use unless there is political will on the part of the government to use that legislation. Unfortunately, what we have seen from this government over recent times is a continual backing away from any willingness to pursue important environmental issues, right down to backing away from quite clear-cut commitments to this chamber and to the Australian people by this government—by the Prime Minister himself—in relation to genetically modified organisms and in relation to the serious pursuit of a greenhouse trigger.

There are plenty of other examples of where this government’s commitment to the environment has gone backwards, if that is at all possible. They highlight why political will is so crucial. It is not just a matter of legislation; it is a matter of political will to implement it and to enforce it. Fortunately there is now a clearly increased ability for third parties to have standing under the act, thereby providing more opportunities for leverage—for pressure—and to pursue avenues to force the government to uphold its environmental responsibilities under the law to the Australian community and to future generations. As the act has been in force for less than one month, obviously we are still in a situation where a lot of the mechanisms for operation of the act are still to unfold, but it is a clearly worrying sign that we have such backsliding from this government on environmental issues. If anything, I think that highlights some of the rationale behind the very difficult and tough decision the Democrats made more than 12 months ago to support passage of the EPBC bill under a reduced time frame for debate. That was something that was not done lightly; it was done because there was a concern that this was a window of opportunity to improve the level of environmental protection nationally and that it might close, and close very quickly.

Given the backwards direction of this government, its ministers and cabinet overall in relation to environmental concerns, it seems all the more likely that that window may well have closed very quickly. It was for that reason that that judgment was made. The opportunity was there to make an improvement to our national environmental legislation and, because of our overall concern for improving environmental protection over and above everything else, the Democrats took that opportunity. I think the actions of the government since that time have reinforced how shaky any commitment from this government is with respect to environmental protection issues. There is a piece of legisla-
tion in relation to renewable energy targets—which I will not pre-empt debate on too much—that is due for debate this week. Again, some of the flaws in that piece of legislation really give serious cause for concern about the strength of the government’s commitment to that particular area of endeavour, which is about the only area of endeavour in the whole climate change area that has produced concrete, mandated, required action. We will have an opportunity to pursue that issue a bit further in the committee stage of this debate, so I will not go on at length about that at this particular stage.

It is important to continue to emphasise, though, the necessity for political will and political commitment from all parties, not just government, in relation to pursuing some of these issues—as Senator McLucas said, not just some of the easy issues but also some of the difficult ones. I would have to wonder how this government is going on even some of the so-called easy issues in the environmental arena. It is a continual litany of disappointment in most regards. There is a little bit of finger pointing from time to time by the federal minister, Senator Hill, regarding some of the flaws of state governments. I think all of us could point to flaws in state governments, but there is a lot more to protecting the environment than pointing out other people who are not taking action—the government needs to take action as well. Land clearing in my home state of Queensland—which people from all parts of the political spectrum recognise is a major environmental catastrophe that is occurring now—has been occurring unabated for a number of years; yet, somehow or other, we have political parties at state and federal level unable to do anything about it. Even though all acknowledge that it is a catastrophe unfolding before us, nobody seems to be able to actually take action to do anything about it, other than to point the finger of blame at each other for each other’s lack of action. That, quite frankly, is clearly not good enough.

The cost that will come from that inaction by both major parties at state and federal level is something that the community as a whole will have to pay. It will be a big price even just in economic terms. The cost of the damage to the environment that will need to be repaired down the track is way over and above any cost that would need to be incurred now to prevent that damage from continuing to happen. It is a classic example of the short-sightedness and failings of our political system—a clear example of the lack of political will and inability to take some of the tough decisions in the face of potential political difficulties. I can recognise that there are political difficulties in taking those actions, but it is one of those clear areas where responsibility, if there is a genuine concern for protecting the environment, should come over and above those short-term political difficulties. Indeed, if the will were there, I believe the so-called political difficulties would be far fewer than political parties seem to feel they are. To improve our environmental legislation at a national level, the Democrats were willing to endure potential short-term political difficulties and take the tough decisions.

The Democrats welcome the opportunity through this debate and this legislation to make further improvements to the act and to deal with this particular bill before us and some of the components of it that are put forward by the government. Some parts are desirable; some parts are of concern. The particular component dealing with regional forest agreements is of major concern to the Democrats, as it is yet another avenue to try to reduce further protection of those forests that come under the RFAs at state level. Unfortunately, it has always been an area where there has never been any environmental protection under federal law. That situation has not changed with the new act. But this particular component within this bill clearly rings alarm bells about the potential for maintaining a loophole which will prevent any mechanism under federal legislation for protecting forests. There is certainly a possibility that, as things stand, as a result of the new act, there may even be increased protection for forests which this particular component of this bill seeks to try to eliminate. That is a situation that the Democrats certainly will not support. We will continue to maintain our opposition to regional forest agreements as they operate within Australia.
and to the legislative regime that the government is trying to put in place in relation to the RFAs. It is another area of ongoing concern where clear environmental damage is being caused, and there is not only a lack of political will to address that damage but also a lack of acknowledgment on the part of other parties to recognise that that damage is occurring. But we can explore those issues further in the committee stage of the debate. Given the number of amendments that we have to get through, I will finish my remarks and expand on some of those issues in more detail when we get to the committee stage.

Senator BROWN (Tasmania) (8.29 p.m.)—Madam Acting Deputy President Crowley, you will remember that the Greens vehemently opposed the Environmental Protection and Biodiversity Conservation Bill when it was before this place a little bit over 12 months ago. I might add that it was the Democrats and the coalition’s environmental protection and biodiversity conservation bill, though one would not have thought so from what Senator Bartlett had to say a moment ago. I will come back to that shortly. What I do want to say at this stage is that the return of the Environmental Legislation Amendment Bill (No. 1) 2000 to the Senate with what appear to be minor amendments gives some opportunity to both review the disaster that this bill embodies and to try again, with a more thoughtful Democrats turning somewhere towards their past concern for the environment and being able to assist the Senate to get through some meaningful changes to this bill—to change a few of the scales on the dragon as far as the environment is concerned.

I would point out that once again the minister for the environment has not seen fit to come in to take part in this debate. I do not know whether the fact that Senator Troeth is in the ministerial chair is again an indication of the disdain with which Senator Hill treats the environment. If that is the case, we are left in the hands of somebody who does not know what the term ‘ecological sustainability’ means. As you would know, I have frequently asked the senator and other members of the government about that. I do not know if the first word is too big, if the second is or if it is the inordinate complexity of putting the two together but the government, to a person, has no ability to give a definition for a fundamental term like that, which would be essential to any approach to environmental debate, let alone environmental legislation, at the start of the new century.

The legislation will have heartened, of course, various state governments and, in turn, will have heartened corporations—particularly resource extraction, woodchipping and mining corporations—around the country, but it flies in the face of repeated opinion polls showing that Australians are amongst the most environmentally aware people on the face of the planet. Twelve months ago the Democrats supported the Howard government in steamrolling this legislation through the parliament against not just the inherent wishes of the Australian people but the wishes of all but four conservation groups in this country, which has hundreds and hundreds of conservation groups. One of those has since made a 180-degree about-turn and at the highest level has repudiated the Environmental Protection and Biodiversity Conservation Bill because of its obvious faults.

The Democrats rode over that and, in secret, negotiated this legislation with the government, shutting out the proper debate that there should have been with the community and, of course, with the environment groups which represent the community right from the local level through to the national level. So I found it remarkable that the Democrats’ Senator Bartlett should come in tonight to express concern about the very bill which the Democrats—all of them—in a joint press release on 22 June last year described as ‘a great bill’. The Democrats, as far as forests were concerned, went on to say the ALP, the Greens and Independents ‘must vote with us’ to protect Australia’s forests. But tonight Senator Bartlett, who was one of the Democrat contingent who cut debate of this legislation to zilch as they pushed it through in the wake of their deal with the government on the GST, pointed out that, as far as this legislation on forests is concerned, it is ‘flawed’. So ‘a great bill’ last year is tonight ‘flawed’.
Senator Bartlett went on to say it is ‘clearly not adequately protecting ... our native forest reserves’. This is the legislation the Democrats voted for and you will know, Mr Acting Deputy President Chapman, that not only did they vote for the component to deal with forests; they knew at the time that they were inherently putting into legislation a big slab of the regional forest agreements process. Senator Bartlett now says the regional forest agreements are totally unacceptable. They were not last year when he and every other Democrat voted to strip the federal government of its powers to intervene in forests for 20 years, when the Prime Minister signed the death warrant for those forests—wherever they might be in Australia—under regional forest agreements.

Senator Bartlett went on to say GMOs were left out. One might ask: by whom? They were left out by the Democrats. When the Greens and/or the Labor Party moved amendments to put them in, what was the Democrats’ response? They guillotined the debate. They slammed shut, through force of numbers, the ability of the Senate to rectify that wrong. Senator Bartlett says that climate change was left out. You know why it was left out: the Democrats forced it out. There were amendments to put it in and the Democrats gagged that proposal as well. Senator Bartlett goes on to say that land clearance—and he is talking about Queensland here—is a catastrophe. It is a catastrophe because the Democrats missed the opportunity to ensure that we had legislation with teeth in it. It would have said that the government must act on land clearance in Queensland, where indeed it is a catastrophe, rather than having the current toing-and-froing between Canberra and Brisbane whereby the Labor government, the Beattie government in Brisbane, and the Howard government here in Canberra both duck their responsibilities for this obscene destruction of the native vegetation cover of Queensland, which is, as commentator after commentator points out, equal to if not greater than the proportionate rate of clearance of the forests of the Amazon. Senator Hill, who is now in the chamber, is directly responsible for that occurring: it is his inaction that is allowing that to occur.

Senator Bartlett said earlier tonight that one of the problems here is that federal governments have never had the power to do anything about it. How completely wrong that statement is! For a start, there are the corporation powers. For example, federal governments have been very fast to threaten banks with the corporation powers to get credit card legislation. That is just one example; there are dozens of other instances. But when it comes to the environment, it seems that federal governments, both Labor and Liberal, are totally incapacitated and are unable to look at the same powers to protect the interests of future generations.

‘There is a lot of room for improvement,’ said Senator Bartlett tonight in relation to this legislation. ‘That is something that we have never denied.’ They may not have denied that there is room for improvement, but last year every Democrat said that this was a great bill as it stands. They knew that was not right; they knew that was a deception. They knew that, with Prime Minister Howard, they had drawn up this bill on the back of the GST, shutting out the rest of the community—and the environment community in particular—from being involved in that process. Four obvious issues come to the forefront of this matter. They have been left out of the legislation, and we will again be moving to have these issues included as matters which would trigger the government into action. These issues are global warming, native vegetation clearance, logging of forests and genetically modifying processes—processes which are being rapidly introduced into the Australian environment, in the wider sense of that word, without any government competence in acting responsibly to meet the threats which genetic engineering poses to health as well as to the environment. It will be interesting to see how far the Democrats will go to rectify the damage they did last year, but the Greens will have amendments available to help them get back on track in the debate that will ensue in the committee stage.

I now want to talk a little bit about the Labor Party. Before I get to the problems in the Labor Party’s approach to the environment in this period leading up to an election, I want
to say that Senator McLucas, through her speech, brought a breath of fresh air into this chamber. Many young Australians, if they heard her approach to the environment, will say, ‘At last we are hearing a new voice in the Labor Party ranks speaking on the environment, a voice of reason, clarity and intelligence. At last we are finding that there may be a voice coming out of the Labor ranks which understands and is committed to the environment in the wider sense of that word, a voice that is able to speak for the environmental aspirations of Australians in some future government.’ I hope that other members of the Labor Party were listening to what she had to say.

That said, I want to take us back two weeks to the Labor Party national conference. The Leader of the Opposition, Kim Beazley, was at the conference in Hobart for the full week. From the morning of 31 July through to Thursday afternoon, 3 August, at Wrest Point Casino, we had four days of his injection of views into the debates. There were 26 pages of doorstops, interviews, press conferences and speeches. There was a full press conference. There were five doorstops. There were three set-piece conference speeches and a short address to the metal workers’ demonstration on fair trade outside. Altogether there were 20,380 words, 96,938 characters, 537 paragraphs and 1,429 lines. We are in an age when the environment is repeatedly up there above taxes in the concerns of Australians and their wishes for political action. In all those words, Mr Beazley failed to mention the word ‘forest’.

The big demonstration outside the casino was against the Labor approach to forests in Tasmania—an approach which, in that state, is even worse than the Liberals’ has been. We are seeing the greatest rate of destruction in history of the old-growth forests of Tasmania. There was no mention of forests by Mr Beazley. The word ‘greenhouse’ did not pass his lips. There was no mention of nuclear issues. He failed to get to the issue of salinity. He did not mention the land itself, let alone Landcare. He did not mention genetic engineering, and the word ‘environment’ in the context in which we are using it did not appear once. I have to say this to the Labor Party—I have been saying it in public recently but I want to reiterate it. The Greens are a party which stands for social justice, the environment, peace and democracy. We see an ecological component in everything in life. We see a very important role for this generation to take into account all future generations as well as our fellow species, which share a right with us to exist on this planet in our time. The environment is involved in everything we do; that is why we are alive.

The public knows that. When you get to the few opinion polls there are on youngsters under 25, the environment streets the field as the issue which is most important to them. How could the Leader of the Opposition totally fail to address it in a national conference of his party which sets the scene for the next election? How could he, like Mr Howard, fail to even go and see those forests, despite the invitations? Two hours out of Hobart, the tallest forests in the Southern Hemisphere, the grandest old-growth hardwood forests in the world, and their wildlife are being destroyed at the greatest rate in history. I have this to say to the opposition: I did not get into this parliament simply to warm a seat and, as far as I am concerned, I am going to fight as hard as I can within my little party to deny the direction of preferences to any party which is a conspirator in this monumental environmental catastrophe happening on Hobart’s back doorstep.

On the weekend the Prime Minister, when he visited Deloraine, ran into that feeling in Tasmania that he is not welcome because he signed the death warrant of those forests with the then Liberal Premier of Tasmania, who took a slightly softer attitude than the now Labor Premier of Tasmania, Jim Bacon, who seems far closer to the woodchip corporations than to those thousand or so people who have lost their jobs out of the forest industry in Tasmania since the Prime Minister signed that regional forest agreement, promising jobs and job security in our time. But if Labor think that it is simply a matter of their always appearing a bit better than the government in these matters, they should think again. And if they do not think I am serious when I say I am going to fight to see that we
do not direct preferences to a Labor Party which shares the Howard forest policy, they should ring ex-Premier Field in Tasmania and see whether, when I make a statement like that, I am dinkum about it, in particular when the issue is forests. I will, of course, be working hard to see that the Labor Party understands that in the run-up to the next election.

When you hear people like Senator McLucas, you think there must be hope. When you look at the government benches, you know there is no hope. As far as the big parties are concerned in this country, they have totally turned their backs on their responsibility to take the tough decisions to change the destructive processes of the present: to really tackle greenhouse gases, not to wimp, as Labor did, on their obligation to ratify Kyoto when this issue was debated in Hobart; and to put an end to this destruction of forests in an age when we have wood coming out of our ears from plantations and do not need to be destroying native forests in this country ever again. They need to really tackle the issue of genetic engineering. Where is Kim Beazley, the Leader of the Opposition, when it comes to backing up his own opposite number in Tasmania, this time doing the right thing by wanting Tasmania to have at least a year’s moratorium on genetic engineering as far as crop lands are concerned and an opt-out clause in the forthcoming legislation whereby the Howard government wants to ride right over the top of this massive public opposition to the trialling of genetic engineering in our country? I will leave the amendments to the committee stage. I reiterate my total opposition to the bill which was enacted here, with the support of the Democrats, just a little over 12 months ago.

