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

BUSINESS

Days and Hours of Meeting

Motion (by Senator Ian Campbell) agreed to:
That on Tuesday, 10 October 2000, the Senate adjourn at 6 p.m. without any question being put.

TAXATION LAWS AMENDMENT BILL (No. 11) 1999

Second Reading

Debate resumed from 10 May, on motion by Senator Minchin:

That this bill be now read a second time.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (9.31 a.m.)—The Taxation Laws Amendment Bill (No. 11) 1999 is the result of a case decided by the full Federal Court, which has commonly become known as the Lamesa Holdings case. The bill that is now before the chamber seeks to close a tax avoidance loophole that Lamesa used to argue in its favour regarding the interpretation of the double taxation agreement that exists between Australia and the Netherlands concerning the alienation of property article.

The bill will insert a new section 3A which clarifies the meaning of that property article provision. While Labor support this bill and commend the government for ensuring that this tax avoidance loophole is closed down, we note the slowness with which the government has moved to act with respect to the Lamesa case.

The Lamesa Holdings case was decided in 1997, but it took the government until 9 December 1999 to introduce amending legislation. The slowness with which the government has acted is symptomatic of this government’s general reluctance to fight tax avoidance. This government loathes taxing the rich or, more importantly, closing down tax loopholes that allow them—most of whom are either Liberal Party mates or, in the case of this government, even members of the ministry—to avoid tax or to pay minimal tax. This government, and in particular the ministry, is littered with members who use the tax avoider’s preferred tax avoidance vehicle, the discretionary trust. In many cases, they have multiple discretionary trusts. Both former Senator Parer, a close mate of the Prime Minister and the Prime Minister’s other close mate, the current secretary to the cabinet, Senator Heffernan, are avid users of discretionary trusts in order to avoid tax.

In response to the widespread abuse of these forms of trust, the government announced the taxation of trusts as companies, which is known as the entity taxation regime. What, though, has happened since this announcement long ago? Firstly, the legislation was due to commence on 1 July 2000 but, due to outrage from government members and ministers—led by the former Deputy Prime Minister, Tim Fischer—the government has delayed the start of these measures to 1 July 2001, although we are yet to see either the legislation or a commitment from the government that this proposal will still be proceeded with. In all probability, the government will seek to drop this legislation through fear of upsetting its mates and, no doubt, a number of members of the ministry. Let us not forget that, following a briefing by the National Party caucus by National Party law firm Cleary Hoare, the then Deputy Prime Minister, Mr Tim Fischer, was reported as saying, ‘We’ll kill this measure in cabinet.’ Mr Fischer was basically saying that the coalition supports tax avoidance and tax abuse via family trusts of the type employed by numerous Liberal Party mates and, as I have said, in some cases, members of the ministry.

Labor support the closure of any loophole that allows tax avoidance of any sort, particularly when it involves non-residents of Australia, as was the case in Lamesa. With regard to this bill, we strongly support the integrity measures concerning alienation of Australian real property by non-residents but note the reluctance and low priority that this government places on acting on tax avoidance, particularly when perpetrated by the big end of town.

It is interesting to look at the government’s approach to this issue as opposed to its re-
luctant approach to what is increasingly be-
coming known as ‘Costello’s bottom-of-the-
harbour’—that is, the systematic abuse and
rorting of what are known as employee bene-
fit arrangements, EBAs—and this govern-
ment’s ability to countenance the abuse of the
EBA system. In that respect, it is noteworthy
that this bill is retrospective in its operation
by nearly two years and is actually in breach
of the Senate resolution of 8 November 1988,
which states:

... where the Government has announced, by press
release, its intention to introduce a Bill to amend
taxation law, and that Bill has not been introduced
into the Parliament or made available by way of
publication of a draft Bill, within 6 calendar
months of the date of that announcement, the Sen-
ate shall, subject to any further resolution, amend
the Bill to provide that the commencement date of
the Bill shall be a date that is no earlier than the
date of introduction of the Bill into the Parlia-
ment, or the date of publication of the draft Bill.

It is interesting that the government has been
prepared, albeit reluctantly, to use retrospec-
tive legislation to close the loophole with
regard to the Lamesa case, but when it comes
to the abuse of EBAs, the government, via
the Assistant Treasurer, has not been simi-
larly enthusiastic.

Let me explain. On 30 June 2000, at the
end of a long parliamentary session, Senator
Kemp put out a half-hearted response to the
growing problem of the abuse of EBAs. In
what is becoming increasingly known as
‘Costello’s bottom-of-the-harbour’, the abuse
of EBAs has so far cost the community $2
billion, and we are still counting. One would
have thought that tax avoidance on such a
massive scale would require swift, assertive
and, arguably, retrospective legislation to
deal with the problem—but not from this
government. Senator Kemp’s press release
refers only to prospective legislation, and is
half-hearted at that. The government’s pro-
posal is to remove the deductibility for con-
tributions made to both onshore and offshore
non-complying superannuation funds, effec-
tive from 1 July this year—never mind the
fact that, on a recent Sunday program expose
into the use and abuse of private binding
rulings, a tax expert, Mr Hank Wamstecker,
claimed that over $2 billion alone had been
put into New Zealand non-complying super-
annuation schemes. So we have the govern-
ment saying, ‘It is all right to rort the tax
system to the tune of billions of dollars prior
to 30 June, but you can’t do it after 30 June.’
The government, though, has made no effort
to attack those EBAs that use complying su-
perannuation funds as part of their tax avoid-
ance schemes. The best the government could
do was for Senator Kemp to ask the Aus-
tralian Taxation Office to review the interaction
of the income tax and fringe benefits laws to
ensure that employee benefit trusts and em-
ployee share plans are taxed appropriately.

Why is this the case, you may ask. Why is
the government in one case, although reluc-
tantly, willing to use retrospective legislation
but in a second, far worse case of systematic
rorting of the tax system via the EBAs, an-
nouncing a half-baked prospective legislative
response? The answer simply lies in the main
players behind the use and abuse of EBAs
and their close connection with the Liberal
Party. No-one can ever accuse the Liberal
Party of not looking after its mates, because
in this case we are at about $2 billion and
counting, as I have said. My colleague in the
other place Mr Kelvin Thomson has outlined
the main Liberal players in the abuse of the
EBA system. Given the government’s now
exposed reluctance to seriously tackle the
issue of EBA abuse, which is costing the
community billions of dollars, it is, I believe,
in the public interest to revisit what Mr
Thomson had to say, because it is now start-
ing to make sense. It is all becoming crystal
clear that this scandal—‘Costello’s bottom-
of-the-harbour’—is no more than a network
of Liberal mates and associates and that now
their party is in government they have been
given, in effect, a green light by this govern-
ment, through its inaction, to pillage and
plunder the taxation system with immunity.

A good starting point is to look at the role
played by the current New South Wales op-
position leader, Mrs Chikarovski, who, in
1996, facilitated a meeting between the firm
known as RPC Pty Ltd—let those initials be
remembered; RPC—of which her former
husband is a major shareholder and director,
and then Assistant Treasurer Jim Short re-
garding RPC seeking favourable private rul-
ings which the ALP suspects were with re-
gard to EBAs. It is interesting to note that Mrs Chikarovski’s defence in relation to why she facilitated this meeting was that she arranged the meeting so that RPC could discuss with the Assistant Treasurer of the day a favourable private ruling with regard to child care. Any reasonable person could well ask why a firm that specialises in remuneration planning would require, at short notice, a meeting to discuss with then Senator Short the issue of a PBR with regard to, of all things, child care. Why couldn’t RPC simply discuss the matter with the Australian Taxation Office? Child care hardly rates up there as a complex tax issue that requires the involvement of Mrs Chikarovski to facilitate a meeting with the Assistant Treasurer. It would involve Mrs Chikarovski, though, when her husband’s firm was seeking favourable PBRs with regard to EBAs that were worth hundreds of millions of dollars to RPC’s clients.

This was the real reason, in our submission, for the meeting and, despite constant denials by Mrs Chikarovski, the government has yet to provide any information to the contrary. If the government wants to table any notes or minutes of the meetings that were held between RPC and then Senator Short, we would welcome them. But we suspect the government will never reveal the truth behind that meeting between RPC and then Senator Short because it is our view that at this meeting the government was more than helpful in ensuring that RPC received every assistance that it required. This is a very telling point because—for those who do not understand how the private binding ruling system operates—private binding rulings are, in effect, signed off by a tax officer acting on the commissioner’s authority. So why did RPC, a private company, require a one-on-one meeting at short notice with the Assistant Treasurer if it was not to try to use the access that Mrs Chikarovski facilitated to seek political support for RPC’s tax minimisation schemes? They certainly were not tax minimisation schemes with respect to child care; they were aggressive EBA schemes that RPC specialises in. By Mrs Chikarovski’s own admission, and that of her ex-husband, her former husband runs a company, RPC Pty Ltd, that is involved in tax minimisation schemes. This is nothing short of influence peddling for Liberal mates and associates to get political support for the bottom-of-the-harbour type of schemes fully endorsed by Mr Costello and the government. Why else is the government so silent on this massive tax abuse? Why else did we get nothing but a half-hearted effort by the Assistant Treasurer to be seen to be doing something about the $2 billion tax avoidance horse that had already left the stable? It is, I submit, because this government is a mates’ rates government, fully funded by ordinary taxpayers for the benefit of those who wish to peddle influence within the Liberal Party.

We have seen the increasing debacle that passes for the private bindings rules system which is presided over by this government. As John Lyons of the Sunday program described it, it is a ‘tax club’ where the currency is a device called a private binding ruling. If you get one of these in your favour from the Australian Taxation Office you are very lucky. If you get more than one, you could become very rich. And who has been at the forefront seeking numerous PBRs? None other than RPC, the same firm that Mrs Chikarovski claims she only sought a meeting for so that a PBR could be sought in relation to child care. We on this side of the Senate therefore want to know what private binding rulings, and how many, the Remuneration Planning Corporation received after the change of government from 1996 onwards and how many private binding rules RPC received with regards to EBAs after that meeting with then Assistant Treasurer, Jim Short.

A related issue in respect of EBAs is the ATO’s response via taxation ruling TR 1999/5. This ruling outlines the circumstances in which FBT should be applied to certain EBAs. But it also provides for a massive ‘out’ clause for those who are already members of the tax club and have a PBR. The ruling states that it does not apply to taxpayers who have already received a private binding ruling and have implemented the arrangement ruled on in substantially the same terms as the ruling. The interesting point that arises here is that, when this ruling was issued in draft form in October 1998, no
mention was made of the subsequent ‘out’ clause that would be given to those who already held a private binding ruling. So, between the time of issuing the draft ruling and the subsequent issuing of the final ruling, members of the tax club, such as the clients of RPC, no doubt secured access to the ‘out’ clause. We on this side ask: who in the government was lobbied after the release of the ATO draft ruling to have an ‘out’ clause placed in the final ruling? Did RPC once again approach the government seeking favourable treatment? Did Mrs Chikarovski use her influence again to secure a meeting for her ex-husband’s firm, who she admits actively markets tax avoidance schemes? Why was the draft ruling changed to protect members of the tax club?

Senator Ian Campbell—Mr Acting Deputy President, I raise a point of order on the standing order on relevance. I have listened very carefully to Senator Cook’s so-called speech in the second reading debate which he is reading verbatim from a set of notes clearly prepared by somebody else. I have carefully read the details of this bill around which this speech in the second reading debate is based. There is absolutely no relevance attaching to the issues that Senator Cook has spent the last six minutes on. He has tipped a bucket over Mrs Chikarovski, who is not in this place; he has tipped a bucket over Jim Short, who is no longer in this place; he is attacking people who are unable to defend themselves in this place. If he wants to tip buckets during a speech in the second reading debate, he should, at the very least, have some scintilla of relevance to the bill before this place. Otherwise, I would invite him to either have the guts to go and say what he is saying about these individuals outside this place—and then be sued for defamation, I would suspect—or put his name on the adjournment list and make this speech during the adjournment debate. But he cannot make this speech when we are considering Taxation Laws Amendment Bill (No. 11) 1999, because the items that he has spent the last six or seven minutes talking about have no relevance whatsoever to this piece of legislation.

Senator COOK—On the point of order, Mr Acting Deputy President: I am coming to the point of the amendment to the second reading motion that is being circulated in the chamber under my name, an amendment which would add to the motion a series of three points relating to delay in bringing the legislation forward, problems that have come to light in administration and the reluctance of the government to tackle tax avoidance.

The ACTING DEPUTY PRESIDENT (Senator Sherry)—Order! Senator Campbell!

Senator COOK—I take the interjection by the parliamentary secretary. If his point of order is that I have not yet moved it, then I will move it immediately and bring relevance to the debate if that is what his concern is. As for his remarks that I am attacking people who are not in the chamber, I am certainly exposing what I regard as a serious tax rort by people who are not in the chamber. If the only definition of being able to expose serious tax problems were that the people must be in the chamber, then very little would be done to expose those problems at all. It is a nonsense to pretend that you cannot criticise people who are outside of the chamber, and the medium of parliament exists for that reason.

Senator Ian Campbell interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Campbell!

Senator COOK—So, Mr Acting Deputy President, the point of order does not stand and I think you should rule that way.

The ACTING DEPUTY PRESIDENT—Thank you, Senator Cook. I do not uphold your point of order, Senator Campbell.

Senator Ian Campbell—But the senator was being irrelevant.

The ACTING DEPUTY PRESIDENT—Senator Cook is talking about the subject matter of the bill, which relates to tax matters and tax administration, so I do not uphold the point of order.

Senator COOK—Thank you, Mr Acting Deputy President. I had, in replying to a recent point of order, indicated that there is an
amendment that has been circulated in the chamber. I do not propose to read it but, in order to perhaps meet the expressed concerns of the parliamentary secretary, I now note that and propose to formally move that as an amendment to the second reading motion. It does, as I have said, bring to the notice of this parliament the delay in the government's coming forward with this legislation, problems that have recently come to light in the administration of the Australian tax office—

The ACTING DEPUTY PRESIDENT—Order! Sorry, Senator Cook. Senator Murray?

Senator Murray—My apologies, Mr Acting Deputy President, just on a point of information: I have not got the amendment that Senator Cook is referring to.

The ACTING DEPUTY PRESIDENT—It has been circulated. You have not got a copy so we will have one circulated to you. I am not sure we have points of information in the standing orders, Senator Murray. I think the issue could have been dealt with by a referral to, or a conversation with, one of the clerks rather than by a point of order.

Senator COOK—Whatever are the difficulties about the circulation, my understanding was that the amendment was circulated in the chamber. I apologise to Senator Murray if he did not receive it, but that was a legitimate understanding of mine. I notice from his demeanour that he now appears to have it, and therefore I formally move:

At the end of the motion, add:

“but the Senate expresses its concern with:

(a) the delay by the Government in bringing this legislation before the Parliament;
(b) problems which have come to light recently to the administration of the Australian Taxation Office; and
(c) the reluctance of the Government to effectively tackle tax avoidance in Australia”.

Let me conclude my other remarks in the second reading debate on this bill. I was speaking about RPC, the company that sought, through the agency of the leader of the New South Wales Liberal Party, Mrs Chikarovski, an urgent meeting with the then Assistant Treasurer, Jim Short. Let me move on from that point. Back in the early 1990s, RPC was used by none other than former senator Warwick Parer to advise his coal company, QCMM Pty Ltd, on how to establish an employee share arrangement. This subsequently became known as—

Senator Ian Campbell—I rise on a point of order, Mr Acting Deputy President. The honourable senator opposite is now dragging former senator Warwick Parer into this matter and tipping a bucket over yet another former coalition senator. I again ask you to suggest to the senator that this matter has no relevance to the bill before the Senate. You cannot simply, because the word ‘tax’ is involved, say that it is linked to the Taxation Laws Amendment Bill (No. 11) 1999. This bill amends alienation of real property through interposed entities. There is an extension of a period for certain gifts under chapter 2. It deals with income of non-resident sportspersons, clubs and associations, and it contains some technical amendments. It has absolutely nothing to do with the items that Senator Cook is raising, and I ask you once again, Mr Acting Deputy President, to rule on this point of relevance.

The ACTING DEPUTY PRESIDENT—As I said earlier, the issues that Senator Cook has dealt with and is dealing with are relevant. If you look at the title of the bill, you will see that it relates to matters of taxation. Senator Cook is being relevant to that, and I do not uphold your point of order.

Senator Ian Campbell—I rise on a point of order. You are now ruling relevant a personal attack on a former senator over his personal tax planning affairs under the guise of the Taxation Laws Amendment Bill (No. 11) 1999—is that what you are doing? Because, if so, it is a ruling that stretches the bounds of credibility.

Senator COOK—Mr Acting Deputy President, on the point of order: this is a very aggressive intervention by the parliamentary secretary that borders on an effort to intimidate the chair, which is, of course, exceedingly unparliamentary.

Senator Ian Campbell—I am not going to have you stand there and attack former senators on their private affairs under the
guise of a speech on the second reading of the Taxation Laws Amendment Bill (No. 11).

Senator COOK—I do suggest that the parliamentary secretary get a grip on himself because he is coming close to misconducting himself, and I do not think he would be pleased to have had that on the record. I am simply using examples that are, in my view, clear examples of where tax avoidance exists and ought to have been acted on by the government. If that is embarrassing to the parliamentary secretary, to the Liberal Party or to the government, then so be it. The whole point of this is that they should have done something about it. I divine that the agitation being expressed in this chamber has nothing to do with the standing orders or my relevance but has to do with the uncomfortable nature of this for the party opposite in government because of their reluctance to deal with tax avoidance.

The ACTING DEPUTY PRESIDENT—I do not uphold the further point of order. If you have a concern about my ruling, refer it to the President, Senator Campbell.

Senator Ian Campbell—Why don’t you say it outside? Go outside and talk about it.

Senator COOK—I have been very happy to say outside of this chamber a whole raft of things about this government being soft on tax avoiders. All I say to Senator Campbell, who now insists on distracting me from my main text, is that the record is replete historically with references to me attacking this government on its attitude to tax avoidance—and I make no apology for doing so. It seems to me to be an obligation on a member of this chamber to do so.

Subsequently, QCMM Pty Ltd became known as QCMM (ESP) Pty Ltd, and I detailed over two years ago how Senator Parer was able to transform 44c into $56,300 overnight through what must have been an RPC designed employee share plan. It is obvious that RPC has close Liberal Party connections, as evidenced by it advising Senator Parer’s coal company. What is more, it is obvious that no less than a federal minister, Senator Parer, had an intimate knowledge of the type of tax avoidance schemes that RPC specialised in—and you can be very sure that they had nothing to do with child-care tax schemes. Is it any wonder that this government has been loath to do anything about the systematic abuse of EBAs when one of its own former ministers was an active participant in an RPC devised employee share scheme? Is it any wonder that RPC was one of the first tax avoidance promoters to use its Liberal Party contacts to seek a meeting with Senator Short to gain the government’s political support for the issue of favourable PBRs, which RPC was abusing to mass-market blatant tax avoidance schemes? There are other issues that I could have covered, such as the commissioner’s role in the appointment of Nick Petroulias and the systematic failure of the ATO’s private binding ruling system, which goes far beyond RPC.

(Time expired)

Senator MURRAY (Western Australia) (9.58 a.m.)—I rise to address the issues concerned with the Taxation Laws Amendment Bill (No. 11) 1999. This bill deals principally with four matters. I wish to speak about only one of those matters because I am of the view that the remaining three matters are not controversial. Schedule 1 of the bill is designed to close off an opportunity for tax evasion exposed by a 1997 decision of the full Federal Court in the Commissioner of Taxation v. Lamesa Holdings. As a general rule, countries assert a right to tax persons who are residents of that country and non-resident persons who make income from sources within the country. That guiding principle may result in double taxation if a taxpayer makes income from a foreign source. It is the intention of governments around the world on grounds of equity to prevent double taxation wherever they can.

Australia is presently a party to 44 bilateral double taxation agreements, and 31 double taxation agreements will be affected by this legislation. These agreements provide a mechanism for avoiding double taxation. Double tax agreements are to be read together with the domestic taxation legislation of the treaty countries and if a conflict arises the double tax agreement prevails. The double tax agreements provide that:
Income from the alienation of real property may be taxed in the State in which the property is situated.

Real property is then defined to include:

... shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the States or of rights to exploit, or to explore for, natural resources in one of the States.

The point to note is that the inclusive definition of real property extends to shares in a company which has a direct interest in real property.

The Lamesa case involves Lamesa, a company created in the Netherlands, and a number of interposed entities. The result of a number of transactions was that Lamesa was assessed as making a profit of some $76 million in the 1993-94 financial year and $128 million in 1995-96. The transactions involved the sale of land. The full Federal Court held that the article of the double taxation agreements relating to the alienation of real property did not apply to indirect interests in real property. The court also found that it was probably the policy of the agreement to restrict the alienation of real property to direct interests because of the complexity that arises from extending the article to several layers of companies. Their Honours concluded:

It seems to us quite consistent with rational policy that the agreement is intended to assimilate as reality only one tier of companies rather than numerous tiers ...

The consequence was that the profits of Lamesa were not taxable in Australia; they were taxable in the Netherlands. However, the Netherlands chose not to exercise that taxing right even though they were entitled to. The principle arising out of the case is that the article relating to the alienation of real property is limited to direct interests in real property and does not apply to indirect interests. I must confess that I find it a little curious that it took a full bench of the Federal Court to convince the Australian Taxation Office of the ordinary meaning of the words used in the double tax agreement. As I previously outlined, the double tax agreement specifically refers to shares in a company, the assets of which consist of a direct interest in land. My concern about the legislation currently before us is that there is the potential for it to be perceived as treaty override. Treaty override occurs where a country amends its domestic law to alter the effect of a treaty to which it is committed and to which it is a signatory. I would digress for a moment and refer senators to the Bills Digest produced by the Parliamentary Library on this bill. That digest is an excellent piece of analysis on this issue and I would commend it to senators with an interest in the bill.

It seems to me, from a superficial examination of the existing provisions of the 31 affected double taxation agreements, that the new section is clearly aimed at removing the limitation contained in the article in every one of these treaties caused by the requirement that there be a direct interest in land. I use the words 'superficial examination' because it is easy, it is apparent, it is on the face of the argument. In other words, the government is indulging in a unilateral act to overturn a contractual international obligation in 31 double taxation agreements. That is not a precedent that we should pursue, it is not something we should be proud of and it is the wrong way to proceed.

I do not profess to be an expert in matters of international law, but it seems clear that the government is attempting to use domestic law to alter the effect of double taxation agreements in numerous tax treaties that we have with other countries. On the basis of that, we will be seen to be a country which is prepared to break a contract where it suits us. The Assistant Treasurer said in a letter to the Senate Economics Committee:

The proposed amendment will, however, simply ensure that the existing provisions of the alienation of property article of our double taxation agreements are rendered fully effective in achieving their intended purpose, addressing alienations of Australian real property.

With the greatest respect to Senator Kemp, the minister, I cannot understand how he can make a statement like that. The alienation of property provisions of the double taxation agreements are clearly limited to direct interests in real property. To suggest that by extending those provisions to indirect interests in real property you are simply ensuring that the provisions of the double taxation agree-
ment are fully effective in achieving their intended purpose completely ignores the ordinary meaning of the words contained in the double taxation agreement, words that have been confirmed in the decision of the full bench of the Federal Court.

Therefore, what is to be seen as the motive behind this is a simple revenue grab. The proposed amendment expands Australia’s taxing right under the alienation of property article to include indirect interests in land. If the land is located outside Australia, the other country’s taxing right is limited to direct interests in land. The proposed amendment would directly conflict with the statement of principle by the full Federal Court in the Lamesa case that ‘the agreement must operate uniformly whether the reality is in the Netherlands or Australia’.

I want to make it clear that the Australian Democrats are not opposed to the principle of schedule 1 of this bill. What we are concerned about is that the government and the Senate are potentially passing a law which will amount to treaty override, will amount to a contractual breach. I do not think that is the sort of message we want to be sending to the 31 or so bilateral treaty partners.

The solution to the problem is that the government should be attempting to renegotiate the double taxation agreements if it is of the view that their provisions are not adequate to protect the Australian revenue base. I understand that that process of renegotiation is an arduous and time-consuming one, and so it should be. But the alternative approach, which is treaty override, can only result yet again in Australia’s reputation as a credible partner on treaty issues like this being damaged. We should not be seen as a country which overturns its international conventions or treaties.

In support of this concern, I refer to the OECD Report on Treaty Overrides published in 1989, which commented:

The Committee—that is, the committee on Fiscal Affairs—recognises that treaty negotiations, and renegotiations, are indeed time consuming but this is a factor which is common to all bilateral negotiations where a proper balance of advantage to both sides has to be found. Any unilateral abrogation of specific obligations destroys such balance and must be condemned.

Whilst the Democrats are supportive of the government’s attempt to close the loophole created by the Lamesa decision, it would have been our preference for the solution to have been negotiated with our treaty partners.

Another concern with the provisions of schedule 1 of this bill is the commencement date. The amending provisions are expressed to commence on 27 April 1998, which is the date of the Treasurer’s press release announcing the measure. Notwithstanding announcement of the measure on that date, this bill was not introduced into the House of Representatives until well over a year and a half later, on 9 December 1999. The Assistant Treasurer provided reasons to the Senate Scrutiny of Bills Committee for the delay in the introduction of the legislation. While I am prepared to accept those reasons, I cannot help but sympathise with taxpayers who have been forced to arrange their affairs on the basis of a press release for a period of more than 20 months.

The last matter I wish to raise was brought to the attention of both the Scrutiny of Bills Committee and the Senate Economics Committee by the Corporate Tax Association. That association expressed concern about the impact of the legislation on transactions that were already being progressed at the time the government announced the legislation. The association sought an amendment to the legislation to incorporate a transitional arrangement to the effect that where a course of action commenced prior to 27 April 1998, this can be established by objective verifiable facts and where the disposal occurs after 27 April 1998, the disposal be excluded from the amendments.

I concur with Senator Barney Cooney’s comments, in his capacity as Chairman of the Scrutiny of Bills Committee, when he said:

The Committee is only concerned with incomplete transactions for which there is objective evidence that they were under way at the relevant date. Exempting such transactions from the retrospective operation of this bill does not confer a privilege, it removes a disadvantage, particularly where such transactions, though incomplete, have become commercially irrevocable.
I regard the request made by the Corporate Tax Association to be reasonable. I have no doubt that it will have revenue implications. But revenue implications alone cannot be sufficient as a reason for denying fairness to taxpayers. I remind those people in the government and in the tax office that, if you set a precedent for overturning international treaty obligations on this basis, no taxpayer who is affected by double taxation agreements or any other treaty consideration can ever be content that those treaties or conventions apply to domestic law and will not be overturned arbitrarily at the behest of the tax office and at the behest of the government. It is simply bad practice and will set uncertainty into our relationships both internationally and domestically.

The two amendments that I will move in the committee stage will give effect to the desire on the part of the Australian Democrats to provide taxpayers with a fair transitional provision, so that those taxpayers who were arranging their affairs on the basis of the law prior to 27 April 1998 can continue in reliance on that law. I reiterate that the Australian Democrats will nevertheless support the passage of the bill. Our amendments to improve the fairness of it are an attempt to ameliorate what we regard as bad practice. We are hopeful that the domestic law will be brought into line with the international law as soon as possible. It is not wrong for the government or the ATO to consider that indirect interests should be dealt with on the same basis as direct interests. Our concern is that you have put the cart before the horse. You should first have got international treaty agreement to do that and then changed the law. Our second concern is with unfair retrospectivity.

Having dealt with the bill at length, I will now deal briefly with the Labor Party amendment on which Senator Cook expressed numerous observations. The Labor Party have put three propositions in their second reading amendment. The first proposition is that:

... the Senate expresses its concern with:

(a) the delay by the Government in bringing this legislation before the Parliament ...

In the light of remarks I have made that it has taken from an announcement in April 1998 to now, August 2000, for this bill to be brought before the Senate, that is a legitimate complaint because of the uncertainty and the impact upon the people affected by the legislation. The second point the Labor Party make is that:

... the Senate expresses its concern with:

(b) problems which have come to light recently to the administration of the Australian Taxation Office ...

Those words can be non-controversial or extremely controversial, depending on who is uttering them and what they mean by them.

Since its very constitution 100 years ago, the Australian Taxation Office has always had problems in administration. It is a natural consequence of being such a large organisation to administer. It would be very surprising to find an organisation of that size which does not have problems. You then have to ask: what do they mean when they say ‘problems which have come to light recently’? If the problems which have come to light recently relate to the pressure that the tax office has been put under by the most considerable change to our tax system ever seen in Australian history, then I think we need to have some sympathy for them and have some consideration for the stress under which they have been put. I certainly would not be at all surprised that stresses and strains have shown. In fact, I wish to go the other route and say that, given the stress they have been under, they performed rather well.

The third issue relates to the allegations and the problems with the whole question of product rulings and all the events surrounding that. As everyone in the Senate knows, there has been a Senate select committee inquiry into that, but there continues to be controversy over past administration and present administration of those areas. I, and no doubt the Treasurer, the Assistant Treasurer and the shadow ministers, get regular letters from investors in various agricultural schemes and other commercial schemes who are extremely aggrieved by the way in which they feel they have been dealt with by the ATO. Those problems are still being resolved at the court
level. To some extent they are still being resolved by a reorganisation and a tightening up in the ATO. Therefore, I would not paint those in a light which dismisses those concerns; but neither do I feel that either the government or the ATO is failing to pay attention to or failing to improve the situation. There is a way to go but I am certainly not of the opinion that bad practices have simply been allowed to continue.

I thought the select committee’s report, under a very capable chair at that time, Senator Murphy, was particularly to the point. However, problems have emerged since and I think the government and the ATO need to give all the attention and the energy that is necessary to resolve those situations. I am quite sure that we should continue to pay attention to improvements in the administration of the Australian Taxation Office.

In summary, the Australian Democrats could agree with (b), but that would depend on the perspective and the way in which you expressed it. Provided the ATO and the government are attending to problems, and they are trying to improve matters and to change systems which have been found to be faulty or not tight enough, then we are content that matters are progressing as necessary. Of course, some of the more important aspects of the bill relate to the integrity measures concerning the alienation of Australian property by non-residents; income tax deductions for gifts and extension of the period of deductibility for certain donations; income tax exemption termination for non-residents, sportspersons, clubs and associations; and capital gains tax technical amendments and corrections of errors. Of course, some of the more important aspects of the bill relate to the integrity measures concerning the alienation of Australian real property by non-residents. The provisions seek to overcome the decision in the Lamesa Holdings case in 1997. This case held that no Australian tax was payable on a profit earned by a non-resident from selling or alienating its interest in an Australian real property asset. In that particular case I think it was a mine. The reason no tax was payable was that the interest was not held directly but rather through a chain of interposed companies. Rather than selling the interest in the mine, one of the interposed companies was sold. Thus, technically, the non-resident was not selling Australian real property but simply an interposed company.

This ruling was inconsistent with Australia actually being able in practice to collect the tax that it is allowed to collect under the various double taxation agreements. The bill therefore includes a new provision which will act as an interim measure, ensuring that the holding of Australian real property through a chain of companies or other entities will not be effective in avoiding tax on effective dispositions of that Australian real property. It is interim in the sense that, once a specific provision has been negotiated in a double taxation agreement, the provision no longer applies. The court decision posed a significant threat to the Australian revenue base and the
type of structure that could be used to avoid tax on all Australian real property.

But the real problem has been that the case was in 1997 and the government has taken until August 2000 to really deal with this issue. That goes to the fundamental question, as I think Senator Murray was saying with regard to our second reading amendment, about the reluctance of the government to effectively tackle tax avoidance in Australia. It has been three years since the case. I think Senator Murray said it was in April 1998 that the announcement was first made about this proposed legislative change. It is outrageous that the government should take this long to deal with a taxation matter which does clearly have the capacity to have a significant effect on revenue. Yet it would seem that when it comes to the ordinary mums and dads—the PAYE taxpayers of the country—there is no such luck. There is none at all. They get jumped on very quickly.

We will be supporting the measure, although it is this aspect of the bill which really is retrospective. But what option is the taxation system of this country left with? I know that Senator Murray is proposing to move some amendments in the committee stage that limit the retrospectivity of the bill. That is something I understand we will not be supporting.

Our second reading amendment goes to a whole range of issues with regard to how this government has acted in respect of protecting the tax revenue of this country. A clear position that has been developed over the life of this government is that they will take a soft approach where the large, wealthy taxpayers are in the box seat. But no such approach is taken when it comes to the PAYE taxpayers and small investors. The government has sung its song loud and proud about how it has reformed the tax system and has been out to stamp out things like the black economy and tax avoidance, but the record speaks a different tune. The major change to the tax system through the introduction of the GST was supposed to have a major impact on the black economy. Yet, as recently as a few weeks ago when I was sitting on a hearing of the Economics Legislation Committee dealing with two other pieces of legislation, from the evidence provided to that committee in respect of the illegal tobacco trade—which operates in a true black economy sense—it was clear that the change to the tax system as a result of the GST will have no effect whatsoever on that and nor will it in a lot of other areas. In fact, it is likely that the black economy will flourish under the GST tax system. In other countries that have VAT or GST tax systems, the evidence has clearly shown that has been the case.

Some of the other problems associated with the matter relate to the have-nots in the tax system. The private binding ruling system is a very interesting system to have in a tax system. Although the tax office has said the private binding ruling system is open to anyone and everyone, this would appear not to be the case. It is extensively used by high wealth individuals and some privately owned companies who seek a ruling from the tax office with regard to how the tax laws will be applied to their particular financial arrangements. I have had difficulty understanding why there has to be a private binding ruling system. I chaired the references committee that conducted an inquiry into the operation of the Australian Taxation Office, as a result of which on 29 May the Taxation Commissioner announced a review of the private binding ruling system. Mr Tom Sherman conducted that review. I understand from a brief story in the Australian Financial Review that the Taxation Commissioner now has Mr Sherman’s report, and he is going to recommend to the Taxation Commissioner that a private binding ruling should be made public in part. I agree with that. For the life of me I cannot see why a taxpayer who might have the financial wherewithal, therefore having a financial advantage over another taxpayer, is able to have a private ruling.

We have seen many problems with private binding rulings that have been run over to mass marketed investment schemes. The Taxation Office has clamped down on a significant number of the mass market investment schemes because of the loss of revenue. Many of those investment schemes have affected small retail investors. From reports from some senior tax officers, it is interesting to note some of the matters they watch for in
making a judgment as to whether or not an investment scheme should be allowed tax deductibility for certain provisions contained within the investment scheme. Insofar as many of them are concerned, none of those that are currently being marketed today would meet the requirements of the Australian Taxation Office. During the course of the Senate inquiry it was submitted that there are private binding rulings that give effect to the same sets of financial arrangements as many of the mass marketed investment schemes operate under. That highlights the problems within the Taxation Office and its capacity to deal with so many of the issues that it has to deal with. I agree with Senator Murray. In any large organisation dealing with an issue such as taxation, there will always be problems. The government of the day has a responsibility to ensure that the tax office has the capacity and the direction, in terms of policy, to ensure that its operation is consistent and equitable across the Australian community. But that is clearly not the case.

The Taxation Office made some announcements on changes to the tax system when it introduced the product ruling system. This was intended to address some of the questions that went to mass mode investment schemes and, in part, it has probably been successful. The tax office’s approach goes to the very heart of consumer information. Let us take the example of a retail investor who might want to invest in a mass marketed scheme, be it a forestry plantation development, a crocodile farm, a tea-tree plantation, a vineyard, or whatever you like. He is presented with a prospectus. Most of the prospectuses for these investment arrangements are usually glossy and they tend to come out towards the end of the financial year when there is limited time for a person to make a decision about the investment. They are deliberately pointed towards a tax effective benefit for the investor.

If you want to check on whether or not that investment scheme has applied for a product ruling, you cannot do so. You can ring up the tax office until you are blue in the face and ask, ‘Has the Murray-Darling vineyard applied for a product ruling in respect of the investment scheme or arrangement that is in place?’ and the tax office will say, ‘We can’t tell you because that is commercial-in-confidence.’ I have actually tried this. I rang up about a forest plantation development in my home state. The advertisement in the newspaper said something to the effect of, ‘Be the first cab off the rank in terms of the benefits for the potential investor—100 per cent tax deductibility on administration costs.’ I thought, ‘That’s good’ and asked for the prospectus. It said, ‘We have applied for a product ruling from the Taxation Office.’ I thought I would check that. I rang the Taxation Office and asked, ‘Can you tell me whether the particular plantation company has applied for a product ruling?’ The reply was, ‘No, we can’t tell you that.’ That is another example of how this system is clearly not working.