Senator HILL (South Australia—Minister for the Environment and Heritage) (8.49 p.m.)—I thank honourable senators for their participation in the debate. The Environmental Legislation Amendment Bill (No. 1) 2000 is a small bill designed to correct a very few inadvertent consequences that resulted from a very large piece of legislation, the Environment Protection and Biodiversity Conservation Act, which was passed in this place just over 12 months ago. In a piece of legislation of that size it is almost impossible to avoid all inadvertent consequences, and we are pleased that so few have arisen in the intervening 12 months. They can be corrected by the passage of this bill in the Senate tonight.

The primary piece of legislation, the Environment Protection and Biodiversity Conservation Act, was passed 12 months ago and has now come into force. Processes under the act are working, I have to say, in a most satisfactory way. The Commonwealth government have looked to accredit the state governments through bilateral agreements to assist in the assessment of actions that affect matters of national environmental significance, and in fact draft bilateral agreements were published by the Commonwealth under the terms of the legislation within a day or two of the act coming into place. They have been open for public consultation pursuant to the statutory provisions for a period of almost a month. That term for public exposure is about to expire, and I hope that in negotiation thereafter we will soon be able to settle those bilateral agreements. In the meantime, the Commonwealth, are dealing with any applications that affect matters of national environmental significance and, if necessary—it has not occurred yet but if necessary—can accredit state processes on a one-off basis.

It was a historic piece of legislation in that for the first time it defined matters of national environmental significance and set out a clear role for the Commonwealth in that regard. It was a result of a cooperative process between the Commonwealth and the states, designed to contribute to better environmental protection nationwide. It was possible 12 months ago to argue about whether other matters might have been included as matters of national environmental significance, and it is still possible to do so.

I note the observation by some honourable senators on the other side in their contributions to the debate tonight that some of those debates were revisited. It is true that, at the time of the debate in this chamber, we had not chosen to include a greenhouse trigger as a matter of national environmental significance, but subsequent to that, and pursuant to
the announcement of the Prime Minister, we have been in the process of negotiating a possible greenhouse trigger under the terms of the existing legislation. In relation to GMOs, which have been mentioned, the outcome of processes to put in place a specific piece of legislation to regulate the release to the environment of GMOs is that the environment minister of the day will have to be consulted on both the process of assessment and the process in relation to any decision that the GMO regulator intends to take. It is true that through this legislation we did not seek—‘we’ being the Commonwealth and the states—to include land clearance as a matter of national environmental significance; rather, we chose other processes which do, I concede, rely upon the existing constitutional responsibilities of the states to achieve a better outcome in that regard. It is also true that the level of cooperation that we have had from at least one of the states—Queensland—has been disappointing.

Although Queensland passed a piece of legislation at about Christmas last year which dealt with native vegetation—endangered and of concern—it has not been prepared to implement its own legislation. That remains a subject of ongoing concern. The Commonwealth is looking to see what it can do to encourage and support Queensland to put into operation its legislation but the very negative response from the Queensland government to date is, as I said, disappointing. Nevertheless, we will persevere in that regard.

Most of the contributions tonight have attempted to reopen debates that were dealt with exhaustively 12 months ago in this place, dealing with the scope of the original piece of legislation, rather than to address the minor corrections that we seek to make through the Environment Legislation Amendment Bill (No. 1) 2000 tonight. Nevertheless, it is an opportunity for these issues to be revisited—I understand that. They are important national issues. I commend the bill to the Senate and wish it a speedy passage.

Question resolved in the affirmative.

Bill read a second time.
The concern is real. What we have here is subsequent legislation—the EPBC legislation is subsequent to those other four pieces of legislation which I mentioned. As a consequence, in some areas the EPBC legislation does in fact impinge on the rights of indigenous Australians. There is a real potential that this legislation may in fact limit the scope of the pre-existing legislation in respect of native title. For instance, the EPBC bill provides a regime for granting approval for certain actions, many of which may impact on native title—actions taken within Commonwealth reserves or in world heritage areas or Ramsar wetlands. The general interpretation of statutory interpretation would mean that this subsequent legislation in the EPBC Act could by intention, or more so in this case by implication, repeal some provisions of the earlier acts or affect the extent of their operation. We see this as a protective measure. We saw it as such last year. We think it is important. We would argue that it does not in any way affect the pre-existing native title rights under that other legislation and we think the government should live with it. I hope the Senate this time finds enough in itself to support this amendment.

Senator HILL (South Australia—Minister for the Environment and Heritage) (8.59 p.m.)—The government does not agree to the amendment. The government believes that the issue was already adequately covered in the EPBC Act, in particular in sections 8, 9 and section 359A.

Senator BOLKUS (South Australia) (8.59 p.m.)—Can I ask the minister whether he sees any real problem or any downside in the government supporting this particular legislation? For instance, when you refer to section 359A you are talking about traditional use of Commonwealth reserves by indigenous persons, but there is a real capacity for other provisions of your legislation to actually impact on the definition of native title. What is the detriment? What is the potential fear that the government has? Why will it not accept a holding pattern amendment, as we are proposing now?

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.00 p.m.)—It is a matter of caution. The government received the opposition’s amendments about an hour ago. One does not deal with matters of native title rights without very careful consideration. In listening to Senator Bolkus, I did not hear an argument that it was necessary to change the provisions that already exist within the legislation that provide that protection. Thus, we are not prepared to go further.

Senator BOLKUS (South Australia) (9.00 p.m.)—I indicate to the minister that the amendments were circulated, and would have been sent to his office, at 4 o’clock. I do not know what you have been doing for five hours, Minister, but it must have been a good meal. You have had quite some notice of them this evening, but I would also say to you that this is the same amendment that we moved in the debate last time. You have actually had 14 months notice of this amendment. Let me just read aspects of it out to you. We say in subclause (1):

Nothing in this Act affects the rights or interests of any indigenous person under—and we list four particular pieces of legislation. In subclause (2) we ensure that:

... nothing in this Act prevents indigenous people from continuing, in accordance with law, the traditional use ... for ceremonial and religious purposes.

The three subclauses there are pretty self-explicit. As I said, you have known of them for 14 months. When you say you are being cautious, I say to you that we on this side are being cautious, with good reason, because if one looks at the history of native title under your legislation there has been one act of erosion after another after another. This is a cautionary amendment to ensure that there is no unintended consequence from your legislation. We say, as we did last time, that it is with just cause as there is some concern in the community that you may have impinged on native title.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.02 p.m.)—As there are a very large number of amendments I indicate that, if the Democrats and the Labor Party indicate that they are supporting the amendment, we will not be seeking to divide.
Amendment agreed to.

Senator BOLKUS (South Australia) (9.03 p.m.)—The amendments that I will now move are in that category of amendments that the opposition deemed important enough to move last time and deem important enough to move now both for their substantive effect and for their symbolic effect. World heritage is an issue of concern throughout the broad Australian community. The way that we protect our world heritage areas is something of increasing concern, particularly given the experience of Kakadu and the growing concern about the Great Barrier Reef. Shark Bay is another one where there is some concern. I think there is a growing concern in the community as to how we protect those areas. There is growing concern as to how this government interacts with the international fora that are established, and have been established for quite some time, to bring a degree of independent expertise to the assessment of world heritage properties and their protection.

These amendments will basically ensure that the legislation in the future not only protects world heritage values but also protects world heritage properties. As such it includes the features and parts of those properties, as well as the world heritage values. This is an important debate in the broader community. It is one that will be continued over the years and probably over the next few months will increase in intensity as the World Heritage Committee comes to Cairns in November to, amongst other things, assess the way that we have been treating and caring for world heritage properties in Kakadu and possibly the Great Barrier Reef. We think it is important to extend the protection in respect of world heritage properties to cover not just those inherent values but also the properties themselves. As a consequence, I seek leave to move the four amendments cognately.

Leave granted.

Senator BOLKUS—I move:

(4) Schedule 1, page 3 (after line 4), after item 1C, insert:

1D Paragraphs 12(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) has or will have a significant impact on:
   (i) a declared World Heritage property; or
   (ii) a part or feature of a declared World Heritage property; or
   (iii) the world heritage values of a declared World Heritage property; or

(b) is likely to have a significant impact on:
   (i) a declared World Heritage property; or
   (ii) a part or feature of a declared World Heritage property; or
   (iii) the world heritage values of a declared World Heritage property.

(5) Schedule 1, page 3 (after line 4), after item 1D, insert:

1E After subsection 12(3)

Insert:

(3A) For the purposes of subparagraphs (1)(a)(i) and (1)(b)(i), a significant impact on a declared World Heritage property is not limited to a significant impact on the world heritage values of the property.

1F Subparagraph 14(1)(b)(ii)

Repeal the subparagraph, substitute:

(ii) part or all of the property, including its world heritage values, is under threat.

1G Subparagraph 14(5)(b)(ii)

Repeal the subparagraph.

1H Subsection 14(6)

Repeal the subsection, substitute: Period for which a declaration remains in force

(6) The period for which a declaration remains in force must be as long as either:

(a) the World Heritage Committee needs to decide whether or not to include the property in the World Heritage List, in the case of a declaration specifying a property that has been submitted to the Committee for inclusion in the List; or

(b) the Commonwealth needs to decide whether the property has world heritage values and to submit the
property to the World Heritage Committee for inclusion in the World Heritage List, in the case of a declaration specifying a property not yet submitted to the Committee for inclusion in the List.

**1J Subsection 14(7)**
Repeal the subsection.

**1K Paragraph 15(3)(c)**
Repeal the paragraph, substitute:

(c) the Minister is satisfied that the property, including its world heritage values, is no longer under threat.

**II. At the end of section 15**
Add:

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

**1M Subsections 15A(1) and (2)**
Repeal the subsections, substitute:

(1) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on:

(i) a declared World Heritage property; or

(ii) a part or feature of a declared World Heritage property; or

(iii) the world heritage values of a declared World Heritage property.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

(2) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on:

(i) a declared World Heritage property; or

(ii) a part or feature of a declared World Heritage property; or

(iii) the world heritage values of a declared World Heritage property.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

(9) Schedule 1, page 3 (after line 4), after item IQ, insert:

**1R Section 34 (table items 1 and 1A)**
Repeal the table items, substitute:

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<td>1A</td>
<td>section 15A</td>
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(27) Schedule 1, page 9 (after line 18), item 19A, insert:

**19B At the end of section 323**
Add:

(3) The principles must prescribe that the management of World Heritage property is to include consideration of the whole area of a World Heritage property and, in relation to the whole area, consideration of the following:

(a) its aesthetics;

(b) the ecological impacts of an action;

(c) the cumulative impact of an action;

(d) the action as a whole, including the parts or stages of an action;

(e) the buffer zone.

Senator BROWN (Tasmania) (9.05 p.m.)—The Greens amendment, which comes next, is much stronger. Instead of talking about preventing those acts which would have a significant impact on world heritage, we use these words:

A person must not take any action that has caused, will or is likely to cause damage to or destruction of a World Heritage property.

In other words, it prohibits any action which is going to cause damage and it does not use the word which is not defined—that is, ‘significant’ action—which allows the minister to have the discretion to determine whether, for example, to allow the current imposition of a tourist resort because somebody wants to make a profit out of a monopoly situation in a national park where there are world heritage values, in southern Tasmania at Planters Beach near Cockle Creek. This minister, Senator Hill, thinks that is not a significant impact on those world heritage values. If there were an entity which wanted to develop and make money out of a world
heritage site in Tasmania, it almost defies imagination that Senator Hill would stand up for the world heritage area against that. Even under the Labor Party proposal you have to say there is going to be significant damage—particularly significant damage, as the government would have it, to values which they see the world heritage area as having.

I ask the Labor Party to look at this issue very carefully. The amendment they propose allows the matter to stay within the judgment of the minister of the day. The amendment proposed by the Greens says that there should not be damage or destruction to a world heritage property. This is by a person taking a deliberate action which has that result. It is a nature based approach. I know the nature based approach has gone out with recent successive governments. Instead, we now have the environment grooming approach, which says that the environment can be groomed to allow any sort of human activity provided it continues to look somewhat green. Under this amendment ministers like Senator Hill will have the ability to have the most elastic imagination when it comes to what is significant damage and what is not and anything will do. I ask Senator Bolkus whether, for example, under the Labor Party amendments he could see a minister like Senator Hill being unable to push for this resort development in national parks with world heritage values in Tasmania. I ask whether it would enable logging up to world heritage boundaries in a national park. I ask what the opposition, and indeed the government, mean by the word ‘significant’.

Senator BROWN (Tasmania) (9.11 p.m.)—The aim of good legislation is to give the court the biggest break possible by making it as clear as possible. It is much easier to prove and to show the damage that is caused to a property than it is to show that, in the view of the minister, there was or was not a significant impact. That is the difference. The significant impact, for example, was not going to occur to the world heritage area in Tasmania if the Franklin Dam was built, according to the Fraser government and their minister of the day. I am sure Senator Hill remembers that. Others felt that significant impact would not occur to the Wet Tropics world heritage area if logging continued in the Daintree. Others think that significant impact will not occur to world heritage properties if you avoid making cultural damage, even though the environment per se, the natural environment, might be damaged by some activity. The words ‘significant impact’ are not defined. The words ‘damage’ and ‘destruction’ are quite clear. They do not have that let-out to the ministerial imagination which the word ‘significant’ does. Sure, that will provide lots of ammunition for disaffected people and I have no doubt it will provide for a long debate in some future court case. But I think we would be doing the courts a favour and the world heritage areas at stake a bigger favour if we took the

Senator Brown is talking about damage or destruction. I would have thought that to damage or destroy you would make a significant impact, but I do not think that ‘significant impact’ is limited only to damage or destruction of the whole property. That is the way Senator Brown’s amendment reads at the moment. We are talking about a part or a feature of a property. He is talking about a broader property.

Senator Brown, I know what you are trying to get at, but I would argue that our amendment is probably a little broader in its reach. I note your concern about the term ‘significant’. You still have the same definitional problems in terms of damage or destruction. At the end of the day, whether it be your amendment or the opposition’s, either way, it will come back to a court process or a ministerial process.
stronger definitional language that I have used in the Greens’ amendments, which is that no action must be taken ‘that has caused, will or is likely to cause damage to or destruction of a world heritage property’.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.13 p.m.)—The chamber is considering the ALP’s amendments. Senator Brown has another approach to this issue. I presume that, if the ALP’s amendments are unsuccessful, he may have an opportunity to pursue his alternative at a later stage in the debate. Whether the ALP’s amendments are successful, I presume, depends on what the Australian Democrats are going to tell us in a moment. The position of the government might, therefore, not be particularly relevant to the outcome, but I would like to let the committee know that the government will oppose the Labor Party’s amendments. We think that the adequate provision in the legislation which protects world heritage values is the provision that is drawn consistent with the language of the World Heritage Convention. In fact, to the extent that the ALP wishes in its amendments to protect impacts, it goes beyond the terms of the World Heritage Convention, which one might have thought somewhat odd, in relation to provisions that are designed to protect the world heritage values pursuant to the terms of the convention. On that basis, as I said, we think the existing language in the legislation serves the purposes that we are seeking. We do not see any reason to extend it further tonight.

Senator BARTLETT (Queensland) (9.15 p.m.)—These amendments from the opposition deal with world heritage properties and are of great importance. No party in this chamber has a stronger record than the Democrats in terms of increasing protection for world heritage properties and ensuring the preservation of some of our world heritage properties. But, again, we need to do whatever we can to strengthen that protection. As I said in my second reading debate contribution, a lot of this still comes down to political will on the part of the government in terms of enacting the legislation or using the legislation that they oversee. As Senator Bolkus said in his comments when moving these amendments that they are partly in relation to substantive change and partly symbolic and are in some ways similar to the previous amendment on native title, which I did not speak to but which the Democrats supported, which was putting the issue beyond doubt.