I go back to the private binding ruling matter, which the Economics References Committee dealt with in part. There have been all sorts of claims and it would appear—I only say ‘appear’—that there is a consistent stream of evidence coming through that keeps strengthening the claim that the Australian tax system very much favours the wealthy. Senator Cook referred to the RPC matter which was reported in the Financial Review of 8 August where high earners have claimed tax deductions of up to $1.5 billion. We can compare that with a case which the Economics References Committee dealt with where a woman, who, it was claimed, owed the tax office some $5,000, was pursued relentlessly. There are many other examples. This particular woman could get nowhere until it was brought to the tax office’s attention that she was going to commit suicide.

It is that sort of approach that I question very seriously. The government has a responsibility to ensure that the tax office has the capacity to deal with the issues confronting it. It is fundamental to the Australian public that they are all equal in respect of taxation law in this country. It is not adequate for some people, because of their financial capacity, to receive different treatment from the Taxation Office and be treated differently under the taxation laws of this country. When we deal with taxation arrangements, we must
deal with them consistently. I hope at the end of the day that the government will give the Taxation Office the direction and the wherewithal, in terms of staff requirements and funding, to enable it to put in place a fairer tax system, because it is clearly not fair at the moment.

Another example, which has been quoted publicly, is where high wealth individuals or companies who have had a tax assessment conducted upon their business find that the Australian Taxation Office assessment says that they owe hundreds of millions of dollars in taxation and they are able to enter into a settlement process and to negotiate a settlement outcome. I have to say that, on the face of it, that appears totally unfair when you compare it with the treatment of other taxpayers—if you like, PAYE taxpayers. As I said, the Economics References Committee received many examples of appalling treatment of taxpayers.

Finally, I note that, in a recent Sunday program, the former Tax Ombudsman, Mr Peter Haggstrom, made a comment that he had received threats from senior tax officials in regard to some of the findings that he had made. That is a matter that must be of great concern to the government. I think that the government ought to conduct its own investigation on those matters. *(Time expired)*

Senator SHERRY (Tasmania) (10.38 a.m.)—The Taxation Laws Amendment Bill (No. 11) 1999 before the Senate contains four basic policy areas. The first relates to integrity measures of the alienation of what is known as Australian real property by non-residents. This change is related to a decision in what is known as the Lamesa Holdings case, which was determined in 1997. My colleagues Senator Cook, Senator Murphy, and Senator Murray on behalf of the Democrats, have gone into this particular case in some detail to explain what occurred, so I will not repeat what they have said in that respect. It is important to note, however, that the decision of the court posed a very significant threat to the Australian revenue base because if the type of structure identified in that case were adopted in any widespread way, it would mean that the taxation of real property in Australia would become highly problematic. That clearly represents a major challenge to the integrity of the Australian taxation system.

We note that the Treasurer waited many months before issuing a press release on 27 April 1998 in which he announced the intention to legislate to overcome this Lamesa decision. I would stress that perhaps it is a complicated area, and a time delay until 27 April 1998 in itself might be excusable. However, we have had a further significant time delay since that announcement on 27 April 1998. Here we are in August of the year 2000 dealing with the legislation that flows from that announcement. That is a disgraceful situation. The Labor Party knows from being in government that there are of course time delays associated with tax legislation. It is not an uncommon practice for there to be time delays. But a time delay of this length is quite extraordinary—from 27 April 1998 through until August of this year. That means, of course, that this legislation is very retrospective.

Again, retrospective tax legislation is not unusual. In cases like this, it is accepted in principle that there will inevitably be elements of retrospectivity, but two years retrospectivity is very significant indeed. It could be, of course—and I suspect at least in part—that the delays have occurred because of the government’s preoccupation and obsession with the introduction of the GST. But the issues relating to the GST are no excuse for the very slack time frame which has occurred in what is a very major crackdown on not just a hole but an enormous cavern in the Australian tax system. It is somewhat ironic, I think, that the Liberal-National Party claim that the GST in part at least is being introduced to crack down on tax evasion—a wrong claim, I would submit. Nevertheless, that is a claim they make, in part at least, for the justification of a GST. Yet, because of that, we have left outstanding a gaping hole in the Australian tax system for a period of two years.

It is not my intention today to go into issues relating to the GST. They are well canvassed and we will continue to canvass them in other tax legislation. This matter of retrospectivity is an important one. It is dealt with by the Senate Scrutiny of Bills Committee,
which is chaired by my colleague Senator Cooney—I might say a very effective chair of that committee; it is a very important committee—and it draws to our attention that the Senate has a resolution. It was moved on 8 November 1988. As I recall, it was moved when the Labor Party was in government and the now government was obviously in opposition. Of course, one of the motivations of the now government for supporting the resolution of the Senate was because of their concern about the number of retrospective tax changes and the length of time that that retrospectivity took. This resolution of the Senate of 8 November 1988 states:

... where the Government has announced, by press release, its intention to introduce a Bill to amend taxation law, and that Bill has not been introduced into the Parliament or made available by way of publication of a draft Bill within 6 calendar months after the date of that announcement, the Senate shall, subject to any further resolution, amend the Bill to provide that the commencement date of the Bill shall be a date that is no earlier than either the date of introduction of the Bill into the Parliament or the date of publication of the draft Bill

The committee concluded:

Pending the Treasurer’s advice, the committee draws senators’ attention to the provision, as it may be considered to trespass unduly on the personal rights and liberties in breach of principle 1(a)(i) of the Committee’s terms of reference.

I do not know whether the Treasurer or the Assistant Treasurer responded to this concern, and I think the Assistant Treasurer should deal with this matter in his response to the contributions on this legislation. The legislation deals with three other policy areas. This is a bill that deals with taxation law, and the administration of taxation is obviously very important. My colleague and deputy leader in the Senate, Senator Cook, has moved a three-part amendment, and one part goes to the administration of taxation law in this country. In that context I want to make some further remarks. Obviously we can amend the tax laws to correct holes that occur in our taxation fabric, but legislation is one thing; the effective administration of tax law is quite another. It is a very important aspect of revenue collection in this country.

Recently, at least three matters relating to the tax office have been brought to the public’s attention which indicate to us that not all is well in the tax office at the present time. I will refer to three matters: firstly, the now infamous involvement of the Taxation Office and particularly the Commissioner of Taxation, Mr Carmody, in that letter on the GST that was to be sent to Australian households. I do not intend to go into detail about that today. The issue has been well canvassed in the Senate by my colleagues, in particular our leader in the Senate, Senator Faulkner, and Senator Ray. But I would just note that this was a major error made by the tax office in the implementation of the GST. It is a very major issue and a very major failing, and I think that in his more honest moments the tax commissioner would even concede that.

The second area of concern relates to the so-called Petroulias case. This is a matter before the courts and, again, I do not intend to go into any detail. I think that, quite properly, the matter should be left aside, but I note that serious allegations have been made by Mr Petroulias about the operation of the tax office. We will see what occurs in the outcome of the court case and the evidence provided there. So that is the second area of major concern about the tax office that has been raised in recent times.

The third area involves allegations made by the former tax ombudsman, Mr Haggstrom, and I do want to go into those in a little more detail. In an article in the Australian of Friday, 7 April 2000, Mr Haggstrom raised a number of matters about the problems within the tax office and in the administration of tax law in this country. I think it is a very informative article. He refers to issues relating to controlling superannuation schemes. He also refers to matters relating to the superannuation surcharge, and Mr Carmody had vowed to clamp down on avoidance in this area in September of 1996. He also went on to refer to investigations by the ATO and the alleged about-face of the ATO on fringe benefits tax exemptions for child care. He highlights that, on the one hand, when the Labor government was in office certain types of arrangements in this area were encouraged and that, under the now
Liberal-National party coalition, certain types of practices in this area are discouraged and there is a contradiction in the approach by the ATO to this particular area.

These are very strong criticisms by Mr Haggstrom of practices within the tax office. As I said, Mr Haggstrom is a former tax ombudsman. He was a tax ombudsman for 3½ years. These are observations and criticisms by a person who I think certainly is in a position to know and who dealt closely with the tax office in its treatment of taxation matters in this country. But Mr Haggstrom did not stop there. He went further and made some other, I think, more serious allegations. On the national Nine Network Sunday program of 23 July 2000, in the context of a special report on the tax office, Mr Haggstrom was interviewed and questioned by the reporter about the performance of the tax office and about some of the activities of senior tax office staff. Mr Haggstrom said:

You know, some senior people pointed out to me—

this is in reference to the tax office—

that—essentially—that unless I pulled my head in, my funding could be undermined.

The reporter asked:

Who were those senior people?

This is people in the tax office. Mr Haggstrom said:

Oh, I won’t mention their names, but I thought it was a, you know, pretty appalling performance and I... as I said, it just stiffened my resolve to do the thing properly. It indicates, I think, some of the arrogance that, you know, one finds in some of these people.

The reporter asked:

But in effect, they were making a threat of sorts, weren’t they?

Mr Haggstrom: Oh, obviously intended to put me off my stroke, so to speak.

So here we have a former tax ombudsman, a man who was in that position for some 3½ years, alleging that some officers in the tax office were threatening him in the carrying out of his public duty. These are most serious allegations and made on the public record. They are not allegations I am making; they are direct quotes from media reports.

I note that, following these allegations by Mr Haggstrom, a former ombudsman, Ms Philippa Smith, did support Mr Haggstrom’s claims that there are deep-seated problems within the tax office administration, particularly in respect to private binding rulings. I do not have time to go into that today, and my colleague Senator Murphy and others have touched on it. There have been allegations by Mr Haggstrom, and there has been some support from the former ombudsman, Ms Philippa Smith. I believe that the current tax ombudsman, Mr Ron McLeod, has entered into the debate and said that the allegations warrant investigation. Apparently, the ATO does have some input and some say in the funding arrangements of the tax ombudsman.

There must be minutes and correspondence in relation to the activities and meetings that occurred and the concerns that Mr Haggstrom has expressed about some officers in the tax office. I think it is important that this matter is cleared up. The allegations were made not by an ordinary taxpayer but by a person of very senior standing who has intimate knowledge of, and an intimate working involvement with, the tax office, and they were made about senior officers in the tax office. Those officers have not been named, and this matter should be thoroughly investigated by either the Treasurer or the Assistant Treasurer, Senator Kemp—who, as part of his duty statements, is required to oversee tax administration in this country. I am glad Senator Kemp is in the chamber today, and I hope for some further information on this matter.

I did ask Senator Kemp on Monday in question time about the allegations made by Mr Haggstrom. I asked whether his funding had been threatened by officers of the tax office, whether the government is taking this matter seriously, and whether the Assistant Treasurer—and the Treasurer, for that matter—has commenced an investigation about the allegations. This is a former tax ombudsman making these very serious allegations.

Regrettably, as comes to pass so often with respect to Senator Kemp’s responses, we do not know whether or not an investigation has commenced. I would have thought it a matter
of public duty and responsibility, given the seriousness of the allegations, for Senator Kemp’s office or the Treasurer’s office to make inquiries about what the allegations are and what records, if any, exist in support of at least some of Mr Haggstrom’s public comments. If the allegations are not correct, I assume that the tax commissioner, or at least some tax officers, will be considering or taking legal action against Mr Haggstrom. These comments were made on the public record and, if they are true, they are very serious and, prima facie, they should be investigated, challenged and answered. I know the tax commissioner has responded to the allegations at least in part, but the government, Senator Kemp and the Treasurer, Mr Costello, simply cannot ignore what are very serious matters indeed.

I observe that Senator Kemp is in the chamber, and he is to respond. The opposition would like to know, in the public interest, whether inquiries have been initiated by Senator Kemp or the Treasurer about this matter. If they have not initiated inquiries about such serious allegations, why have they not? If they have initiated inquiries, what are the results of those inquiries into the allegations made by Mr Haggstrom? I think it is regrettable that there has been a series of incidents in recent times involving the tax office and the administration of tax law. They are serious matters, and I do hope that the second reading amendment moved by my colleague Senator Cook, which in part goes to the administrative problems within the tax office, is passed by the Senate as a warning to the government that, in this area and particularly in the tax office, there is a need for some improvement in the administration of tax law in this country.

Senator KEMP (Victoria—Assistant Treasurer) (10.58 a.m.)—Let me now close the second reading debate and deal with some of the matters which have been raised. Many of the comments made by opposition senators have nothing to do with the bill before us. Senator Ian Campbell made that point. In fact, there is not even a tenuous connection with the bill before us. As usual, the opportunity was taken by members of the opposition, led by Senator Cook, to indulge in a sleazy attack on a range of individuals. I am surprised that Senator Cook, who was a senior minister—

Senator Jacinta Collins interjecting—

Senator KEMP—No, I don’t, Senator. If you examine my record, I think you will find that I am very cautious about attacking the reputations of people who cannot defend themselves. It is quite a different matter for people to come into this chamber and deliberately traduce the reputations and the good names of people who are not here to defend themselves.

It is surprising that a former senior minister of a government would act in this manner. It is one thing for Senator Conroy to come in here and make a complete dope of himself and attack people—that is par for the course with Senator Conroy; we deplore it, but we expect that sort of behaviour from him—but it is surprising that someone of Senator Cook’s standing would also be tempted into this type of sleazy behaviour. I choose those words advisedly. Senator Cook’s remarks, by and large, had nothing to do with the bill before us. Senator Cook tried to build a case that somehow special deals were being done, and I deplore his attacks on individuals, but let me just mention the reference to Senator Short. Former Senator Short is a close friend of mine, and I find it particularly deplorable. Senator Cook would know former Senator Short well and would know that the former senator always conducted himself with the greatest of propriety. Let me put that on the record. Senator Cook is quite happy to walk all over the reputations of people. In the old days, Senator Robert Ray used to have a famous saying—‘10 yards to courage’. If you want to attack an individual, let us see how sure you are—just walk outside this chamber and say the same thing. It is as well that Senator Cook did not do that.

I am mindful of the way Senator Cook has raised issues about others. Let me raise an issue regarding Senator Cook. Senator Cook led the Labor Party to oppose this government cracking down on R&D syndicates. The Labor Party put out the welcome material for tax avoiders; it made paying tax optional for many people. This was never closed down by the Labor government. It was closed down by
this government but opposed in this chamber, and opposed by Senator Cook. Why would Senator Cook have opposed this? I wonder. It would be very interesting if Senator Cook, rather than traducing the reputations of others, were to explain his own behaviour. I have mentioned the appalling speech by Senator Cook. I believe such a speech must have been written by him—I do not believe any of his advisers would have stooped so low.

Senator Jacinta Collins—I thought you did not do this. Just a moment ago, you said you did not sledge, but that is what you are doing right now.

Senator KEMP—I am pointing out that if Senator Cook so freely walks over the good names of other people—

Senator Jacinta Collins interjecting—

Senator KEMP—People can ask questions. I just asked a question. If people come into this chamber and target others, they must expect some of their own medicine. Senator Collins, you and I differ on many issues, but not on all issues. There is a recent issue on which I think you and I would share a similar opinion, and that is an issue that you are going to have to deal with. I will not raise this in the context, but this will be an issue of principle and courage that you will have to face up to.

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Senator Kemp, please return to the matter at hand, and don’t be distracted by interjections. Senator Collins, I ask you to remain silent.

Senator KEMP—The issue of tax avoidance was raised. When we think of the abysmal performance of Labor when it was in government, we can remember the inaction on issues such as trust losses, we can remember the inaction on things like the R&D syndicates, and we can remember the refusal of the Labor government to take any action in relation to so-called high wealth people. The fact of the matter is that this government, as my colleague Senator Murray has said, has taken some very strong action in the area of tax avoidance. Senator Murray and I do not agree on every issue—in fact, there is probably quite a range of issues on which Senator Murray and I profoundly differ—but I make this comment to Senator Murray. I think that Senator Murray comes to debates with a degree of commitment and sincerity which is notably lacking in the other contributions we have heard today. I did not agree with everything Senator Murray said, but he made some appropriate comments about this government’s strong record in cracking down on tax avoidance.

For the record, let me mention what we have done recently in response to the Ralph review of business taxation. A number of measures commenced on 22 February 1999. These deal with issues such as loss duplication on the transfer of revenue losses, artificial loss creation from debt forgiveness, tax avoidance by assigning leases over assets subject to accelerated depreciation and non-commercial loans to closely held entities being used to disguise distributions to their owners.

The government’s stage 1 response included other specific measures to commence from 21 September 1999 and 11 November 1999. These measures prevent loss duplication arising from defects in the continuity of ownership test, deducting company losses, duplication over unrealised losses, artificial losses from the transfer of assets within a majority owned group, and loss duplication based on excess mining deductions. Several measures were also announced as part of the government’s stage 2 response. These limit avoidance through the exploitation of non-commercial losses, restrict the ability of individuals to reduce tax through the alienation of personal services income and limit the tax shelter arrangements by requiring the deduction of prepayments in respect of certain shelter arrangements to be spread over the period in which services are provided, rather than being immediately deductible. That is just a brief summary of the range of integrity measures that we brought in in relation to the Ralph committee.

This was on top of a wide range of measures that had been taken to combat tax minimisation and avoidance prior to the Ralph review. I will list a number of these for the record: investigating the tax-driven activities of high wealth individuals; closing the abuse
of the research and development tax concession—opposed by the Labor Party, opposed by Senator Cook who stood up today and attempted to lecture this government on its activities in relation to tax avoidance; stopping abuse of luxury car leasing; closing the infrastructure bonds scheme; tightening thin capitalisation to address tax minimisation by foreign companies; measures to address tax avoidance through overseas charitable trusts; extending the general anti-avoidance provisions of the taxation system to combat withholding tax avoidance; and preventing the trafficking of trust losses—which was brought to the Labor Party’s attention, but there was no real action while the Labor party were in government. So there are a range of measures, and there is a further list that I could certainly add. This gives answer to the lie that was being told in this chamber—that this government had not taken strong action in the area of tax avoidance—and shows how completely false and misleading the Labor Party’s second reading amendment is. Labor’s amendment will, of course, be opposed by the government.

Let me now turn to some issues of substance that were raised in the second reading debate. A number of speakers, including Senator Murphy, raised issues regarding the delay in the legislation. I think Senator Sherry raised this issue, as did Senator Murray. The proposed legislation was delayed for a number of reasons—most notably, the federal election in 1998 and the amount of time required for the Commissioner of Taxation to consult and, where necessary, discuss the proposals with representatives of the 32 affected double taxation agreement partners. The delay was justified in view of the need to await and fully evaluate the responses of treaty partners. The proposed legislation was also the topic of numerous meetings at international forums which the ATO delegates attended and where they explained Australia’s position. The feedback from these consultations and meetings was factored into the form of the legislation, as was our experience of developments in the OECD and UN fora. The proposed legislation is entirely consistent with the Treasurer’s 1998 press release, and no-one is disadvantaged by the delay. The important thing is that the legislation applies to alienations from 27 April 1998.

The scrutiny of bills report was also raised. I have responded in detail, noting the reasons for the time taken to introduce the legislation in parliament. As I said, it was largely because of consultations with affected treaty partners. My response also dealt with other issues raised by the committee and indicated why the provision renders effective existing taxation rights over the alienation of Australian real property and does not trespass unduly on personal rights and liberties but, rather, operates in a manner that is fair to taxpayers generally as well as those directly affected. Of course, I have also responded in similar terms to the Senate Economics Committee. It is always desirable, of course, to bring measures to a parliament as quickly as possible, but I think there were special circumstances in relation to the matters that are before this chamber and matters for debate. As I said, I have responded to those particular concerns.

I will now turn to a number of other matters that were raised in the second reading debate. Again, we had a very unpleasant attack on the tax commissioner by Senator Sherry. The commissioner, we believe, has done an outstanding job. I would also make the point that the commissioner was first appointed by a Labor government and has been reappointed by this government. In the reappointment, the government expressed great confidence in his work over a period which has been enormously challenging for the Australian Taxation Office—and I think Senator Murray raised that point. This has been a period of very dramatic change in the Taxation Office with the bringing in of a new tax system. It has posed many challenges to the tax office. Not only has the tax office had to preside over this period of dramatic change, but in recent decades we have developed a very sophisticated taxation advisory arrangements and professionals have been creative at finding loopholes in the taxation law, which has posed particular challenges as the tax office and the government have moved to close down these schemes.

Senator Sherry raised the issue regarding allegations that were made recently on Chan-
nel 9’s Sunday program. In relation to the matters that were raised by Mr Peter Haggstrom, a former special tax adviser to the ombudsman, let me make the point that Senator Sherry did quote the response by the ombudsman, Mr McLeod, but he did not quote the response in full, and people would have a misleading impression if they took Senator Sherry’s words alone. The precise position is that the ombudsman, Mr Ron McLeod, released a statement on 21 July 2000 saying:

At no time that Mr Haggstrom worked for me, had he brought to my notice any allegation of this kind—

That is, the allegation that senior tax officials threatened him—

It would have been incumbent on him to have brought any such claim to my attention, if such an incident had occurred.

He went on to say that Mr Haggstrom should bring full details of these allegations to the attention of the ombudsman so that they may be fully investigated. My understanding is—and it is certainly the latest advice I have—that so far this has not been done, despite the invitation by the ombudsman to do so. The allegations were serious. I think that if Mr Haggstrom feels these matters are serious he should accept the invitation of the ombudsman to have them properly investigated—and there is, as I said, a vehicle to have this done.

A number of other issues were raised. In relation to some of the matters that were raised by Senator Murray, he suggested that we should renegotiate treaties—I think I am fair in summarising your remarks, Senator Murray—rather than amend Australian tax law. Let me respond to those matters. The proposed amendment before this chamber will simply ensure that existing provisions of the alienation of property article of our DTAs are rendered fully effective in achieving their intended purpose of addressing alienations of Australian real property. It will prevent easy avoidance of the intent of the article, for example, by the insertion of one or more corporations to take advantage of a separate legal personality of corporations. The legislation will clearly and effectively express this position under our domestic law. I think this is an important point, Senator Murray: it is well-settled law that courts will pay heed to such clearly expressed legislative provisions. To have taken the approach suggested by Senator Murray of not legislating and, rather, renegotiating all the affected DTAs, which number more than 30, would have involved major delays and costs, and any countries not agreeing would have been placed in an advantaged position. Should any of our DTA partners request bilateral treaty renegotiations on the issue, Australia has offered to negotiate an amendment to relevant DTAs for the same effect as the legislation, but with the legislation operating in the meantime as provided in the bill. We have already commenced this process.

I think this strikes a balance between the bilateral character of the DTA relationship and the need to act quickly to confirm what we regard as the allocation of taxing rights intended under the double taxation agreements. Let me conclude this particular point by saying that the vast majority of treaty partners have not objected to our approach. Indeed I think the advice I have is that they have positively affirmed it—and I am looking at my advisers and I notice some nods. So I can provide you with that advice, Senator Murray. It was an important issue that you raised in your remarks and I hope that my response will satisfy your concerns. As time is running out, let me make it clear that we will certainly not be supporting the second reading amendment moved by the Labor Party.

Question put:

That the amendment (Senator Cook’s) be agreed to.

The Senate divided. [11.22 a.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes………… 25
Nees……….. 38
Majority……… 13

AYES


Lundy, K.A.  
Mclucas, J.E.  
Schacht, C.C.  
West, S.M.  

Mackay, S.M.  
Murphy, S.M.  
Sherry, N.J.  

Abetz, E.  
Allison, L.F.  
Alston, R.K.R.  
Bartlett, A.J.J.  
Boswell, R.L.D.  
Brandis, G.H.  
Calvert, P.H.  
Campbell, I.G.  
Chapman, H.G.P.  
Coonan, H.L.  
Crane, A.W.  
Eggleston, A.  
Ellison, C.M.  
Ferguson, A.B.  
Ferris, J.M.  
Gibson, B.F.  
Greig, B.  
Heffernan, W.  
Kemp, C.R.  
Knowles, S.C.  
Lees, M.H.  
Lightfoot, P.R.  
Macdonald, I.  
Macdonald, J.A.L.  
Mason, B.J.  
McGauran, J.J.J  
Murray, A.J.M.  
Patterson, K.C.  
Payne, M.A.  
Reid, M.E.  
Ridgeway, A.D.  
Stott Despoja, N.  
Tehen, T.  
Tierney, J.W.  
Troeth, J.M.  
Vanstone, A.E.  
Watson, J.O.W.  

Faulkner, J.P.  
Minchin, N.H.  
Hogg, J.J.  
Newman, J.M.  
McKierman, J.P.  
Hill, R.M.  
O’Brien, K.W.K.  
Herron, J.J.  
Ray, R.F.  
Tamblyn, G.E.  

* denotes teller

Question so resolved in the negative.

Senator Bourne did not vote, to compensate for the vacancy caused by the resignation of Senator Quirke.

Original question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator MURRAY (Western Australia) (11.27 a.m.)—I draw the attention of the committee to two pages of amendments before the chamber, numbered 1885 and 1886. Sheet 1885 has two amendments on it: No. 1 and No. 2. I will not be moving amendment No. 2, so that strikes that one off. I now wish to ask leave of the chamber to introduce amendment No. 1 on sheet 1885 and, if amendment No. 1 is not approved, amendment No. 1 on sheet 1886 as an alternative.

The CHAIRMAN—First of all, move amendment No. 1 on sheet 1885 and see what happens to that. Depending on what happens to that, you can then move the amendment on sheet 1886. That would be the easiest solution.

Senator MURRAY—I therefore move amendment No. 1 on sheet 1885:

(1) Schedule 1, item 1, page 3 (lines 24 to 26), omit subsection (3), substitute:

(3) However, the subsection (2) applies only if:

(a) the real property or land concerned is situated in Australia (within the meaning of the relevant agreement); and

(b) the alienation or disposition mentioned in subsection (2) is not an excluded alienation or disposition.

I indicate to the chamber that, unless there is a wish for further discussion on my second amendment once the vote is taken on the voices—and I would accept it on the voices—on amendment No. 1, I will move the second amendment straightaway and we will take that on the voices as well, if that is satisfactory to members of the chamber.

I will speak only briefly to this because I think I outlined my case quite fully in my second reading speech. Before I move to the particulars of that amendment, I want to draw the chamber’s attention to the report of the Senate Standing Committee for the Scrutiny of Bills. It is its seventh report, dated 7 June 2000. In that report, I will refer to pages 204 to 213, which cover the Taxation Laws Amendment Bill (No. 11) 1999.

On page 211 of that report the committee quotes an answer from the Assistant Treasurer relative to an inquiry on this bill. It is a lengthy quote but I think it is helpful. The Assistant Treasurer said:

Australia has been very open with its DTA partners about the proposed legislation. They and the OECD forum for discussion of tax treaty issues were notified of the Treasurer’s Press Release and of the introduction of the legislation in the Parliament. We have offered to negotiate an amendment to relevant DTAs to the same effect as the legislation, but with the legislation operating in the meantime, as provided for in paragraph 4 of clause 3A of the Bill. This strikes a balance between the bilateral character of the DTA relationship, and the need to act quickly to confirm the allocation of taxing rights intended under the DTAs. Indications to date are that most countries...
do not regard renegotiation as necessary, but productive negotiations have already commenced with one country on this basis.

There are three points being made there. The first is that that is a recognition by the government that it is acting contrary to the bilateral treaty. The second point the government is making is that, however it is acting contrary, the countries concerned do not regard it as a major issue except, it seems, with one country where it is renegotiating. If it happened to be the Netherlands, of course, that would be very material to this debate.

I next refer the chamber to this committee’s conclusion on this matter. The committee said, on page 213:

With regard to the bill’s retrospective application, the Committee notes the view of the Assistant Treasurer that, “those who relied on the Court decision, without checking the Commissioner’s view, but had not actually alienated the property ... should be governed by the DTA rules clarified in the legislation”. The Assistant Treasurer further states that to make exceptions where alienations were in train but incomplete at the time of the Press Release would “put such arrangements in a privileged position (as compared with later transactions, or transactions without interposed entities) that would not appear to be justified, and would involve a large potential risk to the revenue.

The Scrutiny of Bills Committee then went on to say—it is signed by the chair, Senator Barney Cooney:

The Committee is only concerned with incomplete transactions for which there is objective evidence that they were under way at the relevant date. Exempting such transactions from the retrospective operation of this bill does not confer a privilege, it removes a disadvantage, particularly where such transactions, though incomplete, have become commercially irrevocable.

The chair goes on to say:

Further, it is appropriate that taxpayers act in reliance on the decisions of courts rather than of the view of the Tax Commissioner. The courts adjudicate on the law; the Commissioner administers it. The Committee reiterates the observation in its Fifth Report of 1997 that “People are entitled to be dealt with for their actions and omissions in accordance with the law prevailing at the time of their occurrence and not with a legal regime instituted at a later date”. For these reasons, the Committee continues to draw Senators’ attention to this provision as it may be considered to trespass unduly on personal rights and liberties in breach of principle 1(a)(1) of the Committee’s terms of reference.

What the Democrats have tried to do is to meet that observation by Senator Cooney and his committee and to try and craft amendments which meet that observation. We are concerned, therefore, with objective evidence which deals with incomplete transactions, and this is therefore a transitional amendment. The argument of government, of course, is that it puts a great deal of revenue at stake. Whilst the Senate must obviously always take those considerations into account, the Senate is also responsible for trying to always allow for certainty and security in the nature of arrangements that commercial and other organisations come to and that the law does not cut the legs out from under them retrospectively at a later date. The point that the committee made was that applying a transitional amendment would not confer a benefit, it would remove a disadvantage. That is very important.

As I mentioned during my speech in the second reading debate, the Australian Democrats are concerned to ensure that taxpayers who at the time of the announcement and commencement of this change in the law were arranging their affairs based on the law at that time are not disadvantaged. The amendment I am moving is a very limited one. It will permit a transaction to be subject to the old law only if objective and verifiable evidence exists of action taken to commence an alienation or disposition. Either there must be a court order convening the meetings required in circumstances where the alienation or disposition is pursuant to a scheme of arrangement, or there must be evidence of registration of a part A or part C statement with ASIC in circumstances where the alienation or disposition is pursuant to a takeover announcement. We are not opening the floodgates here nor are we in danger, we believe, of causing substantial revenue loss to the government. If the Assistant Treasurer is of the view that substantial revenue loss could occur as a result of this amendment, we would appreciate his quantifying and elaborating on that potential loss; in other words,
being specific and showing the circumstances under which it would emerge.

I understand that, in discussions my office has had with the Assistant Treasurer’s office and Senator Cook’s office, concern has been raised that the Democrats might be somehow assisting a tax avoidance scheme by maintaining a loophole. The important point to note here is that there is not a loophole in the double tax agreement. The domestic law of Australia reflected those double tax agreements. We are now changing our law contrary to these double tax agreements. I agree that they should be renegotiated, I agree that the ‘loophole’ should be changed and I agree that this law is probably relevant from the time mentioned, providing there is a transitional arrangement. But I do not agree that somebody who was acting lawfully beforehand, whether they are a large corporation or not, should have the law changed on them in this manner. Quite plainly and simply, the double tax agreement provides that gains on the sale of land are taxable in the country in which the land is located.

In this circumstance, as I outlined in my speech in the second reading debate, the Netherlands were entitled to gather tax from the company concerned. The Netherlands chose not to do so. That is not, therefore, a justifiable reason for us to jump on the bandwagon. If a gain is made on the sale of shares in a company which directly owns land, then the gain on the sale of those shares is taxable in the country in which the land is located—that comes directly from the text of the double taxation agreement. There is no confusion, no loophole and no technical gap in the double taxation agreement. It is specific. The government is not closing a loophole. The full Federal Court indicated that the meaning of those words was very precise. What the government is doing now is extending the operation of the double taxation agreement to include situations which are not in that agreement where shares in a company are sold and the company indirectly, not directly, owns an interest in land.

This is not an esoteric argument to me. This is about our international reputation, our ability to keep our word when we have international contracts and treaties and our ability to recognise that, if people have acted under the law as it stands, they should be entitled to the circumstances of that law until such time as the law changes, and therefore there should be transitional arrangements. Even though, according to the Assistant Treasurer, according to the paragraph which I read out—and I have no reason or cause to doubt his word—these other countries are not that concerned about the way in which we are moving, nevertheless in our view the principle is a dangerous one. We have tried to address that in a limited manner which deals only with transitional arrangements. It is for those reasons, which we think are reasons of principle, that we commend the amendment to the chamber.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.39 a.m.)—Senator Murray’s amendment and his foreshadowed fall-back position should this amendment not succeed place squarely before us the question of retrospectivity in tax legislation. This issue has been canvassed in this chamber over many years, and there is that almost classic argument that you could call by numbers by saying that argument No. 1 will now apply or argument No. 2 will now apply—we know what the arguments are. The arguments all follow a set of principles which I think could be put in lay terms this way. On the one hand, it is improper for the legislature in the guise of the Senate to reach back and retrospectively alter laws which require people who were complying with the laws before they were changed to then pay tax on the basis that the taxpayers previously were in compliance with the law and acting appropriately, although it is later held that what they were doing was resorting to loopholes in the law which were not intended and amounted to tax avoidance. So the first block of arguments is: if taxpayers were acting legally at the time, you ought not to reach back and compel them to pay tax, albeit there might be a healthy suspicion that they were accessing tax loopholes which were not intended. The principle about respecting their legal entitlement at the time is paramount.

The obverse argument to that, again in lay terms, is that tax avoidance is a significant
drain on the revenue. Tax avoidance is something that we all abhor. Tax avoidance is something that the wealthier end of the community access because they have discretionary income which enables them to retain smart lawyers and slippery accountants to find their way through the tax system. Therefore, it is a sport practiced by the rich to the advantage of the rich, which was not intended in the original legislation. The only sure-fire way of preventing it is to announce up front that when you uncover loopholes you reach back and close them off, thereby removing any incentive for tax avoidance by threatening retrospective legislation. I think they are the two classic arguments that are put. Usually, the arguments are responded to legislatively on the basis of the circumstances of each particular case. In some cases, the first argument can be held to be reasonable. In other cases, it is sometimes argued that the second argument that I have explained is the appropriate one.

In the legislation before us, what the government is proposing is a bill which does reach back and remove the gains made by people who were engaging in tax avoidance but who were doing so legally at the time. This amendment would inhibit that retrospectivity to a large extent. I set this out because my instructions, as they stand at the moment, are to vote against the amendment, but I do think that these are not easy decisions to arrive at and you have to resort to the circumstances of each particular case to inform your mind. I make that statement now with disarming directness so that my dilemma is obvious, and it then leads to some questions to the government, which I will come to in a moment. Before I do, I want to go to this other matter.

Earlier this morning, in my speech in the second reading debate—a lot of which has been said in this chamber, and a lot has been said by the minister, none of which I will trifle with now; that is a classic debate which we will have at some other time, Minister, because I want to get to the nitty-gritty of this—I said that in 1988 this chamber carried a resolution about retrospectivity in taxation and what the rules were that we would apply. I went on to say that the bill before us in effect breached the resolution of the Senate on retrospectivity in 1988. In 1988, the now government were the opposition and an earnest, articulate and active proponent of the resolution of the Senate. When the government were in opposition they held this view. Now, when they are in government, they are putting a bill to us that contradicts it. The first question should be: do the government support the amendment? The second question should be: if they do not, what are their reasons for contradicting the position that they held in 1988? I would like to hear answers to those questions before I respond further.

Senator MURRAY (Western Australia) (11.45 a.m.)—I would like to put a clarification to the Senate. My adviser has said that I may not have been sufficiently clear when I was moving the amendments. My intention is that the first vote will be on amendment (1) on sheet 1885 and the second vote will be on amendment (1) combined with (1) on sheet 1886, because the amendment on 1886 qualifies amendment (1) on 1885, if you understand what I mean. I am giving the government the choice of either taking an open approach, which is just the one amendment on its own, or a more confined approach, which is putting the two together.

Senator KEMP (Victoria—Assistant Treasurer) (11.46 a.m.)—Let me now respond to the matters which are before the chamber. They are serious matters. I think it would be very clear from my second reading speech that I do not always agree with Senator Cook. To speak truthfully, I rarely agree with Senator Cook. It was interesting how Senator Cook grappled with these particular issues. Let me make it clear that I do not accept the underlying principle that has been put forward that this is retrospective legislation.

Let me say why I say that. The legislation applies from the date of the press release. It is not retrospective to alienations before that date. I think what Senator Murray is suggesting is that there were alienations in train. This is not unique. A lot of tax laws are brought down and, when they draw the line in the sand, a lot of people have made arrangements. Senator Murray, the issue you raise is by no means unique to this bill; in fact, it applies in a great deal of the legisla-
tion that comes before this chamber. The
government announces a change in legisla-
tion and it rules a line in the sand. People
who may have been planning to take advan-
tage of a particular scheme or a court case
then find that that has been ruled out. I am
not sure about the significance you are giving
to this. I agree that this is an issue which we
always have to grapple with and there un-
doubtedly will be, in some cases, matters
which complicate the issue. But, as a matter
of principle, this is not unusual in taxation
law.

One of Senator Cook’s concerns was the
retrospectivity side. That underlies your par-
ticular concern. Let me make clear what we
are talking about. There is a well-accepted
international tax principle—as reflected in
tax treaties—that tax on sales of real property
should be paid in the country where the real
property is situated. That is the advice I have
received from the very distinguished experts
that I have here in the chamber beside me.
The principle is accepted as legitimate by the
international community—and by successive
governments of the day, including govern-
ments of which Senator Cook was a member.
To ensure that this occurs, the tax treaties
provide that, where a company is interposed
between the real property and the ultimate
owner, the sale of the shares in that company
will also be taxed in the country where the
real property is situated.

In Lamesa the court decided that, where
one or more companies are interposed be-
tween the real property and the ultimate
owner, the sale of shares in that company will
not be taxed in the country where the real
property is situated. This is where we see the
mischief occurring. This had the effect that in
the Lamesa case no tax was paid in any
country. The tax that would have been paid in
Australia, I am advised, was of the order of
$74 million. Let me make it perfectly clear
that international tax principles say that a
country should be able to tax sales of real
property which are situated in that country.
An Australian court interpreted a particular
case in a tax treaty such that an overseas tax-
payer could avoid Australian tax by setting
up a series of companies. I think we are in
agreement that that is the situation. There-
fore, what we are really talking about is a
loophole which is available to only non-
resident companies. It is one which could
also be used by large multinational corpora-
tions.

What have we done? We have introduced a
bill to close this loophole. Non-resident com-
panies were gearing up to exploit it. That is
the advice that I have received. This was re-
garded as a significant opportunity. I under-
stand that the tax office is aware of one trans-
action which would have avoided close to
$80 million of Australian tax being paid.
There are probably more examples. The pro-
vision applies from the date the government
announced the loophole would be changed.
We have not gone back. I think Senator
Cook’s dilemma is that we have not gone
back; we have drawn a line in the sand. Al-
lienations which had fully occurred beforehand
were not affected. So we do not accept
the retrospectivity position here.

This means in effect that the non-resident
companies which were gearing up to exploit
it will now not be able to do so. In regard to
the issue raised by Senator Murray, it is quite
appropriate that we discuss issues of princi-
ple in this chamber. In fact, I think this
chamber does occasionally have a useful role
in discussing these complex principles. But I
hope I have made the government’s position
on the issue of retrospectivity quite plain.

Senator Cook raised the issue of the six-
month rule. In my remarks in the second
reading debate, I spoke about the reasons for
the delay in this matter. They were genuine
reasons. One would always hope to go faster
in these matters. On the other hand, there are
occasions when to proceed more slowly
makes some sense, particularly to make sure
that consultations are finalised and we have
received appropriate inputs. Senator Murray,
I have listened very carefully to your argu-
ments. The government will not be support-
ing your amendment, nor your fall-back po-

tion. I hope that, if you do not agree with
the reasons I have explained, you understand
where the government is coming from.

Senator MURRAY (Western Australia)
(11.53 a.m.)—I do understand the govern-
ment’s position. I will make our position very
clear in a very brief and concise manner. This
amendment is a transitional amendment. It seeks to deal with those whose affairs were being arranged in a substantive manner prior to the announcement and whose arrangements were concluded after the announcement; in other words, the span of their activity with regard to these matters was across the date on which you announced that these changes should be made. The Australian Democrats have no objection to the principle in law that you are establishing. It seems to us to be proper tax law. However, we make the point that it remains in contradiction to the double taxation treatments, and those people who commenced activity prior to the April 1998 announcement by the Treasurer were acting lawfully both under the double taxation treaties that we have, as expressed in 31 treaties—it is not just a mistake in one treaty—and under our domestic law at the time and could not in any sense be regarded as tax avoiders or tax manipulators. That was the law, and we think their transactions, if concluded after the date but commenced prior, are therefore subject to a disadvantage which could not be foreseen at the time of the expression. Therefore this is solely a transitional arrangement designed to deal with that circumstance. In that sense, of course it is not retrospectivity that we are dealing with. We are dealing with a transitional circumstance. I stress to the government and the opposition that my preference would be for the adoption of the two amendments running together rather than (1) on its own, because I think the qualifications implicit in that are stronger. But I have given you the option of dealing with it as you see fit. I do understand the government's response, and I thank you for your time.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.56 a.m.)—I, too, understand the government’s response, and my instructions at the moment are to vote against the amendments. However, I have a couple of matters to raise arising from what the government has said, and I want to persist with the questions that I asked earlier. We could have a debate here about what is tax avoidance and what is the difference between tax avoidance and tax evasion. We may well be talking about people who resorted to technicality to avoid tax, suggesting what they did was legal at the time but not intended by the legislature. I am not talking about tax evasion, which borders on illegality. We are talking about tax avoidance. Labor strongly believe that this legislation, which closes that loophole, should proceed. We are not a party that is soft on tax avoidance, so we are voting to close the loophole. More than that, we have criticised the government on the basis that the court decision that uncovered this issue was in 1997 and it was not until 1999 that the government moved to introduce legislation, although it announced by press release in April 1998 that it was going to do it. The criticism of the government has been: what took you so long to get around to closing this loophole? I say that to emphasise that we believe the loophole should be closed down.

But the issue that the amendment from the Democrats introduces is: but with what retrospective effect? It is a question of rights and obligations that is now under debate. My questions arise in regard to that issue of the degree of retrospective effect. Minister, I have no reason to disagree with your answer and by quoting it I am not suggesting that I disagree with it, but from your answer we understand that what is at stake in revenue terms, at least from one entity that you know about, is $84 million in taxes that would be required to be paid.

Senator Kemp—Just under $80 million.

Senator COOK—Thank you for that correction. It is not an insubstantial amount. From a company point of view it is quite a substantial amount, I am sure. But from the point of view of the taxpayers that I feel fondest of—that is, ordinary wage and salary earners who have their taxes deducted from their wages and who pay every last red cent of their tax obligations—it means that if someone were to illegally get away with an amount of $80 million, ordinary wage and salary earners would make it up. That is how the system operates. It is unfair to people on low incomes that there is an element of avoidance of this magnitude.

My question relates to the fact that, on 8 November 1998, the Senate carried a motion that set down the principles of how we should deal with this. It was moved by then...
Senator Messner, a South Australian Liberal, who was a frontbencher. It was moved against a Labor government. I am not complaining about that: I am just stating it for the record. It stated, in part:

... where the government has announced, by press release, its intention to introduce a Bill to amend taxation law, and that Bill has not been introduced into the Parliament or made available by way of publication of a draft Bill within 6 calendar months after the date of that announcement, the Senate shall, subject to any further resolution, amend the Bill to provide that the commencement date of the Bill shall be a date that is no earlier than either the date of introduction of the Bill into the Parliament or the date of publication of the draft Bill.

That is what the Liberal Party said—and it obtained a majority in this chamber—should apply in terms of tax retrospectivity. What are the facts in this case? The facts in this case, according to the explanatory memorandum to the bill, are that the Treasurer announced in press release No. 39 on 27 April 1998 that this loophole would be closed, but it was not until 1999 that the legislation became available. What is the explanation as to why the government, which is a coalition of the Liberal and National parties, proposed this resolution of the Senate in 1998? What is the explanation that the government wants to make as to why it would break the resolution of the Senate that it initiated in 1998 for the purposes of this legislation? Minister, I would, frankly, appreciate an explanation as to what you regard as the reasons why this resolution that your party initiated should no longer apply.

Senator KEMP (Victoria—Assistant Treasurer) (12.02 p.m.)—The six-month rule that Senator Cook has raised is an important rule. I do not seek in any way to diminish that but, on the other hand, there are exceptions which have to be made and each will be judged on the merits of the exception which is being sought. Senator Cook and I can both do our research and I am sure we can find that both governments in the past have not been able to adhere strictly to the six-month rule. I suspect that the six-month rule was brought in in order to encourage governments to move speedily on these matters. That is a desirable principle. I am not arguing against the principle, but I do think at times we have to show some flexibility and judge the matters on their merits.

I was asked about the government’s justification for this and that is not surprising. It is an issue which the relevant committee considered at some length. I received a stern letter on this matter from Senator Gibson, the chair of the Senate Economics Legislation Committee. I think the CTA—the Corporate Tax Association—showed some concerns on it and a response was given. The proposed legislation was delayed for a number of reasons. The most notable, I suggest, was the federal election. In 1998 there was a federal election of happy memory.

Senator Murray—Ha, ha!

Senator KEMP—Thank you, Senator Murray. I am glad you laughed at that. I could not get a recognition from Senator Cook with that remark. There was an amount of time required for the Commissioner of Taxation to consult and, where necessary, to discuss this matter with some 32 affected double taxation treaty partners. The government’s case is justified, I believe, in awaiting and fully evaluating the responses of the treaty partners. That was a comment I made in the second reading speech. The feedback from these consultations and meetings was factored into the legislation which we now have before us.

I make the point—and I think this is significant—that the proposed legislation is entirely consistent with the Treasurer’s 1998 press release. We believe that no-one is disadvantaged by the delay. People are disadvantaged because we have brought a change in the law and closed a loophole, but I am saying that the bill before the parliament is consistent with that delay. There were 32 affected double taxation treaties and there were extensive consultations. We would have preferred to bring this matter before the parliament earlier. Having outlined the nature of the bill, I think the consultations were an important part, but the legislation we have brought in is consistent with the original 1998 press statement. I ask the chamber to ensure that we achieve a speedy passage of this bill.
Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (12.06 p.m.)—I am not questioning that that is consistent with the original press statement, No. 39, from the Treasurer on 27 April 1998. I do not question that there may be exceptions to every rule. Clearly, that is an obvious statement. What I am asking is: what are the exceptions that justify breaking this rule that your party in opposition held to be a very powerful rule? That is what I want to know.

The explanations I have received say, ‘There were logistical problems here; there was an election in 1998.’ That is true; there was. But the Treasurer, in his press release on 27 April, announced this legislation. The election was not until 3 October—some five months later. While it may be a fact that the election got in the way of managing the Australian Taxation Office, it is a bit of a long bow, I would submit, and I would argue that most ordinary people would think it totally unreasonable. If you said that you were going to do it on 27 April—it took you so long to actually draft the legislation; this is not complex legislation—then to use the event of the election some five months later as a justification would suggest that this is very slack on behalf of the government. So, while I hear that explanation, I am not persuaded by that explanation for those reasons. I would be grateful, Minister, since you acknowledge that there are special reasons why a rule should be broken, if you would tell us what those reasons are that cause you to break this rule. That is my question.

Senator KEMP (Victoria—Assistant Treasurer) (12.08 p.m.)—Senator, let me return to what is the special nature of this particular matter which is before us, which I think is the subject of the debate. The Taxation Laws Amendment Bill (No. 11) 1999 required us to go more than once to some 32 countries. I believe it was not just a matter of writing off to everyone; it was a matter that there would be more than one contact, often through different diplomatic channels. That takes time. As I said, the government rests its case. I think it was not just a matter of the explanation of the federal election. I think that, when governments move into election mode—as you would know as a former senior minister—it takes time and energy, as it properly should in a democracy. That is no bad thing. Elections are very serious things, and governments, oppositions and other parties take these matters very seriously.

Let me rest on the issue of the nature of the bill before us. Extensive consultations were required. We rest our case, Senator, on that. We think it is a valid case. You may not be entirely persuaded by it; and, if you are not persuaded by it, then I state that the legislation before us reflects the 1998 press release. That may not make you entirely happy; but if you are not entirely persuaded by the very good, sound and powerful arguments I have put to you, then you should take comfort from the fact that the legislation before us properly reflects the 1998 press release by the Treasurer, and equally it also reflects the consultations with, and the feedback from, those 32 countries. Further, the other comfort that I think you should get is that it is not retrospective; we are not undoing alienations which have fully occurred, but we have drawn a line in the sand. We listened carefully to Senator Murray, as we always do, but in the end we were not persuaded by his arguments. We have listened carefully to the Corporate Tax Association, which I think all of us have had dealings with. Sometimes we accept their views and sometimes we do not. Things are judged on their merits. In this case, we have not accepted their view.

I do not know whether I have persuaded you, Senator Cook. You still look worried and concerned, but I have done my best to communicate the seriousness with which the government has approached its task in this. It would have been my hope that we could have brought this forward earlier; it was not possible for a variety of other reasons, not the least of which is where the Senate has been for the last six months. Nonetheless, I think they are good and cogent reasons. There is an exception here, and I would ask the Labor Party to accept the reasons that I have put forward.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (12.12 p.m.)—I will not delay this unnecessarily. As I said, my instructions are to vote against the amendments, and I have not got any new instructions. I would just
any new instructions. I would just make this point: this breaches a resolution of the Senate that was moved by the Liberal Party in opposition in 1998 to restrict retrospective legislation on tax to deal with tax avoidance that the Labor Party in government at that time was concerned about. Now that the Liberal Party is in government, it is wishing to break the resolution. The reasons that it has offered in this chamber for so doing, as I comprehend them, are that it needed to consult 32 countries—I thought it was 37 countries, but the minister said 32—with whom we have double taxation agreements and that five months after the government’s press release there was an election, all of which meant that the government was not able to move swiftly enough to comply with the six-month rule that it had set in place.

I am glad to have that explanation on the record, Minister, because it may be that after the next election we will be sitting there and you will be sitting here and we will be introducing legislation that might breach the same resolution of the Senate that you imposed on us in 1998. You will then argue: ‘Hang on, the resolution of the Senate is paramount and it cannot be breached.’ I have now established what the grounds are for you breaching your own resolution, and it may be that if the tables are turned at some future time—and I do mark this spot in the Hansard—we will need to cite your explanation to the chamber. I am glad that we have educed it so that that may occur. That leaves me, however, with the obligation of explaining why it will be that the Australian Labor Party would not support the amendment from the Australian Democrats. I might say that it is not an easy consideration to make because I think Senator Murray has made a strong and cogent case for why his amendments should be put up. If they were the only considerations that we would bring to bear, they would prevail.

Unfortunately, they are not the only considerations that I am obliged to bring to bear in this case. The consideration that I think tips the scale for us to defeat the amendments is, in part, some recognition for the explanation given by the government about lateness but, as well, there is a considerable amount of revenue at stake here and one, on balance, has to go for protecting the revenue base as fundamental. I do it on the basis that—and I am sure this is a familiar reason to this chamber—ordinary wage and salary earners pay every cent of their tax. It is only the wealthy, who have extra income and who can afford to employ lawyers and accountants who can find loopholes that avoid their tax. Here, we are closing down a loophole. I think it is a matter of elementary justice to the ordinary Australians who pay every red cent of their tax due that we should be assiduous in closing down loopholes and obtaining the revenue dividend that that involves. Because if we do not, in truth what happens is that the tax burden on every wage and salary earner increases to compensate for the tax that ought to have been paid but was not because of avoidance. On that basis, I will vote against the amendments.

Senator Murray (Western Australia)
(12.16 p.m.)—I thank Senator Cook for his remarks. I would simply say that it is our belief that it is our job, and I am sure it is a job that every senator accepts, to defend without favour the liberties, the rights and the responsibilities of any Australian, any Australian resident or any entity that operates in Australia. Rich or poor; disabled, disadvantaged or advantaged—we apply the same standards. This is really about a matter of principle. I would also say that we too were very hesitant because of the amount of money claimed to be at risk. Of course, we do caution the Senate that it is only a claim by the government. We do not know that that is the amount of money actually at risk, and I do not think the government can say, on a guaranteed basis, that that is absolutely what is at risk. It is their best assessment, and I take it as such. I do not quarrel with that, but I merely say that it is not a certain issue to my mind.

Amendment not agreed to.

Senator Murray (Western Australia)
(12.18 p.m.)—by leave—I move Democrat amendments item 1 on sheet 1885 and item 1 on sheet 1886:

(1) Schedule 1, item 1, page 3 (lines 24 to 26), omit subsection (3), substitute:

(3) However, the subsection (2) applies only if:
(a) the real property or land concerned is situated in Australia (within the meaning of the relevant agreement); and

(b) the alienation or disposition mentioned in subsection (2) is not an excluded alienation or disposition.

(1) Schedule 1, item 1, page 4 (after line 3), at the end of subsection (5), add:

 excluded alienation or disposition means an alienation or disposition to which an agreement mentioned in subsection (1) would apply because of subsection (2) but in relation to which there is objective and verifiable evidence of action taken before 27 April 1998 to commence the alienation or disposition.

 objective and verifiable evidence of action taken to commence an alienation or disposition means:

(a) if the alienation or disposition was made pursuant to a scheme of arrangement regulated by Part 5.1 of the Corporation Law—the court order convening the meetings required to effect the scheme of arrangement; or

(b) if the alienation or disposition was made pursuant to a takeover announcement or takeover scheme regulated by Chapter 6 of the Corporations Law—evidence of the registration of the Part A Statement or Part C Statement of the offerer.

I make the clear point that these would be our preferred amendments, because we think they clarify the matter.

Amendments not agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

BUSINESS

Government Business

Motion (by Senator Kemp) agreed to:

That intervening business be postponed till after the consideration of government business order of the day No. 4—Workplace Relations Amendment Bill 2000.
Mr Kevin Bell QC, in evidence to the recent hearings of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee into this bill, stated that the other thing that the bill provides for is that the commission must have regard to the views of the employer. That is really telling the commission that it may pay particular regard to the views of the employer, and that is one-sided, biased and unfair legislation, and it also attacks the independence of the commission. Mr Bell also said:

There is, in my experience, no precedent in Australian industrial history for the commission to be guided by the views of one party to an industrial situation or dispute. This marks, I think, a sad day when, in legislation supposedly governing fairly and equitably a resolution of disputes between parties, in a conflict of interest the interests of one party in that conflict are to be regarded as predominant.

At the same hearings, it was suggested by the Chief Executive of the Australian Industry Group, Mr Bob Herbert, that some members of his organisation would be embarrassed by the support given to this proposition by the Australian Industry Group. The Australian Industry Group had supported the provision on the basis that a company is likely to have a much greater knowledge of the issues which are relevant to its enterprise than a union which may be engaged in pattern bargaining, or indeed workers who may be engaged in pattern bargaining. Mr Herbert’s response to the suggestion that some of his own members might be concerned with this position by AIG was, ‘We do not mind getting a free kick every now and again, Senator.’ So AIG quite obviously accepted that this was really a free kick that Minister Reith had thrown into the legislation, and it was a free kick at workers. A proposition like this will never get through this chamber.

Let me deal with the scope of the proposals in this bill. The scope of the bill is very unclear. A number of lawyers have confirmed that the provisions of the bill contain concepts that are unclearly drafted and which lack precedent, making interpretation virtually impossible. The bill defines pattern bargaining as follows:

... pattern bargaining means a course of conduct or bargaining, or the making of claims, involving seeking common wages and/or other common employee entitlements, that the Commission is satisfied:

(a) forms part of a campaign that extends beyond a single business; and

(b) is contrary to the objective of encouraging agreements to be genuinely negotiated between parties at the workplace or enterprise level.

When I first saw this definition, I thought, ‘Gee, it’s departmental sabotage. It’s the department that doesn’t want the minister’s proposals to get up.’ I have never seen such a clumsy definition in my life.

It is unclear from the bill, the explanatory memorandum or the second reading speech how the commission would satisfy itself that a course of conduct or bargaining is contrary to the objective of encouraging agreements to be genuinely negotiated between the parties at a workplace level. In evidence given to the committee, Mr Kevin Bell QC argued:

There are several respects in which this bill contains terms of almost impossible ambiguity. I mentioned the terms ‘course of conduct’, ‘what is bargaining’, ‘what is conduct involving seeking common wages and entitlements’ and ‘what is a campaign’ ...

The Australian Council of Trade Unions argued that the effect of the proposed section 170LG would be to include as pattern bargaining any campaigning across an industry in support of claims for improved wages and/or conditions by employees in that industry. Such campaigning would be included irrespective of whether the campaign was intended to involve negotiations at the workplace level in relation to some or all of the common claims as well as any additional issues which might be relevant to the enterprise. The preparedness of the union to agree to variable outcomes in relation to the claims, including timing and method of implementation, would, under these definitions, be irrelevant.

Common claims do not imply common outcomes. This bill seeks to limit common claims, yet common claims do not necessarily result in common outcomes. The CFMEU pointed out, in its submission to the committee, that ‘not all cases, whether or not process
is initiated by a common claim, conclude with an identical outcome for all employers and employees involved in the process. If the government were really concerned about common claims, the bill would not be drafted in its current terms. This only reinforces the impression of a hidden agenda to attack the bargaining position of unions and the independence of the commission, for almost anything is capable of being negotiated at an enterprise level.

Most of these points were demonstrated through the course of the hearings of this committee, which were quite comprehensive despite an attempt by the government to contain the process and limit it to those who would make direct submissions in relation to matters associated with Campaign 2000. But the Senate process prevailed. We had a much broader hearing process and, through that process, we were able to demonstrate on a number of these issues that the minister’s agenda was much broader than he presented. Thankfully, the Democrats were convinced on these points.

Going back to the issue of how almost anything is capable of being negotiated at an enterprise level and how much the minister has sought to encapsulate by defining things in these ways, there is confusion in section 107LGA(2), which directs the commission to consider:

A course of conduct or bargaining, or the making of claims ... contrary to the objective of encouraging agreements to be genuinely negotiated between parties at the workplace or enterprise level unless the Commission is satisfied that all of the common entitlements being sought are of such a nature that they are not capable of being pursued at the single business level.

Despite some uncertainty as to the interpretation of section 170LGA(2), the department has indicated that the section requires the commission to consider the nature of the common entitlements that are being sought—that is, those that form part of a campaign—and whether they would be capable of being pursued at the enterprise level. If any of them are capable of being pursued at the enterprise level, then the conduct in question would be taken to be contrary to the objective of genuine enterprise bargaining.

This was a cause for much debate in the committee inquiry. Eventually, to give the department credit, it came forward with an interpretation of the matters in this bill which reinforced the point that the Labor Party had been making about the real intent of that provision—that if any common claim is capable of being pursued at the enterprise level, the conduct in question would be taken to be contrary to the objective of genuine enterprise bargaining.

As was raised in a number of the submissions to the Senate inquiry into this bill, it is not at all clear which matters are not capable of being pursued at the single business level. It is arguable that almost all entitlements are of such a nature that they are capable of being pursued at the single business level. There are a number of matters—such as maternity leave, occupational health and safety, and industry training schemes—that are best negotiated across enterprises, but it is not clear that these would not be capable of being negotiated at the enterprise level. To the extent that the bill is clear, the scope of the bill is far wider than the government’s stated intentions. The bill will impact upon the standard bargaining practices of employers and employees across many industries, and that is the minister’s real intention. This was reflected in the number of organisations that provided submissions to the committee, ranging across industries such as health, finance, retail and the public sector. These were not Campaign 2000 specific areas; this was right across industry. This was concern expressed about the impact of this bill on standard bargaining practices.

Aside from pattern bargaining, there are other components in this bill which are very significant. I want to deal with the role of the commission and the impact of the bill upon it. This bill attacks the role of the commission. From its former respected status as an independent umpire in bringing disputants together, the commission has been reduced under this legislation to essentially a police agency for employers. The bill requires the commission under section 127 to make interim orders prohibiting industrial action if it is unable to hear and determine the application by employers within 48 hours. The
question of whether industrial action is protected is not relevant to this process; thus the commission loses all discretion as to whether it is appropriate in all circumstances that a section 127 order be made. This is not, as the minister and some employer organisations sought to characterise it, improving the role and the discretion of the commission; it is taking it away.

The International Centre of Trade Union Rights stated to the committee its view that the commission had been reduced in status because its expertise was not respected in those circumstances where, when it should exercise its discretion, it may not. The bill contains the word ‘must’ in places where it should say ‘may’. The International Centre for Trade Union Rights put the view that, if the commission is worthy of retention at all, its expertise must be respected and those areas where discretion is needed should be retained.

Another area is antisuit provisions. The bill attacks the role of the Federal Court. That the government has attacked the Federal Court should come as no surprise, given the minister’s common sniping about the Federal Court. The International Centre of Trade Union Rights’ submission for the Senate’s reference stated:

There is quite clearly a public vilification, and there is an unjustified focus upon particular individual members of the Federal Court as if they stood for the whole.

Subsections 170MTA(2) and 170MTA(4) represent a significant weakening of the power of the Federal Court. Not only are the antisuit provisions in the bill poor policy but their constitutionality is in serious doubt. The department indicated to the committee that it has legal advice in relation to the constitutionality of the bill; however, on this occasion the department is unwilling to provide that advice to the committee for scrutiny. Until we can see the standard of that advice and compare it with other advice or other submissions, the issue stays open. There are serious issues of constitutionality here that need to be considered.

Let me conclude with respect to the Labor Party’s position on this bill. As I said in my opening statements, we are opposing the bill at second reading. There are a couple of technical matters within the bill, but in our view this bill should be rejected as a whole by the Senate. The reason it should be rejected as a whole, despite a couple of valid technical issues, is that the minister—as he has done on a variety of occasions—has indicated in his second reading speech that he is about one thing when he has quite obviously been about a completely different agenda. The Labor Party oppose that agenda in totality. If the minister wants to consult in relation to the technical operations of the act and the concerns he has in that area, the Labor Party are open to those consultations. But we are not open to the frauds that he continues to portray in legislation—whereby, once you look at the detail of that legislation, you find it is about a completely different thing. Unfortunately, those frauds in recent times do not seem to be limited to this minister. We will be rejecting the bill at the second reading.

Senator HARRADINE (Tasmania) (12.36 p.m.)—The Workplace Relations Amendment Bill 2000 is a sham. It has nothing to do with orderly industrial progress. It has nothing at all to do with the rights of employees or employers. It is an attempt by the Minister for Employment, Workplace Relations and Small Business to allow for a situation where there will be survival of the fittest. That is what it will mean. Many employers enter into pattern bargaining themselves and wish to have pattern bargaining because they want to know where they stand. For example, in the retail industry there are a number of smaller independent grocery businesses who want to see orderly industrial progress and justice for their employees and who do not want to see others in the industry go along the Reith path and deny justice to their employees. That is precisely the problem with this legislation.

The minister in his second reading speech points out that in the budget papers it was noted that enterprise bargaining and workplace relations agreements are quite substantial. What he was really saying with regard to the enterprise bargaining matters was, ‘We’re going to change that to make sure that there aren’t those types of enterprise bargaining negotiations with retail employers.’ This
piece of legislation reveals the deep and abiding detestation of the shoppies—the shop assistants union, the SDA—that Minister Reith has.

I want to point out to the chamber that that detestation is not only limited to the area of his particular concern. On the 7.30 Report last night, Minister Reith entered into the argument in the ALP and severely criticised the national secretary of the SDA—the shoppies—for having the gall to request a meeting of the federal executive on the question of whether or not a conscience vote should apply to the government’s IVF legislation. He said:

People like Joe de Bruyn expect these people—that is, the parliamentarians, who he says are in the pocket of Joe de Bruyn—to have a first loyalty to the shoppies union, with a subsidiary loyalty to the Labor Party and, you know, hang the community as a whole.

That is what Minister Reith thinks about a conscience vote. What he says makes very interesting reading. He talks about the Leader of the Opposition standing aside and allowing this to occur. But he has not left it at that—he has been at it again today. An AAP story—time: 11.42 a.m. today—reports:

But Employment, Workplace Relations and Small Business Minister Peter Reith said Mr de Bruyn’s intervention was an example of the power unions still wielded in the Labor Party. ‘With the snap of his fingers Joe de Bruyn has been able to call Kim Beazley to account in the meeting tonight of the national executive,’ he told journalists. ‘He’s basically got the leader of the parliamentary party bailed up simply because he’s the head, the anonymous head, of one of the biggest union donors to the Labor Party.’

What is that meant to do? It is meant to sabotage the legitimate attempt of members of parliament to get a conscience vote on the legislation that is being put forward by the government on the IVF question. That is what it is designed to do—quite deliberately. That raises the question in my mind as to whether the government are fair dinkum—or is it a fact that Minister Reith’s absolute detestation of retail workers and their union outweighs his loyalty to his leader? I suggest that the members of the government parties have a look at what he has done. He has sabotaged the efforts of those persons who are, under the rules, legitimately requesting a meeting.

I have not entered into this debate at all. I happen to have some views about it. It is 31 or 32 years since I was an elected member of the federal executive of the Labor Party. Nonetheless, I do not have a vote and I have not entered into the debate with respect to the Labor Party. I have certainly been urging the government to do something about it and get before the courts, as they should have done in the first instance, because it was a constitutional matter. They had the right under the Judiciary Act—or wasn’t the issue important enough?

Debate interrupted.

MATTERS OF PUBLIC INTEREST

The Acting Deputy President (Senator Ferguson)—Order! The time being 12.45 p.m., we will move on to matters of public interest. I understand there is an informal agreement for each senator making a valedictory speech to speak for not more than 10 minutes today, so with the concurrence of the Senate I shall ask the clerks to set the clocks accordingly.

Quirke, Senator John Andrew: Valedictory

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (12.45 p.m.)—This is a speech that I did not think I would be making and one that I do not want to make, because it is a great shame that ill health has brought John Quirke’s political career to an end before it should have been brought to an end. John arrived in the Senate in 1997, having served two terms in the parliament of South Australia, so he has served as a parliamentarian for some 11 years. Before his service in the South Australian parliament he worked as a teacher and in a number of other occupations, but, of course, he has been a dedicated member of the Australian Labor Party for a very long time. As he said in his first speech in this place, given only three years ago on 2 September 1997:

The ALP has been my life for many years. I added it up the other day and I think I have been to about 29 conferences. I cannot remember how many campaigns I have been to and I cannot remember
all of the other activities that I have been involved
in—but it is a large part of my life and that of my
family.

John’s colleagues on this side of the chamber
would acknowledge that is certainly the case.
He has had a lifetime dedication to the cause
of Labor. I suppose it is the sort of political
dedication that many of us in politics realise
sometimes evolves almost into an obsession.
We know that in the Labor Party, and I sus-
pect many on the other side of the chamber
would understand that too—something that,
while we might understand it in this parlia-
ment, is probably not well understood in the
broader community. In John’s case, his fam-
ily was with him in Hobart for the Labor
Party national conference just a couple of
weeks ago, when really the rigours of his
political life caught up with him and he had a
severe diabetic episode. He had actually
brought his three younger children along with
him to the national conference to have that
experience, to give them a feel for Labor
politics, and it says something about John’s
priorities—his family and his political com-
mitment to the Labor Party.

John was someone who came to Australia
as a child when his family migrated from the
United Kingdom in 1959. He trained and
worked as a teacher for 15 years. Before he
entered the political arena, he worked for a
number of years for one of our former col-
leagues here, Senator Dominic Foreman. As I
said, he was elected to the South Australian
House of Assembly for the electorate of Play-
ford in November 1989, and he was a very
senior player in South Australian politics
indeed. He served as the shadow Treasurer.
He served as the shadow mines and energy
minister, and as the shadow minister for
emergency services, correctional services and
state services. He resigned his position in the
state parliament to take up a position in the
Senate in September 1997.

He was a very important part of the Labor
team in the Senate and was very well known
in terms of the amount of time that he spent
in this chamber as the Deputy Opposition
Whip since the last election. I do stress that
John was a team player in the Labor Senate
caucus, and it is important to acknowledge
that. He was one of those people who would
give anything a go at any time. He would
always be willing to jump in when he was
asked to perform any function on behalf of
the Labor Party in this place. It did not matter
what it was—whether it was participation in
debates without any notice at all, involve-
ment in question time or involvement in
committees, whether they be parliamentary
committees or party committees—I think
there was always a really great enthusiasm
about the way that John Quirke approached
his Senate duties. It was more than just being
an enthusiastic contributor; he was a very
effective contributor and he was a very tough
operator in politics. Often, because of the
preselection processes of our party, a lot of
the tougher operators tend to make it through
as senators. John was one of those and I think
he would acknowledge that that was the sort
of background he came from. He was one of
those persons who gave no quarter and ex-
pected no quarter. He gave as good as he got.
He did not hold grudges but he took his poli-
tics very seriously.

As I said, he was a very effective per-
former in this parliament. Just recently I was
reading about his efforts in an estimates
committee when he was questioning the
managing director of the ABC, and I com-
ment that to senators who may not have read
that very interesting exchange, which re-
ceived quite a considerable amount of media
comment. Spending a small amount of time
in the defence estimates, I certainly know at
first hand of his effectiveness in that forum as
well. He was a very enthusiastic participator
in all the roles that senators have to fulfil, but
he was a particularly able one when it came
to this chamber. He was someone who al-
ways maintained his sense of humour, and he
made some of the most amusing speeches
that have been made in this place over the
last couple of years—there is no doubt about
that.

I hope he stays in the political loop for
years to come. I know it is going to be tough
for him because he really loved being in-
volved in the Labor Party. He loved the po-
litical process. He really enjoyed being a
senator; he gave it his all. He would not want
me to be making this speech today either. He
would have much preferred to have been able
to stay here and make a real contribution. That he cannot causes me personally great sadness, and I know that is also the view of my colleagues. I hope that he can find some alternative activities and obsessions to fill at least part of the vacuum that he is going to find in his life. Many would know that he is a great student of military history. In fact, he turned this to quite a practical bent with his gun connection—something that always worried me! I did not really understand very much about it, but I was always terribly respectful about it, I can assure you. He had broad interests outside this place, and many would know about at least one of those interests. But let us be honest: this is a premature exit from the Senate. It will be a terribly difficult blow for him and for his family, but he has given the priority that you would expect him to give to his family in these difficult circumstances. Let me say on behalf of my colleagues that we are really going to miss our friend and comrade John Quirke.

Senator FERGUSON (South Australia) (12.55 p.m.)—Like Senator Faulkner, it gives me no joy to make this speech either, because I think it is very sad when anybody is forced to resign because of ill health, particularly at an early stage of a Senate career—which it could be said that Senator Quirke was at, having been in this place for only three years. I rang him last Wednesday night when I first heard that he was resigning, and I said to him, ‘It must have been the most difficult decision you have ever made. Couldn’t you perhaps have taken a bit of leave of absence to see if you were going to come good?’ He said, ‘Look, it was a difficult decision but it had to be made. I have four children, one of whom is quite young, and my condition is such that this is the only course that I can take.’ If I were 49 years of age, I think that that would be a very difficult decision for me to make, and I am quite sure that it was a difficult decision for Senator Quirke.

I did not know Senator Quirke before he came to this place, unlike my colleague Senator Ferris who knew him quite well when he was a member in the state parliament. But I knew of him, because he has always been a prominent member of the Labor Party and he has taken a prominent role in South Australia. It was only because of that introduction when he first came to the Senate that he and I shared many plane flights from Adelaide to Canberra on Sunday nights. He was an avid Ansett man and I usually fly with them as well, so Senator Quirke and I often shared the lounge and the plane on the way to Canberra. I got to know him very well, and I would consider him to be a friend.

I read Senator Quirke’s biographical details, and I noticed amongst his former occupations that he classified himself as a night-time telephone operator. I am totally unaware, of course, of the machinations of the Labor Party in South Australia and what might go on, but it seems to me that, because of the sort of prominence that Senator Quirke has received in the Labor Party, it is probably an occupation that he never gave up. I would have thought that Senator Quirke has been a night-time telephone operator all his life, and he certainly used it to his advantage and, I guess it is fair to say, to his party’s advantage as well. When he left the state parliament, he left a number of friends on both sides of the chamber in that place. Someone was unkind enough to say that, at one stage, he probably had more friends on our side of the chamber than his, when they were down to about 10 or 11 in the opposition. Senator Quirke came here as no stranger to this place, having worked for former Senator Foreman for four years before entering state parliament, so he was well aware of the role of a senator and the sort of work that is required of a senator. I think it is fair to say that once he got here he really slipped into the job like a hand into a glove because he knew so well how the place operated.