We already have a difference of opinion between Senators Bolkus and Brown about whose amendments are stronger, based on differing readings of them. In a sense, every time we pass legislation amendments in this place we are potentially second guessing what courts may decide and how they may interpret the legislation. It is clear what the intention of Senator Brown’s amendment is in relation to this area. However, if that amendment was to get up it would be opposing opposition amendment No. 4, which specifies an impact not just on the world heritage property but also a part or a feature of a world heritage property. Someone might interpret that as defining Senator Brown’s amendment as meaning that damage needs to be to the property as a whole rather than just a part of it. I do not know. As I read Senator Brown’s amendment, I think it is as he says—that it is a stronger wording—but I can see the perception that others may have and obviously the perception that a court may give to it.

Either way, one of the important aspects of the opposition amendments we are debating now is that this issue circles around the debate between whether you are protecting values or protecting the property, and which is stronger. From the Democrats’ point of view, the important point with the overall Environment Protection and Biodiversity Conservation Act was the expansion of the reach of the Commonwealth in terms of world heritage properties to not just acts that happen in those areas but other acts outside the area that may have an impact on the world heritage values. That was a significant expansion and the reason the Democrats felt it was a significant advance—an opportunity that we should not pass up to increase the reach of the federal government in having legislative power to protect our world heritage areas. It is an ongoing battle.
Senator Brown not unreasonably focused on potential impacts in his state of Tasmania. I could as easily talk at length about potential impacts on world heritage areas in Queensland. There are significant potential dangers to the Great Barrier Reef Marine Park from a whole host of actions and in many areas potential damages are not being adequately prevented by the state Labor government. There is also the land clearing issue we have heard so much about. There is a lack of protection even for areas of the magnificent Daintree rainforest, where freehold land could still be cleared tomorrow without any legal power to prevent it at state level. There is a clear lack of action to protect an incredibly rich area of biodiversity. At the southeast corner of the state we have proposals to build a cable car—Skyrail mark 2—up to Springbrook, straight through the middle of a world heritage area in the Gold Coast hinterland.

Protection of world heritage is an ongoing battle. Even with the strongest amendments in federal legislation, we still fall back on trying to force governments, whether state or federal, to uphold their responsibilities to protect those areas where we have a responsibility under international covenants and also now under our federal legislation. You can have a lawyer debate about how much these amendments make substantive change and how much they make symbolic change, but I think they are still important in terms of trying to be as clear as possible about impacts not just on the world heritage property but also on the world heritage values. The amendments put both in there and in that sense give a stronger wording. It may or may not go beyond the terms of the convention as it is put internationally. If it does and it means even stronger protection, having the strongest possible protection for these areas which are our environmental crown jewels and in some cases our heritage crown jewels as well cannot really be a bad thing.

Senator BROWN (Tasmania) (9.21 p.m.)—Would Senator Bartlett say whether that meant that the Democrats are supporting the Labor amendment or the Greens amendment?

Senator BARTLETT (Queensland) (9.21 p.m.)—I do not know if others want to make any further contribution to the debate in terms of making that decision, but I would be happy to support the Greens amendment. It probably depends on the order in which they are put.

Senator BOLKUS (South Australia) (9.21 p.m.)—As I indicated, we cannot support the Greens amendment for the reasons I mentioned earlier. So, on the basis of what he has just told the Senate, I would ask Senator Bartlett whether he could consider supporting both and backing both; then he might pick a winner.

Senator BARTLETT (Queensland) (9.22 p.m.)—I do not have a problem with that. I just wanted to make sure we did not get a stand-off situation where both amendments got knocked down.

Amendments agreed to.

The TEMPORARY CHAIRMAN (Senator Chapman)—We now move to Senator Brown’s amendment No. 3. It has not been moved yet, Senator Brown.

Senator BROWN (Tasmania) (9.22 p.m.)—No. However, as we have just debated, this brings us into conflict with the amendments we have just moved. I accede to the numbers of the vote and to the Labor Party’s position on this, so I will withdraw the amendment.

The TEMPORARY CHAIRMAN—We now move to opposition amendments Nos 6 and 10.

Senator BOLKUS (South Australia) (9.23 p.m.)—by leave—I move:

(6) Schedule 1, page 3 (after line 4), after item 1M insert:

1N After Subdivision F
Insert:

Subdivision FA—Protection of the environment from greenhouse actions
24B Requirement for approval of greenhouse actions
(1) A person must not knowingly, intentionally or recklessly take a greenhouse action that has, will have or is likely to have a significant impact on the environment.
Civil penalty:
(a) for an individual 5,000 penalty units;
(b) for a body corporate 50,000 penalty units.

(2) Subsection (1) does not apply to an action if:
(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
(c) there is in force a decision of the Minister under Division 2 of Part 7 that:
   (i) the action is not a controlled action; or
   (ii) the action is a controlled action but this section is not a controlling provision for the action.

24C What is a greenhouse action?
In this Act, a greenhouse action means any of the following:
(a) establishing an industrial plant which emits, or is likely to emit, more than 500,000 tonnes of carbon dioxide or carbon dioxide equivalent per year; or
(b) any other action, series of actions, or policies which will lead, or are likely to lead, to the emission of more than 500,000 tonnes of carbon dioxide or carbon dioxide equivalent per year.

(10) Schedule 1, page 3 (after line 4), after item 1R, insert:

1S Section 34 (after table item 13C)
Insert:

| 13D | section 24B | greenhouse gas emissions |

This is an area which is, and I think will continue to be, of major national importance until the country and all sides of the parliament get it right—that is, how we address the issue of greenhouse. I believe quite strongly that we have had five wasted years in this area. We have had the minister acknowledging—I suppose he has conceded defeat in recent weeks—that the greenhouse gas emis-

sion had increased by some 16.9 per cent over 1990 levels. I understand the enormously difficult job that he has in his party, given all the different pressures, to get an outcome, which is something not dissimilar to all major parties in this place—those competing pressures are there. But unless we get it right as a nation and unless we get it right as a parliament, then the agenda that will be imposed on us by the rest of the world will become more and more difficult and may cause more and more problems.

At the same time, I am enormously frustrated—and I am sure the minister is as well—to find that people are only dwelling on the costs of accommodating the greenhouse problem, without actually looking at the enormous benefits that can flow from a country like Australia getting into the driver’s seat of industrial restructuring and picking up the enormous opportunities that are not just in our region but also worldwide. For instance, when you recognise that in our region alone the amount of investment that will go towards clean new industries will double to some $60 billion or so over the next 10 or 15 years, you can appreciate what sort of opportunities there are for Australia were we to now embrace a structural change that we embraced as a nation some 10 or 15 years ago when we anticipated global trends and markets. It is amazing how industry on the one hand can see some opportunities, as they did some years ago, but on the other hand, when it goes to their own restructuring, they turn a blind eye to those opportunities. That is my gripe for this part of the debate.

I think there is a national responsibility that needs to be adopted by the parliament and by the government in respect of the greenhouse problem. The greenhouse gas emissions are, as the minister acknowledged, going out of control. They are waiting for COP6 in The Hague to see what escape clauses may be available to Australia in order that we can reach Kyoto targets or whatever may come after Kyoto targets. In the meantime, there needs to be an acknowledgment that the national government needs to do more to address the greenhouse problem. One way of doing that is to embrace what we are suggesting in these amendments.
this evening, which is a concept of a greenhouse trigger, on the basis that there are international and national obligations that need to be met by government. The national government needs to have a role in ensuring that greenhouse gas emission is a factor for consideration by the states in an adequate and fulsome way. One way to do that is to ensure that the Commonwealth has a role in this.

What we are doing by amendments (6) and (10) is proposing a trigger for admittedly a large emission amount—500,000 tonnes of carbon dioxide or carbon dioxide equivalent per year out of an industrial plant which may be proposed. But in doing that, can I indicate that we are moving the same amendment that we moved in the previous debate some 14 months ago. Can I also indicate that very soon we are going to be in a situation where the federal government is going to be about the only government in Australia which does not play an active, ongoing role in monitoring greenhouse emissions. If you go through the states and even the territories, you will find that within their processes there is already in most cases, if not in all, a provision that would ensure an assessment of the greenhouse gas emission impact on proposed projects. Whether it is WA, the ACT or even the Northern Territory, in their EIS arrangements and procedures they acknowledge that need and address greenhouse gas emissions.

Some may say that, if that is happening, why do you need it on a national level? You need it on a national level for a number of reasons. First of all, there is a real and pressing need for national leadership in this area. Secondly, there needs to be national consistency, to the extent that we can organise that. Thirdly, the federal government is the one government that has to basically face the music internationally on this issue when the government goes to international fora. For the government to go to an international forum like Kyoto or The Hague and say, ‘Hold it. Every other state and territory in Australia has got an ongoing monitoring role, but in our case we do not have an EIS process that would adequately consider the impact of major projects in terms of greenhouse emissions,’ I do not think is good enough. So there are both national and international responsibilities. The minister will say that he has all sorts of things in place and that they produce lots of glossy documents and photos and arrows and so on; but, Minister, you are not really achieving those results. I understand why you are in a bit of gridlock situation with some of your colleagues, but I am sure that you would appreciate that this would give you an ongoing role in the area.

I must say one other thing: you cannot continue to abuse the states for what you say is inaction when you are probably more guilty of inaction than they are, especially when those states are actually making achievements. I think last week or a couple of weeks ago you criticised New South Wales for their inactivity—four weeks after you gave them a national award for their activity. So the inconsistency there is something which is quite apparent to the community. I know from the leaked press reports that we have seen that the minister would like to embrace a trigger like this—well, here is another chance for him to do so.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.29 p.m.)—It would be a shortcut, that is true, but we do not think it is the correct process. The legislation sets out the process for adding further matters of national environmental significance. Part of the obligation of that legislation is to consult with the states, and that is what we are doing at the moment. So the inconsistency there is one thing which is quite apparent to the community. I know from the leaked press reports that we have seen that the minister would like to embrace a trigger like this—well, here is another chance for him to do so.
rect way forward; rather, the correct way is the process the government is adopting.

Senator BARTLETT (Queensland) (9.31 p.m.)—As Senator Hill said, one might be tempted to take the option—I do not know whether I would call it a shortcut—presented by Senator Bolkus. Certainly the Democrats are so tempted that we circulated a similar amendment ourselves. I think it is because it is not a shortcut that it is now clearly the time when action needs to be taken. It has been more than 12 months since the EPBC legislation was passed by this chamber—it is closer to 14 months now. Consultation is all very fine but, as all senators would know, the process of consultation that the government has undertaken was as a consequence of commitments given to this chamber by the minister, the Prime Minister and indeed the government as a whole. There was a clear indication that consultation would be done with the aim to put in place a process.

I think there are two components that are worth emphasising again. Firstly, if we compare where we are now under legislation with where we were before, there never has been a clear environmental power for federal government to act purely on the basis of greenhouse emissions. What this amendment seeks to do, and indeed what the guarantee the Democrats gained from the government last year sought to do, is to put that in place for the first time. It has now been more than a year, and clearly there is no time to lose in this area. As became clear through the Senate committee inquiry into greenhouse issues, which the Democrats initiated, this is an urgent issue. It is not something that can continue to be put off. It is obviously appropriate and important that state governments where possible have input into the structure of such a mechanism, not least because they are often in the best position to be aware of potential impacts. Nonetheless, what has clearly happened under this federal government is not even that the states are opposed to it, although some of them clearly are, but that the federal government itself, or significant components within the federal cabinet, is opposed to acting at all in this regard. It is opposed to having any form of national oversight, national power, on greenhouse issues—this from a government that has signed the Kyoto protocol but has not ratified it. That we are hiding behind the coat-tails of the US and not having any independent action of our own in this area is matter of concern as well. But it is clear that there is no commitment and there is no will from the government at the federal level. Despite having signed the Kyoto protocol and despite all the mouthings of platitudes about the need to take this issue seriously and that we will meet our commitments given to Kyoto, the evidence is clear: we are not going to meet our commitments to Kyoto and the government is trying to avoid even having any legislative mechanism to enable it to enforce opportunities to meet those targets.

The amendment put forward by the ALP puts in place a limit of 500,000 tonnes of emissions. In the Democrats’ view that is too high but, again, it is clearly, better than nothing, going on the principle that the Democrats have espoused with this act and this legislation that if it is an improvement on the current situation we will take it, even though we would certainly urge for more. The amendment I have circulated sets that level at 100,000 tonnes, which is around the level suggested by a range of environment groups during the consultation process that the minister spoke about. I know Senator Brown has an amendment that sets the limit lower again, at 50,000 tonnes. But I think the clear principle is that we now have a mechanism through this new act to add matters of national environmental significance. This is one that is clearly nationally significant; indeed, it is internationally significant. We would not be signing protocols about greenhouse emissions if it were not an issue of international significance.

It is clearly an appropriate issue for there to be legislative power at the national level. It is not something that should be left to the states. It may be something that some state governments are monitoring and that they are doing something about. But if ever there were an issue that needed a coordinated national approach and an enforceable national approach, surely it is this one. Speaking about my home state of Queensland and its world heritage areas, whilst some of the sci-
ence about the impacts of climate change is still unclear, I think it is quite a reasonable statement to suggest that one of the first areas of significant major detrimental impact that is likely to happen is in terms of the impact on the Great Barrier Reef through coral bleaching. We have seen significant evidence to the Senate committee inquiry into that sort of wholesale damage to the Barrier Reef. Apart from being an environmental catastrophe, it would obviously be a major economic problem for the state of Queensland, particularly for Central and Northern Queensland, and it is something that we need to be doing something about now. All the evidence shows that is a serious problem and all the serious scientific evidence shows that Australia is falling further and further behind. We are going backwards at an increasing rate and, clearly, we need to have more concrete action.

There are things being done that I am sure the minister could point to, but obviously the fact that we are still going backwards shows that not enough is being done. We need to have a clear legislative power in place. The process that the government has put in place is one of consultation, with no time line on the end of it; it is a clear sign now that, at cabinet level, the government as a whole is backing away from not just its commitment to any serious attempt to address environmental issues but the commitment it gave to the Australian people and the Senate to move towards putting in place a mechanism such as this. The government having failed to deliver on its promise and its commitment there, it is clearly time for putting in a measure such as this. I am not sure if Senator Bolkus said so, but I suspect he would not support the Democrats’ amendment of 100,000 tonnes. Certainly the amendment that the opposition has put up is an advance on the current situation.

Senator BROWN (Tasmania) (9.38 p.m.)—The current situation is nothing, because 12 months ago the Democrats guillotined the amendments by Labor and the Greens that would have had this trigger mechanism in place. I will continue to come back to this point, because the end point of the debate we are having here tonight and will continue to have tomorrow is very likely to be that the government will not accept the environmentally sound amendments, moderate as they might be from a Greens’ point of view, and will let this amending bill languish so that we are left with what the Democrats and government put through last year. It needs to be made clear right down the line that this was a deliberate decision by the Democrats last year to block Labor and the Greens from having a series of trigger mechanisms added, including this one for greenhouse, using the force of their numbers to even block the vote on it.