It is true that Senator Quirke, as Senator Faulkner said, was a tough operator, but he was also a straight shooter. I mean that figuratively speaking as well as meaning that he was a straight shooter in the literal sense. I was away with him on a defence committee visit to North Queensland, and I saw him firing a Steyr rifle. I saw the target afterwards, and he was indeed a straight shooter. You always knew where you stood with him. He always had a point of view. He did not care whether or not he agreed with you; sometimes he agreed with us and sometimes
he did not, but he always presented a point of view. He was a person who was always good company wherever he was. I had the good fortune to have served on committees with Senator Quirke, particularly the foreign affairs, defence and trade committee. I remember that on one occasion last year he was the only Labor member of a defence subcommittee that travelled throughout northern Australia. About five of us went, and I can say that it was one of the most enjoyable four or five days I have ever had. Senator Quirke certainly played a strong role in that, and he was excellent company.

Senator Faulkner mentioned the fact that Senator Quirke loves guns. He is a passionate shooter; he loves shooting. I know he often used to go shooting with former Liberal Speaker of the South Australian parliament Graham Gunn, and they would go up north. He had a number of close friends with whom he would go shooting. I think they were shooting wild goats at one stage, and there were a number of other exercises where they went away together. He loves shooting that much. I do not know many people who are as avid for or as passionate about guns and shooting as Senator Quirke is; it is one of the passions of his life.

I am quite sure that Senator Quirke will stay in the political loop because politics has been his life for so long. His dedication to his party, his dedication to wanting to win, and his dedication to the people who were close to him in the party I am quite sure mean he could not just divorce himself from political life completely. Although we will not be seeing him here in the chamber performing those duties, I am quite sure that the Labor Party in South Australia and probably the Labor Party nationally will know that John Quirke is still around, although he is not a senator. I think that is good. As Senator Faulkner said, it must be very difficult for someone at 49 years of age to suddenly be cut off from what has been their life’s interest, their life’s work, and their life’s passion, which it has been for Senator Quirke, and I certainly wish him well. I hope that he can control his diabetes. I hope he is in the situation where he can lead a very good and active life, but one that is not subject to the stresses and strains of travelling and the sorts of strains that we all know apply to people who choose this for a career.

Senator Quirke is a man who has been cut short at the start of his Senate career. He has had a long parliamentary career by some standards, having had eight years in the state parliament, but he saw this as a new challenge and a new career and I know he is going to miss it very much. I join with Senator Faulkner in wishing him well. As I said, I hope his health is maintained and certainly offer my best wishes to Senator Quirke, his wife Davina and their four children.

Senator SANDY MACDONALD (New South Wales) (1.02 p.m.)—I wish to make a personal and National Party contribution to the valedictory to our friend John Quirke. John Quirke came to Australia with his parents after World War II from England, where he was born in 1950. Therefore in his 50th year, his forced retirement is particularly unfair. His parents went to South Australia, like many migrant families, to make a new and better life for themselves. He came into the federal parliament after service in the state parliament, as Senator Faulkner said, and he had been the member for Playford for eight years and had served in a number of shadow ministries. He came into the federal Senate in 1997, just two and a half years ago. The Senate—every parliament in fact—should be as truly representative as possible of our society. I think it is fair to say that as the child of English migrants who had obviously done well in their adopted country, he was a very good choice of the South Australian parliament at that time. I am sure his friends and family must have been very proud of the success that John has had in public life.

I think it is fair to say that everyone, with the possible exception of one or two of his ALP factional opponents, liked John Quirke; he leaves here as one of the most popular members of the Senate, as my colleague Senator Ferguson said. Whilst clearly a factional player, he reminds me a little bit of the homily of Theodore Roosevelt—he spoke softly but always carried a big stick. I think in that regard he certainly did carry a big stick within the confines and power structures of his party. He was always candid with
his views. He was prepared to concede political points if he believed his side was wrong and he was always good company, both socially and politically. He had friends across the political and social spectrum.

Some reference has been made to his great interest in shooting. I think that gave him a great entree to and experience with a wide variety of country people. No-one liked a gossip politically more than John. He has in fact made a career of it. I suspect that that love of political company will continue whilst he has breath in that rather rotund body of his.

I got to know John Quirke particularly on a visit of the Joint Foreign Affairs, Defence and Trade Committee to Bougainville. I guess being at 10,000 feet in an open Iroquois helicopter with the prospect of an odd bullet going up your spine provides a feeling of empathy with almost anybody. I particularly enjoyed the problems John had with his accommodation on Bougainville, which was very limited. John had to share a minute room with former ALP member Dr Theophanous, who happened to be the deputy chairman of this committee. He was a great one for taking the right of seigneur.

Senator Faulkner—That must have been a low point.

Senator SANDY MACDONALD—It particularly was, Senator Faulkner, I can tell you. He said Dr Theophanous insisted on taking the double bed within this minute room. Dr Theophanous got the double bed; John Quirke got the small camp bed. In the morning, John came out looking very, very tired. He said, ‘That bloke spoke all night. First he spoke incessantly, then he talked in his sleep.’ He said, ‘I have to get dressed on the veranda because there’s absolutely no room in this room.’ I said, ‘Well, what’s he got?’ He said, ‘He’s got three suitcases and a suitcase of his book.’ I said, ‘What’s the title of the book?’ It was something like ‘Multiculturalism in Australia’. He said that when he asked, ‘Why have you got copies of this book?’ Dr Theophanous said, ‘I’m presenting it to every Bougainvillean I meet.’ I do not know how that went down. Anyway, I would not consider that his night alone with Dr Theophanous was a happy memory. Perhaps that is a view that might be shared by some of his other party colleagues.

John is clearly a very good family man. I know that he had three young children and I understand that he had an older stepson as well. He often talked about his children and his wife. He was obviously a good and diligent teacher in his former life. He always appeared to be a decent person, and decent people in my experience have decent politics. All major parties require them, because all major parties have the eventual responsibility of being in government. I wish John, his family, his health and his continued political involvement well for the future.

Senator ROBERT RAY (Victoria) (1.07 p.m.)—I am very sad to see that Senator Quirke has had to leave the chamber because, as has already been noted, he loved politics and he loved the Senate. When he rang me to say that he was resigning from the Senate, I did not spend any time trying to dissuade him. For a long while I have known of his medical circumstances—we share some of them—and I knew of the battles that he had had over the past three years in particular. I believe he has made the right decision. Federal politics, in particular, is not a conducive environment in which senators and members of parliament can necessarily discipline the events of their life. He has made the correct decision.

I first met John in the 1980s when he was a staffer to Dominic Foreman. He was certainly no shrinking violet then. He would just march into your office for a conversation—I think Senator Macdonald indicated he loved a bit of juicy political gossip—or he would stop you in the corridors. He was one of the best known staffers around here in the 80s. He wrote some brilliant speeches, which Dominic Foreman, God love him, managed to butcher on occasions. He was an inveterate organiser and he certainly organised Dominic Foreman’s political life in Canberra. He was also an active player at national conferences and certainly in the 1986, 1988, 1991, and 1994 national conferences, I had a lot to do with John. I also made sure if I visited South Australia that he was on the list of visitors because, as mentioned, he was a substantial
player, amongst others, in the South Australian branch.

This eventually led him into state politics, where he served as chairman of important parliamentary committees. He served as a shadow spokesman and, if memory serves me right, he was only very narrowly defeated for the deputy leadership of the South Australian Labor Party some years ago—by one or two votes, from memory.

Senator Boswell—It was the Labor Party; you said the Liberal Party.

Senator ROBERT RAY—Sorry; it was for the Labor Party! He only occasionally organised the numbers in the Liberal Party! John was one of the many examples we have—I do not want to go through them all—of people who have moved from state politics to federal politics. There are literally 10 or 15 in total in this parliament who once served in state politics. Historically, something like 20 per cent of federal politicians started their careers in state parliaments. So he was fairly familiar with parliamentary procedure.

When he arrived here three years ago, he fitted in immediately. He did not have to go through what is a fairly overwhelming experience of knowing how the Senate works because he worked here for half a decade and he knew the ropes. He did fit in particularly well.

He was made Deputy Whip. This is a position of great honour in the Labor Party. Over the years I have persuaded Senator Faulkner to adopt the job, I have persuaded Senator Conroy to adopt the job and I persuaded Senator Quirke. The only thing we have in common is that none of the three has ever forgiven me because of the amount of time deputy whips have to spend in the chamber. I am not sure whether I have encouraged or discouraged Senator Ludwig to take the job. I put it on the record that I discouraged him and that is one less enemy I have made.

John was on a variety of committees, on which he enthusiastically served, but his great love was the Joint Foreign Affairs, Defence and Trade Committee. He loved the issues and he loved the political camaraderie of what is basically a bipartisan committee. It means that on trips, et cetera, one can build up a degree of friendship and sociability that does not always exist within the confines of this chamber.

His attitudes on political issues could only be described as black and white. Subtlety was never a thing that Senator Quirke even bothered to cultivate. The highlight of his life was his partnership with Davina. The circumstances of this are not well known outside South Australia. Davina was a member of the Right faction. Senator Quirk was then a member of the Centre Left. This was the Montagues and the Capulets coming together. Indeed, John Quirke actually had to go down to the office of the leader of the Right to seek his permission and to assure him he was not trying to steal a conference vote.

I think the coup de grace in the argument that convinced the South Australian Right leader to sanction the marriage was the fact that I was invited to be MC at the wedding reception—and what a great night that was. Everyone was there—friends, enemies, the lot. It was such a successful night—we managed to stitch up two pre-selections before they cut the cake. He did really fall on his feet in that relationship, that partnership, with Davina.

It has been mentioned before that John was a great loyalist. He would want to be. He had to vote for the anti-gun laws in spite of owning an arsenal bigger than the Kremlin. But nevertheless he did so, though maybe grudgingly. The only mistake I ever made with Quirky was to suggest when he arrived in Canberra that he occupy the office next door to me, which happened to be vacant. On one occasion he had the four boys up and within half an hour, the battle of Stalingrad was raging next door. We could not even hear ourselves think. So I had to send a staff member around, who a lot of people say is very similar to General Zhukov, to ensure that peace reigned. It did for at least half an hour.

Senator Faulkner—Name the staff member.

Senator ROBERT RAY—No, I will not do that on this particular occasion. I know John will miss politics. It is hard to say at this
stage the degree of involvement that he can have. He will miss the friendships of his colleagues. He will miss the repartee of his political enemies. But I am not at all surprised that in the end he put his family first. I want to wish him, Davina and the boys all the best in the future for a long and happy life.

**Senator FERRIS (South Australia) (1.14 p.m.)**—I would like to begin my small contribution today by drawing a picture of one of the most enduring memories that I have of Senator Quirke. It was during a visit on a light aircraft to the Pitjantjatjara in South Australia when he, as the shadow minister for mines and energy, was accompanying the South Australian minister for mines and energy, Dale Baker, to see if we could facilitate some mineral exploration on the Pitlands. Senator Quirke had brought along a book to read, because it was quite a long flight. It was a diary of the last six hangings in England. He was reading this book very calmly and intently for quite some time. I asked him what he found so interesting about the book and he said with a smile, ‘I’m just looking for hints.’

As the flight became quite rough and we were all quite agitated as to whether we would have a happy landing, Senator Quirke’s eyes never moved from this book. I can only wonder with some apprehension whether, now that he has more time to spend with politics, the hints he picked up from that book may emerge in some of South Australia’s marginal seats. As somebody very interested in the outcome of the marginal seats at the next election, I hope that Senator Quirke’s memory of some of the hints in that book may have faded a little.

Senator Quirke did accompany the minister on a number of trips and I got to know him quite well. He was interesting and easy to deal with. He was always very amusing and I for one found his company very enjoyable.

I met Senator Quirke about 10 years ago when he was working for former Senator Dominic Foreman as a staff member and I was also a staff member in this place. We travelled on the same aircraft and saw one another from time to time. He was in state parliament in 1993 when I went to work as the chief of staff for Dale Baker and Senator Quirke was the shadow minister. We were able to facilitate what was a record in the end in the South Australian parliament of passing amendments to the Opal Mining Act in one minute and 45 seconds. This was the result of some close consultation and a broad coalition of views about what needed to be done to assist the opal industry in South Australia. I believe it is a record in passing legislation that has not yet been beaten.

Senator Quirke came to the Senate just after I came to this place. Once again, we met up and found ourselves together on the Select Committee on Information Technology, which at that time was inquiring into the degree to which the media in Australia exercised self-regulation. I remember Senator Quirke discovering with some interest that a radio station which gave us evidence had been doing some live broadcasting from some places that I suspect Senator Quirke did not want his teenage son to know about. It was revealed as being the station he curiously found his radio had been switched to each morning when his eldest son stayed up late listening to the radio. Senator Quirke felt that this was something he would never have known about had it not been for the helpful and explicit evidence we received on that day.

He has a wonderful healthy cynicism for the political process. Many people today have been talking about him in the past tense. It is certainly the case that he is past tense as a senator, but he is very much with us and I hope will be with us for a long time to come.

Senator Quirke has a wonderful family of boys. They used to come and greet the light aircraft when he came back from these trips that we would take to mines and energy sites in South Australia. These very small Quirke mascots would come running across the tarmac. He had a genuine love of, and delight in, the spontaneous way these little kids ran out to greet him after a trip away while Davina was trying to manage them on the tarmac.

I would like to end by saying Senator Quirke was generous with his boys to the degree that, whenever I was able to sit with him on the Ansett breakfast flights home, he
managed to encourage me to give him my little jar of honey so he could allow his baby’s sticky little fingers to go into it. It was something that I was always very happy to do.

I have these enduring memories of Senator Quirke’s friendship and his sense of humour and I look forward to a long and happy association with him in the future when his health recovers. I also add my best wishes to Davina along with those of my colleagues.

Senator HOGG (Queensland) (1.19 p.m.)—I rise to say farewell to John Quirke, a good friend and a good colleague. I suppose the most disappointing aspect of today is that John cannot be present to hear the words that are being said. His health has deteriorated so badly that he is housebound in South Australia. The one thing that always stood with me about John Quirke is that he was a true mate, a mate in the real sense of the world. He was a team player. You knew you could trust John and he was loyal to you. You might not agree all the time with some of the things he might have to say but you knew that what he said to you was going to be the way he would act and that he would be dead loyal to you in whatever your endeavours might be. His word really was his bond. I know others have referred to his liking of shooting, but there is no doubt he was a real straight shooter and that is a real quality if you can find it in someone today. When they look you in the eye they mean what they say and when Quirky did it, you knew what he said was what he meant and that he would stick by his word through and through. In that sense he was an admirable person to know with admirable qualities. But unfortunately, as has been stated, his medical problems got on top of him and, of course, he has now taken the sensible approach to look after his health and, most importantly as has been raised, his family. That is an absolutely admirable quality of the man that he would not just see himself but see his family in such an important light and focus on the needs of both his wife and his children.

My close experiences with John are confined to my association with him here in his time in the Senate. John had one honour conferred upon him which not too many people have conferred upon them in this place. Every Tuesday night there is a group of us who go to dinner at a particular restaurant in town. It is affectionately called the ‘Hoggerama’ and I am known as the convener of the dinner. When I had to be away on one occasion John very quickly stepped into the breach and took over the organisation of the Hoggerama and was duly rewarded by his colleagues who turned up that evening complimenting him on organising a greater number of attendees than I could. It stands testimony to John’s capacity in his role, firstly, as a congenial person and, secondly, as a person who could organise other people and draw them together. Even in my absence—which probably was the reason they all turned up—he was able to get them there on that occasion.

The other thing that I found out about John was that he was admired by the staff around Parliament House. I know that on one particular occasion near Christmas John and I, for some reason, ended up spending two hours with the Jetset staff and it was not simply a case of John or me rebooking tickets. John was so convivial and wanted to express to those people his thanks and enjoyment of their company. We stayed there for a couple of hours and they were probably two of the best hours I have spent in this place. The stories that he told—and that is another characteristic of John; he is a great storyteller—just rolled on and on and I think that is what made the time pass so quickly. It was fairly late at night and when you look at the hours that John had put in in this place, you can see it ended up taking a toll on him.

John was a competent speaker, a capable operator and, of course, he was a good support to me as a colleague on both the Foreign Affairs, Defence and Trade References Committee and the Foreign Affairs, Defence and Trade Legislation Committee. The interesting thing is that when those committees were sitting every now and again Quirky would get up and go for a walk. You knew that when Quirky did that it would be a few minutes before he came back because he needed to tend to his medical problems. You respected him for that but it did not in any
way limit his ability to participate in the committee, nor his capacity to do so.

In conclusion, I wish John and Davina all the best. I know he has taken, in his mind, the right decision. I am sure that his colleagues respect his judgment. He will be sadly missed in this chamber. His friendliness, his mateship, undoubtedly will be something that is sadly lost and missed by a number of people. I wish him and Davina all the best in their retirement.

Senator O’BRIEN (Tasmania) (1.26 p.m.)—As we all know, after each election they publish a small publication called the Parliamentary Handbook. A handbook it is not; it is a fairly weighty book and if you carried it around with you on aircraft, you would be paying excess baggage. All of us end up with our mug shot in this publication and I had a quick look at page 211 to see the cheeky image of John Quirke staring out. I think he epitomises a friendly person in the photo that appears there, and that is how I always found John. He would come into the chamber to relieve me as Whip and he would always say, ‘Good day, Mr Whip. How are you, Mr Whip? What’s going on? What are we to do today? Where are we at?’

I have been sharing this seat in the Senate with him since I became Whip and he became Deputy Whip in October 1988. We were always able to exchange views on a range of subjects. He was always very keen, I found, to draw my attention to the absence from the chamber of senators from our side at the beginning of question time. I am not sure why, but he always seemed to focus on that all the time. He was always focusing not just on one seat but would point out every single person who was absent and get me to do my job by getting them into the chamber.

I found John had that knack when he was speaking of being able to simply and humorously encapsulate an argument. That is why the government would have noticed the number of times he was chosen to speak when we received only five minutes to express a point of view. John would pick a few points that he wanted to make and then, in his typical laconic fashion, would make those points, have the chamber in stitches and sit down. I think we all appreciated that and that is probably the thing most of us will remember most about his presence in this chamber. True to his photograph, as depicted on page 211, John could be a cheeky chap and the picture really does do him justice in the publication.

It is a great pity that John’s health does not allow him to continue, but I echo the comments of Senator Hogg and others before me that he has made a very wise decision. My father suffered from diabetes; he was fortunate that it did not affect him in the way that it affected Senator Quirke, but I know that that condition can be extremely debilitating and dangerous, and the lifestyle that members of this place lead is not conducive to controlling diabetes. It is a very difficult disease to control, even in milder forms. I understand that John’s particular form of diabetes has moved beyond that. That is a great misfortune for him and I think a misfortune for this place, because it means that we have lost the humour that he has given us, and that will not be easy to replace. We have lost his company in the many hours that we spend here and I think we have lost the opportunities that others, as I have heard in the debate, have had to make his acquaintance away from this place and to appreciate his interests and his qualities, some of which I heard about as we sat together here, but many of which I did not have the opportunity to hear about. I deeply regret that.

I think probably the most difficult thing for John to accept after attaining what I know was something that he felt was a great attainment—and that was becoming a senator for South Australia—was that he had to relinquish that in these circumstances. I think that is the sobering thought that he leaves us with; that is, that it is our fragility that limits our role here and we have a limited time here and need to give all that we can to that time, while at the same time respecting that our health and our families are also important.

I think, apart from all of the other things that John leaves me with, his unfortunate early departure leaves me with a reminder for myself—I am sure other senators feel the same—that none of us are invincible; we
have a time to do what we can here; and at the end of that time hopefully we will leave with the respect of our colleagues. Can I say in these circumstances that John was here a very short time, but in my view made quite a significant mark in this place. He certainly will leave me, having sat with him for some time and worked with him for some time, with fond memories and some targets to achieve.

Senator SCHACHT (South Australia) (1.32 p.m.)—I rise to speak on this valedictory to John Quirke, whose resignation from the Senate is on the ground of ill health. I will not make the normal valedictory speech, because I would be a hypocrite if I did. It is well known in this place, as it is in South Australia, that within the internal affairs of the Australian Labor Party over recent years John Quirke and I have been at loggerheads on many issues, above all else on the way the Labor Party should be organised and run. Although it would not be remembered or noted here, I put on the record that we supported each other years ago on a number of issues. For example, I recommended to former Senator Foreman that he appoint John Quirke to his staff way back in 1985, when there was a vacancy on Senator Foreman’s staff. I supported John Quirke’s preselection for the state seat of Playford when that became available for preselection in the late 1980s. He also supported me for preselection for the Senate in 1986 at the state conference of the Labor Party, and I subsequently was elected at the double dissolution election of 1987.

We were both founding members—I may have been a bit ahead of him, but it was even before he worked for former Senator Foreman—in the very early days, of what was then called the Centre Left faction. He was a very hardworking member of that faction. The Centre Left was formed in South Australia because the other two factions from the eastern states, the Left and the Right, had started organising, and it was clear that the old style of the Labor Party in South Australia on a broad consensus was no longer going to operate. Because of the introduction of PR ballots for the election of delegates for the national conference, the days of the branch sending a unified delegation to a national conference were coming to an end, and therefore other factions from other states were organising. Many of us did not want to join either the Left or the Right, so we formed a centre group which we called the Centre Left, probably conservative in organisation, but leaning a bit more to the Left on policy—but also allowing expression of a wide range of opinion.

I started to disagree with John Quirke and he would disagree with me. If the positions were reversed—if I were leaving here on the ground of ill health, or maybe if I am not elected in two years, if I do not get No. 3 on the Senate ticket—and Senator Quirke were still here, I think he would make similar remarks, if he were honest: that we started to disagree with each other in the early 1990s about the way the Centre Left faction, as we call it, was being run in South Australia. I disagreed with the subfactionalism that was going on. As others have mentioned here, John Quirke is a very black-and-white person in the way he does things; that is his style. I think you should have a bit more discretion and judgment in how you handle people. But he and the then state secretary, Terry Cameron, had a different view. They may well have been right, but my view is that the beginning of the demise of the Centre Left in South Australia began because of that at that time. Also there were other conditions; for example, the amalgamation of certain unions meant that unions who supported our group got amalgamated with unions from the Left or Right and went off and joined those factions. So there were many other factors as well.

I think the point came where I very strongly disagreed with the reasons that John gave for leaving the centre and joining the Right in the mid-1990s over a preselection ballot within our own faction, which he lost. You always lose some ballots, but he took that as a particular affront. I think he had made up his mind some time before that to join the Right. I know my colleague Senator Robert Ray spoke about his friendship with John Quirke. I do not think John would find it objectionable for me to say that I always thought that he saw Robert Ray and Graham
Richardson as the mentors that you should follow in style when being a factional organiser or operator. I think at times Robert Ray, and even Graham Richardson, can be less black and white in handling issues within the Labor Party. Again that is a matter of judgment. He might quite fundamentally disagree with my attitude, as I disagreed with him.

When he joined the Right, that was part of a process. Several others left at the same time, and the Right became a bigger group. Of course, it has to be acknowledged here—because everyone comments on it by snide interjections, by comments in the newspapers or by corridor gossip—that earlier this year, when I again sought preselection and to be in one of the first two positions on the half-Senate ticket for South Australia, I was unsuccessful and ended up at No. 3. It is well known that John Quirke was very much organising to ensure that it was a person from his own faction who got elected higher up the ticket than I did. That is fine; I do not complain about that. That is the outcome of a PR ballot in a factional arrangement.

It is clear that in a number of areas of the operation of the Labor Party in South Australia he and I have fundamental differences of opinion; we differ about the way the state branch has been performing in recent times and I am on the public record as being considerably disturbed that our state branch of the Labor Party, through most of the 1990s, has not performed as well as it did in the previous 30 years when we were basically the majority party in South Australia. I have been on the record elsewhere. I have to say I could not get up here and make a speech without putting on the record the differences, because if I gave a glowing testimony to everything he had done, people would have said—as would John Quirke—‘Schacht’s a hypocrite,’ just as I would say, if Quirky stood up in this place and said I had done all these wonderful things, ‘Quirky’s being a hypocrite.’ We know each other well enough and have known each other long enough—I have known John Quirke longer than most—to understand that is the best way to treat each other.

I have always known about John. He has had a very deep interest in defence matters. When he worked for Senator Foreman, and even before that, in the discussions in the Labor Party in South Australia, John’s interest in defence matters was very well known and very technically expert and I have no doubt when he came here that was one of his aims.

When he came here, I disagreed—I know this disappointed him greatly, though it did not make any difference to the outcome—with his swapping from the state house to this chamber. In state parliament we had a cricket team of members—11 only—and he was the shadow Treasurer, so I did not think it was appropriate that, with only a few months to go to the state election, he should step down and come to the Senate. I thought the first criterion we should be facing was doing everything we could to rebuild the Labor Party at the state level in South Australia which, in the subsequent state election, we did very well. Anyway, that was a position I took. He disagreed with it. I put that view inside the Labor Party. He had the numbers. He was successful and came here.

I want to conclude on what has to be acknowledged with John Quirke. I have known for a long time that John Quirke has a diabetes problem. He has openly acknowledged it to many people over many years. Whatever disagreement I may have had within the Labor Party with John Quirke, we were both in the Labor Party and once we were on the floor here together, the enemy was on the other side, not here between each other, and that should always be the focus.

It does take courage for someone like John Quirke to realise that one has to put one’s health and family ahead of political interests, et cetera, and he has done that. The thing that particularly strikes me is that John and Davina Quirke have three kids under 10 years of age. The idea that he might try to hang on here and risk his health and pass away and leave three kids under 10 without a father for the rest of their lives as they go through those important teenage years would be a tragedy. On that basis, John Quirke has made a very tough decision but a very correct decision on behalf of his family, and I certainly want to acknowledge that.
Senator Ludwig (Queensland) (1.42 p.m.)—I rise to speak about John Quirke. He has not left the chamber, in the sense that his aura will continue. In the short time that I have been here he has been of great assistance to me in providing guidance and advice, which I have not always followed, but I have certainly listened to the advice that he has given me. I acknowledge the company that he has provided at some of the dinners. I think Senator Hogg went into those particular dinners at the ‘Hoggerama’. I was not always that punctual in turning up and participating.

What I thought I would have in the coming years was an ability to be able to learn and to continue to build on a relationship with Senator Quirke, finding time to engage him in some of the pastimes and interests that he has had. Certainly I thought I would be able to express some continued enjoyment at his ability to provide short quips and to be able to hurl bombs across the chamber and hit targets, not only in a sense of having an interest in guns himself, similar to myself, but also the ability to be able to shortly put an argument and deliver it so that it hits its mark quite effectively. That sort of skill is not one that comes to people easily. It is one that I am sure John developed over time and it is one of those interests I was hoping also to have rub off on to me.

I note in the biographies of senators and members for the 39th parliament that I pre-date his joining the ALP. In fact, I pre-date him by a couple of years. I am sure that his speedy rise through the ranks owes much to his ability, directness and forthright nature. I can only hope that I can emulate that in some way over the years.

I am very pleased to be able to take the opportunity to also thank John for the time I had to learn from him and to be able to experience some of the uniqueness of John that I think was reflected in this chamber. In some instances, people like John are necessary in places to be able to add humour and lightness and also to be able to provide guidance and that maturity that comes with someone who has the experience he has in relation to this place.

The number of committees he was on provided great scope for him to be able to learn and to develop that art over the time he was here. I also find that the time he spent with me on the legal and constitutional committee was of great value. We met in WA and in other places, including Sydney, and I was able to gain experience and benefit from his advice to me, although, as I said, I did not always listen to it as much as I should have done. I also have great admiration for John’s ability to be able to summarise debates and put them forward directly. Also, the matters that he ranged over provided me with great guidance.

Senator Crowley (South Australia) (1.46 p.m.)—I too want to take the opportunity to say a few words about my colleague John Quirke. I particularly want to join others in their comments about John today. I think all of us have had a cold bucket of water in the face reminder that, as Senator O’Brien said, our health and our immutable continuing existence is not a given. We are reminded that we are all pretty frail or vulnerable to illness like anybody else. Every now and again senators can think that they will live forever, but it is a good idea to be reminded from time to time that we can be sick like any other human in the community.

In the politics of South Australia, as I have said in this place in the past, the people who were instrumental in assisting me into politics included Mick Young, back in the days when he would say things like, ‘What this party needs is a couple of good boilers.’

Senator Boswell—Ha, ha!

Senator Crowley—I thought you would enjoy that, Senator Boswell. I am not sure what the definition of a good boiler is but I seem to have qualified under that definition back then.

I also enjoyed support from people like Howard O’Neill, who was the state secretary and, subsequently in the role of state secretary, Chris Schacht, who probably used other words than ‘boilers’. There is no doubt that the Labor Party in South Australia saw very early on the importance of providing a representation of women in politics. That was both at state and federal level and in the party organisational committees and so on.
Subsequent to that, maintaining one's place in the scheme of things depended very much on support within the factions. John Quirke was one of those people in the Centre Left whose support I counted on and depended on for a significant number of years. As John Quirke used to say, particularly after the shifting ground of factions in South Australia, 'It is very interesting, isn’t it? The people who previously were thanking me for the support that I provided for them can now seem to find no kind words to say about me at all.'

I think there is something about politics that does mean that a lot of the decisions and people’s commitment to things political make those issues and the need to succeed very powerful indeed. There is something about politics that means if you are defeated in a ballot, it is particularly crushing or hard to cope with. I think Senator Schacht said a few minutes ago that he has had the experience on a few occasions and it could also be said, 'Haven’t we all?'. Perhaps it is because of the passionate commitment for those of us who are involved in politics—that it is something more than just a job. Politics is far more than that. I suppose the winning is particularly sweet and the losing is particularly tough.

I thank John Quirke for a lot of support over my years in the party in South Australia. I also found it interesting that John Quirke’s way of getting the numbers certainly earned him the odd criticism. I will not cite all those shocking things that might have been said about a person, and I am sure the senators present know a fair number of them. One of the things I did like is that people could say, 'How can this man who is so hard, stern and tough at getting the numbers then be seen cuddling his little kids like that?' It is as if you cannot be such a nice man with your own children if you are such a beastly person when it comes to getting the numbers. It is extremely interesting to know how many people were actually surprised by the toughness of John in the political arena and the countering of that with his absolutely unqualified affection and commitment to his family. A number of speakers have already said his decision was clear. If his family was in jeopardy, his priority was very obvious. He would do what was necessary to be with, and to ensure he stayed with, his family.

It is very disappointing that a person of John’s involvement in, commitment to and love of, the Labor Party should have to retire so early for disappointing reasons—health reasons that left him no option. It is very disappointing for him, I am sure, that he had to make this choice. It is a tough choice but an honourable one and worthy of our appreciation that he has so clearly made this decision for family in the face of his clear delight in things political. As others have said, and I am very happy to pass on my appreciation of John in these areas, he was not only a great number getter within, and supporter of, the party but also a huge source of information. I know very few people who had such access to the ins and outs of what was going on. For the good news and the bad news and the scuttlebutt up and down corridors in both state and federal politics, John Quirke was a great one to make sure you checked in with, because he was a huge source of information.

I am pleased to have this opportunity today to say a few words on behalf of John, to thank him for his support in the past and to wish him well and, having made this decision on behalf of his health, I hope that entitles him to many years of good health with his wife, Davina, and children. Undoubtedly he loves them dearly and I hope his time post the Senate is fruitful and productive.

Senator HARRADINE (Tasmania) (1.52 p.m.)—I also would like to pay tribute to John Quirke and note on the sad occasion of his resignation from this Senate the contribution he has made to public life over many years, both in the South Australian parliament and the national parliament. It is true that we acknowledge what he has done, but we should also be grateful for what persons like John do. I am certainly grateful for many of the things he did. Many of them were done without the blare of publicity. He was a worker. He knew his way around and was able to achieve success in many areas without any boast and without any fanfare. The more that can be done, the better, I believe, not only for the need for us to be a little bit more humble than we are but also for the body...
politic as a whole and for the people whom we represent.

John and I talked at times about the mid-north and the northern part of South Australia, which is of course where I came from originally. He had a great interest in that part of South Australia as well as, of course, in the whole of that state. He was very, very knowledgeable, as has been referred to in the comments made in this valedictory period of speeches. I worked with him and saw how he worked in, for example, the IT area. He was a member of the IT committee and got across the submissions and the issues very quickly. Similarly, he was a participating member on the Senate Legal and Constitutional Committee and also I recall his commitment to human rights—a very, very important commitment, one that he stuck to throughout his period in this chamber. I was not privileged to know him well at all before he entered the chamber. I note, for the record, that he replaced someone who was also a quiet worker in this chamber, Dominic Foreman.

I would like to join with colleagues in expressing my regret that John has had to make this decision. It does bring home to us that what we do here is certainly not everything. In fact, we should always remember that what we are doing here is but the tip of the iceberg. I want to express my best wishes to John and to his wife, Davina, and four sons, Alexander, Liam, Daniel and Christian Luke. We will remember what he has done here for his constituents and the parliament and the issues as a whole. I wish him a speedy recovery. We are with him and we again thank him for his contribution to public life.

Sitting suspended from 1.59 p.m. to 2.00 p.m.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Minister for the Environment and Heritage) (2.01 p.m.)—by leave—I inform the Senate that Senator Nick Minchin, the Minister for Industry, Science and Resources and the Minister representing the Minister for Sport and Tourism, will be absent from question time today. Senator Minchin is presenting the government’s position on the need for a national repository for the safe disposal of Australia’s low-level radioactive waste to a large public meeting in Adelaide. During Senator Minchin’s absence I will take questions relating to the industry, science and resources portfolio and the sport and tourism portfolio.

QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Banking

Senator CONROY (2.02 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Does the Howard government support the banks increasing their interest rates and fees and charges in order to recoup the costs of the GST? Why did the ACCC approve these increases when the government has repeatedly claimed that the banks will be hundreds of millions of dollars better off under the GST? That is out of the ANTS package right here, page 169. If the banks are going to be hundreds of millions of dollars better off, why are consumers and small businesses going to be hundreds of millions of dollars worse off due to GST inspired interest rate and bank fee increases?

Senator KEMP—Thank you to Senator Conroy, a former official with the Transport Workers Union—

Senator Conroy—And proud of it.

Senator KEMP—Oh well, there is no accounting for taste, that is for sure. Basically the point I am making is that virtually every senator over there is a trade union boss. This is not a Labor Party, this is a trade union bosses’ party. Let me get on to the question that Senator Conroy asked—

Senator Conroy—My dad has never employed me.

Senator KEMP—My dad would never employ you, Senator Conroy. He is a man of some taste and judgment, I can tell you. He knows a shonk when he sees one.

Senator Conroy—He employed you.

The PRESIDENT—Senator Kemp, the question.

Senator KEMP—It is the absolute height of hypocrisy for the Labor Party to be raising issues on the cost of banking. If the Labor Party had supported the original ANTS package, which you waved in the air, Senator Conroy, which was the source of what you were talking about, both the financial institu-
tions duty and the bank accounts debits tax would have been abolished. If you had supported the original ANTS package, which you waved around, both FID and BAD would have gone. Now, of course, as a result of your behaviour and that of your trade union colleagues, the people of Australia need to know that they will continue to pay the FID until 30 June 2001 and the BAD until 30 June 2005. We need look no further than the Labor Party's performance in this chamber, and in waving around the ANTS package, Senator, you fell straight in. The Labor Party opposed the ANTS package but now they support the GST.

Senator Conroy—It is your package. You did the deal with the Democrats.

Senator Faulkner—Is that the never ever GST?

The PRESIDENT—Order! Persistent interjecting is disorderly.

Senator Kemp—I make the point that, having up to 30 June opposed the GST, the Labor Party have changed their view and now support the GST. The bank fee increases as a result of the new tax system, like all price increases as a result of the new tax system, are subject to investigation by the ACCC, if people are concerned. The government has given the ACCC strong powers to prevent price exploitation. One moment Senator Conroy seems to be running with the idea that the ACCC does not have enough powers and the next moment seems to be saying that it has too many powers.

Senator Conroy—It does not have enough resources.

Senator Kemp—Now he is worried about the resources of the ACCC. The truth of the matter is that on this issue you are all over the place. If the Labor Party are genuinely concerned about this issue, and I do not believe they are, to be quite frank, if the Labor Party are concerned about any fee increases they can draw these matters to the attention of the ACCC. I also make the point that we do not know the Labor Party policy on the FID tax nor on the BAD tax. (Time expired)

Senator CONROY—Madam President, I ask a supplementary question. Isn’t it a fact that the government has deliberately misled Australian banking consumers and small businesses? Isn’t it the case that, rather than bank fees and charges going down under the GST, as promised on page 169 of your tax package, the GST has forced both bank fees and interest rates up, further eroding the value of the tax cuts?

Senator Kemp—Madam President, let me quote a number of facts. When we came into office, people were paying upward of 10 per cent interest on home mortgage loans. Now, the more typical home mortgage interest rate is about eight per cent. So under our policy, interest rates have come down. Under Labor Party policy, interest rates go up. That is the first point I make—that interest rates have come down under this government compared with when we assumed office.

Senator Conroy—There is nothing left of your tax cuts.

Senator Kemp—Senator Conroy raises the issue of tax cuts. I just hope, when people are taking note of answers, that we can get some assurances from the Labor Party and Senator Conroy.

Senator Conroy—The voters in Isaacs worked you lot out—good and proper!

Senator Kemp—Stand up after question time, Senator Conroy.

The PRESIDENT—Senator Conroy, you have asked a question and a supplementary question and have been shouting consistently during the answers. That is disorderly.

Senator Kemp—The one thing that the public want to know from Senator Conroy and the Labor Party is whether the Labor Party will assure the public that the very substantial tax cuts which this government has given them will be kept. (Time expired)

Welfare Reform: Report

Senator MASON (2.08 p.m.)—My question is to the Minister for Family and Community Services, Senator Newman. The minister today received the final report of the independent reference group on welfare reform, chaired by Mr Patrick McClure. Will the minister outline to the Senate the key elements of welfare reform?
Senator NEWMAN—I thank Senator Mason, who has a keen interest in the subject of welfare reform, as do all members on this side of the chamber. There would not be a need for this government to reform welfare if the previous government had done more to give Australians better opportunities in life. Welfare reform as practised by this government is welfare reform for a fair go. Welfare reform is about recognising individual circumstances. Welfare reform is about being fair to the taxpayer who funds the system. Welfare reform is about removing barriers. Welfare reform is about modernising the system to take us through the 21st century.

The handing over today of the report from the McClure reference group was a significant moment in Australia for future policy directions. I cannot emphasise enough how important that report is to the future directions of this country. That report is going to be used to guide the reform of our welfare system and to shape future policy development. Our government recognise the need to keep pace with the future development of Australian society and to maintain a strong economy. That is why we have been able to get an economy whereby Australians are getting jobs in unprecedented numbers—the best social welfare policy you could have. The modernising of the welfare system is fundamental to keep pace with the changes happening in our society and in the world. It is very similar to the need for tax reform. That has been a very significant and important element in improving the lot for Australians. Social welfare reform is just as important and just as significant for our country.

As well as providing a social safety net for those in genuine need, the welfare system has to do more to encourage self-reliance and to give more practical support to those people who are in vulnerable situations. As a community, we need to focus on the capacities and the abilities of our citizens and how we can support their full participation in our society. The government does endorse the broad direction of the report. There are five key areas for reform which are identified in the report: individualised service delivery, a simple and responsive income support structure, incentives and financial assistance, mutual obligation and social partnerships. Those five key areas demonstrate that welfare reform is not just an issue for government but is an area where the wider community—business and the community—have an important role to play. Of course, the involvement of the wider community has already been quite extensive. There has been huge consultation by the reference group with the community to produce the interim report and continuing consultation with the community after the issue of the interim report in March. There has been a broad, wide-ranging consultative process.

The report further validates the strong social policy reform agenda that has already been implemented by the Howard government. That includes the creation of Centrelink, the Job Network, the introduction of the youth allowance which streamlined payments to young people from five into one and improved the lot of students, as well as tax reform. The report principles are going to further build on this strong base.

We are not about simply adopting overseas approaches to mutual obligation. We want to ensure that our policies reflect our different customer groups, social security system and Australian community norms and values. The government agrees with the report that our welfare system must work towards reducing economic and social disadvantage over time and encourage increased economic and social participation based on ability and capacity. I commend the committee for its report. (Time expired)

Genetically Modified Foods: Labelling

Senator FORSHAW (2.13 p.m.)—My question is directed to Senator Herron representing the Minister for Health and Aged Care. Now that the Howard government has been rolled by the states and New Zealand on the question of proper labelling for genetically modified foods, will the minister give an undertaking to implement the decision of the Australia New Zealand Food Standards Council without further delay or interference from the Commonwealth?

Senator HERRON—The question is obviously based on a false premise. The Prime Minister was not rolled in New Zealand in
relation to gene technology. There was a consensus decision arrived at at the minister’s meeting.

Senator Forshaw—He was rolled.

Senator Herron—He was not. Basically the question is the usual fatuous question that you get from the other side trying to score political points. The reality is that the recent decision on labelling of genetically modified foods was taken by 10 health ministers—the Commonwealth minister, the New Zealand minister and eight state and territory health ministers—constituting the Australia New Zealand Food Standards Council. After much debate, the council reached a collegiate position which required all health ministers to modify their respective positions. Senator Forshaw might be interested to know that all health ministers—the whole lot of them—modified their positions.

All ministers had to find a balance between consumers’ desire to know what they were buying and the cost to industry and to Australia’s and New Zealand’s trade. Minister Wooldridge was pleased to see the state and territory health ministers move closer to the Commonwealth’s preferred position in a lot of areas, reflecting a whole of government consideration of the issue. We will be interested to see, however, whether the decision will require industry to test or determine whether DNA is present in highly refined ingredients, processing aids, food additives and flavours. The Commonwealth’s position would have allowed blanket exemption for these components, and this would have had the potential to reduce costs to industry and to consumers substantially while still delivering world’s best practice information to consumers. My understanding is that that was the final decision arrived at.

In considering this issue, it must be remembered that health ministers have stated that it is not a health and safety issue; it is a consumer choice issue. The Commonwealth will continue to liaise with stakeholders to assess costs and to ensure smooth implementation of the new labelling requirements. I am sure that my colleague Senator Tambling, who ably represented the government in New Zealand, will be taking a keen interest in this. I am sure that he will ably represent us in this regard in the future. He is an outstanding senator for the Northern Territory and a valued colleague within the portfolio.

Senator FORSHAW—Madam President, I ask a supplementary question. I note that the minister did not give an undertaking that the government will implement the decision of the Australia New Zealand Food Standards Council. Can the minister confirm that, because this issue has already taken almost two years to resolve, there are already foods on the market containing genetically modified ingredients? Can he also confirm that it will be 12 months from gazettal before the labelling regime is in place? In light of this, Minister, can you advise the Senate of the timetable that the government intends to follow to have the standard gazetted as soon as possible?

Senator Herron—My understanding in relation to gazettal is that it will be within the next few months. I would have thought that Senator Forshaw would believe also that the important thing is to get it right in relation to the determination. A few months may be important in this regard. I am sure that the gazettal will be achieved within a short period of time.

East Timor: Australian Federal Police

Senator BRANDIS (2.17 p.m.)—Madam President, my question is directed to the Minister for Justice and Customs, Senator Vanstone. Just over a year ago the first contingent of 50 AFP officers was deployed to East Timor to ensure the security of the ballot on independence. Does the minister believe that sufficient recognition has been given to those brave officers who served in East Timor? What further efforts is the government undertaking on behalf of those officers?

Senator VANSTONE—I thank Senator Brandis for the question. Australians can be, and I am sure they are, justly proud of the job done by the Australian Federal Police in East Timor last year both in the lead-up and in the post-ballot period. More than 250 Australian Federal Police have now served or are still serving in East Timor as a part of an ongoing commitment by the government to the restoration of peace and democracy in the new nation. I am sure no-one in the military will
mind me pointing out that the AFP were there first and are still there.

The first contingent of 50 Federal Police left Australia in late June 1999. All were, at that time, unarmed civilian police. There was a total of 272 civilian police from 27 countries, led by an Australian, the UN Commissioner of Police, Alan Mills. Within a week AFP officers came under attack from militias in Maliana. In Suai a church came under threat from 40 militia armed with guns, grenades and machetes. The sole female Federal Police officer was able—as one might expect, Madam President; I am sure you will understand—to hold the fort, call for back-up and allow voting registration to continue. At Aimaro in early August two civilian police were speaking to about 70 pro-independence students when they were attacked by militia armed with rocks. A plastic chair and a coffee table were brought to assist them to fight off the militia. In Oecussi more riots broke out and an Australian Federal Police officer was forced off the road by a militia member who threatened to kill him. He was able to defuse the situation until the Indonesian police arrived.

On polling day, 30 August, the violence dramatically increased, resulting in the death of four locally engaged UN employees. Four days after the ballot, with further violence, burning and looting, all electoral staff were withdrawn to Dili and Bacau, where they stayed virtually under siege by militias. A week after the ballot, most UN civilian police were evacuated to the safety of Darwin. Five officers remained, including Alan Mills, with about seven other civilian police. It is fair to say that, without that group and their willingness to hold on in what was by any description a desperate and dangerous situation, the UN may have withdrawn. We must all remember that it was only the unarmed civilian police who refused to give up when everybody else was ready to leave. Anyone who saw the photos of Timorese handing their children through razor wire to police at the UN compound could not possibly forget those scenes. By 14 September all UN staff were evacuated, but on 22 September the second detachment of Federal Police was back there again, two days after the Army finally arrived. This year the third and fourth detachments have been deployed.

Last week, on 8 August, I had the honour to present some of these police with their overseas service medals. There are to be further ceremonies. There is uncertainty as to whether the UN will give these people the medals they deserve. There is uncertainty and discussion. Foreign Minister Downer and I are today sending a joint letter to the UN Secretary-General, Kofi Anan, calling for the UN medal to be issued to all AFP officers who served in East Timor. It is an important priority for the government and I hope it is not misplaced confidence that the UN will recognise the job these people did.

Australian Defence Force: 3rd Battalion, Royal Australian Regiment

Senator HOGG (2.21 p.m.)—My question is to Senator Newman, the Minister representing the Minister for Defence. Can the minister confirm reports that members of the Defence Force, specifically the 3rd Battalion, Royal Australian Regiment, have been subject to bashings, assault and battery, torture and unlawful detention by fellow members of the battalion? Is it true that the perpetrators of these actions have not been brought to justice? Is it further true that legal action against two of those responsible was actually aborted as a consequence of the intervention of the then commander of the 1st Division? Why have the minister and the ADF persistently withheld information about these extremely serious matters from the media; the Senate estimates committee; the Joint Standing Committee on Foreign Affairs, Defence and Trade; and the Commonwealth Ombudsman?

Senator NEWMAN—Let me make it very clear: the government and the Defence Force do not condone any sort of bullying or violence within the ranks of the ADF. When we were in opposition we were very strong to see that it did not happen under the previous government, either. The maintenance of good discipline rests largely on good leadership and the proper application of the Defence Force Discipline Act. The government takes all allegations of abuse and bastardisation very seriously indeed and condemns them unreservedly. I am confident that Lieutenant
General Cosgrove is similarly committed to those policies and principles.

The Army confirms that a number of personnel from 3 RAR have been charged with assault and other offences. These matters are still pending so it would be inappropriate for me to comment further on the detail of the investigations, but the allegation in the article that Minister Moore and Lieutenant General Cosgrove have held discussions on this issue are groundless. There has not been, nor will there be, any cover-up. The investigation will continue to be properly processed in accordance with the Defence Force Discipline Act. Minister Scott and I personally have every confidence in the ADF and its military justice system.

Senator HOGG—Madam President, I ask a supplementary question. Minister, in addressing the first part of my question you did not answer the issue of whether the minister and the ADF persistently withheld information about these extremely serious matters from the media, the Senate estimates committee, the Joint Standing Committee on Foreign Affairs, Defence and Trade, and the Commonwealth Ombudsman. If you cannot answer that would you take it on notice?

Secondly, when did the Minister for Defence first become aware of these events and what action did he take in response?

Senator NEWMAN—I do not have information on that and I will seek a response from the minister.

Welfare Reform: Report

Senator LEES (2.24 p.m.)—My question is also to Senator Newman, but in her capacity as Minister for Family and Community Services. I ask the minister if she is aware of a key recommendation in the final McClure report regarding mutual obligation. This recommendation is that mutual obligation should be:

implemented in a way that maximises voluntary compliance and provides that alternative approaches to sanctions are considered before financial penalties are imposed.

Does the minister agree with this approach and does she agree that this represents a significant departure from her government’s current enthusiastic breaching of job seekers and the widespread imposition of financial penalties?

Senator NEWMAN—I know that Senator Lees has an interest in the issue of breaching. I point out to her what I pointed out to the Senate this week—that under our government there has been a reform to the breaching system whereby there are three opportunities for people to be breached. They can be breached for activity testing purposes or they can be breached for administrative reasons where they have failed to give information about their income or whether they are partnered or single and that sort of thing. These three breaches are a much fairer system than we inherited. You will recall, Senator, that we worked with ACOSS and with the other parties in this chamber to achieve a fairer system. It was agreed—and therefore went through in the end without opposition—that people would get one warning, effectively, and they would have their income reduced somewhat, a second warning and they would be reduced again and a third warning and they would be taken off benefits. I am informed that that does not happen very much at all these days because people do generally deal with it on the first or second occasion that they have breached, and that is a good thing. The previous system was that people were taken off payments immediately on the first occasion, and that meant that the law was not being implemented by the social security officers because they were very unhappy about taking people off payments straightaway for a first offence. So, in that context, I believe that what Mr McClure was saying today in the press conference is right—that most people do want a job; most people do try and do the right thing; some people, and there is always an element, do not. We have some people who are quite fraudulent. It is a small proportion, but not the 2,500 that keeps being reported in the press. They are some of the most serious cases or persistent offenders; there are many other cases of fraud which do not go to the courts but get dealt with in other ways. But there is non-compliance in quite large areas, and the law needs to be obeyed.

Nevertheless, that is not the basis on which welfare reform is being promulgated. It is to
try and give people opportunities, to try and remove the barriers that are in their lives now—whether it is where they live; whether they have a disability and what kind of a disability; or whether they have a lack of computing skills, for instance. It is often the case with mature age workers that they have that sort of a barrier. Sometimes, particularly for many women who have been out of the work force a long time, a lack of confidence is the barrier. They have been so long without using what skills they had that those skills have become very rusty. As a government we are not focusing on sanctions. This welfare reform is about opportunities. It is about opportunities and removing barriers to people’s opportunity to take up a full involvement and participation in our community. It is good news for people.

Senator, I would urge you to read the report carefully. I would ask every Australian to read it carefully. If you take it as a whole, as Mr McClure was saying today, please look at it all. Look at the totality of it—the direction of it. The government has endorsed that direction. We are now going to sit down and, across the whole of government, look at the recommendations one by one and produce a report that will come back. Today I cannot answer the questions of detail about the recommendations because the government has not yet gone through that normal process. This is a report to government; it is not the government’s report—it is not ‘from government’. I have given you the general thrust, Senator. I cannot answer the specifics that you are asking because they have not even been considered.

Senator LEES—I was asking the minister about current practices regarding people who are currently on unemployment benefits. The breach rates are somewhere around a quarter of recipients. I consider that to be an absurdly high figure. At the end of her answer the minister discussed the general thrust of the report. Well, the general thrust of the report is one of supporting people, encouraging them, looking at issues such as lack of transport, lack of child care and lack of training. On the thrust of the report, can the minister answer whether or not she is prepared to reconsider the way in which the unemployed are currently being treated?

Senator NEWMAN—I re-emphasise that this was a reform that the Senate endorsed. It was a very consultative process to change the breaching arrangements.

Senator Lees—The breach rate is around 30 per cent in South Australia.

Senator NEWMAN—I can tell Senator Lees that the vast majority of unemployed people—

Senator Lees interjecting—

Senator NEWMAN—Senator, I am trying to give you the answer that you are wanting. Eighty-six per cent of the 1.4 million people who received payments last financial year did the right thing while on payment. They are not breached. I repeat: 86 per cent of the 1.4 million people who received payments did the right thing while they were on payment. Rate reduction periods do send a message to those who, for carelessness or for deliberate reasons, do not do the right thing. If you are suggesting that the Democrats do not believe in people doing the right thing, let that be on the record, but I would not have thought that is what you would have said. I would have thought you would believe that most people would do the right thing and should do the right thing, and that is what the government believes.

Welfare Reform: Report

Senator LUDWIG (2.31 p.m.)—My question is to Senator Newman, the Minister for Family and Community Services. Does the minister accept that the McClure report’s claim that welfare reform requires the provision of efficient individualised service delivery is clearly a serious criticism of the government’s current failure to resource Centrelink adequately? As a specific example of the Howard government’s attitude towards resourcing of the service delivery agency, is the minister aware that at the Wynnum Centrelink office in Queensland there is currently a four-week waiting list for Newstart interviews? Will the Howard government take the McClure report’s criticism on board and put adequate resources into Centrelink offices like Wynnum?
Senator Newman—The answer to the first part of the senator’s question is no. I would point out to him that this government is the one that first of all commissioned the report. If you would like to go back and read my speech at the National Press Club last year and the discussion paper which I released, you would see that the government genuinely wanted suggestions and recommendations for the way ahead. In the meantime, this government has introduced the one-to-one arrangement between Centrelink offices and people needing help. That is proving a great boon. It has improved the relationship with the Centrelink staff and it has improved the opportunities for the people who need help. It has already gone some way down the route that the McClure report is suggesting.

They are also suggesting that there should be a streaming of people and that each, according to their needs, should be the focus. I think that is a very important contribution that they have made because people do need to be assessed effectively as to what barrier may be facing them and what help can be given. That one-to-one arrangement in Centrelink is already in place to be able to do just that streaming. There is more to build on that. The linkages between Job Network and Centrelink are also issues that the McClure report has recommended that we look at. The government is going to look at those recommendations and take them very seriously.

Senator Ludwig—Madam President, I ask a supplementary question. Will Senator Newman take on board the question that I asked and perhaps look at the Wynnum Centrelink office in Queensland? Will the minister provide the Senate with a list of waiting times for Newstart interviews for all Centrelink offices, so that we can have a better idea of the likely size of the reform task that lies ahead?

Senator Newman—I think that would involve a great deal of officer time. I will have a look at what is involved—as Senator Ray was always wont to do. He was willing to provide the information if it was not an undue use of resources.

Dairy Industry: Deregulation

Senator Harris (2.34 p.m.)—My question is directed to the Assistant Treasurer and it relates to the consequences of the government’s deregulation of the dairy industry and its resultant impacts on the victims of the legislation. Has the government naively handed over control of the industry to the multinationals? Do farmers have any input or control over their farm gate prices? In Queensland, prices to dairy farmers have fallen up to 18.9c per litre in only one month. As a result, farmers are now running very close to the bone. Is the government aware that the dairy farmers are now operating on three-monthly contracts which are up for renewal on 1 October? How does the government expect the predominantly family operated dairy industry to continue to invest in their future with only three-monthly written contracts?

Senator Kemp—It was very kind of you to ask that question of me, Senator Harris, but I have some bad news for you. It does not directly relate to my areas of responsibility. Your question should probably be directed to the minister acting on behalf of the minister for primary industry. I will pass it on to Senator Alston, who is the responsible minister in this chamber.

Secret Intelligence Services: Security Breach

Senator Robert Ray (2.36 p.m.)—I direct my question to Senator Hill, the Leader of the Government in the Senate. What action has the government taken in response to the leaking—on 6 July this year to the Canberra Times—of the top secret report into the security of Australia’s secret intelligence services prepared by the Inspector-General of Intelligence and Security, Mr Bill Blick? Has the government launched an investigation into this serious breach of security? If not, why not? If an investigation has been undertaken, has it resulted in the identification of the source of the leak? If so, what action does the government propose to take?

Senator Hill—I do not have an answer to that question, but I will take it on notice.

Senator Robert Ray—Madam President, I ask a supplementary question. There is
one additional piece of information you might seek, Minister, to assist us in this. Can you tell us, when you are seeking that information, whether it is the view of the Attorney-General, Mr Williams, as stated on 22 July, or the view of Mr Downer, as stated on 24 July, which represents the current status of government opinion on this? Their views seem to me to conflict. You might also let us know whether the government has considered the Blick report and whether recommendations have been adopted. I am not seeking the details of those, just whether action has been taken on it.

Senator HILL—I will take that further information on notice.

Superannuation

Senator LIGHTFOOT (2.37 p.m.)—My question is addressed to the Assistant Treasurer. Will the minister update the Senate on the latest figures available on the growth of superannuation assets and contributions? How are the government’s policies contributing to the growth in superannuation?

Senator KEMP—I thank the senator for that important question. Senators will know that there has been extensive debate on superannuation in this chamber. We have a number of senators, including Senator Watson on this side, who take a particular and continuing interest in superannuation. Senator Sherry, on the other side, seems to spend about 90 per cent of his waking hours thinking about the superannuation surcharge—by current forecasts. To those two senators, and indeed to all senators, let me say that there is some further good news on superannuation. There is no doubt that the growth of superannuation has been one of the many success stories of the Howard government. Today APRA released its latest quarterly survey of superannuation trends which provides figures up to the end of the March quarter. The survey demonstrates yet again the strong growth in superannuation in Australia.

Senator Sherry—It’s the superannuation guarantee, Rod.

Senator KEMP—Total superannuation assets—if you can control yourself, Senator Sherry—had reached some $454 billion by the end of March this year. This represents a growth of some 3.6 per cent during the March quarter, and a really quite outstanding increase of some 17 per cent plus during the 12 months to the end of March.

Senator Sherry interjecting—

Senator KEMP—Senator Sherry, you might have missed that. I know you have a particular interest in superannuation. There has been very strong and continuing good growth in superannuation, which I would have thought—

Senator Ferguson—He said it wouldn’t happen.

Senator KEMP—Senator Sherry said—as Senator Ferguson said—it wouldn’t happen, and I would have thought that you would have been very pleased and, indeed, relieved to hear these figures, Senator. Contributions during the year to March were up some 38 per cent compared with the previous 12 months, increasing from just over $37 billion to almost $52 billion. Member contributions were up substantially during the year to some $19 billion. This continual rise, Senator Sherry, in voluntary contributions is very pleasing. Superannuation funds, I can report, experienced high investment returns during the March quarter and assets in all sectors rose with the DIY funds—the funds with less than five members—which continues to be one of the fastest growing sectors, recording asset growth in the order of some 29 per cent.

Superannuation is now an important part of Australian society, with 91 per cent of all employees covered and with superannuation making up the largest component of financial assets of households. Our superannuation system, I am pleased to report, is based on strong foundations. It is growing rapidly in size and in importance for Australia’s financial markets. The government is building on these foundations to provide Australia with an even stronger, more flexible and robust superannuation system. Senators will be aware of important reforms like choice, which are currently matters being strongly negotiated on the government’s agenda. The news is indeed good on superannuation, and it is quite contrary to all the statements and comments that Senator Sherry has bored us witless with over the last four years.
Telstra: Sale

Senator MARK BISHOP (2.41 p.m.)—
My question is to the Minister for Communications, Information Technology and the Arts. Is the minister aware that at the Western Australian National Party State Convention last weekend the Western Australian Deputy Premier and State National Party Leader, Mr Hendy Cowan, restated his opposition to the full sale of Telstra? Does the minister have any response for the Deputy Premier, who said of the government’s Besley inquiry into Telstra service levels:

Anyone in Telstra or anyone in the Federal Government who thinks the National Party is going to change its view on the basis of a report ... we won’t?

Senator ALSTON—In my experience, Mr Cowan speaks more for himself than for his own little party in Western Australia, let alone the National Party at federal level. So let us be quite clear on this. Presumably every citizen in Australia is entitled to have a view and to put it to the Besley inquiry. Certainly members of the National Party are entitled to have their view and to have that considered at various levels. I do not think anyone has ever accused Mr Cowan of being a team player and, therefore, I would be very surprised if he could be regarded as speaking on behalf of the National Party at federal level.

Probably more important is a piece that appeared in the Financial Review today which made it very clear that, because of changes that are imminent in the US Congress, Telstra’s current status is at risk. What that tells you, I think, is that the Labor Party ought to come clean on their attitude on Telstra, because in that wonderful interview that Mr Crean gave the other day in the Financial Review, which of course suffered the fate that it deserved, he talked a fair bit about the contradictory elements of Labor Party policy such as those relating to the sale of Telstra and the GST, and then, as the reporters say, he goes off the record quite often to express a personal view. So I think we would be particularly interested to know whether Mr Crean actually said off the record the sorts of things that Mr Beazley has previously said to Mr Blount and Mr Keating has said to Mr Prescott of BHP. In other words, as Mrs Ker-not so memorably said, it is not so much what Labor might do in opposition in relation to the privatisation of Telstra that worries her, it is what they do in government.

So I think it might be a very helpful contribution to the debate if, rather than concentrate on the views of Mr Cowan in Western Australia, you concentrate on the real views of your shadow Treasurer. As we know from that Bulletin article a few months ago, your leader has not even been able to convince his own staff that he would not sell Telstra in government and your shadow minister similarly could not convince the reporters. So there is a huge credibility problem on the other side of the chamber that I think dwarfs any differences that there might be in one state of the Commonwealth on our side of politics. So there is the challenge for the Labor Party; get out there and have the courage to embrace a policy approach that has been adopted worldwide. Even North Korea and South Korea are coming together—you probably will not have a single ally left, the way you are going. Quite clearly, this is the sort of test that people look to you for. If you want to have credibility, this is your opportunity.

I conclude by saying that the Labor Party’s credibility is absolutely on the line on a number of issues, but the best example of this is a letter from Senator Crowley sent out to residents saying, ‘Kim Beazley has promised that, if elected, a Labor government will roll back the GST to make it fairer for all Australians, but we need you to tell us what needs to be changed.’ In other words, that word that dares not speak its name—you know, little ‘r’ roll-back now. Roll back? They do not even know what they are going to roll back. They have to get out to the community and ask them. If that is not populist politics taken to the extreme, I do not know what is. Let us get back to the high moral ground and take an issue of real substance. Let us find out what Mr Beazley and Mr Crean really think about Telstra, and then you might have some policy respectability.

Senator MARK BISHOP—Madam President, I ask a supplementary question arising from that response. Will the minister
now acknowledge that he simply intends to use the Besley inquiry report as an excuse to support the full privatisation of Telstra, over the wishes of rural and regional Australians as well as over the opposition of his coalition partners, the National Party?

Senator ALSTON—You must be reading the wrong trade union magazines because the ones I have seen have not said that. There may be different views around the country-side, and they usually surface at public meetings when the Labor mayor of some regional centre gets up and makes a point that is no doubt following the script from central casting. But there is very little evidence, I suggest to you, that large numbers of people in rural and regional Australia share your view of the world. They know full well that you would privatise Telstra as quick as a flash if ever you got your chance to do it. It is one of those classic policies, such as cross-media ownership and the like: ’No, we don’t have any plans to do it at the present time.’ We all know what that means, and I think people in rural Australia know very well what is in store for them at the next election, just as they did in 1996 and in 1998 when they quite rightly took the view that both sides of politics have the same policy; it is just that one party is up-front and the other does not have the courage of its convictions.

Welfare Reform: McClure Report

Senator STOTT DESPOJA (2.47 p.m.)—My question is addressed to the Minister for Family and Community Services. I refer to the minister’s endorsement of the direction of the welfare reform report released today, which emphasises investment in people to encourage participation and the provision of opportunity within a supportive society. Does the minister acknowledge that this represents a significant departure from her government’s current approach to welfare and employment assistance? As part of the minister’s endorsement of this approach and her recognition that job seekers and income support recipients require ‘more practical support’, will she restore the billions of dollars of funding that her government has cut from employment assistance and education and training—cuts which have directly contributed to the incapacity of the current system to provide opportunities for many jobless and income support reliant people?

Senator NEWMAN—I utterly reject the premise on which that question is based. This government has not been about slashing people’s opportunities. Let me just give you one example: in his portfolio Dr Kemp has massively increased the number of traineeships and people on the New Apprenticeship scheme. If that is not giving people a chance in life, I do not know what is. Some of those figures are double those we inherited from what the Labor Party was doing when we came into government. So you cannot get away with that, Senator. Let me also point out, as I have already this week in the Senate, that the Jobs, Education and Training program, the JET program, has also been substantially increased so that there is now approximately $17 million worth of expenditure on that program. It has also been widened to include partnered parents as well as single parents. It is one of those programs that does enable people to remove barriers and become more self-reliant. I said yesterday that I thought it was a very good program. I always said that when we were in opposition and I still believe it, and that is why we have expanded it; because it does help people. It helps them to remove the barriers in their lives and it helps them to get on top of the issues that are holding them back. It is empowering. It is utterly consistent with the recommendations of the McClure report. As to the detail of the McClure report, I have already said that the government will be answering that in some detail before the end of this year across the whole of our government, across all portfolios that are relevant to it. So, Senator, I can only reject your claim that in some way we have not provided opportunities for people. The very establishment of the Job Network, which has been such a huge success—

Senator Abetz—700,000 new jobs!

Senator NEWMAN—Whatever it is; 700,000 or 800,000 new jobs—has been of incredible benefit to people in Australia who were so marginalised under the previous government. People in Australia today have a strong economy, strong wage growth, good support measures in the welfare system and
good support measures in the training and apprenticeship system, and Australians recognise that.

Senator STOTT DESPOJA—Madam President, I ask a supplementary question. I recognise that the minister wants time to consult with her colleagues about the detail of the report in a holistic approach, but in light of the minister’s emphasis and acceptance of the notion of individual and the minister’s support for the emphasis on individualised service delivery, can the minister at least give the Senate an undertaking that she will advocate to cabinet the restoration of the $80 million, or 25,000 places, that your government cut last year from intensive assistance—the only government program designed to address this issue.

Senator NEWMAN—In a democracy such as we have, the cabinet processes are not open to being explained to senators here. Previous governments, including the rabble that is now opposite, did not advertise what proposals were going to cabinet when they were in government, and I do not intend to change from that.

Employment: Return to Work Program

Senator CROWLEY (2.52 p.m.)—My question is to Senator Newman, the Minister for Family and Community Services.

Government senators interjecting

The PRESIDENT—Order! Senators on my right will cease interjecting.

Senator CROWLEY—After the minister denied yesterday that the preparing for work agreements are a matter for her portfolio, has she now had drawn to her attention that this program is listed as a family and community services 2000 budget measure designed to save the government $212 million over four years by breaching nearly 50,000 unemployed people? In spite of the obvious distractions of retirement or alternative vice-regal employment, which may account for her not recalling this program at all yesterday, could the minister now explain how that policy, which helps fewer than 2,000 people into work while taking payments off nearly 50,000 people as a punishment, can actually be described as preparing them for work? Given that this is a real budget measure rather than a proposal for a pilot, isn’t this a real indicator of the Howard government’s punitive and cost-cutting approach to welfare policy?

Senator NEWMAN—I have not checked the Hansard, but yesterday I understood that I was being asked about the Return to Work Program, which is in fact a DEWRSB program—and a very good program it is. I am sure you would endorse it, Senator, because it is helping people who have been carers and out of the work force for two years to get back into the work force, and it is tens of millions of dollars.

Opposition senators interjecting—

The PRESIDENT—Order! The level of shouting and sledging on my left is unacceptable.

Senator NEWMAN—if I was being asked about the preparing for work agreement, as Senator Crowley clearly is asking now—

Senator Crowley—you got it wrong, Senator.

Senator NEWMAN—I am sorry. There is usually so much noise coming from your colleagues, with their male voices that bel low, it is very hard sometimes to hear females ask questions. You just heard an example of this with Senator Stott Despoja, who was being drowned out by some of these dopes opposite.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left will cease behaving as they are, which is in a disorderly fashion.

Senator NEWMAN—I would utterly deny that this is about a punitive approach. In that context, I am glad to say that neither is the McClure report. Consistent with the government’s approach, it is not a punitive approach, and we would not be interested in such an approach. But let me explain the preparing for work agreement. I am sorry, Senator, if that is what you asked me about yesterday; I did not hear. That agreement conveys the government’s mutual obligation message to job seekers, and mutual obligation is a fair system because it is mutual obligation for the taxpayer as well as for the per-
son who gets assistance. It is a fair system in the context of the sort of philosophy that Australians carry around in their hearts.

All activity tested job seekers sign an activity agreement on the day they claim payment. Most people would be surprised that they did not always have to do that. It formalises the activity testing arrangements and places them in a mutual obligation context from day one. The objective of the measure is not just to increase compliance but to provide a more focused approach to mutual obligation requirements. The agreement ensures that job seekers are aware of their rights as well as their obligations from the granting of the payment, and it streamlines the unemployment processes. From the day they claim payment, job seekers are informed of their obligations to actively job-seek and to participate in a range of additional activities, in return for receiving unemployment payments.

The main change is that people will be subject to the mutual obligation initiative and will choose their activity at day one. However, they will not be required to undertake this activity until they reach either six or 12 months on payment. The agreement helps them to focus on finding work immediately when they claim income support, to identify barriers to taking up work, and to develop strategies earlier to combat these barriers.

Coupled with Centrelink’s new one-to-one contact initiative, it is harder for job seekers to slip through the cracks and become long-term unemployed and welfare dependent. Senator, I would have thought you would have endorsed that. During the first four weeks of this initiative, from 1 July this year, around 50,000 job seekers have signed a preparing for work agreement. Job seekers can ask for additional time to think about the agreement before they sign, and very few job seekers to date have asked for extra time.

Senator CROWLEY—Madam President, I ask a supplementary question. Minister, I do believe a policy which helps fewer than 2,000 people into work while taking payments off nearly 50,000 people as punishment is worthy of the title ‘punitive’. Can you tell the Senate whether the punitive preparing for work agreement is a welfare reform initiative of yours or just another attempt by the trigger-happy Minister for Employment Services to demonise the so-called job snobs?

Senator NEWMAN—If Senator Crowley had been alert and listening just before this was introduced, she would have found that it was a joint exercise announced by Ministers Abbott and Anthony.

Aboriginal and Torres Strait Islanders: Family Violence

Senator COONAN (2.58 p.m.)—My question is to the Minister for Aboriginal and Torres Strait Islander Affairs, Senator Herron. The government has demonstrated its commitment to creating better outcomes and opportunities for indigenous Australians, especially through its practical approach to reconciliation and record spending. Will the minister outline what the government is doing to prevent family violence in indigenous communities?

Senator HERRON—I thank Senator Coonan for her question and for her continued interest, particularly given her legal training and background. Family violence is an issue of enormous concern to the Commonwealth government.

Opposition senators interjecting—

Senator HERRON—It is an issue which I would have thought the Labor Party in opposition should take some interest in, because they took no interest in it when they were in government. It should be of grave concern to everybody here that some women and children continue to experience appalling levels of physical and psychological abuse. The distress, the heartache and the despair of family violence touches the lives of so many people, not only in the wider community but also in indigenous families. The incidence of violence in indigenous communities is disproportionately high and must be given priority and attention by indigenous communities themselves and by all levels of government. Research has shown that violence directed towards spouses and other family members is significantly higher in the indigenous population than in the non-indigenous population, and in some communities violence affects up to 90 per cent of those families.
Wednesday, 16 August 2000

While the states and territories have responsibility for addressing indigenous family violence, the federal government is so concerned about this issue that it is taking a coordinating role. I am very pleased to inform the Senate that the federal government will spend $2.2 million funding 30 indigenous community organisations in the first stage of the National Indigenous Family Violence Grants Program, which is administered by my colleague Senator Newman. I want to pay public tribute to Senator Newman for her interest in this issue in my particular field and for her interest in it overall. She has demonstrated her concern for domestic violence and is overseeing the federal government’s national strategy to stop family violence.

The Commonwealth government has committed $50 million to Partnerships Against Domestic Violence, a collaborative initiative with the states and territories and the community, to find more effective ways of preventing domestic violence across Australia. The funding grants I have announced are based on principles proposed and agreed to at a series of roundtable conferences I held last year with indigenous stakeholders. That has been an enormously successful round that has been held with the indigenous stakeholders and with the federal and state public servants involved in this field.

We are spending $6 million on the National Indigenous Family Violence Grants Program, which will provide practical and flexible support for grassroots projects and will trial new approaches. These grants for 30 projects across Australia are the first stage in a three-year program to build community based solutions to family violence that are designed and run at a local level to prevent and reduce family violence. The essential feature of these programs is that they are owned and run by the communities themselves. These include the Burringurrah Community Aboriginal Corporation in Western Australia: $116,000 for a strong family, strong community, strong culture project; Sandgate Indigenous Community Network in my home state: $80,000 for a safety and family project to employ family support workers; and Goreta Aboriginal Corporation at Point Pearce in South Australia. And there are others.