That said, I do agree with Senator Bartlett and Senator Bolkus that the Howard government has been not just derelict in its duty but culpable in its failure to act on global warming. The Prime Minister, in 1997, made commitments that sounded as though Australia was going to catch up with European best practice when it came to global warming. That was in the run-up to Kyoto. Senator Hill went to Kyoto with the coal industry—and I should not leave out the aluminium industry—pulling the reins, and there the rest of the world, with the necessity to get an agreement, agreed to allow Australia, only topped by Iceland, to have 108 per cent equivalent of greenhouse gas emission output by 2010 compared to 1990. As Senator Hill could tell the chamber, if he were not too embarrassed to do so, Australia is already beyond 118 per cent of 1990 levels and there are estimates that by 2010 we will be somewhere in the region of 120-140 per cent of 1990 levels. This is in a world where I think even Senator Hill would agree that global warming is a real phenomenon—that the world is warming, that year after year we are seeing record temperatures, with episodes such as the current massive fires in the United States, with an increased severity of tropical storms and with the rapid melting down of the northern ice mass from the North Pole. Any of these separately might be seen as an isolated or temporary phenomenon, but when you put the lot together you come to the conclusion that the insurance industry worldwide has drawn: that this is a real phenomenon and that enormous action needs to be taken now—if we cannot do it for environmental reasons, then to prevent
massive economic damage worldwide. The government knows that, but this government is captive to the multinational corporations whose time line is the next annual report, if not the next day’s showing at the stock exchange—and let the devil take future generations.

If I were Senator Hill, I would hang my head in shame at claiming the title of protector of the Australian environment having failed totally to get into place any laws to deal with this catastrophe that the world is facing. Senator Hill smiles at that, but I take this matter as being serious, and so ought he. The fact is that he has done nothing that would aggrieve those corporations at all. Worse than that, he has given his stamp of approval to the increased output of greenhouse gases from Australia—deliberately done, as in the case of the Prime Minister’s signature on the regional forest agreements, with massive logging and therefore greenhouse gas injection into the atmosphere which Australia, although a developed country, is currently carrying out in a way that would shame many developing countries with lax environmental endeavours.

It is as if the prospect of global warming is too awesome and too difficult to face up to. I too have read the press reports about Senator Hill being rolled in cabinet by the likes of Deputy Prime Minister Anderson and Prime Minister Howard. If Prime Minister Howard stood strong on this issue it would go through cabinet; he is proud of being able to point to having influence of that order in cabinet. But in this situation the Prime Minister is a greenhouse gas polluter. He is not on the side of the majority of Australians who want this issue tackled. He is not even on the side of the polluter pays principle, which surely is a complement to the idea that we should have a level playing field where everybody contributes equally and is rewarded equally for their actions.

The Prime Minister and the Minister for the Environment and Heritage are in the business of the rewards, but they are not in the business of the responsibilities—they want to take, but they do not want to commit. The losers are not only the Australian people of today but their children and their children’s children. It is an extraordinary delinquency of the government that, on this matter, it has performed about the worst of any government in the Western world. The best that the government can do is to point to the Australian Greenhouse Office.

Let me say that the Australian Greenhouse Office is a failure. It would be better if it were not there, because it does give the government a hedge—it gives it a blind, a detour, a diversion to say, ‘Look at all the money we are putting into the Australian Greenhouse Office.’ The minister for the environment claims it to be of world standard but, when you look at the results, it is far from it. The philosophy that you should give incentives to big business to do the right thing by the environment but you should not have laws for those people who will not come into line is to the detriment of the wider society. If you are going to succeed in a massive national enterprise which requires everybody to play their part, then, besides incentives for those people who do the right thing, you must have penalties for those who do the wrong thing. But it does not happen in this case, because those people who do the wrong thing are people who contribute to the coffers of the big political parties and, at the moment, the interest is in the government of the day.

It is an extraordinarily bankrupt position in our society where these corporations override the commonsense of even kindergartens when it comes to the environment. It is such a pity that there are so few senators who are willing to put a toe in the water of an environmental debate on matters as serious as this because they are inherently frightened of the prospects of being clobbered either by the big corporations they depend upon for keeping their seats in this place or, alternatively, by some sections of the union movement who in turn are arm in arm with the corporations when it comes to environmental degradation, not the least of which is global warming.

It is an extraordinarily serious matter, and Senator Bartlett is right: the Greens have reluctantly put a trigger mechanism on those new enterprises in this country which would produce more than 50,000 tonnes of carbon
dioxide or equivalent into the atmosphere each year so that the minister of the day should look at those and see what can be done to reduce that amount of extra global warming. The Democrats say 100,000, and the Labor Party says 500,000, 0.1 per cent of the current total output of the nation, which has the worst record in the world. Yet the government cannot even come at that target. A single new mega coal-fired power station would boost the country’s output of global warming gases by a full 0.1 per cent—world’s worst practice—and this minister says, ‘Oh no, we can’t look at that.’ Of course, a major reason for that is that it is the big corporations which are involved in this antisocial behaviour and do not want to take what they see as the cost of doing the right thing by the environment and the right thing by the economy in the long term.

I hope that overnight the Labor Party will reconsider the 500,000 and reduce it to at least the Democrats’ level of 100,000, if not the Greens’ target of 50,000. Every enterprise that is producing greenhouse gases, and therefore global warming, should be hauled into line by government, if not ministerial action.

Progress reported.

ADJOURNMENT

The PRESIDENT—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Drugs: Swedish Study

Senator TIERNEY (New South Wales) (9.50 p.m.)—I rise tonight to speak on one of the great scourges that face modern society—the rising tide of illegal drugs. In a world where these drugs, especially heroin and its problems, continue to worsen, one country stands out as having considerably reduced its problem over the last 30 years. At a time when the drug problem in many European countries was deteriorating, Sweden managed to turn this problem around and greatly reduced its problem with hard drugs, particularly heroin. To gain some insight into this problem and how Sweden moved from an out-of-control situation with drugs in the 1960s to one that is under control at the start of the 21st century, I met with a number of key Swedish officials and visited a compulsory detox centre in Stockholm. The official discussions shed light on how Sweden has largely resolved its drug problem since it reached its peak in the early 1970s.

Fortunately for Sweden, they realised the extent of their problem that far back in time and undertook a very wide range of comprehensive policies to resolve the worsening drug problem. The result is that, 30 years later, Sweden has one of the lowest rates of drug taking among school children anywhere in Europe. For example, in Great Britain, one in three people aged older than 12 have used a narcotic drug; in Denmark, it is one in four; in Germany it is one in eight; but in Sweden the figure is one in 15.

Can we in Australia learn anything from the Swedes to reduce our problem with hard drugs? If policy is to be adapted from a foreign culture we need, firstly, to try to understand the cultural context in which it operates. Sweden is a more cohesive society than Australia and has a more consistent values system. The Swedes seem more likely to fall in with a well-led and resourced campaign to tackle a major social problem facing their country. When the drug problem was out of control in Sweden in the early 1970s, the Swedish government set as its goal a drug free society. This consisted of a well-resourced and wide-ranging strategy that blended the best of ‘tough on drugs’ and ‘harm minimisation’. The Swedish approach is now so well integrated and comprehensive, they find our debate about these two varying approaches very strange. The Swedes pulled out all stops to prevent drugs coming into Sweden. If people did become addicted and later wanted to quit, detoxification facilities and counselling were available on a very wide scale not only to the addicts but also to their families. Most impressive was the multilevel education campaign that built a community wide commitment.

The cultural and contextual differences would make it difficult, but not impossible, to emulate the Swedish success story in the areas of border control and law enforcement, but not so difficult in the areas of treatment and education if the community were prepared to back the resources needed to bring
the hard drug problem under control. Firstly, border control is a lot easier in Sweden than Australia. They have less extensive borders, an arctic climate for eight months of the year, are at the end of the line in terms of countries as you move further to the north and are in close proximity to easier drug markets which are more attractive to drug dealers, such as Germany and Holland. All this makes the scale and scope of border control a lot easier for Sweden than Australia. Secondly, the law enforcement problem in Sweden seems far more straightforward than in our country. When quizzed directly, no officials could point to any serious corruption problem with the Swedish police administering drug enforcement. Some new Australian policy directions, such as drug courts and custodial rehabilitation, have solid backing from the Swedish experience. In the 1980s, when Sweden saw a turnaround in the number of drug abusers, there was a strict set of drug policies put into place. New directives were sent out to prosecutors, saying that every possession of illegal drugs should be taken to court and not written off, which had been the practice previously.

Thirdly, with the rehabilitation of addicts, Sweden has a lot to teach our state governments about providing sufficient resources for assisting addicts. If an addict wants to detox, the facility would be provided immediately in Sweden. Interestingly, this is now a declining area of expenditure in Sweden mainly because their policies have been so successful the need for detox beds is now only minor. The detox centre that I visited had 70 beds, occupied mainly by people with chronic alcohol problems. Only five of the beds were occupied by heroin addicts in Stockholm, which is a city equal to one-third of the population of Sweden. So-called ‘harm minimisation’ strategies, such as shooting galleries and free heroin, were seen by the Swedish official I spoke to as being counterproductive because of their possible role in building a drug culture. These strategies were tried in Sweden in the early 1970s and quickly abandoned as they were judged to exacerbate the worsening drug culture of that era.

Finally, the Swedes have a lot to teach us from their 30 years of experience with public and school education programs. When Sweden was confronted by one of the world’s worst drug problems 30 years ago their foundation strategy was public education. Comprehensive national advertising helped build the resolve of the people of Sweden to confront their drug problem on a very broad front. In Sweden, the government is taking the approach that, at the local level, it is better to develop a credible drug policy with the support of local authorities, such as municipalities, county officials and volunteer organisations. In Sweden they all have a role in fighting the drug problem. The other strand of public education in Sweden over the last 30 years has been specifically targeted at the schools. Since the peak of the Swedish drug problem, the average age of the typical drug abuser has risen to the mid-30s. This demonstrates the success that these drug policies are having in deterring new people and young people starting on drugs.

The comprehensive approach taken by Sweden stands out like a beacon in Europe. The major drug problems experienced by Sweden in the sixties and the seventies were, by the early nineties, largely beaten. There has been in recent years a rise in the intake of narcotic drugs, particularly new designer drugs, but this rise has been from a very low base and is still a relatively minor problem. This stands in stark contrast to what happened in other European countries, like Germany and Holland, which are now where Sweden was in the 1960s—a drug problem out of control. According to the Swedes, this is because other European countries lacked the comprehensive approach that they adopted to reduce drug taking, which goes hand in hand with the more liberal attitude to drugs in those other European countries. Some Swedish authorities felt that these countries had basically given up and were taking a socioeconomic approach to the problem. When I questioned them about the meaning of this they explained that, coming from such a high base—for example, in Germany the number of registered drug crimes multiplied six times between 1975 and 1998—it would be prohibitively expensive to adopt the comprehensive approach of
Sweden in these other countries, so they just bear the social and economic costs.

The lesson for Australia is to put the resources in now in a comprehensive way or pay later in enormous socioeconomic and personal costs. The federal government has adopted some very successful policies on drugs over the last few years and has increased resources enormously in this area, but it can only go so far. Some of the key areas in a comprehensive policy, such as law enforcement, rehabilitation and school education, are largely state responsibilities. So let us hope that, with all the GST revenue being handed back to the states, the states will stop making excuses about being cash-strapped and get serious about resourcing on a wide range of fronts to combat Australia’s growing drug problem.

Aviation Fuel Contamination

Senator O’BRIEN (Tasmania) (10.00 p.m.)—Today I gave notice of a motion which deals with the impact of the fuel contamination crisis on regional Australia generally and on Flinders Island, an island off the north-east coast of Tasmania, in particular. That motion culminates in condemnation of Mobil Australia, a company which is part of a multinational group and was integrally involved in the crisis in the sense that it sold a petroleum product which was contaminated—avgas, in fact—to aircraft operators. It is important to understand that the impact of the crisis was felt differently in different parts of Australia and I just want to draw the Senate’s attention to what Nicole Strahan said in the Weekend Australian on 22 January about Flinders Island:

The island is almost totally dependent on the piston-engine aircraft now grounded throughout most of eastern Australia after being exposed to contaminated Mobil fuel. Light aircraft are the only link to mainland business centres and integral to the seafood, export and tourism industries, delivery of emergency supplies, mail and newspapers.

As I say, Flinders Island is not unique in being affected by the crisis but it was one of the centres which had very few other options when its main link with Tasmania and mainland Australia was cut by the avgas crisis. That crisis continued for more than four weeks and during that time any businesses not connected with the aviation industry but nevertheless dependent upon it suffered substantial losses, losses obviously caused by the lack of services occasioned by the avgas crisis.

On 31 January the Senate Rural and Regional Affairs and Transport Legislation Committee conducted hearings in which it took evidence in relation to the avgas crisis. At those hearings I asked questions of Mr Paul Wherry and of a Mr Garrow, both representing Mobil, about the crisis. In particular, I raised with them the question of the effect of the avgas crisis on the tourism industry in places like Flinders Island. Mr Wherry told the committee at that time that the particular compensation program that Mobil was considering was directly related to the operators and people directly affected by the crisis. But he did say:

Other third party issues are very complex. If others seek to make a claim on Mobil, then we will have to look at that at the time.

There was a somewhat extensive exchange, and the time permitted to me tonight does not allow me to deal with that as much as I perhaps could in the circumstances. Subsequent to that hearing on 31 January I had a meeting in my office here in Parliament House with Mr Wherry and Mr Ron Webb, both of Mobil. This was on 15 February at about 11 a.m. At that meeting a number of matters were discussed, I raised principally three issues with them. There was the direct effect on what might be said to be aviation or aviation connected businesses as a result of the avgas contamination. There was the issue of the Flinders Island businesses and the effect on them of the avgas contamination issue, and also the issue of the effect on the warranties of aircraft of the recommended cleaning process, given that licensed aircraft mechanical engineers were not prepared in all cases to sign off on the repairs recommended to deal with the residual problems of the avgas crisis. At that meeting Messrs Webb and Wherry advised—and remember what had been said on 31 January to the committee—that Mobil was then considering claims from a tourist operator on an island off the Queensland coast and a kiosk opera-
tor at an airport. It is important to note that both of those businesses did not fall within the parameters of the limitation of claims that Mobil had reported to the Senate Rural and Regional Affairs and Transport Legislation Committee on 31 January. There was an indication therefore at that time that Mobil was now giving consideration to what Mr Wherry had described as ‘other third party issues’.

Not surprisingly, I communicated with businesses on Flinders Island and I did take the opportunity of seeking other clarification as to what might be appropriate for businesses to do. The sum conclusion of those discussions was that Mobil indeed sent claim forms to quite a number of businesses on Flinders Island and encouraged those businesses to submit claims. They were not businesses directly connected with the aviation industry—for example, a taxi and hire car business and a number of other tourism related businesses. The process required the businesses to consult with their accountants—and indeed incur costs—in the preparation of claims which they could submit to Mobil. Those claims remained under consideration for a number of months until a date early in July, as I understand it, when Mobil commenced responding to claims from those businesses on Flinders Island, saying that the claims did not fall within the parameters for the claims to be considered by Mobil, that is, they were not claims directly related to aviation businesses, those which had been set out before the committee on 31 January.

It is very clear to all of the businesses concerned—and it is certainly clear to me—that Mobil led them to believe that their claims were being given fair and serious consideration. There is no doubt that, in the case of businesses in places like Flinders Island, the curtailment of flight services entirely due to the avgas crisis can be laid at the door of those responsible for the crisis. One suggests that, as Mobil has accepted responsibility for that crisis and has paid claims to other operators, it is equally responsible for the circumstances of the businesses which, whilst not being directly related to the aviation industry, are totally dependent upon the services it provides. After encouraging them to submit claims and to incur costs in the preparation of the claims and after giving them false hope, Mobil has withdrawn that hope from them and has told the businesses that it will not be acceding to their claims. So very small businesses in isolated parts of Australia such as Flinders Island are now faced with the prospect of running the gauntlet of a legal action against Mobil, which is part of the Mobil-Exxon group and is a large multinational. We are talking about businesses that might have turnovers of $30,000, $40,000 or $50,000, and they are supposed to take on the multinationals of this world in a legal environment. It is not a prospect which is enticing for most small businesses around Australia, and it is certainly not enticing for those that I have spoken to on Flinders Island.