These examples form part of the government’s practical approach to addressing disadvantage in indigenous communities. We are spending a record $2.3 thousand million on indigenous specific programs this year—a record. I am proud to say that this government has focused on key areas of health, housing, education, employment and self-empowerment to create a better future for indigenous Australians so that they can share in the nation’s prosperity.

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

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Savings Bonus

Senator Newman (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.03 p.m.)—I seek leave to incorporate in Hansard some additional information for Senator Denman, who asked me a question yesterday.

Leave granted.

The answer read as follows:

Senator Denman asked the Minister for Family and Community Services on 15 August 2000:

Can the Minister advise the Senate exactly how many pensioners who applied for the Aged Persons Savings Bonus, because of confusing application forms, been wrongly issued cheques that included $2,000 meant only for self-funded retirees? Can the Minister also confirm that these individuals have been advised to bank their cheques but not to spend them and to lodge an objection with the tax office? What steps will the Government take to advise pensioners that their cheques may be in error and to ensure no further cheques are sent out without being checked?

Answer:

Centrelink have advised me that 105 payments of the Self Funded Retirees Supplementary Bonus were made to pensioners who should not have received this amount. As soon as it was brought to their notice, Centrelink corrected the computer system to prevent this occurring again.

The Australian Taxation Office has advised me that these payments will be recovered subject to their normal debt recovery guidelines.
Senator Denman asked the Minister for Family and Community Services on 15 August 2000:

While the Minister is checking, can she also confirm that until last week pensioners who had been underpaid pension bonuses because of outdated Centrelink records of were told to lodge tax returns in order to recover the correct amounts of bonus? Given that Centrelink has now issued instructions to make ex gratia payments to rectify these mistakes, will the Government now assist those pensioners who acted under previous advice and paid an accountant to prepare a tax return?

Answer:

Centrelink informs pensioners on a regular basis that they should tell Centrelink of changes in circumstances within 14 days of the change. Unfortunately, some pensioners have not done this, and so a small number of bonuses were paid on out of date information.

Initially, some customers were advised that they could seek a higher bonus by claiming with the Australian Taxation Office if they thought they were entitled to a higher bonus.

However, as the Prime Minister noted in Question time in the House of Representatives yesterday, the Government considered this and decided to institute a simpler and easier approach to ensure that people got their full entitlements.

So, far from being condemned, I would have thought the government should be praised for that.

ANSWERS TO QUESTIONS ON NOTICE

Question No. 2165

Senator ROBERT RAY (Victoria) (3.03 p.m.)—I ask Senator Herron, Minister representing the Minister for Health and Aged Care, in accordance with the provisions of standing order 74(5), for an explanation of his failure to answer question on notice No. 2165, placed on notice on 11 April 2000.

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (3.03 p.m.)—I apologise to Senator Ray for the lateness of the response, but I have received a reply from the minister where he states that he cannot authorise the time and effort entailed to obtain the information requested, which is unrelated to the priorities of the health portfolio.

Senator ROBERT RAY (Victoria) (3.04 p.m.)—I move:

That the Senate take note of the explanation.

It was a disgraceful answer. A similar question has been placed and answered by at least five National Party ministers and two Liberal Party ministers. The two Liberal Party ministers are Senator Newman and Mr Reith. They managed to answer those questions with very little expenditure of resources, and their answers I found very satisfactory. These went to the expenses of office—that is, entertainment incurred by ministers. I went through Senator Newman’s answer, and I thought it was all pretty much okay. I went through Mr Reith’s answer. I thought it was pretty much in line with what I thought was a fair thing. You would know, Madam President, that I went through Mr Sharp’s expenses and thought it was a very unfair thing. Similarly when my attention was drawn to a previous Labor minister’s expenses I also said publicly I thought that was a very bad thing. This is a cover-up and an excuse. If seven other ministers can answer the question of how much they have spent on entertainment, why can’t the Minister for Health and Aged Care answer those questions? Why can’t he?

Senator Faulkner—it’s because of the MRI scam. That’s why.

Senator ROBERT RAY—Senator Faulkner says it is because of the MRI thing. I was not that interested—I have to be candid—in how much he spent, but he spent a lot of time consulting in the health industry and I wanted to know when, where and how much taxpayers’ money had gone into it, because his own fundraising dinners, which this would not cover, have become notorious. This is not a satisfactory explanation for the failure to answer this question. They have had it for four months. Why didn’t they give this answer three months, two months or one month ago. They thought the question could just sit there and never be considered.

I am not a rigorous pursuer of ministers who do not answer questions on time. I think I have something like 80 questions on notice that go beyond the 30-day rule, but I let them run because I understand that in some circumstances it takes longer to answer. I also clearly understand that in some cases the resources required to answer a question do not justify a minister answering a question, and
those go to complex questions that require a lot of historical research.

This is an absolute dodge. This is a front action. The minister does not want to answer the question; he has put up this bogus, absolutely fraudulent excuse of expense. It is very easy for Senator Newman to come in here and answer the question appropriately. It was very appropriate for Mr Reith to do so, and I will give Mr Sharp and his department credit: even though the figures did not reflect very well on them, they fronted up with them. The poor old National Party over there has taken a bit of a battering about some of their lunches and dinners. Why shouldn’t Mr Wooldridge have to front? It is an absolutely disgraceful answer given by the minister here today.

Question resolved in the affirmative.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Human Rights: China

Senator HILL (South Australia—Minister for the Environment and Heritage) (3.07 p.m.)—Before Senator Ray spoke on his motion, I should have said that I have some information in answer to a question Senator Harradine asked yesterday. I seek leave to have the answer incorporated in Hansard.

Leave granted.

The answer read as follows—

The Government’s view on the human rights situation in China is that there have been some negative developments which have caused concern in the past eighteen months. The situation is not even, and some progress has been made in the areas of law reform and in setting up a better legislative framework for the protection of human rights. We continue to believe that dialogue is the best means of raising Australia’s concerns.

NGOs with an interest in human rights are debriefed on the dialogue at the second of two rounds of consultations the Department of Foreign Affairs and Trade holds annually. This year, the consultations are expected to be held in late September or early October. NGOs also have an opportunity to meet members of the Chinese delegation during their visit to Canberra.

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 2333 to 2345

Senator ROBERT RAY (Victoria) (3.07 p.m.)—I ask Senator Kemp in accordance with the provisions of standing order 74(5) for an explanation of his failure to answer questions on notice Nos 2333 through to 2345 inclusive placed on notice on 13 June 2000.

Senator KEMP (Victoria—Assistant Treasurer) (3.08 p.m.)—After that last outburst from Senator Ray, I am a bit loath to find out what in fact will be the response from Senator Ray when I give him the explanation. Senator Ray, you did have the courtesy to write to me, and I appreciate that. You drew my attention to the fact that there were some outstanding questions. I have looked into this matter and I have asked to make sure that these questions are progressed as quickly as possible so they can be tabled in the Senate.

Senator ROBERT RAY (Victoria) (3.08 p.m.)—I move:

That the Senate take note of the minister’s response.

I thank Senator Kemp for his activities in pursuing this matter. Senator, you have given a different answer from that of your colleague’s. I was not criticising your colleague—I hope he understands that. I think it is an extremely foolish reaction. Nevertheless, Senator Kemp said that he will pursue these issues.

I note in passing that it is not always easy to get answers within the 30 days. I did not introduce this rule. Senator Kemp voted for it; I voted against. Sixty days tends to stretch credibility a bit—and it has gone beyond 60 days. But, again, I acknowledge that some of these issues are complex and that it is not always possible to get an answer within 30 days, especially given the context of the tax office being under pressure from a number of fronts and workload. I accept Senator Kemp’s explanation. I do hope, Senator Kemp, that when we come back for the next session—I do not expect them this week; but in about two weeks time—you might be able to let us know how you are going.
Question resolved in the affirmative.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Banking

Senator MACKAY (Tasmania) (3.09 p.m.)—I move:

That the Senate take note of the answer given by the Assistant Treasurer (Senator Kemp), to a question without notice asked by Senator Conroy today, relating to bank fees.

Before I get into the substance of that, I would like to urge people who may be listening to this to not necessarily check the Hansard in relation to the response from Senator Kemp but to actually check the tape, if that is possible, because the Hansard will not actually reflect one of the more interesting slips that Senator Kemp actually made. In relation to Senator Conroy’s assertions that the government had misled the people of Australia when it said that banks would be substantially better off and, therefore, consumers would be substantially better off, Senator Kemp in fact said that the Howard government was proud of its tax increases. I think he probably meant to say ‘tax decreases’ but he quite clearly said ‘tax increases’—and I think that really says it all.

Senator Kemp interjecting—

Senator MACKAY—You do not have to believe me, Senator Kemp—and I am sure you do not—you only have to look to your right and ask one of your colleagues about the inflationary impact of the GST. In fact, he has become a bit of a fiscal savant over here, as probably the only government minister who predicted the inflationary impacts of the GST.

Senator Faulkner—Would that be Senator Ian Macdonald?

Senator MACKAY—Senator Ian Macdonald—that is correct. In fact, he has become a bit of a fiscal savant over here, as probably the only government minister who predicted the inflationary impacts of the GST. I will quote from the article in the Queensland Times. In the article, Senator Macdonald is quoted as saying in relation to interest rate rises and the GST:

It is not directly related to the GST but there is some form of projection that, with the huge amounts of money—

Senator Faulkner interjecting—

Senator Hill interjecting—

The DEPUTY PRESIDENT—Would the leader of the government and the leader of the opposition please cease their conversations across the table to one another.

Senator MACKAY—I would like to have this whole quote listened to, because it is an interesting quote. In relation to interest rates and the inflationary impacts of the GST Senator Ian Macdonald said:

It is not directly related to the GST but there is some form of projection that with the huge amounts of money that all of us will have in our pockets following the tax cuts that there will be a tendency for people to say, ‘Ha, money’ and bid against each other to buy goods and services, and that causes inflation.

Well, bingo! Senator Ian Macdonald went on to say:

So I guess the Reserve Bank have wanted to dampen speculative investment and a lot of retail spending when people do suddenly find themselves with a lot more cash in their pockets.

Bingo!

Senator Knowles—What’s this ‘bingo’ nonsense?

Senator MACKAY—I will explain it for those opposite. Senator Ian Macdonald is the only government minister who has actually admitted to the inflationary impact of the goods and services tax. He admitted it on 4
February. Subsequent to that, of course, there have been four increases in the last 12 months in relation to interest rates. When Labor lost office in 1996, interest rates were around 10 per cent.

Senator Patterson—What were they before that?

Senator MACKAY—They were around 10 per cent when Labor lost office. Now they are about 8.2 per cent. So for 1.8 per cent of the mantra Mr Costello talks about, what do the taxpayers of Australia have? A great big new tax.

Senator Patterson—They got their tax cuts. That’s more than they got out of you.

Senator MACKAY—The tax cuts—I am glad you raised that. They had the tax cuts there for a microsecond. Senator, but then interest rates went up. Bingo—they were gone; no tax cuts. Interest rates go up and tax cuts go. So it is no surprise that Senator Kemp in fact again refused to respond to this and it is no surprise that he echoed the comment of Mr Costello yesterday in the House of Representatives, which was ‘I won’t answer the question,’ because the reality is that it is an inflationary tax, the banks are involved in it and the government has lied to the people of Australia.

Senator KNOWLES (Western Australia) (3.15 p.m.)—I cannot let that nonsense of ‘bingo’ go unanswered. The whole issue that Senator Conroy raised about banking would have to be the height of the Labor hypocrisy that we have heard so far this week.

Senator Mackay—You always say that.

Senator KNOWLES—Exactly, Senator Mackay—this is the doozy of the doozies. Senator Mackay and Senator Conroy come in here today and accuse the government of not linking tax cuts with interest rates. The question needs to be asked: did the Labor Party, in 13 years of high interest rates, ever give a tax cut? More importantly, did they ever link it to the high interest rates? The answer is no. The Labor Party cranked interest rates up to 17 per cent. At not one stage was a tax cut given.

Senator Sherry—That is wrong—we did cut income taxes.

Senator KNOWLES—Isn’t it amazing: Senator Sherry sits there and says, ‘That is wrong.’ Senator Sherry, you give the Senate—

The DEPUTY PRESIDENT—Address the chair, please.

Senator KNOWLES—I ask Senator Sherry to give to the Senate the dates, names, times and places of the tax cuts that were given when the government had high interest rates because of your appalling financial policies. But they never did it, they would never do it in government again and here they are trying to make political mileage out of this today. The fact remains that it is the height of hypocrisy because, as Senator Kemp said at question time, if Labor had supported the original tax package, both financial institutions duty and the bank account debits tax would have been abolished—and they are coming in here grizzling about bank charges and about banks generally. Why didn’t they support the original package? If the people of Australia really want to know why they will continue to pay the FID until 30 June 2001 and the BAD tax until 30 June 2005, they need look no further than the Labor Party—the Labor Party’s refusal to support the original ANTS package. How dare they come in here and complain about the costs that are associated with the banks, and how dare they try to imply that there should be some link between interest rates and tax cuts. They have never done it in the past and they now somehow expect that it should be done in the future. But, of course, the main reason that the Labor Party espoused for opposing the ANTS package was their opposition to the GST. Isn’t that amazing? That is the tax they now support.

Senator Mackay—No, we don’t.

Senator KNOWLES—Isn’t that interesting? Senator Mackay and all her mates over there should at some stage be honest with the people of Australia and say what they are going to roll back. But, of course, we have Senator Crowley saying, ‘We don’t actually know what we’re going to roll back. We’re going to ask you, the people of Australia, what it is that you want to roll back.’

Senator Hill—Where’s the leadership?
Senator KNOWLES—As Senator Hill says, where is the leadership on this issue? ‘Oh, we don’t know what we’re going to do, we’re just going to see what we should do.’ But the fact of the matter is that Senator Crean, the would-be Treasurer of this country—and lord help Australia if that ever happened—

Senator Faulkner—It is Mr Crean to you.

Senator KNOWLES—Mr Crean, I mean; I should not give him the title of ‘Senator’. For heaven’s sake, that is an insult to all my colleagues on this side. But the fact of the matter is that Mr Crean comes out and says, ‘We’re going to reduce taxes but we’re going to wind back the goods and services tax. We don’t know how we’re going to do that but we’re going to increase the surplus.’ For heaven’s sake, how can you do all of that? You are going to wind back the goods and services tax but you are going to increase the surplus without the income—a grade 2 student would be able to say, ‘Mr Crean, get your sums right, pal.’ But Mr Crean goes on trying to bluff the people of Australia. This whole question has been resolved, and the answer that they—the Labor Party—refuse to support is the ANTS package. Yet they support the goods and services tax; they will not abolish it, and they will not tell the people of Australia where they are going to roll it back. It is about time that they came clean and were honest with the people of Australia.

Senator LUDWIG (Queensland) (3.20 p.m.)—Well, what we have now is that we all know that Mr Peter Costello is not the real Treasurer, not at all. The Australian on Monday, 14 August 2000, states: ‘the Reserve Bank governor wants good budget surpluses’. The PM will not comment on interest rates, so let us see if the Treasurer and the PM will follow the Reserve Bank’s advice—softly spoken advice, I might say, but it seems to be very powerful advice. From what the RBA now says, it seems that it is an independent, autonomous body. The Treasury, likewise, does not seem to determine interest rates or even particularly want to. The Treasury, through its secretary, Mr Ted Evans, seems to come to the conclusion with Mr Macfarlane that the RBA is an independent body—no road rules, no political oversight, not elected, and absolutely nothing for it to go on other than the Treasurer and the Assistant Treasurer bleating about interest rates. The public know they have gone up. The public want some action—not some action from the Reserve Bank, not some action from Mr Ted Evans but from this government. They want to know what is going to happen. They want to know whether the fifth rise is the last, if there are going to be any more. They want to know whether the 150 basis percentage points are the end of the line or whether there are going to be more. They want to know what happened to their tax cuts. I can tell you that now: they really want to know what happened to their tax cuts. The cuts did not even hit the sides before they disappeared.

Home owners and consumers want to know what happened. The rise in interest rates has added a burden to not only the consumers but also the people with home loans. Home loan interest rates have gone up, and the banks have been quick to take the point. This government gave tax relief—yes, it did—and it went just like that. As for the relief that they put through, consumers and the people with a home loan are now saying, ‘Where did it go? We had health rises and we had a rebate that disappeared with the interest rate rises. We have the burden of the GST, which has removed the tax cuts.’ The consumers, workers and taxpayers out there know full well that that tax cut has disappeared; it did not even hit the sides. An article in the Australian Financial Review on Wednesday, 16 August 2000, states:

According to the latest Commonwealth Bank-HIA Housing Report, affordability conditions dropped 6 per cent in the June quarter, dragged down by an increase in mortgage rates from 7.3 per cent to 7.8 per cent... So the housing industry knows. The article continues:

Housing Industry Association managing director Dr Ron Silberberg said the figures came as no surprise—

it must be a surprise to this government because it is no surprise to him—

given the spate of interest rate rises instituted by the Reserve Bank—

‘instituted by the Reserve Bank’ is an unusual turn of phrase—
over the past eight months. The cat is out of the bag. Perhaps when my constituents write to me and complain about interest rates, the burden of the GST and other matters, I should write to the Reserve Bank governor and complain. There does not seem to be any point in complaining to this government about seeking relief, about seeking assistance, about trying to provide some measure of support.

And then there is the other arm, the ACCC. If you lock the ACCC and the RBA together, we have got a solution to the Treasurer. Given the roles of the RBA and the ACCC, it seems we do not need the Treasurer. The rural community is suffering. There is a lack of banking services in western Queensland and throughout our rural areas, and we get rural transaction centres to compensate. By no means is it much of a compensation. The latest series of interest rate rises are hitting people very hard. The Australian Industry Group questioned the rises, as home owners face another $26 a month extra on a $150,000 home loan. Even support from the employers for this government is starting to disappear. They need to take a leaf out of some book—certainly not the RBA’s book or the ACCC’s book.

Senator CAL VERT (Tasmania) (3.25 p.m.)—It certainly takes a while for the opposition to get off the old GST, doesn’t it? I thought that they had given it away, but here we go again. They have run out of ideas today so they have decided to start talking about the GST and bank fees, and of course Senator Ludwig got onto interest rates. I do not think that you people over there have anything to crow about in relation to interest rates. I recall that when you left government we were looking at interest rates, for farmers in particular, that were up around 17 per cent—they are half of that now. At about the same time, we had unemployment up around 11 per cent—it is now 6.3 per cent. So I do not think that you guys have anything that you can really go on about.

As far as tax cuts are concerned, Senator Ludwig said that those people who are going to get tax cuts will be disappointed. I can tell you that that is not so. One of my constituents, a pensioner, came into my office the other day. Every month since the GST came in he has been monitoring how he is faring. So far he is $10 a week better off. He has told me that. He has kept his shop-a-dockets, and he is $10 a week better off.

Senator Faulkner—Which Liberal Party branch is he a member of?

Senator CAL VERT—He was not a member of the Liberal Party. The other day another person was talking to me about tax cuts. He said, ‘I thought that I would be about $50 a week better off. You wouldn’t believe it: I am $70 a week better off!’ At least we have produced a tax cut. It was a little bit different in the bad old days of Labor when you promised all sorts of things, including l-a-w law tax cuts. Not only did the people of Australia not get the tax cuts but they did not get any compensation for the massive increases in taxes. In the 1994-95 budget you increased taxes; if I recall correctly, departure taxes for tourism went up by $27. In the 1995-96 budget you again increased taxes. The Medicare levy went up by 0.1 of a per cent to 1.5 per cent and motor vehicle tax went up by six per cent from 15 per cent to 22 per cent. Company tax went up by three per cent from 33 per cent to 36 per cent, tobacco tax went up by 10 per cent, and of course we all remember those l-a-w law tax cuts that just disappeared.

While Labor was in government, we heard that great promise—Senator Cook said it in this place several times—that there was going to be a surplus. We came into government in 1996 and what did we find? A $10 billion black hole. We now have the situation where we are told that if Labor ever gets into government again it will roll back the GST. Where will it roll it back to? What is the answer? You are talking here today about financial institution duty and bank account debits tax. They would be abolished now if you had supported the ANTS package. We know you are supporting it now, but if you had supported the total package back then the people of Australia would not have to wait until next year to see the abolition of FIDs and BADs. But, no, you would rather make a bit of cheap political capital out of it and promise the people of Australia that you are going to roll back the GST. We do not know
to where. When Senator Crowley gets some replies from the letters she is sending out around her electorate, perhaps they will give her some indication of where you could roll it back to. But everybody in Australia knows that the minute you start rolling back the GST you are going to have to pay for it somewhere else. Everybody in Australia knows just how well the Labor Party handles money! If, by some chance, you happen to roll into government, I guarantee that any surplus we build up and all the good economic values that we have put into place will soon disappear. We are waiting to hear from Mr Beazley and the rest of his financial advisers as to where they are going to roll this tax back to and where the money is going to come from to compensate for it.

Senator Hill—Probably from wholesale sales tax. Are they still for the wholesale sales tax?

Senator CALVERT—No, I think they are for the GST now. Anyway, we look forward to hearing from the Labor Party on where they are going to roll the GST back and where they are going to get the money from. We know how they are going to spend it. They will spend like they did before and leave the country broke. We know that. But I would be interested to hear where they are going to get the money from to make up for the roll-back of the GST.

Senator SHERRY (Tasmania) (3.30 p.m.)—I have two points of issue with Senator Calvert. Firstly, he said that interest rates were 17 per cent under Labor when we were defeated in 1996. Wrong. Interest rates were around 10 per cent, depending on the product and the financial institution. Secondly, Senator Calvert blames us because FID and BAD banking charges have not been abolished. As I recall it, it was the deal that this government did with the Australian Democrats that postponed the abolition of FID and BAD. It is a bit rich to blame the Labor Party for the deal you did with the Australian Democrats.

The three largest banks in this country are Westpac, CBA and NAB. In June of this year Westpac announced an increase in fees and charges and interest rates on 49 products. CBA announced an increase in fees on 32 products and an increase in interest rates on 77 products. The National Australia Bank announced a 0.1 per cent increase in interest rates and a higher increase on personal loans. Why? Because of the GST, the increasing costs. There have been five increases in interest rates in the last 10 months. Why? At least in part because of the inflationary impact of the GST. Why has this occurred? Because of the cost increases of the GST, and the banks themselves, NAB and CBA, claim that those cost increases between them amount to $140 million per annum. The Commonwealth Bank claims that because of the GST costs have gone up 1.5 per cent.

What did the Liberal Party, what did Mr Howard and Mr Costello, say before the last election? If we look at page 169 of the ANTS document, the new tax system document, we see that Mr Howard and Mr Costello claimed that the cost effect on banking of the GST would be a reduction in costs of $670 million. I emphasise that Mr Costello and Mr Howard claimed in the ANTS package—their promise document, their bible almost, that they took to the election—that banking costs would go down by $670 million. Instead, costs have gone up. They also claimed that the price effect on banks, on financial institutions—this is on page 172 of the Howard-Costello ANTS package—would be a price effect of minus 10.6 per cent. Yet prices that banks charge on fees and interest rates have gone up because of the GST.

That promise that Mr Howard and Mr Costello made in the lead-up to the last election stands alongside a number of other commitments they gave. Mr Howard on a number of occasions said that beer prices would go up by 1.9 per cent. How much have beer prices gone up by? About eight per cent. Mr Howard and Mr Costello said that petrol prices ‘will not go up because of the GST’. They later revised that promise to ‘need not go up under the GST’. And we know the result. In my own state of Tasmania, petrol prices in this last week have hit over $1 a litre. Sure, the majority of that is because of world oil prices, but part of that cost increase, 2c to 3c, is because of the GST. Then we have had the latest commitment made by Mr Howard and Mr Costello in the lead-up to the
last election. Pensioners would get a $1,000 pension bonus—

Senator Calvert—Up to $1,000.

Senator SHERRY—Mr Howard is not saying that in the media. In the media reports I have seen, the TV clips, Mr Howard does not mention anything about a pension bonus up to $1,000; he says pensioners will get a $1,000 pension bonus. That has not been delivered. We know that only some 40 per cent of pensioners in this country got anywhere near $1,000. So we have had significant increases in interest rates and we have had significant increases in fees and charges because of the GST. It is the same with beer prices, the same with petrol and the same with the pensioner bonus. These four instances are glaring examples of the way in which the Australian public was misled by Mr Howard and Mr Costello in particular in the lead-up to the last election.

Question resolved in the affirmative.

Welfare Reform: Report

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.35 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Newman) to questions without notice asked by the Leader of the Australian Democrats (Senator Lees) and Senator Stott Despoja today, in relation to the welfare reform report.

Senator Newman has rather enthusiastically endorsed the direction of the report of the reference group on welfare, as indeed she should, stating what an important tool it will be in shaping future social policy. She is on record as endorsing both the thrust and direction contained in the report today. The Democrats welcome this endorsement, but we certainly differ from the minister in her assessment of the government’s current policy in relation to social welfare, or indeed her prior record on social policy. We do not view the underresourcing of Centrelink, the cuts of $1.5 billion from employment assistance upon the introduction of Job Network, the denial of income support to thousands of young people upon the introduction of the Youth Allowance, the cuts to higher education and training, the introduction of up-front full cost fees for some undergraduate places or, indeed, the increase in HECS as achievements this government could be proud of in relation to social policy.

I was astounded today to hear Minister Newman cite her colleague Dr David Kemp as an example of this government’s commitment to opportunity. That the minister for education could be called a proponent of opportunity is extraordinary. He has been responsible for the denial of access to education and training for thousands of disadvantaged Australians. His introduction of up-front fees and charges has meant that those who cannot pay are unable to access places in higher education and training, and the spiralling costs of TAFE and other training are now denying vocational education and training to thousands more.

Similarly, I was amazed to hear in her response the minister refer to the JET program as another example of her government’s strong record on social policy, given the reports—and they are well known—of the five-month waiting lists and criticisms now that, unfortunately, the program is little more than a meet-and-greet without the accompanying one-on-one assistance that participants require. The McClure report sets out vital priorities if the current welfare system is to be transformed into a truly supportive environment, one adequately resourced to provide individualised and tailored assistance—this is a very strong emphasis of the report—and support to income support recipients and job seekers to enable them to take advantage of opportunities and facilitate their increased participation in society.

This is not just about changing the approach of the government with regard to its mania for scapegoating and denigrating job seekers for their lack of work. It is about more than winding back the overemphasis on breaching—to which Senator Lees referred in her question. It is about the massive re-investment in education and training, early prevention of long-term unemployment and early school leaving. It is about the provision of resources for jobless Australians so that they have choice over the direction their lives will take and what form their participation in our community will take. It is certainly not
about labelling job seekers as ‘job snobs’ for not taking fruit picking jobs hours away from where they live or, say, about telling people who may have specific barriers to employment that if they cannot find a job in Sydney at the moment, there is no hope for them. It is not about removing funding from the one program designed to address barriers to long-term unemployment, which remains virtually as high as it was during the recession of the early 1990s, despite the fall in general unemployment.

That is the government’s current approach: to slash programs, to cut funding, to put up barriers to education and assistance and, of course, to denigrate, to scapegoat and to stereotype in a negative manner those who are unable to find work. In many respects, this report offers a new direction which will require courage and commitment from this government to implement responsible and appropriate social policy—something we have not yet seen.

Australia’s job seekers and income support recipients are right to be suspicious of the government’s intentions with regard to this welfare system. The record of this government is abysmal and it takes more than an endorsement of the ‘direction’ and potential for the report to be a ‘guide’—to quote the minister’s press release—to reassure us. This report must be implemented as a whole, and that includes investment and support as well as any extension of obligations. I hope Senator Minchin enjoyed the rally in Adelaide today but, as he knows, certainly the Democrats and most of the South Australian community are with Ivy.

Question resolved in the affirmative.

COMMITTEES
Selection of Bills Committee
Report

Senator CALVERT (Tasmania) (3.40 p.m.)—I present the 11th report of 2000 of the Standing Committee for the Selection of Bills and I move:

That the report be adopted.

I seek leave to have the report incorporated in Hansard.

Leave granted.
The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 11 OF 2000
1. The committee met on 15 August 2000.
2. The committee resolved to recommend—
That the provisions of the following bills be referred to committees:

<table>
<thead>
<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation Committee</th>
<th>Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy Amendment (Private Sector) Bill 2000 (see Appendix 1 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>29 August 2000</td>
</tr>
<tr>
<td>Taxation Laws Amendment Bill (No. 7) 2000 (see Appendix 2 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Economics</td>
<td>5 October</td>
</tr>
<tr>
<td>Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000 (see Appendix 3 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Employment, Workplace Relations, Small Business and Education</td>
<td>7 September 2000</td>
</tr>
<tr>
<td>Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000 (see Appendix 3 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Employment, Workplace Relations, Small Business and Education</td>
<td>7 September 2000</td>
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<td>Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000 (see Appendix 3 for a statement of reasons for referral)</td>
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<td>Workplace Relations Amendment (Termination of Employment) Bill 2000 (see Appendix 3 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Employment, Workplace Relations, Small Business and Education</td>
<td>7 September 2000</td>
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</table>
(b) That the following bills not be referred to committees:

- Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2000
- Customs Tariff Amendment Bill (No. 3) 2000
- Family and Community Services (2000 Budget and Related Measures) Bill 2000
- Patents Amendment (Innovation Patents) Bill 2000
- Retirement Assistance for Farmers Scheme Extension Bill 2000
- Telecommunications (Universal Service Levy) Amendment Bill 2000
- Therapeutic Goods Amendment Bill (No. 3) 2000
- Trade Marks Amendment (Madrid Protocol) Bill 2000
- Trade Practices Amendment (International Liner Cargo Shipping) Bill 2000

3. The Committee recommends accordingly

The committee deferred consideration of the following bills to the next meeting:

- Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999 (deferred from meeting of 30 November 1999)
- Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 2000 (deferred from meeting of 6 June 2000)
- Tobacco Advertising Prohibition Amendment Bill 2000 (deferred from meeting of 20 June 2000)
- Defence Legislation Amendment (Flexible Career Practices) Bill 2000 (deferred from meeting of 27 June 2000)
- Family and Community Services and Veterans’ Affairs Legislation Amendment (Debt Recovery) Bill 2000
- Gene Technology (Consequential Amendments) Bill 2000
- Gene Technology (Licence Charges) Bill 2000
- Higher Education Funding Amendment Bill (No. 1) 2000
- Vocational Education and Training Funding Amendment Bill 2000 (deferred from meeting of 15 August 2000)
- Coal Industry Repeal Bill 2000
- Criminal Code Amendment (United Nations and Associated Personnel) Bill 2000
- Indigenous Education (Targeted Assistance) Bill 2000
- Protection of the Sea (Civil Liability) Amendment Bill 2000
- Trade Practices Amendment Bill (No. 1) 2000
- Treasury Legislation Amendment (Application of Criminal Code) Bill 2000

(Paul Calvert)
Chair
16 August 2000
Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
- Privacy Amendment (Private Sector) Bill 2000

Reasons for referral/principal issues for consideration
To examine the wide-ranging exemptions from the proposed national co-regulatory privacy scheme for the private sector outlined in the legislation, and the protection of genetic privacy under this bill.

Possible submissions or evidence from:
- Australian Medical Association
- Human Genetics Society
- Mr Tim Dixon
- Australian Privacy Charter Council
- Office of the Privacy Commissioner
- Insurance Council of Australia
- Insurance and Financial Services Association

Committee to which bill is referred:
- Legal and Constitutional Legislation Committee

Possible hearing date:
- Possible reporting date(s): As soon as practicable

(signed)
Vicki Bourne
Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
- Taxation Laws Amendment Bill (No. 7) 2000

Reasons for referral/principal issues for consideration
To allow consideration of capital gains tax and pay-as-you-go measures in the bill.

Possible submissions or evidence from:
- Committee to which bill is referred:
  - Economics Legislation Committee
Possible hearing date:
Possible reporting date(s): 7 December 2000
(signed)
Kerry O’Brien
Appendix 3

Proposal to refer a bill to a committee

Name of bill(s):
Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000
Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000
Workplace Relations Amendment (Termination of Employment) Bill 2000
Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

Reasons for referral/principal issues for consideration

Possible submissions or evidence from:

Committee to which bill is referred:
Employment, Workplace Relations, Small Business and Education Legislation Committee

Possible hearing date:
Possible reporting date(s): 7 September 2000
(signed)
Paul Calvert

Senator McKIERNAN (Western Australia) (3.40 p.m.)—In relation to the Privacy Amendment (Private Sector) Bill 2000 which is being referred to the Senate Legal and Constitutional Legislation Committee for report by 29 August, I move this amendment:

At the end of the motion, add “but, in respect of the reporting date for the Privacy Amendment (Private Sector) Bill 2000, omit ‘29 August 2000’, substitute ‘a date to be determined after consulting the Senate Legal and Constitutional Legislation Committee’.

I move this amendment for a very good reason. The Senate Legal and Constitutional Legislation Committee and its secretariat are extremely busy at the moment on a number of matters but more importantly on the stolen generations inquiry for the references committee. This particular reference comes absolutely out of the blue to me as deputy chair of the legislation committee. I have had a quick consultation with the chair of the committee, Senator Payne, and she was not consulted on this at all.

Were we to go ahead and try to meet the reporting date, it would mean all members of the committee, but particularly the chair and the deputy, changing all of our itineraries for next week. There is absolutely nothing we could do on it this week because on Thursday afternoon we have public hearings on the stolen generations inquiry. On Friday we have public hearings on the stolen generations inquiry. Next week, I have arrangements back in my constituency in Western Australia and we are required to report back to this place on these terms of reference by a week on Tuesday—29 August.

There has to be a better process in place to handle this. It really is very unfair for a committee such as the Standing Committee for the Selection of Bills to come forward with recommendations on complex matters such as this particular bill and require us to consult with the range of people we have been charged with consulting with on the reference of the bill. It is not the way, I would humbly suggest, to do business. We are asked to take submissions or evidence from the Australian Medical Association, the Human Genetics Society, Mr Tim Dixon, the Australian Privacy Charter Council, the Office of the Privacy Commissioner, the Insurance Council of Australia and the Insurance and Financial Services Association. It is going to be hard enough for those organisations to prepare a submission for the committee and for committee members to digest and read those submissions and then prepare a report. It is not impossible, but it is almost impossible. If we had no other work to do, we might be able to do it, but we have other responsibilities to this chamber and we will honour those responsibilities as a priority given to us by the chamber. There has to be a better way of referral. There has to be some method put in place to consult with members of the committee, with all sides of the chamber being informed, in order to carry out the inquiries properly. What is happening here is not the way to do it.

I have put forward an amendment, which we have done very quickly on the run, which is a way out of it. The committee will look at that—I assure you on behalf of the chair and myself as deputy—and come forward with a
date when it might be possible to do the inquiry and then report back. I can almost guarantee that, even if the Senate insists, the committee will not be reporting back by 29 August. I commend the amendment.

Senator CALVERT (Tasmania) (3.45 p.m.)—The Selection of Bills Committee does consult. In this particular case we thought it might be possible. After speaking to our advisers we suggest that, if Senator McKiernan were to change his amendment to 5 September, that would probably satisfy everybody. I do not know whether he feels that the committee can deal with this. It would be a one-day hearing. That would give them another week to deal with this matter. If it were changed to 5 September rather than 29 August, I hope that would be of some assistance.

Senator O'BRIEN (Tasmania) (3.45 p.m.)—I want to comment on the amendment and advise that the Selection of Bills Committee was given the benefit of Senator Coonan’s wisdom on the availability of the committee, and it was on that basis, and no other, that the committee came to the view that that was a possible reporting date. As will be clear from other comments I make, it is always open to committees to come back to the chamber if the Selection of Bills Committee sets a target which is unattainable. I would commend that approach if other approaches are not available.

Secondly, on the question of the reference of the Taxation Laws Amendment Bill (No. 7) 2000, the report sets out no possible submissions or evidence and no possible hearing dates with a reporting date of 7 September. So I am not sure, in those circumstances, what the committee involved intends to do. No doubt there will be briefings from the minister’s office at the appropriate time.

Amendment agreed to.

Original question, as amended, resolved in the affirmative.

BUSINESS

General Business

Motion (by Senator Ian Campbell)—by leave—agreed to:
(a) valedictory statements relating to the resignation of Senator Quirke may be made from 6.50 pm to 7.20 pm today; and
(b) a senator shall not speak for more than 10 minutes.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Meeting

Motion (by Senator Bartlett, at the request of Senator Allison)—by leave—agreed to:
That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate today, from 5 pm till 7 pm, to take evidence for the committee’s inquiry on global warming and the Convention on Climate Change (Implementation) Bill 1999.

NOTICES

Presentation

Senator Woodley to move, on the next day of sitting:
That the Rural and Regional Affairs and Transport References Committee be authorised to hold a public meeting during the sitting of the Senate on 17 August 2000, from 4 pm to 6 pm, to take evidence for the committee’s inquiry into air safety.

Senator Ian Campbell to move, on the next day of sitting:
That the following bill be introduced: A Bill for an Act about interactive gambling, and for related purposes. Interactive Gambling (Moratorium) Bill 2000.
Senator Allison to move, on the next day of sitting:
That the Senate—
(a) notes:
(i) the strong turnout on 15 August 2000 by South Australians to the 'I’m with Ivy Campaign’ protest against any form of nuclear waste dump being established in the State,
(ii) that, to date, the number of signatures on the campaign petition has reached 125,000,
(iii) that this figure clearly shows the overwhelming opposition of the South Australian community to the Government’s proposals, and
(iv) the findings of a Network Seven poll in July 1999 showing that 93 per cent of South Australians oppose the siting of a national radioactive waste dump in South Australia; and
(b) calls on the Australian Government to respect community concerns and state legislation in dealing with this matter.

Senator Allison to move, on the next day of sitting:
That the Senate—
(a) notes that:
(i) the Victorian Opposition announced, on 16 August 2000, that it will obstruct attempts by the Bracks’ Government to introduce proportional representation in the Legislative Council and set parliamentary terms at 4 years,
(ii) the Victorian Premier, Mr Bracks, has confirmed that a constitutional commission will be established to examine parliamentary reform,
(iii) the present terms for upper house members of parliament are 8 years, representing a degree of job security and privilege held by few people outside politics, and are unique in Australia,
(iv) Dr Naphine’s disingenuous remarks that parliamentary reform would grant power to One Nation style extremist groups, and
(v) the Coalition’s 150-year domination of the upper house was interrupted for only a matter of weeks in 1985; and
(b) congratulates Premier Bracks for announcing his intention to conduct a plebiscite on the issue; and
(c) commits to the principle that a truly representative upper house is vital to a democratic parliament.

Senator West to move, on the next day of sitting:
That the Senate—
(a) recalls its resolution of 6 June 2000 concerning Fiji;
(b) reiterates its condemnation of the coup against Fiji’s constitutional and democratically-elected government;
(c) applauds the courage and resilience of Mahendra Chaudhry and the members of his Government;
(d) welcomes the arrest of the terrorists and criminals involved in the seizure of Fiji’s democratic government and calls for those persons to be dealt with by the full weight of the law;
(e) declares that the imposition of a racially-discriminatory political system in Fiji is unacceptable and will result in Fiji remaining an international outcast;
(f) affirms its support for the restoration of democracy and the rule of law in Fiji; and
(g) calls on the Australian Government to maintain sanctions on Fiji and to work actively to ensure there is no easing of international pressure on the unconstitutional interim government to allow a prompt return to democracy and a non-discriminatory political system.

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

Senator Brown to move, on 29 August 2000:
That the Senate—
(a) notes that:
(i) the Government claims ownership of the 2020 Vision, which aims to treble the area of plantations by 2020 and which has enthusiastically encouraged private investment in plantations,
(ii) prospectuses issued by plantation companies explicitly recognise the critical role the Government plays in supporting private investment in plantations, and

(iii) Jaako Poyry Consulting, in a recent report commissioned by the Government, notes the background of oversupply and under-utilisation in many regions, and states ‘Many private growers can correctly ask why is the government supporting expansion when they cannot sell what they have now?’; and

(b) calls on the Government to guarantee that the Australian public will not be at financial risk from any claim for damages by plantation investors or prospectus companies.

Postponement

Items of business were postponed as follows:

General business notice of motion no. 607 standing in the name of Senator Stott Despoja for today, relating to the work for the dole scheme, postponed till 17 August 2000.

General business notice of motion no. 636 standing in the name of Senator Brown for today, relating to human rights in China, postponed till 17 August 2000.

COMMITTEES

Foreign Affairs, Defence and Trade Legislation Committee

Extension of Time

Motion (by Senator Calvert, on behalf of Senator Sandy Macdonald) agreed to:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade Legislation Committee on the provision of the Veterans’ Affairs Legislation Amendment (Budget Measures) Bill 2000 and a related bill be extended to 30 August.

Foreign Affairs, Defence and Trade References Committee

Extension of Time

Motion (by Senator O’Brien, on behalf of Senator Hogg) agreed to:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the economic, social and political conditions in East Timor be extended to 7 September 2000.

Economics Legislation Committee

Extension of Time

Motion (by Senator Calvert, on behalf of Senator Gibson) agreed to:

That the time for the presentation of the report of the Economics Legislation Committee on the Excise Amendment (Compliance Improvement) Bill 2000 be extended to 17 August 2000.

BATTERY HENS

Motion (by Senator Bartlett) negatived:

That the Senate—

(a) notes that:

(i) in September 1997, the Australian Capital Territory Legislative Assembly passed legislation to ban the battery cage system of producing eggs because of major animal welfare problems,

(ii) in June 1999, the European Union passed legislation to effectively ban the battery cage system of producing eggs throughout Europe from 2012 because of the major animal welfare problems with the battery cage,

(iii) in the week beginning 6 August 2000, the Queensland Department of Primary Industries released results of public consultations on the future of the all-wire battery cage which showed that the public wants battery cages abolished, with 86 per cent of people saying battery cages are ‘totally unacceptable’,

(iv) in the past month, more than 23 000 Australian people have sent postcards to the federal and state agricultural ministers urging them to ban the battery cage,

(v) the Royal Society for the Prevention of Cruelty to Animals has collected more than 54 000 signatures from people calling for the banning of battery cages, and

(vi) Australia’s federal, state and territory ministers responsible for primary industries and agriculture will be considering proposals to phase-out the battery cage at the Agriculture and Resource Management Council of Australia and New Zealand meeting to
be held in Brisbane on 18 August 2000; and

(b) calls on the Federal Government and all state and territory governments to agree to phase-out the battery cage as soon as practicable.

NOTICES

Postponement

Motion (by Senator O’Brien, on behalf of Senator Jacinta Collins) agreed to:

That general business notice of motion No. 2 standing in the name of Senator Collins for today, relating to the disallowance of the Workplace Relations Amendment Regulations 2000 (No. 1), as contained in Statutory Rules 2000 No. 121 and made under the Workplace Relations Act 1996, be postponed till the next day of sitting.

Presentation

Senator BROWN (Tasmania) (3.52 p.m.)—I am sorry I missed the earlier call, but I seek leave to give a notice of motion.

The DEPUTY PRESIDENT—You can do it by handing it to the Clerk in writing.

Senator BROWN—Madam Deputy President, I rise on a point of order. I will put that motion that I flagged a moment ago in on notice, but I point out that that is not usual Senate practice because it denies the Senate the opportunity to hear verbally the motion being put. I hope it does not become usual practice.

MATTERS OF URGENCY

Goods and Services Tax: Petrol Prices

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 16 August, from Senator Cook:

Senator the Hon Margaret Reid
President of the Senate
Parliament House
CANBERRA ACT 2600

Dear Madam President,

Pursuant to standing order 75, I give notice that today I propose to move,

‘That, in the opinion of the Senate, the following is a matter of urgency:

The harsh impact on all Australians of the extremely high price of petrol as a result of the increase in the amount of tax on petrol due to:

the Government’s failure to reduce the excise on petrol by the full 8.2 cents required to honour its promise that the GST would not add to the cost of petrol (at a strike price of 90 cents a litre), instead leaving a shortfall of 1.5 cents a litre;

the subsequent indexation increase on 1 August 2000 which has led to a further 0.7 cents per litre in petrol tax; and

with the market price now being around $1 dollar per litre, the further 1 cent of GST being charged relative to the Prime Minister’s strike price of 90 cents.’

Yours sincerely,

Senator Peter Cook

The DEPUTY PRESIDENT—Is the motion supported?

More than the number of senators required by the standing orders having risen in their places—

The DEPUTY PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.54 p.m.)—I seek leave to amend the motion.

Leave granted.

Senator COOK—I move the amended motion in the following terms.

That, in the opinion of the Senate, the following is a matter of urgency:

The extremely high price of petrol as a consequence of OPEC’s actions in forcing up the price of world crude oil and the increase in the amount of tax on petrol due to:

the Government’s failure to reduce the excise on petrol required to honour its promise that the GST would not add to the cost of petrol, instead leaving a shortfall of up to 1.5 cents a litre;

the subsequent indexation increase on 1 August 2000 which has led to a further 0.7 cents per litre in petrol tax; and

the GST impost on the higher petrol price compounding and adding a further 1 cent per litre.

This is an important urgency motion. It is important on several levels, the most significant of which is the honesty of this government in dealing with Australians. This gov-
ernment made an unblemished, unamended, unqualified commitment on petrol prices. It made it to Australians ahead of the last election, it has reiterated it since, and it has now blatantly dishonoured that commitment. The commitment it gave was that the price of petrol would not rise as a result of the GST. They later tried to amend to say that what they really meant was that the price of petrol ‘need not rise as a result of the GST’. But before the election the Prime Minister was quite clear: ‘it will not’. Despite the efforts to water down that undertaking that it need not, the facts are that petrol prices have gone up. They have gone up as a consequence of the GST. They have gone up more than they would have needed to otherwise, and Australians are worse off in terms of the cost of petrol to ordinary consumers of that spirit than would otherwise be the case had the GST not been introduced. It is true that OPEC have increased their prices. But remember this: the GST is a percentage tax and, because of the percentage that is extracted, as the gross price increases so does the amount extra you pay in tax increase. Because the oil market is volatile and because OPEC have been conspiring to push up the per barrel price, this government should have paid more attention to compensation in order to deliver the undertaking of the Prime Minister. It has not. As a result, we all pay higher petrol prices and higher petrol prices than had been promised.

In this chamber, and more importantly in the Australian community, the GST has excited widespread resentment and criticism. On 1 July, the compensation for the GST was delivered in the form of tax cuts. The fundamental point that has to be made about the so-called compensation is this: the GST is a percentage tax; the compensation is a cash amount. With increases in inflation and increases in other charges, the value of the compensation erodes until it costs Australia to afford the GST; it does not benefit Australia. Even if you agree with the government’s basic premise that Australians will be better off with the GST—even if you agree with that piece of duplicity, even if you think that is true—the dynamics of a percentage compensated by a cash amount mean inevitably the compensation will erode and you will pay more. Since 1 July, we have seen interest rate hikes, meaning for the ordinary Australian household the value of the compensation is lost immediately. We have seen the banks committing to increased costs and charges above the limit, meaning for people that use the Australian banking system the compensation has been lost immediately. As well we have seen this breached promise by the government on petroleum and petrol pricing around Australia, meaning again the compensation is not just eroded; the compensation is turned into a negative where it costs the Australian community for the GST and, because it is a percentage tax, it costs middle and low income earners more than it costs the big end of town or the wealthy in this country. The GST is a regressive tax and it is costing us because now the compensation does not compensate.

Let me go not to the Labor Party’s view but to the community’s view about this. I have before me a press release on price rises for petrol in July—despite the fall in world oil prices—from the Australian Automobile Association. This body represents the NRMA of New South Wales, the RAC of Victoria, the RACQ of Queensland, the RAA of South Australia, the RAC of Western Australia, the RAC of Tasmania and the Northern Territory and Australian Capital Territory automobile associations. This is not a Labor Party body. This is a community organisation representing the interests of motorists. What does it say about the government’s failure to honour its undertakings? It says, in its press release—and I intend to quote extensively from it because this proves the point beyond any doubt:

In releasing the latest monthly petrol price monitoring for July, the Australian Automobile Association has expressed disappointment that the Treasurer and the ACCC have not investigated petrol price rises. The latest monitoring shows that despite a fall in world oil prices of $1 (US) per barrel between June and July, the average July retail price in capital cities rose by around 4 cents per litre. The price, in wholesale costs, to refineries went south; the price, in retail costs, to motorists at the pump went north, and the reason, in part, is the GST. The news release continues:
‘Based on the petrol price monitoring for July, which shows substantial pump price increases at a time when world oil prices were falling, it is clear that motorists have been paying far more than they should have been for petrol,’ ...

‘The Government gave assurances that there would be no increases in petrol prices as a result of the GST. The ACCC should investigate whether or not there has been an increase as a result of the GST, and if so, how much. And whether or not there has been price exploitation under the guise of the GST. The ACCC also needs to look at refinery increases and margins as well as retail increases and margins.

That is the Australian Automobile Association talking on behalf of Australian motorists. I have quoted that to put beyond any doubt the fact that Australian motorists are getting slugged in the petrol tank because of the GST and that is an explicit breach of the government’s promise.

We know that the Prime Minister, in pursuit of populist political slogans, has attacked the oil refineries about the increases that they have passed on. He believes that they have passed on more than they should have. He bases his calculations on what he describes as a ‘government modelling’ of the price impacts for the refineries. I do not want to defend oil companies in Australia unnecessarily, but what has to be said in their defence on this point is that the government modelling does not conform with their commercial experience. The Prime Minister has refused to release the government modelling for public analysis and criticism to show the basis upon which the government has made its assumptions and has criticised the refining industry, saying they are taking prices to exploit the opportunity open to them with the introduction of the GST.

It may well be that in this case the oil refineries are right, but it does not let the government off the hook. It made a promise. It has put $500 million down in compensation. It does not compensate. Australian motorists are being slugged. This is an explicit breach of the government’s promise and, on petrol, it does not just cost the user: it costs industry. Australian industry is a big consumer of petrol. Therefore, the higher prices being passed on to it in petrol get passed on in final costs to consumers in products. It has a ripple-out effect. (Time expired)

Senator KEMP (Victoria—Assistant Treasurer) (4.04 p.m.)—I must say that was a pretty ordinary performance by Senator Cook. We are used to ordinary performances by Senator Cook and that rates as very ordinary indeed. There is a very big concession in the motion moved by Senator Cook which we are debating—that is, world prices of oil are at very high levels. The reason Australian prices have risen is because world prices have risen. There is in the motion before us at least some recognition of that. I will tell you why your speech was ordinary, Senator Cook. What you have done today is what the Labor Party has done ceaselessly—that is, you attempt to run on both sides of the street. Today Senator Cook stood up and attacked the GST. Senator Cook, the GST is now your policy. I do not know whether you were at the conference, but the GST is now your policy. I do not know whether you were at the conference, but the GST is now your policy.

Senator Cook—No, it’s not.

Senator KEMP—Senator Cook says the GST is not his policy. I thought Senator Cook was a reasonably senior shadow minister, but maybe he is not. The fact of the matter is that the GST is your party’s policy: it may not be your policy. If the issue of the GST in relation to fuel was the big issue that you have now drawn attention to in the chamber, one would have thought it might have been the subject of some debate or would have had some mention in the volumes of policy cliches which make up the Labor Party platform. The truth of the matter is that there is no mention of this. So what does the public assume?—that the Labor Party will keep the current arrangements, with one exception which I will now come to.

The Labor Party has not argued for any change in relation to the way the GST is applied to fuel. As you know, the promise that the government made was that the price of petrol need not rise as a result of the GST.

Senator Conroy interjecting—

Senator KEMP—What happened after 1 July? As the Prime Minister said, a survey was done of some 4,000 stations. What in fact happened was, of course, that that survey
showed that major capital city prices fell by 0.4c a litre. You get up, as you relentlessly do, and you accuse the government of breaking a promise. You adduce no conclusive evidence to suggest that that is the case. We have evidence, as I said, which points out that there was a survey of some 4,000 stations. I think people listening would be wondering: ‘What is the Labor Party proposing to do?’

Senator Conroy interjecting—

Senator KEMP—Senator Conroy, you were not in the chamber—and I do not blame you; it is a burden to come in and listen to Senator Cook—when Senator Cook raised this issue, and we listened carefully to find out what was the Labor Party solution. There was no mention of a Labor Party solution to this issue. Senator Conroy, I think people who have been listening very carefully to you on the radio would say, ‘You have drawn attention to this particular matter today in the Senate’—and we are debating it—‘but what does the Labor Party propose to do?’ I think people will be listening very carefully to you, Senator. Let me say that we know one aspect of the Labor Party policy on fuel.

Senator Conroy—Move up to Benalla.

Senator KEMP—Senator Conroy, you have got a big sword. Can I warn you that those who live by the sword, die by the sword. You in particular, Senator Conroy, should take note of that. There is one aspect of the Labor Party policy which we have now been able to ascertain as a result of a senior frontbencher, Mr Joel Fitzgibbon. Yesterday, Mr Fitzgibbon enlightened Australia with a pledge—and I am now quoting from a press release that my colleague Mr Joe Hockey put out:

The Labor Party will abolish the $500 million fuel grants scheme to rural and remote Australia.

People who are listening to this will wonder how on earth Senator Cook can get up here and purport to be concerned about the price of fuel when they propose no solutions as they concede that the price of fuel has risen because of what has happened on world markets while Mr Joel Fitzgibbon comes out pledging to abolish the $500 million fuel grants scheme to rural and remote Australia. This is what Joel Fitzgibbon said yesterday in the parliament:

Labor has got a number of commitments to petrol prices ... taking the exact opposite approach to that taken by those who sit opposite. In other words, he says that their approach is different. Where is it different? He then goes on to say:

The $500 million fuel grants scheme largely goes straight to the major oil companies...

This of course is quite wrong; it is incorrect. The fuel rebate scheme has been declared under the price exploitation provisions of the Trade Practices Act, and that means that the 1c and 2c rebate must be passed on to consumers.

What we have here is a Labor Party attack on remote and regional Australia. What we need from Senator Conroy, because we did not get it from Senator Cook, is for him to get up and clarify what the Labor Party position is. We have said that the price of fuel need not rise as a result of the GST. We have surveyed some 4,000 stations to check on what happened to prices after the introduction of the GST. Let me make the point that we are again seeing another Labor Party fraud. Senator Cook was a senior minister in the previous government. Senator Cook and Senator Conroy might like to know this: what was the excise on fuel when the Labor Party came into office in 1982?

Senator Boswell—Five cents.

Senator KEMP—Six cents, actually.

What was it when the Labor Party left office?

Senator McGauran—Thirty-three cents.

Senator KEMP—Just on 34c a litre. This is the Labor Party’s commitment. We know that after the 1993 election we saw a very substantial rise in the excise on fuel—voted for by the Labor Party. I believe, as we have seen so often in this chamber, the hypocrisy of Labor is writ large in the speech by Senator Cook. We know that Labor has now accepted the GST. Labor has no proposals to change the arrangements in relation to fuel, except, as I said, the first element of the rollback is to abolish the $500 million fuel subsidy scheme to rural Australia. What we want from Senator Conroy is for him to clarify the Labor Party’s position. We are all concerned,
of course, about the high price of fuel. But we all know, Senator Conroy, that the reason for the high price of fuel—

Senator Conroy—And getting higher under your policies.

Senator Kemp—Can I make clear the fact that the motion before us, as even Senator Cook concedes, says that the price of fuel has risen as a result of the high prices on world markets. Even Senator Cook has conceded that proposition. We have put in place a number of schemes that will cut the cost of fuel to people in business, people in rural Australia, and the transport industry. The Labor Party has had an approach in the past of using fuel excise to garner more and more revenue. We know that the Labor Party policy, as outlined by Mr Crean, will require substantial rises in taxes. The question we have to ask ourselves, and the community has to ask itself, is: will this substantial rise in tax be in the area of income tax or will it be in the area of fuel excise? What we want Senator Conroy to do when he stands up is to clarify the Labor Party position. It is no good coming up and complaining. We all know that world prices are high. We all know that they have gone up very substantially.

(Time expired)

Senator Murray (Western Australia) (4.14 p.m.)—The Australian Democrats have a few broad propositions that govern their policy concerning petrol and other fuels. Firstly, we have always held to the view that higher fuel prices are a useful restraint on wasteful consumption. But you have to be careful with what you mean by ‘high’. We have, over time, attempted to balance the economic, environmental and health grounds on which you determine fuel policy. We have always supported a bias towards fuels that are cleaner than others. We have supported a lower price for unleaded fuels. We support lower prices for gas. We support lower prices for fuels which meet high emission standards. We have also supported a system whereby subsidies or support should be given to encourage the use of forms of transport that do more for Australia than the use of, say, particular types of private transport. For instance, we have long been supporters of heavy investment in public transport. We have long been supporters of a much greater investment in rail.

The GST and new tax system negotiations in which we were involved enabled us to use leverage to achieve a number of our policy items. For instance, we supported the government’s drive to get increased jobs and economic activity going in the regions, which were depressed in many respects, on the basis that that was absolutely necessary for the health of Australia overall. But we resisted the lowering of heavy transport fuel prices in the cities, where the concentrated emissions have much higher effects. We were able to negotiate with the government for an extra $160 million commitment to rail, which we hope will result in much better rail usage than there has been. We were able to negotiate with the government much better and greater use of gas in terms of conversion subsidies and differentiation from petrol and diesel fuels.

So, in the balance of an economic, environmental and health approach, we think we have an approach that does result in the best overall outcome for Australia. But when you are talking about prices, you have to always be conscious of relativities. I found that the recent statements by OPEC and the trend that is emerging were alarming. I had the view that OPEC’s pricing regime was likely to be relatively short term. I am now concerned that it may well be medium to long term and that the world again faces a situation of very high prices in world crude oil, which will affect Australia’s economic activity and its economic prospects.

When any government is faced with a changed world pricing situation, our call as Democrats is for it to be flexible in response, because we have to ensure that business and transportation remain at an optimum level of activity and that they are as efficient as possible. That may require a revisiting of certain areas of reform that have been bogged down. I notice that Senator Crane is in the chamber. He would know that I am referring to the problems of vertical integration in the oil industry, the structure of the industry and the pricing consequences that result. Unfortunately, at present, there is no cross-party agreement, or indeed cross-industry agree-
ment, on the route to go but, because it is a difficult problem, it does not mean that the government should back away from it. They should keep coming at it. We have to be very concerned if OPEC’s long-term pricing policy has serious dangers for Australia.

Turning to the wording of the motion, I think it is good that Labor has recognised that OPEC’s action deserves an urgent analysis. I think that behind those words would be encouragement for the policymakers to adopt a flexible and quick response to any warning signs that may emerge in terms of how it will detrimentally affect Australia. The first dot point of Labor’s motion refers to:

the Government’s failure to reduce the excise on petrol required to honour its promise that the GST would not add to the cost of petrol, instead leaving a shortfall of up to 1.5 cents a litre.

Our leader, Senator Lees, has made the point before that, really, this was an absolutely unnecessary fight for the government to pick. Why the government could not have picked a final pricing position that actually enabled them to honour their promise without the strong attacks from Labor is beyond me. It is just a small amount of money, up to 1.5 cents a litre. I know when you expand that it becomes a vast amount of money but, nevertheless, the political pain experienced through dodging around at the edges of that promise is just unnecessary and in our view has contributed to undermining the government’s very great achievement in changing the tax system and introducing a far better outcome, particularly for rural and regional Australia. It is a great pity that there is a problem with the transportation pricing level. So we would focus on the fact that we think the government have not delivered their promise in full. I know they contest that but, for me, it is a fight they should not have picked. It is an unnecessary fight to have achieved, even if it is at the margins—and it is at the margins.

The second point we pick up on is that the subsequent indexation increase on 1 August 2000 has led to a further 0.7c per litre in petrol tax. Frankly, that is just a statement of fact. It has. It was Labor’s policy to introduce indexation. As I understand it, that is a bipartisan policy; both sides of the House support it. My corporate memory is not strong enough, but I suspect that our lot supported it as well. I was not in the chamber at the time it was introduced. So that is a fact, and either the Senate and the government of the day have to agree to get rid of indexation or they do not. To me, that does not add much to the nature of the debate.

The last point provides us with a real opportunity. It says, ‘The GST impost on the higher petrol price compounds and adds a further 1c a litre.’ Of course it is the nature of a consumption value added tax that the higher the price the higher the tax returned. The consequence is that if petrol prices keep going up the GST return to the states will increase. If the GST return to the states increases, that will prove to be a windfall. If the states are going to achieve a windfall profit out of this, and if it is the states that are responsible for running public transport, let us all please campaign for the states to use this GST windfall on the price of petrol for subsidising public transport to a greater extent than they do at present. It would be a great outcome of an unfortunate OPEC policy if the net beneficiaries ended up being our public transport sector. I remind you that the McClure welfare report produced today by the government did outline that public transport is particularly important for low income battlers, for the poor and disadvantaged in our society. Let us hope that this GST windfall can be effectively used by the public transport sector.

Senator Conroy—You put the GST on rail prices, bus prices—

Senator MURRAY—As Senator Conroy knows, our policy was for there not to be a GST on public transport. As he also knows, and as we acknowledge—

Senator Conroy—You failed in that negotiation.

Senator MURRAY—We failed in that negotiation. We are people who admit our mistakes, unlike you, Senator Conroy. That was a failure on our part; however, here is an opportunity for us to win it back. I say to you that there is a mix of messages here which the government should heed: firstly, a flexible response to OPEC’s policy; secondly, an
opportunity to put GST on the map in terms of subsidising public transport and gas to a greater extent than it is at present; and, thirdly, perhaps looking at a way of re-examining the vertical integration and the structure of the industry. 

(Time expired)

Senator CONROY (Victoria) (4.24 p.m.)—You can see why the government are so sensitive on this issue, and I hope, Senator Crane, that you are one of those I am about to talk about. In today’s Australian, there is a story entitled ‘Backbench revolt on fuel prices’. It states:

Rising petrol prices have sparked a Coalition backbench rebellion, forcing ministers at a party-room meeting yesterday to hose down calls for a royal commission into the industry.

I hope you were one of those, Senator Crane. I hope you stuck to your guns and were not intimidated by people like Senator Boswell, who will stand up here and talk about rural petrol prices. They will talk and talk, but country voters know that ‘Roll Over Ron’—

Senator Boswell interjecting—

Senator CONROY—is in the pocket of the big retailers, in the pocket of the big oil companies, and in the pocket of the big banks. That is what country voters know about the National Party nowadays: they are in the pockets of the big institutions and the big end of town, just like their Liberal mates. They cannot turn to you guys for representation any more.

Senator Boswell—They won’t turn to you, that’s for sure.

Senator CONROY—I don’t see your name in this article, Senator Boswell, which is a disappointment. I know a lot of country voters rely on you, and they will be disappointed not to see your name on this list—as with you, Senator Crane. The article says:

Kathy Sullivan said there was a perception the oil companies were profiteering and that an inquiry was overdue.

“The whole subject needs to be aired,” she told The Australian. “I personally do not understand how a price that goes up overseas today means it goes up 10c a litre overnight on the Gold Coast.

It then quotes Mr Hockey, the minister for this particular area: Joe Hockey ... questioned the effectiveness of a royal commission and insisted the Australian Competition and Consumer Commission was undertaking intensive monitoring of petrol prices across the country.

And yes, they are engaged in some intensive monitoring—so intensive that they have already exposed the lie that this government are relying on. That is the lie when the Prime Minister said, in his address to the nation in August 1998, that ‘the GST will not increase the price of petrol for the ordinary motorist.’ He did not use the weasel words he uses today about ‘need not’—not the ‘need not’ that you have already heard from Senator Kemp and that you will hear from Senator Boswell but ‘will not increase because of the GST.’

Then they pulled the act of spivviness that Senator Murray has already described. They decided to try to cut corners. They decided they were too cheap to keep this promise. They said, ‘We will give back only 6.7c instead of the full 8.2c’—1½c a litre. That is what they are taking, extra, from every Australian. How do we know this to be the case, even though the government deny it? You just have to go to the government’s own budget papers, which state that Commonwealth government revenue will increase as a result of the change. According to the government budget papers, from July 1, the government will keep the 8.2c a litre they pass to the states, following the High Court decision in 1997. This will earn the government $1.65 billion. So they are getting $1.65 billion from this tax. And what are they giving back to the states? They are giving back 6.7c a litre. That is $1.34 billion. Remember: they are gaining $1.65 billion, but they are giving away only $1.34 billion. That is a profit of $300 million. No arguments; it is their own budget papers. But this mob want to keep pretending.

What did Allan Fels say when he was asked about whether or not the government was justified in saying that it was up to the oil companies to pass on their anticipated cost savings? Even Allan Fels would not swallow that one. Fels is on the public record saying that it could be a number of years before any of the anticipated cost savings from the oil companies would be passed on to consumers. It was exposed in your budget pa-
pers—exposed by your puppet, who swallowed every other piece of government propaganda and then repeated it to the public. But even Allan Fels has not swallowed this one.

Let us move to the backbench revolt. Senator Crane and Senator McGauran, I have read this article two or three times, and I have to tell you: your names are not here. I am very disappointed. You are going to meet those people in Benalla for the first time, Senator McGauran. Senator Crane, I think you should know that Senator McGauran has followed your lead. He has finally moved his electorate office to a country area. He has moved from across the road from me in the CBD in Melbourne out to a country area. Funnily enough, it is to Benalla. Senator Boswell, you know Benalla well. Benalla is the 97-year safe National Party seat in Victoria that fell to the Labor Party in a by-election not three months ago—not even two months ago. So, in a state of absolute panic, Senator McGauran—onto his horse and up the highway, up the Hume—went to Benalla.

Senator McGauran interjecting—

Senator CONROY—You have gone there in sheer panic to try to save the seat from the Liberals. I would like to say he was going to get it back from me, Senator Boswell, but he knows that it is really a fight with the Liberals up there. Lou Lieberman is going, and Senator McGauran has moved in to try to undermine him and win the seat for the National Party. It is quite transparent really.

The RACV has just released a survey. Of the 108 petrol stations surveyed across Australia between June and July, 102 have increased their petrol prices. What did the Prime Minister say last month? ‘Nothing is as formidable as field evidence,’ said the Prime Minister. ‘It beats everything. It’s like a football match. The result always beats the prediction, doesn’t it?’ He said that on Channel 10 just a week or two ago. What does the football match say? What does the field test say? It says that this government is helping to rip off every motorist in this country.

I will respond to Senator Crane’s question: what is the Labor Party’s policy? I have to say this to you: Senator Kemp has been running that line for a while now. You obviously think it is a good one. He said in this chamber, and you can check it in Hansard: ‘Look, what happens is the Labor Party identify this sort of problem. What are they going to do about it? They’ve got no policies.’ The government minister in charge of this area is identifying that there is a problem. The government are a policy vacuum at the moment. They have put the GST in place, and they have not got a single idea what to do next—not a single idea where to take the country next. Do not stand there and accuse us of being the government—you are the government. We identify the problems, and at the next election we will say what our policies are—at the next election. We are not going to do what you guys are doing. With your hands on the levers over there, you stand there and say, ‘We haven’t got any ideas about how to fix any of these problems. We created the problems. We’ve got no idea how to fix them. It’s the Labor Party’s job to fix the problems, to come up with the ideas.’ You guys are a policy free zone, and you have been for 12 months. Your entire government has no vision, no ideas and nowhere to go. The voters are going to catch up with you. (Time expired)

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (4.33 p.m.)—That was the most remarkable speech that I have ever heard in this chamber. We have brought in the most comprehensive tax changes that have ever come before the Australian people. The tax changes have not been in one month or two months, and now we are being accused of having no policies.

Senator Sherry—You never try; that’s the problem with the National Party

Senator BOSWELL—Senator, if you really believe that, you are disillusioned. You are so badly disillusioned that you are in a complete denial fall. If you say in this parliament that the coalition government are without policies after we have just made the most huge policy change in Australia for the betterment of Australia, then you are in an act of denial.
This is the first time I have heard a criticism of the GST since it was brought in five weeks ago. We were told of the end of the world was coming—that the sky was going to fall in; that it was going to be nightmare on Main Street. There was not even a ripple on Main Street. This is the first attack on the GST that we have seen in five weeks. The people have not accepted that there is anything wrong with GST. It has been introduced very smoothly, and the battlers are finding another $40, $50 or $60 in their wage packets, something that you—the so-called battlers’ friends—have never been able to provide. No wonder these battlers—these so-called Labor Party battlers that have been rusted onto the Labor Party for so long—are now coming over to be known as the Howard battlers. You have lost contact with your grassroots. You have lost complete contact with the people in the factories and the people on the floors of the shops. You have completely lost contact with them. I say to you: you should get into the front bars of the hotels around Tasmania—get into where the rugby league is played and where the Australian rules are played. Get back and make a connection with the people that you used to once represent, because you have deserted them.

The ink was not dry on this matter of urgency when Senator Cook raced over and said, ‘That’s a bit rough; you can’t ask anyone to swallow that matter of urgency.’ So he compromised the urgency, and he acknowledged that petrol and fuel prices are going up, in his words, due to the extremely high price of petrol as a consequence of the OPEC’s actions in forcing up the price of world crude oil and the amount of tax on petrol. So we had an urgency motion, and then, before the urgency motion was presented, we got an apology from the Labor Party. And well may they apologise for such a stupid, idiotic urgency motion, when their response to the fuel price rises was to increase excise. When Labor came to office, the excise on fuel was 6.155c a litre. When they left office, the excise on fuel was 34.183c a litre. In that time fuel excise had gone up 600 per cent and the price of fuel had risen by 27c a litre because of the excise that they had imposed on fuel. And they have the audacity to come in here and accuse the coalition government of putting fuel prices up! As I said before, the Labor Party are in an act of denial. I have seen that happen.

I think we ought to debate what the benefits to Australia have been with respect to fuel and the GST. The GST was introduced on 1 July—a matter of five or six weeks ago. Petrol prices to industry have been reduced by 6.7c a litre. They should have gone down another 1.5c a litre, but that is a matter of debate between the government, who maintain that that 1.5c a litre should have been passed on, and the oil companies that say they will not pass it on. I am not going to get into that debate but, in effect, fuel should be 1.5c a litre cheaper. Then we have the test of the GST. There were price falls in major metropolitan centres of 0.04c a litre—and that was on the ACCC monitoring of 4,000 sites in the week after the introduction of the GST on 1 July. The price of fuel has gone up 47 per cent since last year—and I, more than anyone else, know how fuel prices affect rural Australians—and, added to that, the Australian dollar has fallen significantly, putting about another eight per cent on fuel prices in Australia.

I will now go to a very important issue. The additional government programs to reduce fuel costs in regional and remote areas are benefiting regional Australia by about 1c a litre, rural areas by about 2c a litre and remote areas are in about that 2c a litre spectrum. But what do we hear from the Labor Party? That particular program is a $500 million program directly affecting rural and regional Australia. Today I was surprised to learn, by listening to my colleague, that Mr Fitzgibbon wants to remove the $500 million for petrol prices in rural Australia. Then the Labor Party has the audacity to come in here crying crocodile tears, saying that this government is not concerned that fuel prices are going up. This government is terribly concerned about the price of fuel going up.

Senator Sherry—What are you doing about it?

Senator Boswell—One thing we are not doing, Senator, is removing a $500 million subsidy from the price of fuel that is going into rural and regional Australia. If you guys are going to get up here and present
MPS like this, then do it with a bit of intelligence and a bit of courage. You have become a complete an utter farce as far as this parliament is concerned.

Senator MURPHY (Tasmania) (4.41 p.m.)—I am not sure that I could follow the speech just made by Senator Boswell—

Senator Boswell—No, you wouldn’t.

Senator MURPHY—You are right; I wouldn’t.

Senator Sherry—You couldn’t.

Senator MURPHY—As Senator Sherry said, ‘You couldn’t follow it because it makes no sense.’ It makes no sense—not even in dollar and cents terms, as Senator Boswell rightly knows. He is a member of the coalition—the part of the coalition that is supposed to represent the country in Australia. He walks out of the chamber, as he has walked out on the rest of the people in regional Australia. They have sold the people of regional Australia a pup on petrol.

I want to go to a point that Senator Boswell seemed to make, or want to make, during the course of his speech—that is, what has impacted on the price of fuel? He said, ‘Oh, well, crude oil prices have been one and the exchange rate another.’ That is quite true; they do have an impact on the price of fuel. But let us have a look at the crude oil price when the government set their 90c strike rate. What was the price per barrel of crude oil? At the time of the announcement, 22 June, the price per barrel of crude oil was $US34.55. The exchange rate was—I do not have the figure with me at the moment—

Senator Crane—That is irrelevant.