Having spoken to Mobil and having expressed my concerns about the way that they have handled this, I will be proposing that the Senate endorse the motion that I have put and that it condemn Mobil Australia for failing to properly compensate all of the businesses that were severely affected as a result of its distribution of contaminated fuel. It seems to me that that is the only outcome that is possible if equity is to prevail.

**North West Shelf: Joint Environmental Management Study**

**Senator EGGLESTON (Western Australia)** (10.09 p.m.)—Tonight I would like to say a little about the North West Shelf joint environmental management study which was recently launched in Perth. On 1 August, I was pleased and honoured to represent Senator the Hon. Nick Minchin, Minister for Industry, Science and Resources, at the launch of the North West Shelf joint environmental management study. This study is a $6 million joint initiative between the Commonwealth agency the CSIRO and the Western Australian government, and it is the largest environmental management project in Australia at the moment.

The North West Shelf, as is well known, is Australia’s major resources development area. It contains vast reserves of oil and gas, which were discovered in the early 1970s and were commercially exploited from 1980. It is the source of most of Australia’s do-
The contribution of the Pilbara and the North West Shelf to the national economy is well known. What is less well known is that the North West Shelf is an area of great marine biodiversity and ecological sensitivity. The biodiversity in the seabed habitats of the North West Shelf includes a remarkable array of marine fauna, such as tropical fish, turtles, hard and soft corals, sponges and crustaceans. There are some of the best examples of tropical arid-zone mangroves in the world to be found on the Pilbara coast. There are great coral reefs, which are very diverse and which are found, in many cases, very close to the shore. For example, the Ningaloo Reef Marine Park at the southern end of the North West Shelf is within swimming distance of the shore at Exmouth and is home to dugongs, migratory whales and the giant whale sharks which migrate along that coast every year in May. All of this, of course, creates an excellent tourist potential, and tourism is a very important industry in the North West Shelf area. The North West Shelf also has the highest incidence of tropical cyclones anywhere along the Australian coastline, and these cyclones have a major influence on the marine environment and associated industries.

In spite of all this great marine diversity, no formal environmental study has ever been undertaken. As a result, the North West Shelf study has been initiated and will deliver detailed knowledge about the marine ecosystem in the area, which will assist in better and more sustainable management of the shelf environment. As a result of the study, we will have a better idea of exactly what it is that is there, what needs protecting and how to go about achieving that outcome. Management of the 110,000 square kilometre study area is currently covered by more than 200 separate federal, state and local government laws.

The North West Shelf study was initiated in 1998 when the Western Australian government provided $2.7 million over four years, and in 1999 the Commonwealth government approved another $3.4 million in funding. The study will be managed by both the Western Australian Department of Environmental Protection and CSIRO Marine...
Research. The study is supported by the Australian Institute of Marine Science, the Australian Petroleum Production and Exploration Association, Woodside Energy, Apache Energy and the Australian Geological Survey Organisation, all of whom will be involved directly in the project. It is important for the future of resource developments that potential environmental impacts are adequately assessed and a balanced management model developed that is able to respond to changing multi-use patterns. This study will develop the scientific methods and understanding to do this, providing more accurate information which will assist in the sustainable management of the region.

The study will bring major benefits to industry, as is recognised by industry with the participation of Woodside Energy and Apache Energy in the study. The study will facilitate development, easing uncertainty over environmental impacts and providing accurate information, which will result in environmental impact assessments of potential projects being more predictable and, hopefully, more expeditiously granted. At present, industry must at times contend with regulations that were made without the availability of substantive scientific research, resulting often in slow and expensive development processes. The existence of a scientifically sound decision making model for multiple use management of a region can eliminate many uncertainties and make our industries more productive. By allowing marine industries to be managed more effectively, the North West Shelf management study will also minimise the possibility of conflict developing between different uses of the marine environment on the shelf.

In conclusion, the North West Shelf marine study must be regarded as bringing significant benefits to all the stakeholders involved in the North West Shelf. Given the major economic importance of that area, it is very good to see that it is proposed to permit that development to continue while preserving the environment of the North West Shelf in the best possible way.

Mandatory Sentencing

Senator GREIG (Western Australia) (10.19 p.m.)—Tonight I rise to speak on the issue of mandatory sentencing. While the issue of mandatory sentencing may be off the front pages of our newspapers, the matter of jailing juveniles is far from settled. I would like to take this opportunity to correct, for the record, some of the misinformation and propaganda which have obscured the facts in this debate.

Contrary to the claims made, and impressions created, by Senator Tambling in this house on 7 June, the position taken by me and the Democrats in this debate was not an agenda to overturn the legislation of a democratically elected government for the sake of it, nor was it about ignoring the wishes of the wider community. Senator Tambling seemed to think that just because mandatory sentencing is a law it is therefore right and that popularity of a law makes it a right law. Senator Tambling may care to remember that the civil rights movement arose from the people's will to overturn unjust legislation which had popular support for generations. The wider community in Australia is in fact demanding the repeal of this legislation, as evidenced through protests held around the nation, personal representations by the legal fraternity and children's organisations, petitions, print media and talkback radio. Just two days before the Prime Minister's deal with the Northern Territory's Chief Minister, Denis Burke, was announced, some 2,000 people protested in Melbourne, calling for mandatory sentencing legislation in both Western Australia and the Northern Territory to be repealed.

It is a sad reflection on the government in both chambers that this issue has been effectively gagged from proper debate by party politics. Immigration minister Philip Ruddock urged those in his party who were wavering on the issue to maintain party discipline, while simultaneously singing the praises of the conscience vote in the Liberal Party. He said at the time:

The Liberal Party has always taken the view that on matters of conscience its members are free to vote as their conscience dictates. But they have to do so with responsibility and they have to do so in the context of observing certain conventions in relation to the way in which these issues are addressed.
Mr Ruddock, and indeed the government, obviously do not see mandatory sentencing as being one of those issues that warrant such a vote. Despite the damning report by the Senate’s Legal and Constitutional References Committee, despite the voiced concerns of many in the Liberal Party in both houses, despite international unwanted attention on the issue, and in spite of strong public opinion, that particular bill remains buried in the Notice Paper. I think in fact it may since have been removed from the Notice Paper; I am unclear on that.

The issue was unsatisfactorily resolved when the Prime Minister formulated his political solution with the Northern Territory Chief Minister, Denis Burke. As an editorial in the Australian newspaper on 11 April 2000 noted:

It is important that the age of adulthood in the territory is raised to 18 years (from 17). It is important also that all juveniles arrested for minor offences be placed in diversionary programs before a decision is taken whether they are charged. It is important that the diversionary program will be enhanced through an injection of $5 million in federal funds. It is also important that an Aboriginal interpreter service will be funded, if only to explain the purpose of the law to some transgressors. But the fundamental issue—mandatory sentencing itself—has escaped review.

If it had not been for the government’s refusal on an open debate and a conscience vote, as was reasonably demanded by the situation, the Democrats would not have had to resort to seizing the first legislative opportunity which arose in order to again draw attention to this bill. It would seem from reading Senator Tambling’s comments in Hansard that once laws are passed by a state parliament they are set in stone and become the untouchable Holy Grail of politics. One of the legitimate and constitutionally mandated powers the federal parliament has is the ability to override some state laws, but it is a power which is rarely used by Liberal governments and, on those rare occasions that it is, only haphazardly. What this debate highlights is one of the great weaknesses of the Liberal party—that is, its anxiety and duplicity over the eternal debate on states rights. Senator Tambling says that I, and anyone else opposed to these laws, must not continue to interfere in the legitimate governance of the Northern Territory. Yet his party was quite happy to do just that over the issue of voluntary euthanasia. It is an untenable and weak line from a party that knows only too well how to pander to populist politics.

It was also very easy for the government simply to focus on the laws in the Northern Territory and to completely ignore the fact that Western Australia has similar laws, although I accept they are not as harsh. And it remains a fact that the government has failed to address the concerns caused by the mandatory sentencing legislation regimes in both states. Most importantly in this debate it should be remembered that states do not have rights; people have rights. In this case, the people’s right to fair and just treatment by our judicial system has been ignored.

For the record, I would like to correct another point which Senator Tambling presented to the Senate in the last sitting, with reference to the report of the Senate Legal and Constitutional References Committee report into mandatory sentencing. In the Northern Territory, before the deal was made between Chief Minister Burke and Prime Minister Howard, an adult convicted of a property offence was given a minimum sentence of 14 days in jail. It is an accepted fact that whilst the laws do not target Aboriginal people, that is their ultimate effect. People are being sent to jail for trivial offences. It is worth remembering that, following the suicide of a 15-year-old boy in Don Dale Detention Centre, the publicity surrounding mandatory sentencing was heightened further by the case of a 21-year-old Aboriginal man who was jailed for the theft of just $23 worth of cordial and biscuits from the store-room of a mine. He was sentenced to a year in prison for the 1998 theft—just one of many trivial offences that have been dealt with under mandatory sentencing legislation.

A person will receive the same sentence for a trivial offence as for a serious one, although I note in recent weeks it has become clear that in the Northern Territory those people convicted of a property theft of less than $100 will not be subject to mandatory sentencing, which creates the quite bizarre
situation where potentially a person having been convicted for property theft of perhaps $110 would receive the same treatment as somebody convicted of a property theft amounting to many thousands of dollars. Jail should be the last resort for a juvenile offender and the emphasis should always be on rehabilitation. Aborigines, particularly juveniles, are being jailed because of this mandatory minimum sentencing. Mandatory sentencing is wrong in principle, simply because it denies judges and magistrates any discretion in sentencing.

I encourage all senators and members to read the Senate Legal and Constitutional References Committee’s report into mandatory sentencing for a thorough understanding of the real issues, rather than believe the rhetoric of those with vested populist interests, which has dominated much of these discussions.

Senate adjourned at 10.27 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

A New Tax System (Family Assistance) Act—
Child Care Benefit (Australian Resident) Guidelines 2000.
Family Assistance (Higher Amounts) Determination 2000 (No. 2).

A New Tax System (Family Assistance) (Administration) Act—
Child Care Benefit (Allocation of Child Care Places) Determination 2000.
Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2000.
Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000.
Child Care Benefit (Receipts) Rules 2000.
Child Care Benefit (Record Keeping) Rules 2000.
Family Assistance (Present Value of Unpaid Amount — Interest Rate) Determination 2000.

A New Tax System (Goods and Services Tax) Act—

GST-free Supply (Drugs and Medicinal Preparations) Determination 2000.
GST-free Supply (Health Services) Determination 2000.
Australian Communications Authority Act—
Radiocommunications (Charges) Determination 2000.
Telecommunications (Charges) Determination 2000.
Telecommunications (Facility Installation Permit — Application Charge) Determination 2000.
Telecommunications (Facility Installation Permit — Public Inquiry Charges) Determination 2000.

Australian Communications Authority Act and Radiocommunications Act—Radiocommunications (Interpretation) Determination 2000.

Australian Communications Authority Act, Radiocommunications Act, Radiocommunications (Receiver Licence Tax) Act and Radiocommunications (Transmitter Licence Tax) Act—Radiocommunications (Definitions) Determination (Revocation) 2000 (No. 2).


Australian Meat and Live-stock Industry Act—
Australian Meat and Livestock Industry (Live Sheep Exports to Saudi Arabia)
Amendment Order 2000 (No. 3).
Australian Prudential Regulation Authority Act—Instrument under section 51—Instrument fixing charges to be paid to APRA, dated 21 June 2000.
Civil Aviation Act—Civil Aviation Regulations—Civil Aviation Orders—Civil Aviation Amendment Order (No. 9) 2000.
107, dated 30 June 2000; and 4 July 2000.
Instruments Nos CASA 235/00, CASA 288/00, CASA 327/00 and CASA 328/00.
Statutory Rules 2000 Nos 204 and 205.
Consular Privileges and Immunities Act—Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination 2000 (No. 1).
Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination 2000 (No. 2).
Currency Act—Currency (Royal Australian Mint) Determination 2000 (No. 5).
Diplomatic Privileges and Immunities Act—Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination 2000 (No. 1).
Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme)
Amendment Determination 2000 (No. 2).


Excise Act—
Notices Nos 2 (2000) and 3 (2000)—
Notices of declared rate in respect of diesel fuel rebate.


Family Law Act—
Regulations—
Attachment to Statutory Rules 2000 No. 81.

Farm Household Support Act—
Dairy Exit Program Scheme Amendment 2000 (No. 1).
Restart Re-establishment Grant Scheme Amendment 2000 (No. 2).


Financial Management and Accountability Act—
Determination under section 20—Determination 2000/09.

Fisheries Management Act—
Australian Fisheries Management Authority Temporary Orders Nos 1 and 2 of 2000.


Health Insurance Act—
Health Insurance (Accredited Pathology Laboratories — Approval) Amendment Principles 2000 (No. 1).

Higher Education Funding Act—Determination under section—


Migration Act—
Statements for period 1 January to 30 June 2000 under section—
33.
48B [2].
345 [4].
351 [39].
417 [127].


Motor Vehicle Standards Act—

National Health Act—
Declarations Nos PB 10 and PB 11 of 2000.
Determination—
Nos PB 8, PB 9 and PB 12 of 2000.
Medicare and Pharmaceutical Benefits Programs Privacy Guidelines (Amendment 2000 No. 1).

Native Title Act—
Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 10).
Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 11).


Quarantine Act—

Regulations—Statutory Rules 2000 No. 129.

Radiocommunications Act—
Radiocommunications Amendment Standard 2000 (No. 2).
Radiocommunications (Australian Space Objects) Determination 2000 (No. 2).

Radiocommunications (Compliance Labelling — Cordless and Mobile Phones) Amendment Notice 2000 (No. 2).
Radiocommunications (Electromagnetic Radiation — Human Exposure) Amendment Standard 2000 (No. 2).
Radiocommunications (Foreign Space Objects) Determination 2000 (No. 2).
Radiocommunications (Foreign Space Objects) Determination 2000 (No. 2) Amendment Determination 2000 (No. 1).

Radiocommunications (Radiocommunications Receivers) Determination 2000 (No. 2).


Remuneration Tribunal Act—
Determination 2000/03: Remuneration and allowances for holders of part-time public office.
Determination 2000/04: Remuneration and allowances for holders of public office.
Determination 2000/05: Remuneration and allowances for full-time holders of public office.

Social Security (International Agreements) Act—
Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act—Regulations—Statutory Rules 2000 No. 150.
Superannuation (Productivity Benefit) Act—
Sydney Airport Curfew Act—Dispensation granted under section 20—Dispensation No. 8/00.
Taxation Determination TD 2000/30.
Telecommunications Act—
Telecommunications Labelling (Customer Equipment and Cabling) Amendment Notice 2000 (No. 1).
Telecommunications Numbering Plan Amendment 2000 (No. 3).
Telecommunications Numbering Plan Amendment 2000 (No. 4).
Telecommunications (Consumer Protection and Service Standards) Act—
Special Digital Data Service Provider Declaration 2000 (No. 1).
Telecommunications (Interception) Act—
Textile, Clothing and Footwear Strategic Investment Program Act—Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2000 (No. 2).
Veterans’ Entitlements Act—
Instruments—Statutory Rules 2000 Nos 187 and 188.
Workplace Relations Act—
Regulations—Statutory Rules 2000 No. 121.
Indexed Lists of Files
The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended 3 December 1998:
Indexed lists of departmental and agency files—Department of Veterans’ Affairs—
Statements of compliance for the period—
1 July to 31 December 1999.
1 January to 30 June 2000.
PROCLAMATIONS

Proclamations by His Excellency the Governor-General were tabled, notifying that he had proclaimed the following provisions of Acts to come into operation on the dates specified:


Fisheries Legislation Amendment Act (No. 1) 2000—Schedules 1 and 2—1 August 2000 (Gazette No. S 415, 28 July 2000).


Insurance Laws Amendment Act 1998—Schedule 2 (other than item 27)—1 July 2000 (Gazette No. GN 25, 28 June 2000).

Jurisdiction of Courts Legislation Amendment Act 2000—Schedule 1 (other than items 77 to 90) and Schedule 4—1 July 2000 (Gazette No. GN 25, 28 June 2000).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Sport and Tourism Portfolio: Agency Boards
(Question No. 2160)

Senator O’Brien asked the Minister representing the Minister for Sport and Tourism, 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/fax 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 Minister for Sport and Tourism has provided the following answer to the honourable senator’s question:

Sport and tourism are part of the industry, science and resources portfolio. Responses dealing with the boards of sport and tourism agencies are incorporated in the answer to question 2154.

Surveillance Warrants
(Question No. 2196)

Senator Murray asked the Minister representing the Attorney-General, upon notice, on 1 May 2000:

With reference to the annual report on the Telecommunications (Interception) Act 1979 for the 1998-99 financial year, which indicates that the total number of Part VI warrants issued under the Act rose from 675 in 1997-98 to 1284 in 1998-99 and that the number of warrants granted to the National Crime Authority (NCA) in relation to a ‘special investigation’ has risen from 44 to 150 during that same period, can the following details be provided:

1. The number of warrants issued under the Act to allow surveillance of people in each of the following categories: (a) members of state or Commonwealth parliaments or their staff; (b) members of the judiciary or their staff; (c) people who might reasonably be classified as senior public servants; and (d) any registered political party, its staff or executive members.

2. The number of warrants issued pursuant to an NCA “special investigation” to allow surveillance of the people/entities in each of the categories referred to in (1).
(3) The total number of Administrative Appeals Tribunal (AAT) members authorised to issue war-
rents and the total number of members of the judiciary so authorised;

(4) The total number of warrants issued by members of the AAT and the total number issued by
members of the judiciary;

(5) Whether there is any difference in law or in practice in the minimum standard of warrant appli-
cations granted by members of the AAT as against those granted by members of the judiciary;

(6) Whether there have been any changes in recent years to the requirements for a successful warrant
application; if so, can details of such changes be provided.

(This question extends to, but is not limited to, the interception of home, office and mobile tele-
phones)

Senator Vanstone—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) I am advised that State and Federal agencies that conduct interceptions under warrant do not rou-
tinely keep records by reference to occupations of subjects. There is no requirement in the Telecommu-
nications (Interception) Act 1979 for such information to be collected and retained. In any case State
and Federal agencies would be prohibited from disclosing such information if it amounted to “design-
nated warrant information” as defined in the Telecommunications (Interception) Act 1979.

(2) I am advised that the National Crime Authority (NCA) does not keep records by reference to oc-
cupations of subjects. To be able to provide this type of information would require a background check
on every user of a telecommunications service the subject of a warrant. This is not feasible. In any case
the NCA would be prohibited from disclosing such information if it amounted to “designated warrant
information” as defined in the Telecommunications (Interception) Act 1979.

(3) Sixteen members of the Administrative Appeals Tribunal (AAT) have been nominated by the
Attorney-General under section 6DA(1) of the Telecommunications (Interception) Act 1979 to issue
warrants authorising interceptions for law enforcement purposes. In addition, 27 Judges of the Family
Court of Australia and 9 Judges of the Federal Court of Australia remain ‘eligible judges’ for the pur-
poses of the Telecommunications (Interception) Act 1979 by virtue of not having withdrawn their con-
sent to undertake the function of issuing interception warrants.

(4) Between 1 July 1998 and 30 June 1999, the majority of warrants were issued by nominated AAT
members. The total number of warrants issued by members of the AAT was 1168. The total number of
warrants issues by eligible judges was 116.

(5) There is no difference in law or in practice in the minimum standards for warrant applications
granted by members of the AAT as against those granted by members of the judiciary. The require-
ments for a warrant application to authorise interception for law enforcement purposes are set out in
sections 40 to 42 of the Telecommunications (Interception) Act 1979. Similarly, the criteria to be satis-
fied for the issue of an interception warrant for law enforcement purposes are the same regardless of
whether an eligible judge or a nominated AAT member is issuing it.

(6) There have been no legislative changes in recent years to the requirements for a successful inter-
ception warrant application.

Sport and Tourism Portfolio: Agency Boards

(Question No. 2218)

Senator O’Brien asked the Minister representing the Minister for Sport and Tourism, 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 Minister for Sport and Tourism has provided the following answer to the honourable senator’s question:

Refer to my answer to question 2160.

**Department of Transport and Regional Development: Rents Paid**

(Question No. 2236)

Senator Robert Ray asked the Minister representing the Minister for Transport and Regional Services, 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 Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

From the information available, of the Transport & Regional Services portfolio’s agencies, the following amounts to 24 May 2000 were paid during the 1999-2000 financial year:

1. Department of Transport & Regional Services = $8,588 million
   - Civil Aviation Safety Authority = $3,958 million
   - Airservices Australia = $4,394 million
   - Australian Maritime Safety Authority = $1,951 million
   - National Capital Authority = $0.596 million

From the information available, of the Transport & Regional Services portfolio’s agencies, the following amounts are projected to be spent from 24 May 2000 to the end of June 2000 during the 1999-2000 financial year:

2. Department of Transport & Regional Services = $1.139 million
   - Airservices Australia = $0.391 million
   - Civil Aviation Safety Authority = $0.335 million
   - Australian Maritime Safety Authority = $0.165 million
   - National Capital Authority = $0.054 million.

**Department of the Treasury: Rents Paid**

(Question No. 2237)

Senator Robert Ray asked the Minister representing the Treasurer, 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 Kemp—The Treasurer has provided the following answer to the honourable senator’s question:

1. and 2. The requested information is displayed in the tables below:

<table>
<thead>
<tr>
<th></th>
<th>Treasury Rent cost to 31 May 2000</th>
<th>Projected cost to 30 June 00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Bureau of Statistics Rent cost to 31 May 2000</td>
<td>$4,235,485</td>
<td>$393,438</td>
</tr>
<tr>
<td>$15,067,394</td>
<td>Projected cost to 30 June 00</td>
<td>$857,743</td>
</tr>
</tbody>
</table>
Department of the Environment and Heritage: Rents Paid
(Question No. 2239)

Senator Robert Ray asked the Minister for the Environment and Heritage, 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 answer to the honourable senator’s question is as follows:

DEPARTMENT

(1) $16,644,997
(2) $1,466,937

NB: Includes properties leased by the Bureau of Meteorology, the Antarctic Division, the National Oceans Office and the Supervising Scientist.

AUSTRALIAN GREENHOUSE OFFICE

(1) $884,376
(2) $143,014

NATIONAL PARKS AND WILDLIFE

(1) $839,718
(2) $4,909
GREAT BARRIER REEF MARINE PARK AUTHORITY

(1) $481,794
(2) $47,500

NB: The figures provided in response to part (1) of this question are payments made from 1 July 1999 until the end of May 2000. The figures provided in response to part (2) are projected payments from June 2000 until the end of the 1999-2000 financial year.

Department of Family and Community Services: Rents Paid

(Question No. 2242)

Senator Robert Ray asked the Minister for Family and Community Services, 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 Newman—The answer to the honourable senator’s question is as follows:

(1) The amount of rent paid by the Department and agencies within the portfolio to end of May 2000 is $176,694,898

(2) The amount of rent paid by the Department and agencies within the portfolio for the remainder of the 1999-2000 financial year is $19,427,469

Department of Education, Training and Youth Affairs: Rents Paid

(Question No. 2247)

Senator Robert Ray asked the Minister representing the Minister for Education, Training and Youth 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 Ellison—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

(1) $3,543,971 (as at 30 April 2000 for offshore properties)
$6,727,938 (as at 30 April 2000 for onshore properties)
$10,271,909 (total as at 30 April 2000)

(2) $137,110 (for offshore properties)
$1,345,587 (for onshore properties)
$1,482,697 (total projected from 30 April 2000 to 30 June 2000)

Department of Veterans’ Affairs: Rents Paid

(Question No. 2252)

Senator Robert Ray asked the Minister representing the Minister for Veterans’ 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 Newman—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:
Asian Development Bank: Debt Management
(Question No. 2256)

Senator Bourne asked the Minister representing the Minister for Foreign Affairs, upon notice, on 26 May 2000:

(1) (a) How much money is owed to the ADB; and (b) which countries are its largest debtors, both in gross terms and on a per capita basis and relative to gross domestic product.

(2) Does the ADB have specific debt management plans for those countries in the Asia Pacific Region who are part of the Heavily Indebted Poor Countries (HIPC) 41 and the Jubilee 2000 group of 52 nations.

(3) Does the ADB have specific debt management plans for heavily indebted poor countries in the region, such as Indonesia, that fall outside the above two categories.

(4) How, and in what ways, does the ADB integrate its debt management with the International Monetary Fund and World Bank HIPC process.

(5) What role and position is the Australian Government taking with regards to ADB debt management in the region.

(6) Does the Government know of any studies done or does it have information, regarding the macro-economic implications, social impacts and management of debt in Vietnam and Laos.

(7) What economic analysis, if any, is required for ADB projects regarding debt implications of a loan.

(8) Has the ADB commented publicly on the calls of Jubilee 2000 and the global non-government organisation debt cancellation movement.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) According to information supplied by the ADB, as of 31 December 1999, the total money owed to the ADB was US$44.30 billion.

The largest debtors to the ADB in gross terms are: - Indonesia (US$7.6 billion in total, of which US$6.9 billion is in ordinary loans and US$0.7 billion is in concessional loans); Pakistan (US$6.4 billion in total, of which US$2.3 billion is in ordinary loans and US$4.1 billion is in concessional loans); the People’s Republic of China (US$4.5 billion in ordinary loans) and Bangladesh (US$4.4 billion of which US$10 million is in ordinary loans and almost US$4.4 billion is in concessional loans).

The four countries with the highest level of ADB loans on a per capita basis are: the Cook Islands (US$1,222); Marshall Islands (US$523); Samoa (US$477) and Tonga (US$360).

The four countries with the highest ratio of the value of ADB loans relative to gross domestic product are: Samoa (40%); Marshall Islands (33%); Lao People’s Democratic Republic (29.8%) and Mongolia (29.5%).

(2) The ADB does not have stand-alone, specific debt management plans for the Heavily Indebted Poor Countries (HIPC) 40 (Since the initial HIPC indicative list of 41 countries was drawn up, two countries (Equatorial Guinea and Nigeria) have been removed and one (Malawi) added as a result of updated analyses of their respective debt situations, leaving the current HIPC indicative list at 40 countries.) and the Jubilee 2000 group of 52 nations. Only three HIPC countries (Myanmar, Laos and Vietnam) are presently members of the ADB. Analyses of debt sustainability under the HIPC Initiative are conducted by the World Bank and the International Monetary Fund (IMF). However, the ADB conducts debt analysis as a part of its country economic assessment and country absorptive capacity analysis. The analysis then forms part of the Bank’s country planning process through the Country Assistance Plan, which is the ADB’s country planning document.
(3) The ADB examines debt vulnerability as part of each country’s regular economic assessment and absorptive capacity analysis. The ADB has not previously involved itself in the preparation of debt management plans, but maintains a close working relationship with the World Bank and IMF on debt management issues.

(4) The ADB coordinates with the IMF and the World Bank in conducting policy dialogue on macroeconomic management, including debt management. One condition for Heavily Indebted Poor Countries is to establish a track record with IMF and World Bank economic reform programs. The IMF consults, where appropriate, with the ADB during the IMF’s Article IV missions, which assess the macroeconomic conditions of countries.

(5) The Government supports the ADB’s current approach to debt management in the region and is ready to work with the ADB on particular debt relief issues as they might arise.

(6) The IMF plans to conduct a debt sustainability analysis for the Lao People’s Democratic Republic in the near future.

The ADB does not conduct such studies. However, it has undertaken to monitor the debt situations of Vietnam and the Lao People’s Democratic Republic in cooperation with the IMF and the World Bank.

(7) The ADB’s Guidelines for Economic Analysis of Projects require that where a project is seen as large in a national context, that is, where it may have a substantial impact on foreign exchange revenues, expenditures or budget resources, the economic analysis should include a discussion of national affordability. This is particularly necessary in borrowing countries with small populations and/or small economies. National affordability is considered in the context of investment possibilities for the country as a whole, and in the context of economic projections. This includes net foreign exchange currency flows over the project life, net flows to the government over the project life, the effect on national debt and possible effects on the exchange rate of substantial capital inflows at the beginning of the project.

(8) The ADB has not commented publicly on the calls of Jubilee 2000 and the global non-government organisations’ debt cancellation movement.

Australian Rock Lobster: Tariffs

(8) The ADB has not commented publicly on the calls of Jubilee 2000 and the global non-government organisations’ debt cancellation movement.
Since January 1996, tariffs on rock lobsters have fallen twice (the first occasion being in 1998 when tariffs fell from 42.5% to 40%). Taiwan has agreed to further reduce the tariff rate on all varieties of lobster to 20% (or NT$45.10 p/kg, whichever is higher) immediately following its accession to the WTO, and then to 15% (or NT$33.70 p/kg, whichever is higher) by the year 2002.

(4) Rock lobsters (all types) exported to Taiwan between 1996-99:

<table>
<thead>
<tr>
<th>Rock Lobster Exports to Taiwan</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value (A$'000)</td>
<td>131,436</td>
<td>135,298</td>
<td>100,994</td>
<td>108,957</td>
</tr>
<tr>
<td>Volume (KG)</td>
<td>4,255,778</td>
<td>4,097,204</td>
<td>3,860,059</td>
<td>3,903,415</td>
</tr>
</tbody>
</table>

(a) and (b) Rock lobsters (all types) exported to other countries since January 1996:

<table>
<thead>
<tr>
<th>Rock lobster exports (Value A$'000)</th>
<th>1996</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>117,093</td>
<td>95,787</td>
<td>85,967</td>
<td>141,122</td>
</tr>
<tr>
<td>Japan</td>
<td>128,763</td>
<td>128,977</td>
<td>86,491</td>
<td>107,622</td>
</tr>
<tr>
<td>United States of America</td>
<td>25,182</td>
<td>48,109</td>
<td>62,515</td>
<td>67,305</td>
</tr>
<tr>
<td>China</td>
<td>11,964</td>
<td>52,698</td>
<td>77,429</td>
<td>29,894</td>
</tr>
<tr>
<td>France</td>
<td>235</td>
<td>302</td>
<td>2,982</td>
<td>9,886</td>
</tr>
<tr>
<td>Singapore</td>
<td>3,748</td>
<td>4,182</td>
<td>3,076</td>
<td>9,504</td>
</tr>
<tr>
<td>Italy</td>
<td>580</td>
<td>382</td>
<td>663</td>
<td>814</td>
</tr>
<tr>
<td>Malaysia</td>
<td>793</td>
<td>724</td>
<td>249</td>
<td>404</td>
</tr>
<tr>
<td>Korea Republic of</td>
<td>1,152</td>
<td>459</td>
<td>48</td>
<td>283</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0</td>
<td>3</td>
<td>632</td>
<td>268</td>
</tr>
<tr>
<td>Switzerland</td>
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<td>12</td>
<td>17</td>
<td>239</td>
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<tr>
<td>Cuba</td>
<td>0</td>
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<td>180</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>182</td>
<td>132</td>
<td>179</td>
<td>169</td>
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<tr>
<td>Thailand</td>
<td>136</td>
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<tr>
<td>New Zealand</td>
<td>90</td>
<td>44</td>
<td>75</td>
<td>146</td>
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<td>Belgium-Luxembourg</td>
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<td>Indonesia</td>
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<td>177</td>
<td>117</td>
<td>41</td>
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<tr>
<td>Brunei</td>
<td>28</td>
<td>56</td>
<td>33</td>
<td>36</td>
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<tr>
<td>Mauritius</td>
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<td>7</td>
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<td>Cyprus</td>
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<tr>
<td>French Polynesia</td>
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<td>13</td>
</tr>
<tr>
<td>Germany</td>
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<td>7</td>
</tr>
<tr>
<td>Portugal</td>
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<td>7</td>
</tr>
<tr>
<td>Kuwait</td>
<td>0</td>
<td>18</td>
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<tr>
<td>Philippines</td>
<td>23</td>
<td>78</td>
<td>21</td>
<td>4</td>
</tr>
<tr>
<td>Greece</td>
<td>0</td>
<td>0</td>
<td>122</td>
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</tr>
<tr>
<td>Canada</td>
<td>0</td>
<td>21</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Denmark</td>
<td>0</td>
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<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Egypt</td>
<td>0</td>
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<td>1</td>
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<td>Finland</td>
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<td>1</td>
</tr>
<tr>
<td>Iceland</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
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### Rock lobster exports (Value A$'000)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<th></th>
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<td>Ireland</td>
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<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Austria</td>
<td>36</td>
<td>23</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Brazil</td>
<td>0</td>
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<td>0</td>
</tr>
<tr>
<td>Fiji</td>
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<td>0</td>
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<td>0</td>
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<tr>
<td>Honduras</td>
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<td>26</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>India</td>
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<tr>
<td>Lebanon</td>
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<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Macedonia Former Yugoslav Republic of</td>
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<td>0</td>
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</tr>
<tr>
<td>Maldives</td>
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<td>2</td>
<td>6</td>
<td>0</td>
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<td>Norfolk Island</td>
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<td>9</td>
<td>0</td>
</tr>
<tr>
<td>Oman</td>
<td>42</td>
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<td>0</td>
</tr>
<tr>
<td>Papua New Guinea</td>
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<td>Spain</td>
<td>162</td>
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<td>34</td>
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<td>Sweden</td>
<td>19</td>
<td>0</td>
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</tr>
<tr>
<td>Vietnam</td>
<td>0</td>
<td>25</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### Rock lobster exports (Volume KG)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>3,168,046</td>
<td>2,482,631</td>
<td>2,446,730</td>
<td>4,114,267</td>
</tr>
<tr>
<td>Japan</td>
<td>3,799,564</td>
<td>3,892,624</td>
<td>3,104,283</td>
<td>3,649,841</td>
</tr>
<tr>
<td>United States of America</td>
<td>601,180</td>
<td>810,768</td>
<td>1,025,043</td>
<td>1,267,694</td>
</tr>
<tr>
<td>China</td>
<td>322,332</td>
<td>1,334,956</td>
<td>2,059,107</td>
<td>860,561</td>
</tr>
<tr>
<td>France</td>
<td>114,479</td>
<td>113,415</td>
<td>92,079</td>
<td>334,681</td>
</tr>
<tr>
<td>Singapore</td>
<td>7,010</td>
<td>125,901</td>
<td>318,199</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>15,700</td>
<td>10,759</td>
<td>19,592</td>
<td>21,838</td>
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<tr>
<td>Malaysia</td>
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<td>0</td>
<td>0</td>
<td>11,880</td>
</tr>
<tr>
<td>Korea Republic of</td>
<td>25,658</td>
<td>18,156</td>
<td>7,377</td>
<td>11,218</td>
</tr>
<tr>
<td>United Kingdom</td>
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Rock lobster exports  
(Value AS’000)

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<td>India</td>
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(6) (a), (b) and (c) Tariffs applying to rock lobsters since 1996 in countries referenced at Question 5 (where available):

Simple Average Rock Lobster Tariffs

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<tr>
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<th></th>
<th></th>
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<td>0.00%</td>
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<td>42.50%</td>
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<td>3.47%</td>
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<td>0.00%</td>
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Simple Average Rock Lobster Tariffs

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<td>0.00%</td>
<td>0.00%</td>
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<td>0.00%</td>
<td>0.00%</td>
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</table>

(7) (a) and (b)

China
(a) market access negotiations with China over the past two years in the context of China’s accession to the WTO.
(b) Australia has now secured China’s agreement to a significant reduction in the tariff on live rock lobsters to a level of 15% (from 35%). This reduction will be implemented in a small number of annual steps (to year 2005) once China joins the WTO.

European Union
(a) and (b) While Australia has not engaged in specific bilateral negotiations with the EU on rock lobster tariffs, since the conclusion of the Uruguay Round of multilateral trade negotiations in 1994 (which resulted in a reduction in tariffs on a range of seafood products - including Australian rock lobsters) the Department of Foreign Affairs and Trade has actively assisted the West Australian Rock Lobster Association in promoting its products in the EU market and in improving market access strategies. It is also expected that discussions on rock lobsters will form part of the next round of multilateral trade negotiations.

Canada, Brazil, Chile, Papua New Guinea, Philippines, Indonesia, New Zealand, Thailand, Korea, Malaysia, Japan

The above countries have not been the subject of designated bilateral negotiations relating to tariffs on rock lobsters. This is because industry contacts consider the markets to be of comparatively little commercial interest to Australian lobster producers or because tariffs are already at very low levels. While there are no ongoing formal negotiations, the Department of Foreign Affairs and Trade has worked in particularly close consultation with representatives of the West Australian Rock Lobster Association on strategies for improving access of Australian rock lobsters around the world.

Rock lobster tariffs in a number of countries have been falling progressively, either as a result of unilateral tariff reform programs or in accordance with WTO commitments. Examples include Papua New Guinea, the Philippines, Thailand, and Japan. We welcome these developments.

Australian Waterfront: Redundancies
(Question No. 2290)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 30 May 2000:
(1) What has been the value of levies paid to fund redundancies on the Australian waterfront, on a monthly basis, by each stevedore since the levy was introduced.

(2) What has been the value of payments made to each stevedore to fund redundancies on the Australian waterfront since the Government’s so-called waterfront reform commenced.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The information on levy collected is considered ‘commercial-in-confidence’, as the answer would provide an accurate estimate of the market share of each stevedore. However, total levy collected to date since the levy was introduced in February 1999 up until May 2000 is $38,187,278. Of this total P&O Ports and Patrick have contributed around 93%. Other stevedoring companies have contributed the balance.

(2) The following table shows the payments made to the redundant employees of each stevedore. Please note that the total number of redundancies is 1487 not 1486 as advised.

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<th>Name of Stevedore</th>
<th>Cost of redundancies</th>
<th>Number of redundancies</th>
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<tr>
<td>Patrick group of companies</td>
<td>$102,192,291.40</td>
<td>821</td>
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<tr>
<td>P&amp;O group of companies</td>
<td>$62,975,723.02</td>
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<tr>
<td>Sea-Land (Australia) Terminals Pty Ltd</td>
<td>$1,777,374.83</td>
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<tr>
<td>Freport Maintenance &amp; Engineering Services Pty Ltd</td>
<td>$576,146.83</td>
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<tr>
<td>TJ Prest &amp; Sons Pty Ltd</td>
<td>$712,953.10</td>
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<tr>
<td>Marine Porters Association former members</td>
<td>$1,243,525.45</td>
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</tr>
<tr>
<td>Northern Shipping &amp; Stevedoring Pty Ltd</td>
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<td>18</td>
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<td>Newcastle Stevedores Pty Ltd</td>
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<tr>
<td>Strang Stevedores Australia Pty Ltd</td>
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<td>Holyman Ltd</td>
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<tr>
<td>Keon Cargo Stevedoring Pty Ltd (in liquidation) trading as Total Stevedores</td>
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<td>TOTAL</td>
<td>$178,394,473.60</td>
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Lamb Industry Development Fund: Market Program Funding
( Question No. 2292)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 31 May 2000:

(1) How many expressions of interest have been lodged for the funding of market programs through the Lamb Industry Development Program.

(2) (a) How many applications for funding through the program have been approved; (b) how many were rejected; and (c) how many are still under consideration.

(3) What is the purpose of each of the successful applications and, in each case: (a) what level of funding has been approved; and (b) who lodged the application.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Sixty-six.

(2) (a) none as yet; (b) Forty expressions of interest and 6 full applications; and (c) Twenty.

(3) See 2 (a) above.
Quarantine Services: Tasmania
(Question No. 2294)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 31 May 2000:

(1) (a) What was the funding allocation to Tasmania for the provision of quarantine services on behalf of the Commonwealth in the 1999-2000 financial year; and (b) what was the actual expenditure in that year.

(2) What is the funding allocation to Tasmania for this purpose in the 2000-2001 financial year.

(3) If the funding allocation for the 2000-2001 financial year varies from the funding level expended in the 1999-2000 financial year, what was the basis of that variation.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

Funding arrangements for the provision of quarantine services on behalf of the Commonwealth are provided under the terms of a Memorandum of Understanding (MOU) between the Australian Quarantine Inspection Service (AQIS) and the Tasmanian Government.

(1) (a) The 1999-2000 budget for the provision of quarantine services in Tasmania is $1.178m. (b) The estimated 1999-2000 expenditure for this purpose is $1.195m.

(2) The funding allocation to Tasmania for 2000-2001 for this purpose has not been finalised.

(3) Any variation between the estimated funding allocation for 2000-2001 and the estimated 1999-2000 expenditure is likely to be due to the aggregated effect of less passenger and cargo traffic requiring quarantine clearance, changes to Australia Post international mail operations and various minor budget adjustments including those due to savings in corporate support costs and reductions in Wholesale Sales Tax.

Eden Hill, Western Australia: Aboriginal Sacred Site
(Question No. 2298)

Senator McKiernan asked the Minister for the Environment and Heritage, upon notice, on 6 June 2000:

(1) Has an application been received, under the Aboriginal and Torres Strait Islander Heritage Protection Act, from Mrs Edna Bropho and others concerning the Western Australian Government placing a prison on an Aboriginal site at Eden Hill, Western Australia.

(2) Is the Minister aware that any approval by him to allow the prison to be placed on the site will, in all probability, mean Aboriginal prisoners being placed in a prison on an Aboriginal sacred site.

(3) In line with the Government’s commitment to reconciliation, will the Minister at least ensure that the Government does not allow this further insult to be visited on Aboriginal people.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) Yes I have received applications for protection, under the provisions of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, over the site of a proposed prison in the Eden Hill area. The applicants seek declarations of protection under both section 9 and section 10 of the Act.

(2) and (3) In line with the provisions of the Act, I have nominated Mr Peter Marks under s.10.(1)(c) of the Act to invite representations from the interested public, and to prepare a report to me on the matters prescribed in the Act.

The report has now been submitted to me. I shall consider the report, and the attached representations, in reaching my decision in relation to the applications.

Goods and Services Tax: Assist Certificates
(Question No. 2300)

Senator Brown asked the Minister representing Treasurer, upon notice, on 6 June 2000:

(1) (a) What precautions have been taken to ensure that the $200 GST Assist certificates can only be used by the business to which they have been issued; and

(b) What identification is required when they are presented to be redeemed.
(2) How many business that applied for goods and services tax registration by 31 May 2000 will not receive their certificates in time to redeem them before 30 June 2000.

(3) Will the Government extend the time for redemption of the certificates to 30 June 2001; if not, why not.

**Senator Kemp**—The Treasurer has provided the following answer to the honourable senator’s question:

(1) (a) The certificates can only be used with suppliers that have registered with the GST Start-Up Assistance Office (GST SAO). When certificates are redeemed, Registered Suppliers:

. can accept certificates as part or full payment for goods or services associated with the implementation of the GST. The certificates cannot be used to purchase goods or services not associated with the implementation of the GST.

. must charge no more than the prices specified their application to be a registered supplier. If they wish to vary the prices this can only be done with the agreement of the Office.

. must ensure that the certificate is valid. They are provided with a sample of the certificate which outlines the incorporated security features for this purpose.

. must complete the following actions in respect of each certificate received:

: complete the amount, in figures.

: ensure that the certificate is signed where indicated which is the declaration by the Certificate holder that they are eligible to use the certificate in terms of turnover and ownership and that the certificate is being used in accordance with the Conditions of Use in the Registered Supplier Booklet.

: enter the registered supplier code where indicated.

(b) No identification is required when the certificate holder uses the certificate to purchase services and / or equipment.

(2) and (3) On 15 June 2000 the Chair of The New Tax System Advisory Board announced an extension on the use of the $200 certificates. The certificates can now be used to purchase GST-related products and services and plant and equipment until 31 October 2000.

**Australian Quarantine and Inspection Service: Contracts with the Department of Health and Aged Care**

(Question No. 2302)

**Senator O’Brien** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 6 June 2000:

(1) Has the Australian Quarantine and Inspection Service (AQIS) signed a memorandum of understanding with the Department of Health and Aged Care relating to the management of human quarantine activities.

(2) (a) When did negotiations relating to the above memorandum between the two agencies commence; and (b) when were the negotiations completed.

(3) (a) What was the nature of the relationship between these two agencies prior to the signing of the above memorandum; and (b) how was that relationship formalised.

(4) How do the arrangements set out in the new memorandum between these two agencies vary from the previous arrangements.

(5) Have the changed arrangements resulted in a transfer of financial resources.

(6) Can a copy be provided of the memorandum of understanding between AQIS and the Department of Health and Aged Care relating to the management of human quarantine activities.

**Senator Alston**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes.

(2) (a) The development of a memorandum of understanding between the two agencies was first considered in late 1998 – formal negotiations commenced in May 1999 (b) negotiations were completed in December 1999.
(3) (a) AQIS and the Department of Health and Aged Care maintained a close working relationship in managing human quarantine issues prior to the signing of the memorandum of understanding (b) the working arrangements were administered through consultation and liaison between the relevant areas of each agency.
(4) The signing of the memorandum of understanding has not varied the arrangements between the two agencies – the document has formalised the existing arrangements.
(5) No
(6) Yes, a copy has been provided to Senator O’Brien.

Department of Education, Training and Youth Affairs: Fringe Benefits Tax Paid
(Question No. 2315)

Senator O’Brien asked the Minister representing the Minister for Education, Training and Youth Affairs, upon notice, 7 June 2000:

(1) (a) What was the value of fringe benefits tax (FBT) payments made by the department; and (b) what was the level of FBT payments made by its agencies in the 1997-98, 1998-99 and 1999-2000 financial years.
(2) What were the incentives paid to departmental officers and employees of agencies that attracted the FBT over the above periods.
(3) In the above years, what were the compliance costs of calculating the FBT for the department and its agencies.
(4) What incentives, other than those attraction FBT, were paid to departmental officers and employees of agencies in the above years.
(5) What were the compliance costs associated with the calculation and payment of these non-FBT incentives.

Senator Ellison—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

(1) (a) The value of the fringe benefits tax (FBT) payments made by the Department are as follows:
   . $2,343,780.93 in 1997-1998,
   . $951,958.97 in 1998-1999,
(The large reduction from 1997-1998 to 1998-99 was due to AAO changes.)
(b) The value of the fringe benefits tax (FBT) payments made by the Department’s agencies (Australian National University, ANUTECH Pty Ltd and Australian National Training Authority) as follows:
   . $814,322 in 1997-1998,
   . $797,517 in 1998-1999,
(2) The incentives paid to departmental officers and employees of agencies that attracted FBT were Motor vehicles, vehicle parking, home garaging of motor vehicles, living away from home allowance, housing benefits, accommodation subsidies, remote area housing/travel, electricity subsidies, work related expenses, taxis and entertainment.
(3) The compliance costs associated with the calculation and payment of these types of incentives are difficult to estimate and are not readily available.
(4) The Department provides standard Australian Public Service remuneration and conditions to staff. These allowances and entitlements are as follows:
   . performance based pay bonuses,
   . retention bonuses,
   . superannuation under salary sacrifice arrangements, and
   . laptop computers.
(5) The compliance costs associated with the calculation and payment of these types of incentives are difficult to estimate and are not readily available. However the costs associated with the calculation and
payment of these bonuses are minimal as they take the form of annual payments for a small number of officers.

**Department of Industry, Science and Resources: Fringe Benefits Tax Paid**

*(Question No. 2316)*

Senator O’Brien asked the Minister for Industry, Science and Resources, upon notice, on 7 June 2000:

1. (a) What was the value of fringe benefits tax (FBT) payments made by the department; and (b) what was the level of FBT payments made by its agencies in the 1997-98, 1998-99 and 1999-2000 financial years.

2. What were the incentives paid to departmental officers and employees of agencies that attracted the FBT over the above periods.

3. In the above years, what were the compliance costs of calculating the FBT for the department and its agencies.

4. What incentives, other than those attracting FBT, were paid to departmental officers and employees of agencies in the above years.

5. What were the compliance costs associated with the calculation and payment of these non-FBT incentives.

Senator Minchin—The answer to the honourable senator’s question is as follows:

(1) (a) The value of fringe benefits tax (FBT) payments made by the department were as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AUSLIG</td>
<td>$83660</td>
<td>$43420</td>
<td>$28778</td>
</tr>
<tr>
<td>AGAL</td>
<td>$58907</td>
<td>$33629</td>
<td>$14073</td>
</tr>
<tr>
<td>AGSO</td>
<td>*paid by DPIE (AFFA)</td>
<td>**$98084</td>
<td>$144039</td>
</tr>
<tr>
<td>IP Australia</td>
<td>$28351</td>
<td>$31256</td>
<td>$32225</td>
</tr>
<tr>
<td>TOTAL (Agencies)</td>
<td>$170918</td>
<td>$206389</td>
<td>$219115</td>
</tr>
</tbody>
</table>

* Department of Primary Industries and Energy now Agriculture, Fisheries and Forestry (AFFA)
** AAO effective 21 October 1998. Data for 1997/98 and period 1 July 1998 to 20 October 1998 is the responsibility of AFFA and is not included.

(b) The level of FBT payments made by its agencies are as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AUSLIG</td>
<td>$83660</td>
<td>$43420</td>
<td>$28778</td>
</tr>
<tr>
<td>AGAL</td>
<td>$58907</td>
<td>$33629</td>
<td>$14073</td>
</tr>
<tr>
<td>AGSO</td>
<td>*paid by DPIE (AFFA)</td>
<td>**$98084</td>
<td>$144039</td>
</tr>
<tr>
<td>IP Australia</td>
<td>$28351</td>
<td>$31256</td>
<td>$32225</td>
</tr>
<tr>
<td>TOTAL (Agencies)</td>
<td>$170918</td>
<td>$206389</td>
<td>$219115</td>
</tr>
</tbody>
</table>

(2) The incentives paid to department officers and employees of agencies that attracted the FBT over the above periods were:

- Vehicles
- Official Hospitality
- Gym Membership Reimbursement
- Quit Smoking Program
- Car Parking
- Living-Away-From-Home-Allowance
- Studies Assistance Bursaries
- Semi-Official Phones
- Spouse Accompanied Travel
- Child Care Assistance (vacation care).
(3) Compliance costs of calculating the FBT for the department and its agencies as follows

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ISR</td>
<td>$38670</td>
<td>$42733</td>
<td>$26150</td>
</tr>
<tr>
<td>AUSLIG</td>
<td>$7000</td>
<td>$5000</td>
<td>$4000</td>
</tr>
<tr>
<td>AGAL</td>
<td>$3165</td>
<td>$3165</td>
<td>$2085</td>
</tr>
<tr>
<td>AGSO</td>
<td>paid by DPIE (AFFA)</td>
<td>$300</td>
<td>$600</td>
</tr>
<tr>
<td>IP Australia</td>
<td>$1500</td>
<td>$1600</td>
<td>$1400</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$50335</td>
<td>$52798</td>
<td>$34235</td>
</tr>
</tbody>
</table>

(4) Other incentives paid to departmental officers and employees of agencies in the above years were performance pay for SES under AWA’s.

(5) Compliance costs associated with the calculation and payment of non-FBT incentives are

<table>
<thead>
<tr>
<th>Dept/Agency</th>
<th>Incentive</th>
<th>1997/98</th>
<th>1998/99</th>
<th>1999/00</th>
</tr>
</thead>
<tbody>
<tr>
<td>ISR</td>
<td>Performance Pay</td>
<td>$694</td>
<td>$701</td>
<td>$714</td>
</tr>
<tr>
<td>AUSLIG</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>AGAL</td>
<td>Performance Pay</td>
<td>Nil</td>
<td>Nil</td>
<td>$866</td>
</tr>
<tr>
<td>AGSO</td>
<td>Performance Pay</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>IP Australia</td>
<td>Performance Pay</td>
<td>$240</td>
<td>$240</td>
<td>$240</td>
</tr>
</tbody>
</table>

Department of Agriculture, Fisheries and Forestry: Fringe Benefits Tax Paid

(Question No. 2319)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 6 June 2000:

1. (a) What was the value of fringe benefits tax (FBT) payments made by the department; and (b) what was the level of FBT payments made by its agencies in the 1997-98, 1998-99 and 1999-2000 financial years.

2. What were the incentives paid to departmental officers and employees of agencies that attracted the FBT over the above periods.

3. In the above years, what were the compliance costs of calculating the FBT for the department and its agencies.

4. What incentives, other than those attracting FBT, were paid to departmental officers and employees of agencies in the above years.

5. What were the compliance costs associated with the calculation and payment of these non-FBT incentives.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

1. (a) The value of FBT payments made by the Department in the financial years 1997-98, 1998-99 and 1999-2000 was $1,462,851.18, $1,461,159.98 and $1,109,481.15 respectively.

(b) The level of payments made by its agencies is shown in the following table:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ABARE</td>
<td>$65,807.44</td>
<td>$72,857.68</td>
<td>$119,304.64</td>
</tr>
<tr>
<td>AGSO</td>
<td>$70,714.88</td>
<td>$68,360.91</td>
<td></td>
</tr>
<tr>
<td>AQIS</td>
<td>$958,717.86</td>
<td>$948,202.42</td>
<td>$643,554.60</td>
</tr>
<tr>
<td>BRS</td>
<td>$39,405.54</td>
<td>$43,493.71</td>
<td>$44,124.16</td>
</tr>
<tr>
<td>Resources &amp; Energy</td>
<td>$66,368.72</td>
<td>$44,863.92</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Policy &amp; Support</td>
<td>$261,836.74</td>
<td>$283,381.34</td>
<td>$302,497.75</td>
</tr>
<tr>
<td>Total</td>
<td>$1,462,851.18</td>
<td>$1,461,159.98</td>
<td>$1,109,481.15</td>
</tr>
</tbody>
</table>

(*) The agencies shown above are internal agencies of the Department. Portfolio agencies that are not incorporated in the Departmental ATO return are not included. Machinery of Government changes, which occurred in October 1998, resulted in the transfer of the Resources & Energy Group and the Australian Geological Survey Organisation out of the Department of Primary Industries & Energy. There were also organisational changes within the Department, which was renamed Agriculture, Fisheries and Forestry – Australia.

2) Fringe benefit taxable incentives paid to departmental officers over the above periods were
- Cars
- Private telephone charges
- Entertainment
- Education fees
- Travel
- Living Away From Home Allowance
- Housing (Remote & Non-Remote)
- Golden Wing Membership
- Debt Waiver

3) The compliance costs in the calculation of the FBT for the Department and its internal agencies in the above years were essentially direct Wage and Salary Costs as shown below

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance</td>
<td>$84,437</td>
<td>$53,820</td>
<td>$57,953</td>
</tr>
</tbody>
</table>

4) Nil.

5) N/A.

Department of Sport and Tourism: Fringe Benefits Tax Paid

(Question No. 2323)

Senator O’Brien asked the Minister representing the Minister for Sport and Tourism, upon notice, on 7 June 2000:

1) (a) What was the value of fringe benefits tax (FBT) payments made by the department; and (b) what was the level of FBT payments made by its agencies in the 1997-98, 1998-99 and 1999-2000 financial years.

2) What were the incentives paid to departmental officers and employees of agencies that attracted the FBT over the above periods.

3) In the above years, what were the compliance costs of calculating the FBT for the department and its agencies.

4) What incentives, other than those attracting FBT, were paid to departmental officers and employees of agencies in the above years.

5) What were the compliance costs associated with the calculation and payment of these non-FBT incentives.

Senator Minchin—The Minister for Sport and Tourism has provided the following answer to the honourable senator’s question:

The response to this question is incorporated in the response to Question Number 2316.

Stone, Mr Shane: East Timor

(Question No. 2327)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 8 June 2000:
(1) Has the Australian Ambassador to the United Nations been approached by Mr Shane Stone in relation to any business matter in East Timor; if so, what are the details.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) The Ambassador and the staff of the Australian Mission to the United Nations are not aware of any approach by Mr Stone in relation to any such matter.

Age Pension: Recipients
(Question No. 2330)

Senator Chris Evans asked the Minister for Family and Community Services, upon notice, on 8 June 2000:

(1) How many people were receiving the full age pension as at 30 June in 1997, 1998 and 1999 and as at 31 May 2000.

(2) What are the department’s projections on the numbers of full age pension recipients for the years 2001 to 2004.

(3)(a) How many people were receiving a part age pension as at 30 June in 1997, 1998 and 1999 and as at 31 May 2000; and (b) can a breakdown be provided for each of the years in (3)(a) on the proportion of people receiving 1 to 25 per cent, 26 to 50 per cent, 51 to 75 per cent and 76 to 99 per cent of the age pension.

(4) What are the departments projections on the numbers of part age pension recipients for the years 2001 to 2004.

(5) Does the department track the numbers of self-funded retirees; if so, what are the numbers of self-funded retirees as at 30 June in 1997, 1998 and 1999 and as at 31 May 2000.

(6) What are the department’s projections on the numbers of self-funded retirees for the years 2001 to 2004.

Senator Newman—The answer to the honourable senator’s question is as follows:

(1) The total numbers of people receiving age pension at the specified dates are shown below. Around two-thirds of these received the maximum rate.

- 30 June 1997 - 1,641,822
- 30 June 1998 - 1,684,015
- 30 June 1999 - 1,715,792
- 31 May 2000 - 1,723,463

(2) The department’s projections on the total number of age pension recipients are shown below. It is expected that around two-thirds of these will receive the maximum rate.

- 2000-01 - 1,816,350
- 2001-02 - 1,832,796
- 2002-03 - 1,857,653
- 2003-04 - 1,879,429

(3) (a) In relation to the figures provided in response to question 1, around one-third of these received a part rate age pension.

(b) Figures broken down as requested are not readily available for 1997, 1998 and 1999. Figures as at 31 May 2000 are available:

- 1 to 25 per cent of full age pension - 41,621
- 26 to 50 per cent of full age pension - 84,988
- 51 to 75 per cent of full age pension - 117,264
- 76 to 99 per cent of full age pension - 334,191

(4) In relation to the figures provided at question 2, it is expected that around one-third of these will receive a part rate pension.

(5) The department does not track the number of self-funded retirees.

(6) The department does not have projections for the number of self-funded retirees.
Australian Electoral Commission: Provision of Electoral Rolls
(Question No. 2355)

Senator Robert Ray asked the Minister representing the Minister for Finance and Administration, upon notice, on 13 June 2000:

(1) Has ComSuper used an electronic version of the Electoral Roll provided by the Australian Electoral Commission (AEC); if so, (a) when did the AEC provide the Electoral Roll; and (b) for what purpose(s) has it been used.

(2) Has ComSuper ever sought legal advice as to the lawfulness of using the Electoral Roll for those purposes; if so, from whom has this legal advice been sought.

(3) Following the provision of the legal advice, was ComSuper satisfied that the use of the Electoral Roll was in fact lawful; if so, on what basis was ComSuper satisfied that the use of the Electoral Roll was lawful.

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

(1) ComSuper has not used an electronic version of the Electoral Roll.
   (a) ComSuper obtained a test disc for an electronic version of the Electoral Roll on 29 May 2000;
   (b) ComSuper has not installed the Electoral Roll on its system or used it for any purpose.

   Note: ComSuper is currently a prescribed authority under the provisions of the Commonwealth Electoral Act 1918 and is provided with access to a confidential file extract of the Electoral Roll. Access to that extract is governed by a Safeguard Agreement. That Agreement specifies the purpose of access as being restricted to the location of clients’ current addresses for the purpose of the payment of benefits, recovery of overpayments and review of benefit entitlements and to thus ensure protection of the public revenue.

(2) ComSuper has not sought legal advice as to the lawfulness of using an electronic version of the Electoral Roll.

(3) See responses to (1) and (2) above.

Aboriginal and Torres Strait Islander Commission: Consultants
(Question No. 2387)

Senator Faulkner asked the Minister for Aboriginal and Torres Strait Islander Affairs, upon notice, on 21 June 2000:

(1) How many consultants have been engaged or used by the department, and all agencies in the portfolio, to 31 May 2000, in order to:
   (a) advise on the internal implementation of the new tax system; and
   (b) advise on, and/or publicise, the effect of the new tax system on the portfolio’s client groups.

(2) Can a full list be provided of all consultants engaged or used in relation to the purposes set out in (1), together with the cost of each consultancy.

Senator Herron—The Aboriginal and Torres Strait Islander Commission has provided the following information in response to the honourable senator’s question:

(1) (a) Four.
   (b) Four.

(2)

<table>
<thead>
<tr>
<th>Consultant</th>
<th>Expenditure to 31 May</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Walter &amp; Turnbull</td>
<td>51,972.00</td>
<td>99,441.00</td>
</tr>
<tr>
<td>BHP IT</td>
<td>Nil</td>
<td>30,000.00</td>
</tr>
<tr>
<td>SAP</td>
<td>Nil</td>
<td>47,625.64</td>
</tr>
<tr>
<td>Consultant</td>
<td>Expenditure to 31 May</td>
<td>Total Cost</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-----------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>KPMG</td>
<td>121,990.00</td>
<td>139,848.46</td>
</tr>
<tr>
<td><strong>Subtotal (a)</strong></td>
<td>173,962.00</td>
<td>316,915.10</td>
</tr>
<tr>
<td>KPMG</td>
<td>25,450.00</td>
<td>Nil</td>
</tr>
<tr>
<td>Language Australia</td>
<td>Nil</td>
<td>115,885.00</td>
</tr>
<tr>
<td>Qld Community</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing Coalition Ltd</td>
<td>Nil</td>
<td>74,412.00</td>
</tr>
<tr>
<td>Community Housing</td>
<td></td>
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</tr>
<tr>
<td>Coalition WA</td>
<td>Nil</td>
<td>35,000.00</td>
</tr>
<tr>
<td><strong>Subtotal (b)</strong></td>
<td>Nil</td>
<td>250,747.00</td>
</tr>
<tr>
<td><strong>Total (a) + (b)</strong></td>
<td>173,962.00</td>
<td>567,662.10</td>
</tr>
</tbody>
</table>

The consultancies relating to question 1(a) were funded from ATSIC’s annual appropriation and the consultancies relating to question 1(b) were funded by the GST Start-Up Assistance Office through ATSIC.