Senator MURPHY—I will just deal with the crude oil price for a start, Senator Crane. What is the current crude oil price? Yesterday it was $US31.93 a barrel. According to those with greater knowledge than I on these matters, any drop in crude oil prices—every dollar movement up or down—is supposed to have a 1c movement in the price at the pump. As there has been a decrease of $2.62 since the Treasurer’s announcement on 22 June, one would assume that there ought to be a 2.62c per litre drop in the price of fuel. But has that happened? No, not at all. In terms of the exchange rate, the difference between the exchange rate at the time the Treasurer made his announcement and today is 2c. Let us put that aside and have a look at how much fuel has gone up. In my state the wholesale price of fuel has risen by 5.5c per litre.

Now, of course, this is where we come to the big con that this government has inflicted upon the population of this country in respect of petrol. We were told right back then, prior to the election, about how the GST was not going to have any impact on petrol prices, none whatsoever. It was followed up after the election by the Prime Minister, the Treasurer and the finance minister, who was the gamest of all: he said petrol would actually go down. Where is Mr Hockey today? What has he got to say about the circumstances confronting Australians today in respect of petrol prices? Senator Boswell said, ‘We have the $500 million rebate scheme,’ which is a very interesting scheme—2c in terms of remote areas.

I was looking at the map that I have here and what I am about to say was actually drawn to my attention by my colleague Senator Trish Crossin from the Northern Territory. If we look at this map, we can see that the remote areas of Australia are in a burnt orange colour and the regional centres are in a buff or beige colour. Right at the top of the map is Darwin. There is a little line that is drawn around it. I assume it is supposed to be drawn around metropolitan Darwin. I know Darwin is a regional centre in terms of it having a reasonable population but you cannot get a much more remote area. You have not excluded Broome, Derby, Port Hedland, Exmouth or Geraldton—they are all in. Of course, Weipa is in. I just find it amazing, in terms of the remoteness, how you would exclude those people. What was the basis for excluding those people? The government, prior to the election, said, ‘The GST’s going to have no impact at all,’ but the fact of the matter is that it has. What has been argued is this: ‘Oh, well, the industry ought to give the old consumer 1½c a litre back. That’s the saving it has made as a result of the lower transport costs.’ The industry has said to that: ‘Prove it. Prove it as to where these cost savings are’—the cost savings that you expect it to pass on. Have you done that? No,
not one iota of it. You are hoping beyond all hope that this issue will die.

Senator McGauran—No.

Senator Murphy—I take note of the interjection from another National Party senator, another person who would claim to be a representative of regional Australians. I will listen with interest to you, Senator McGauran—through you, Mr Acting Deputy President—when you get up to address these issues on behalf of the people you claim to represent but unfortunately do not.

Senator McGauran—Why do they keep re-electing us?

Senator Murphy—I would not like to remind Senator McGauran of the most recent results of elections in Victoria, the state for which he is a senator. I would not like to remind him of those. (Time expired)

Senator Crane (Western Australia)

(4.48 p.m.)—I rise too to speak on this particular urgency motion concerning petrol, and there are obviously a number of points that I would like to make. The one thing that concerns me about the debate so far, which certainly the opposition cannot bring themselves to address, is this: the issue of fuel in this country, whether it be at the refining level, the distribution level or the retailing level, is in very, very difficult circumstances at this point in time. I wish you people on the other side would take the whole fuel issue in this country just a little more seriously than you do. In fact, I think you treat it with total disregard. If we look at the eight refineries in Australia, we find that not one of them is making two per cent as a return on their capital. As Senator Cook, who is the mover of this particular motion, would know, there has been the major restructuring, for example, which went on at BP in Western Australia just last week. So I would hope that at some time those on the other side of the chamber would be big enough to actually address in a proper way the full issue of fuel.

In terms of the GST, I can quickly run through the figures as they have been set out. The government has put in place a 6.7c per litre rebate. There is a 1.5c saving as far as the oil refineries are concerned, and I am not aware that they have not passed that on. In fact, I do believe, from the commitments and what they have said to me privately, that they will pass the savings on, because they have no intention of falling foul of the ACCC. We then put in place the regional and remote area benefits from the 1c or 2c fuel sales grant schemes. If you were to be absolutely honest about it, you would find that, as far as the impact of the GST on fuel prices is concerned, it is covered. There is no question about that.

In addition, as has also been mentioned but it bears repeating, in the monitoring by the ACCC in the week after, there was a fall of 0.4c per litre across 4,000 sites. So it is very difficult for you people on the other side of the chamber to substantiate the argument that you are trying to put forward today. What I really want to know in terms of your particular position concerns this: we have had approximately 25 minutes of hearing three Labor speakers and we have heard nothing of what their intent is or any indication whatsoever as to what their fuel policy is into the future and what their attitude is in terms of the excise. We have heard that they are going to roll back the GST. We have not heard how they are going to fund that. Does that mean that they are going to roll up the significant savings which have occurred to industry through fuel excise savings? Senator Murray has left the chamber; he raised the issue of taking the excise off rail use, something that I have pursued relentlessly over a number of years—and I am delighted that that has come off. Are you going to roll it back? What is your policy position as far as excise is concerned?

Senator Cook—You made the pledge; you honour it.

Senator Crane—I have already dealt with that particular issue and I am satisfied that in fact the GST is covered as far as the measures that have been put in place are concerned. I repeat that: I am satisfied. I was one of the people, as you people on that side of the chamber know, who followed this issue very, very closely indeed.

What is your position on the excise when the diesel is used on rail? Are you going to still allow the claiming back of the GST they will pay as part of the system? What is your
policy on the 24c a litre issue? Are you going to roll that on as far as road transport is concerned? You have not dealt with any of these matters, and if you want to pick up and run on these issues it is important that you deal with them. What is your position on the use of diesel for off-road activities? What is your position on agriculture, mining, forestry and fishing? We have not heard a word about those issues. I am deeply concerned that, to finance your so-called roll-back of the GST, you will roll on the excises, and I would like a denial from those on the other side of the chamber.

In the time remaining to me, which unfortunately is short, I want to go back to the inquiry that I chaired in May 1999 in regard to the government’s reforms of the fuel industry.

Senator Cook—You’re guilty as charged.

Senator CRANE—I am not guilty of anything, Senator. You have a record of misleading this chamber that is second to none.

Senator Cook—I do not.

Senator CRANE—Yes, you do. But I am not going to be sidetracked here; I want to go back to our policy position at that particular time. We recognised that there were problems in the fuel industry, and we came up with a plan which involved putting in place an oil code. We came up with a plan which involved putting that into the Trade Practices Act. It involved giving additional powers to the Trade Practices Commissioner. You opposed all of that; you were not prepared to assist. You stand up in this place—believe hypocritically—and say, ‘You should have the ACCC out here.’ We could have had that 12 or 15 months ago. We could have had an oil code in place. We could have had the unconscionable conduct provisions of the Trade Practices Act operating today. We could have had the commitments that were made at that time by the oil industry in terms of the franchisees concerned. They said that they would allow any franchisees in this country to become commissioned agents. They said that they would allow that, and they accepted it in terms of amending the agreements which existed between them.

Many things were put on the table, but you continued to block and to stop them. You come in here and you fire arrows at us. Look at the GST and the monitoring of it by the ACCC: we could have had that sort of force, that sort of power, involved in the fuel industry. I say to you people on that side of the chamber—and I say it to the Democrats as well—that we need to get that legislation back in this chamber. We need to deal with the issues surrounding that, and we need to get an oil code in place so that, if there is any funny business in the oil production chain, the oil distribution chain or the fuel retail business, it can be dealt with in a fit and proper manner according to the laws and the processes of the Trade Practices Commission. I am absolutely certain that the Trade Practices Commission, through the Trade Practices Act, would love to have the opportunity to monitor the fuel situation—whether it be refining, distribution or the use of petrol in your cars—at this time. My final comments relate to what the Labor Party is going to do about the many reforms we have put in place.

(Time expired)

Question resolved in the affirmative.

Motion (by Senator Carr) agreed to:

That, pursuant to standing order 154, this resolution be communicated by message to the House of Representatives for concurrence.

COMMITTEES

Scrutiny of Bills Committee

Report

Senator DENMAN (Tasmania) (4.56 p.m.)—On behalf of Senator Cooney, I present the 10th report of 2000 of the Standing Committee for the Scrutiny of Bills. I also lay on the table the Scrutiny of Bills Alert Digest No. 10 of 2000, dated 16 August 2000.

Ordered that the report be printed.

NATIONAL YOUTH WEEK

The ACTING DEPUTY PRESIDENT (Senator Bartlett) (4.56 p.m.)—I present a response from the Minister for Transport and Regional Services, Mr Anderson, to a resolution of the Senate of 6 April 2000 concerning National Youth Week.
BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives agreeing to the amendment made by the Senate to the following bill:

RETIREMENT ASSISTANCE FOR FARMERS SCHEME EXTENSION BILL 2000

First Reading
Bill received from the House of Representatives.

Motion (by Senator Tambling) agreed to:
That this bill may proceed without formalities and be now read a first time.

Bill read a first time.

Second Reading
Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (4.58 p.m.)—I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—
This bill will extend the successful Retirement Assistance for Farmers Scheme until 30 June, 2001.

The RAFS scheme is a key initiative of the Agriculture—Advancing Australia package—introduced by this Government in 1997 to ensure a strong ongoing future for this nation’s farming sector.

The Triple-A package has delivered unprecedented support to the rural sector, focusing on measures to boost competitiveness, sustainability and profitability. It has helped farmers to improve their business and risk management skills and to become more self-reliant. At the same time, Triple A has introduced an effective safety net for farmers in financial difficulties.

The RAFS scheme provides older farmers with the opportunity to transfer their farm to the younger generation without affecting their access to the age pension or service pension. Since its introduction in September 1997, the scheme has assisted more than 1,400 retiring farmers and their partners.

Its extension for a further nine months will allow more farmers to reap the benefits of the scheme. They will be able to pass their farm on to their children, providing their family not only with a going concern but with a sense of continuity and belonging in their community. At the same time it will allow retiring farmers immediate access to the age pension or service pension.

The scheme is designed to assist farmers who are facing hardship because their business is forced to provide a living for two families when it is capable of supporting only one. RAFS removes a significant impediment to the intergenerational transfer of the family farm.

The eligibility requirements of the scheme have not altered. Farmers will need to meet the eligibility criteria of the scheme as it has operated during the past three years.

The extension of this initiative, costing around $9 million over four years, will further contribute to a strong farming industry and enable older farmers, including many veterans, to retire with peace of mind, leaving a proud legacy to the younger generation.

Debate (on motion by Senator O’Brien) adjourned.

NATIONAL HEALTH (LIFETIME HEALTH COVER) REGULATIONS 2000

Senator CHRIS EVANS (Western Australia) (4.58 p.m.)—On behalf of Senator O’Brien, I move:

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

The opposition has moved to disallow these regulations because we believe that they are unfair and that, by limiting access to hardship relief to those who have previously had private health insurance, they go far beyond what was approved by parliament when the substantive legislation for Lifetime Health Cover was passed. The National Health Amendment (Lifetime Health Cover) Bill 1999 was debated in the Senate on 23 September last year. The opposition voted for the bill because it supports the principle that long-term members of health insurance funds should pay less than those who joined when they were older. In the debate, the opposition warned that the government’s scheme was crude and inflexible and that great care needed to be taken in how the new arrange-
ments were put into place. A number of amendments were moved to make the scheme fairer and, with the support of the Australian Democrats, some of those were passed.

Unfortunately, the government refused to accept amendments moved by the opposition which would have improved the provisions on hardship and would have depoliticised the process for determination of what constituted a hardship case. The opposition argued that the Private Health Insurance Ombudsman was the person best placed to consider hardship claims from people who, by reason of their financial situation or exceptional circumstances, were unable to take up health insurance in the period before 30 June this year. On that occasion I argued that it was far preferable to have a longer term mechanism for resolving hardship cases that was seen to be independent, fair and standing apart from the bureaucracy of the department. Unfortunately, this view was not accepted and the minister insisted on retaining personal responsibility for determining all applications for consideration under the hardship provisions. I note that he has since decided that this is an onerous task and has set up a special section in his department to undertake this task and introduce special forms and procedures for handling applications. This confirms the opposition’s view that the task should have been left to the Ombudsman, who is well placed to decide such matters.

The purpose of the regulations that are the subject of this disallowance motion is to define the circumstances which the minister should consider in exercising his hardship discretion. In the act, the only requirement is that a person must apply in the form and manner approved by the minister before 1 July 2002. The regulations provide that the minister should exercise his discretion on the grounds of financial hardship where the person received an income support payment or held a health care card in the 12 months leading up to 1 July this year, and can also do so in exceptional circumstances. I think that is a fair enough definition. But the regulations then go on to ban hardship relief being given to anyone in this category unless they have previously held private health insurance for three years or continuously for 12 months within the last three years. This is an onerous and unreasonable condition which was not foreshadowed by the government in the debate on the bill. The idea that only people with private health insurance can be considered to be in hardship is, of course, ridiculous. Although the bill was dealt with in the Senate nearly a year ago, the government dawdled with its implementation plans and has failed to adequately explain the way Lifetime Health Cover would work. The regulations were tabled in parliament only three weeks before the deadline for Lifetime Health Cover. Instead of having plenty of advance warning about how the hardship rules were to apply, the public was kept in the dark.

The government undertook extensive advertising to create what I believe was a fearful situation in the community by promoting a ‘run for cover’ mentality. This obviously had the desired effect, and the government is trumpeting the success of this advertising, without paying any attention to the fear and anxiety that its campaign created. The government has also completely ignored its commitments to the Australian Democrats about the advertising of Lifetime Health Cover. I hope that all members will take note of the value of a letter from this minister issued in the heat of the Senate debate in order to win the support of the minor parties. Time and again we have seen last-minute promises made to win the support of the Democrats and other minor groups which are then immediately broken and forgotten.

In this case the minister’s chief of staff wrote to the Democrats at his minister’s request on 23 September last year outlining the commitment the government wanted to make. This was done to dissuade the Democrats from supporting an opposition amendment to ensure that advertising of Lifetime Health Cover was factual and non-political and to subject it to scrutiny by the Australian Competition and Consumer Commission. The letter contained six explicit commitments about the advertising. In my opinion, every single one was broken. On the issue of hardship, the minister promised ‘to include information outlining the criteria for hardship
provision and the procedure for applying for consideration under this provision’. This clear and absolute commitment has been completely disregarded. Not a word appeared in any of the advertising on the hardship provision, not even a leaflet was made available to explain how to apply for consideration. He broke his promise because he had not actually worked out how the hardship provision was to be applied until it was nearly too late. The only promotion that I have seen that he has done is a letter sent to members of parliament in July—after the deadline—telling them about the administrative arrangements he had belatedly put in place.

The limits on the hardship provision applied by this regulation were never explained to the public. The fact that only previous members can be considered has outraged many. A typical example is an unemployed man who rang on 28 June to complain about the harshness of the government’s policy. He had several kids and his wife was pregnant, and he had been made redundant as an accountant several months earlier. He said he had hopes of getting a job in November, if not before, but because of the new rules he wanted to take up private health insurance for the first time in his life. His complaint was that the government was punishing him for being unemployed in June when he hoped to shortly be back in a job. Because he was 52, he would carry a penalty of 44 per cent higher premiums for the rest of his life because of the accident of the month he was made redundant. I am told by the person who spoke to this man that he had a compelling case for hardship relief and the act enabled this to be given to him but, because of the previously undisclosed limitations in the regulations, he was simply ineligible. I understand that this person, because he had greater persistence than most, rang the department, a number of funds and the minister’s office to argue the merits of his case. At every stage he was told differing stories but he was ultimately rebuffed on the grounds that the minister decreed that hardship existed only for previous members and that ordinary people who had not previously had health insurance were of no interest to the government in terms of this provision. I think that is a truly sad state of affairs.

The opposition has moved this disallowance to point out to the government the harsh impact of the additional condition it has imposed. We want the government to remake these regulations without the narrow definition that excludes many Australians in hardship or exceptional circumstances. It is a simple question of fairness, and I am surprised the government has been unable to admit its mistake and rectify the error by remaking the regulations with a less restrictive set of conditions. If this disallowance is carried, the opposition urges the government to remake the regulations without the offending subparagraphs (a) and (b) in each of clauses 7 and 9. As the Senate is aware, I am not able to move those amendments; we only have the ability to try and disallow the regulations. But that is the purpose of our doing so, because we think those changes would make for a much better set of regulations. I think this is in the funds’ interest and, given the minister’s enthusiasm for higher membership numbers, it is surprising he has been harsh on those in the community who are most in need of a fair go. The suggestion that remaking these regulations would disadvantage anyone is, I believe, quite wrong. The principal act clearly establishes a right for anyone to apply for hardship. Disallowance will not reduce the ability of people to apply for consideration. The absence of regulations simply requires the minister to consider a case on its merits under the principles of natural justice, without the benefit of regulations that rule out the majority of applications on reasonable grounds.

The situation of migrants, people serving in the defence forces and Antarctica and overseas returnees will be unaffected once the regulations are remade. Repealing these regulations will be a small step. I hope that the opposition can get the support of other parties in the Senate to restore fairness to that procedure.

Senator LEES (South Australia—Leader of the Australian Democrats) (5.07 p.m.)—The Democrats supported the Lifetime Health Cover legislation because we believe that those people who stick with lifetime health insurance and do not simply move in and out when they are likely to be needing something in the private sector should be
in the private sector should be encouraged. Those people who move in and out, dipping in when it is to their financial advantage and not paying premiums in between time, should be discouraged from that activity. That is effectively what this legislation has done. I think it has been more successful in increasing fund membership than even the government thought it would be. I am pleased to stress again that, through promises that the minister has made, there will be no reduction in the amount of money going to the public hospital system, as was originally planned under the Medicare agreement.

We did recognise at the time that we dealt with this legislation that there would be some groups needing special attention and special consideration to make sure that they were not disadvantaged, particularly those persons who are normally resident here but who, over the period of time when there was a lot of encouragement to join up, were out of the country, perhaps in the defence forces or the diplomatic service. Also, it had to provide for people who showed some interest in private health insurance. I think what the opposition is trying to do today to begin with is very thin indeed in terms of vast numbers of people being affected. I do not believe that that is the case. I think it is perfectly reasonable to look to people who showed some interest in private health insurance. I think what the opposition is trying to do today to begin with is very thin indeed in terms of vast numbers of people being affected. I do not believe that that is the case. It must be remembered that Medicare was always intended to co-exist with the private health system, not replace it. Initial estimates of the cost of Medicare assumed that at least 40% of Australians would maintain their private cover.

The Democrats will not be supporting the disallowance that is before us. I believe we would be disadvantaging those people who have signed up in good faith, believing that the rules were as the rules were, not that anyone could come back in future months saying that at that particular point they had done the sums and decided that their budget would not stretch to it. The most important thing that we could all do is to make sure that the public health system is sufficiently strong and able to provide services and that people will not have any fear of not being privately insured. That the public system can and should be able to cater for everybody is the key issue we should be addressing. We will not be supporting this disallowance.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (5.10 p.m.)—As the opposition is very much aware, the government is committed to maintaining a balance between the public and private health sectors. The private health insurance reforms which the government has introduced over the past four years have been instrumental in encouraging those people who can afford to and wish to take out private health insurance to do so. The participation rate figures announced on Monday by the Prime Minister show that more than 7.9 million people or over 40 per cent of the population now have private hospital cover. This brings the level of coverage back to that which existed in June 1992, the period when Brian Howe’s policies to dismantle private health insurance began to bite. This government has restored the balance between the public and private health systems to what it was when Medicare was conceived. As the opposition’s former minister for health Graham Richardson conceded in 1993:

It must be remembered that Medicare was always intended to co-exist with the private health system, not replace it. Initial estimates of the cost of Medicare assumed that at least 40% of Australians would maintain their private cover.

This government has also been the best friend that Medicare ever had. Since 1997-98, Commonwealth funding in real terms to states and territories for public hospitals has gone up by 23 per cent and there has been no change to universal eligibility for Medicare. Private health insurance is a personal choice and no Australian will be denied access to medical or hospital care because they are unable to take out private health insurance or choose not to do so.

Lifetime Health Cover has been instrumental in the success of the government’s integrated private health insurance reform strategy. This policy was designed to encourage people to take out private health insurance earlier in life and to maintain their membership, as well as discourage ‘hit-and-run’ behaviour where someone joins a health
fund just before requiring treatment and then leaves soon after. It has also had the positive
effect of significantly increasing the number
of people with private health insurance. In
combination with the 30 per cent rebate,
Lifetime Health Cover has turned the tide.

It should be remembered that the opposition
supported the passage of the Lifetime
Health Cover legislation. The member for
Jagajaga stated on 21 June 2000 that Lifetime
Health Cover will be maintained by Labor.
The Lifetime Health Cover legislation which
the opposition supported contains a provision
for people who were in hardship during the
grace period—that is, 1 July 1999 to 1 July
2000—to be given an exemption from the
normal Lifetime Health Cover rules. The op-
position is trying to argue today that the crite-
rion for this hardship provision are too harsh
and that the public was not aware of the
hardship provision or the criteria until it was
too late to act. This is simply not the case.

From November 1999, general informa-
tion relating to the criteria for hardship and
instructions on how to apply were available
to the public. This information was included
on the Lifetime Health Cover web site, and
was available from the 1800 private health
insurance information line, from health funds
and from the Department of Health and Aged
Care. The specific criteria for the hardship
provision had to be provided for in regula-
tions. As soon as these regulations were
made on 7 June, the Minister for Health and
Aged Care issued a press release, the health
funds were notified and information was
available from the 1800 number and from the
Department of Health and Aged Care web
site. All of those people who had previously
inquired to the Department of Health and Aged
Care about the hardship provision were
also sent detailed material on the criteria. It
should also be noted by the opposition that the
deadline for the hardship provision was
not 1 July 2000; in fact, the deadline is not
for another two years—1 July 2002. This
means that people have plenty of time to put
together an application for hardship.

The opposition have attempted to argue
today that the criteria for the hardship provi-
sions are too restrictive and that people
should not be required to have had previous
private health insurance in order to qualify
for an exemption from the Lifetime Health
Cover rules. They fail to appreciate that the
very purpose of the hardship provision is to
assist people who have demonstrated a previ-
ous commitment to private health insurance
but who, because of circumstances of hard-
ship, were not able to take out hospital cover
prior to 1 July 2000. It was never intended to
be a broad-ranging provision for anyone in
any kind of hardship. It is very important to
note that any special exemption for people
comes at the cost of higher premiums for all
other members of private health insurance.
Those people who have not been a member
before and who cannot join a fund, if their
financial circumstances change in the future,
will still benefit from the introduction of
Lifetime Health Cover through the positive
benefits of increased premium numbers on
future premium levels.

In developing the Lifetime Health Cover
policy, the government was careful to ensure
that the loadings for late entry were set at a
level sufficient to provide an incentive for
people to join at an early age and to maintain
their cover, without making premiums pro-
hibitively expensive for people who delayed
joining until later in life. The policy also,
importantly, did not require people to take
out top hospital cover in order for them to be
covered by Lifetime Health Cover. In the
lead-up to the Lifetime Health Cover dead-
line, there were singles products available for
as little as $3.52 per week and family policies
for only $7.06 per week. The 30 per cent re-
bate also made it possible for new members
to afford to take advantage of Lifetime
Health Cover, and it has enabled many ex-
isting members, especially pensioners and
self-funded retirees, to keep their insurance.

The opposition have also tried to argue to-
day that people felt they were being forced to
take out private health insurance. The mem-
ber for Jagajaga, in her 9 June 2000 press
release, stated that people were telling her
that the government was blackmailing them
into buying private health insurance because
the advertisement campaign suggested that
Medicare would be dismantled and that the
only cover available would be private health
insurance. This is just absolute nonsense. The
opposition know full well that the government was very concerned to ensure that the public were aware that they would continue to be able to access the public health system. Indeed, the Lifetime Health Cover brochure, which was available in Medicare offices, health fund offices and many other locations, including supermarkets, stated:

Lifetime Health Cover only affects people who want to take out private hospital cover. All Australians will still be able to receive public hospital treatment under Medicare.

As I stated earlier, the people who are unable to take out private health insurance, or who choose not to, are still able to access medical and hospital care under Medicare. This was made very clear to people in the one-year grace period leading up to the start of Lifetime Health Cover.

The opposition are proposing to disallow the Lifetime Health Cover regulations on the basis of their objection to the previous private health insurance requirements contained in regulations 7 and 9. The Lifetime Health Cover regulations do not just cover the criteria for the hardship provisions; they also cover the classes of people taken to have hospital cover under clause 4(2) of the act. These include members of the Australian Defence Force, people working in the Antarctic and Australians who are currently living or working overseas. Under the regulations, these people are given an entry age of 30 on 1 July 2000 and, while ever they remain a member of one of these classes—for example, while they remain a member of the Australian Defence Force—they are taken to have hospital cover. Once they stop being, say, a member of the ADF, the period of absence provision comes into effect and they have two years and 364 days to take out hospital cover before they incur a two per cent loading on their premium.

If the opposition succeed in disallowing these regulations, these people, including all full-time members of the Australian Defence Force, will cease to have hospital cover from today. Because regulation 6(1) prescribes a class of person who is taken to have hospital cover, the disallowance of this regulation will result in no classes of persons being prescribed. This means that, although ADF members have their health services provided for them free of charge and have no need for private health insurance, they will be required to take out private health insurance if they wish to lock in the base rate premium. As with all private health insurance members, they will have a period of absence which gives them two years and 364 days before they incur a loading. But this is not going to help those people who may continue in the forces for another 20 years. They would have to pay 17 years of premiums that they would not have had to pay if the opposition had not sought to disallow these regulations.

Similarly, Australians who were overseas on 1 July 2000 will be penalised if the regulations are disallowed. If they want to lock in the base rate premium, they will need to take out hospital cover while they are overseas. Obviously they cannot use private health insurance while they are overseas and will be paying money for a product they cannot use. So the opposition will punish a considerable number of people if these regulations are disallowed today.

The Lifetime Health Cover regulations also contain all of the administrative arrangements for the policy. If the regulations were disallowed, health funds would no longer be required to send out annual statements to members advising them of their Lifetime Health Cover status and providing them with information about the type and level of cover they hold. This could very well lead to consumer confusion about whether they pay a loading on their premiums or how many days absence they have used. So the opposition will not only be penalising certain groups of people; they will also be denying all 7.9 million private health insurance members decent information about their insurance product and their status under Lifetime Health Cover.

I move on to the hardship provision criteria. As the opposition would be aware, there are three criteria under which people can apply. These include financial difficulty, which is in regulation 7, migrants, which is in regulation 8, and exceptional circumstances, which is in regulation 9. In order to meet the exceptional circumstances criterion, a person
must have had previous private health insurance and must demonstrate that due to exceptional circumstances it was unreasonable to expect them to have hospital cover on 1 July 2000. This criterion was included in the regulations to protect previous private health insurance members who did not have hospital cover on 1 July 2000 because they were, for example, seriously ill or in difficult financial circumstances awaiting compensation payment. But the opposition is quite happy to penalise people in this sort of situation. If the Lifetime Health Cover regulations are disallowed today, any current or future applicant under this provision would likely lose the right to be granted an exception from that Lifetime Health Cover rule. Because this criterion involves a consideration of a discretionary nature, any current applicant for whom a decision has not yet been made and any potential future applicants would probably not have an accrued right to be treated as having hospital cover on 30 June 1999 and 1 July 2000. So if a person was unlucky enough to be in hospital in the period leading up to the Lifetime Health Cover deadline and is still in hospital recovering and has not yet applied for special consideration, then it will likely be too late if these regulations are disallowed.

Now we get to a really interesting aspect of the opposition’s disallowance motion against the Lifetime Health Cover regulation. It appears that disallowance of subregulations 7 and 9—that is, the financial hardships and migrant provisions—will likely have no practical effect at all. For those applicants for whom a decision has been made, disallowance of the regulation will not affect any determination made by the minister’s delegate prior to the date of disallowance. This was to be expected. Those applicants who have already applied but for whom no decision has yet been made will probably have an accrued right to have a determination made regarding their application, so current applicants will likely not be affected by the disallowance of the regulations. Then we get to all of those people who would be eligible to apply under the financial hardship and migrant provisions but have not yet done so. Remember that, under schedule 2 of the National Health Act, these people have until 1 July 2002 to apply for an exemption on the basis of hardship. It appears that all of these eligible people would probably have an accrued right to apply to be treated as having had hospital cover on 1 July 2000 irrespective of whether they have actually applied by today. This is because the disallowance of regulations by a house of parliament has the same effect as a repeal of those regulations. Under the Acts Interpretation Act 1901, the repeal of a regulation shall not affect any right accrued under the regulation. Therefore, if the opposition succeeds in disallowing the Lifetime Health Cover regulations today, then those people who were on an income support payment or health care card during the grace period and have had previous private health insurance can continue to submit an application for exemption and have that application considered by the minister’s delegate. The same applies for those people who meet the migrant criteria.

This means that this disallowance motion has been a waste of time, except for the defence forces, people in the Antarctic and people residing overseas. For them, the opposition’s disallowance motion is a slap in the face. Mr Beazley is supposed to be a friend of the ADF. I wonder how many of them will now feel that they have been shut out of Lifetime Health Cover by Labor. The opposition is here today with yet another poorly thought through strategy. In attempting to oppose the exceptional circumstances provision criterion, they are potentially going to penalise a large number of people they probably did not mean to penalise and will leave the financial hardship and migrant provisions open to application until 1 July 2002. I am thankful that the Democrats have indicated their support and I am hopeful that other senators will support the government in voting down a motion which, while being pointless, will also result in collateral damage.

Question resolved in the negative.
DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN AUTHORITIES) BILL 2000

Report of the Foreign Affairs, Defence and Trade Legislation Committee

Senator CAL VERT (Tasmania) (5.28 p.m.)—On behalf of Senator Sandy Macdonald, I present the report of the Foreign Affairs, Defence and Trade Legislation Committee on the provisions of the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000 together with the Hansard record of the committee’s proceedings and documents, and submissions received by the committee.

Ordered that the report be printed.

WORKPLACE RELATIONS AMENDMENT BILL 2000

Second Reading

Debate resumed.

Senator HARRADINE (Tasmania) (5.29 p.m.)—I continue my remarks on the Workplace Relations Amendment Bill 2000 having regard to what has transpired prior to my rising in this chamber. What transpired was an excellent and very skilful speech by Senator Jacinta Collins on behalf of the Labor Party, and I believe on behalf of all workers, in which she covered all bases. There is not a great deal left for me to cover, but I do state clearly that the Workplace Relations Amendment Bill 2000, the so-called pattern bargaining bill, seeks to limit the ability of representatives of employees—that is to say, unions and associations—to bargain common claims on behalf of their members with more than one employer. That is what is happening now and it is happening to the advantage of not only the employees concerned, which is paramount, but also the employer that wants to do the right thing. It does not work well for the employer that wants to rip off his employees. For those irresponsible employers, this legislation brought forward by the minister, Mr Reith, is just what they want—to be able to get away with injustices. The minister is disadvantaging those employers and workers who want to do the right thing, who want to ensure that everybody gets a fair deal. Many employers want to see pattern bargaining—if that is what you call it—to ensure that there is a level playing field and irresponsible employers cannot take advantage.

The net result of this legislation will be to disadvantage the most vulnerable of workers. It is all about disadvantaging the most vulnerable of workers. Let me tell you how. This legislation will not affect those workers with very strong direct bargaining power because the employers with whom they wish to bargain are very often in the cost-plus business. They know what day of the week it is and what will occur, if not immediately, later on down the track if it is not agreed upon. Those vulnerable employees who do not have such direct bargaining power, who do not have the direct muscle to insist upon justice, will be the ones that are unfairly targeted by this piece of legislation. These are the ones who very often rely on the umpire. I will not go into what some football commentators have been saying lately about umpires in the AFL. I think it has been rather unfair. What is being proposed in this legislation is that the powers of the Industrial Relations Commission be weakened. The commission’s powers to protect the most vulnerable will be weakened. I believe the Senate should not go along with this. The Senate is the preserver, I believe, of the rights of individuals. The Senate should stand up against the proposal.

The workplace Relations Amendment Bill 2000 requires the commission to terminate a bargaining period upon the application of an employer where a union has engaged in pattern bargaining. This leaves the commission with no opportunity to exercise its own discretion in the matter. This is a severe limitation and restriction on the independence of the industrial relations umpire. Orderly industrial progress is important for the future of this nation—it always has been—but once you limit the powers of the umpire, who wants to see progress in this nation, you are denying to the nation its right to see orderly progress. The legislation further complicates the situation because, in most cases, the Industrial Relations Commission would be unable to arbitrate the matter in dispute where a claim involves pattern bargaining and where this leads to the termination of the bargaining period. The representatives of the employees,
the workers—the unions—are left in a no-win situation. The employer is refusing to negotiate the claim, the employees cannot take protected industrial action and the union cannot submit its claim to the arbitration of the independent arbiter. The legislation further shifts the balance away from those who are least able to achieve justice without the protection of the umpire.

I believe that one of the problems, as I mentioned previously, is Mr Reith’s attempt to see that, for example, those people whose leadership and union are currently successfully negotiating enterprise bargaining agreements with a range of employers cannot do so. I am sorry to hear the minister take his contempt for due process and for the SDA into another, totally unrelated field and attack the leader of that organisation for having the gall to request a meeting of the national executive of the Labor Party to consider a conscience vote in respect of the IVF legislation!

I have not entered into the public argument about what is happening in the Labor Party—but he did, and he did it in a most grievous way, such that action should have been taken against him immediately. I think it is important for as many of the public as possible to know what he has been doing. On the 7.30 Report last night, the minister said that people like Joe de Bruyn, the leader of the shop assistants union, expect these people—and he is talking about those members of parliament who are allegedly in Joe’s pocket—to have a first loyalty to the shoppies union with a subsidiary loyalty to the Labor Party, and hang the community as a whole. I wonder what the community thinks about that: ‘Hang the community as a whole.’ That is what he says about Joe de Bruyn’s attempt to get a conscience vote. He carried on again today. And so de Bruyn was snapping his fingers. It is an absolute disgrace. I say very clearly here and repeat again: either the government is not fair dinkum about its legislation in respect of IVF or the minister for industrial relations, Peter Reith, so detests the retail workers, their union and leadership that that detestation overrides his supposed loyalty to his leader. (Time expired)

Senator CARR (Victoria) (5.41 p.m.)—The Workplace Relations Amendment Bill 2000 ought to be opposed on the basis of principle and for reasons of practicality. This bill is not only fundamentally unfair; it is unreasonable and it is unjust. It is also fundamentally flawed. It cannot be passed, in my view, not simply because it embodies a deep injustice but because it is unworkable, it is deeply ambiguous and it is seriously destabilising. It has the potential to destabilise both Australia’s system of industrial relations and the legal system itself. The bill’s objectives are outlined in the explanatory memorandum. It seeks to prevent what it terms ‘pattern bargaining’. This is defined in the explanatory memorandum as:

... bargaining where unions seek common terms and conditions across a number of employers, regardless of the circumstances of the individual business concerned.

The bill would enable the commission to terminate a bargaining period on the basis that ‘pattern bargaining’ is occurring.

Subsection 170MP(1A) says that a union is to be taken as not genuinely engaging in enterprise bargaining if it has engaged in what is termed as pattern bargaining. It seems to redefine the powers of the Australian Industrial Relations Commission in relation to the issuing of orders designed to render unlawful industrial action taken by workers. It would further restrict workers’ rights to take protected industrial action. It also seeks to protect the rights of employers in pursuing legal action against workers with respect to industrial action taken by those workers. The government’s stated rationale is that this bill would enhance the ‘system of genuine workplace or enterprise bargaining’. That is the claim made in the minister’s second reading speech. He went on to claim in his speech that this system:

... produced mutual benefits for workers, employers and the national interest, on almost every criterion—better wages, relevant conditions, higher productivity, more jobs, increased competitiveness, greater workplace participation and lower dispute levels.

If enterprise bargaining as we have known it has produced all of these results, then I think we are entitled to ask: why is the government seeking to tamper with it? Why does it indeed need improving? In fact, the outcomes
of the government’s particular version of enterprise bargaining have not been a bed of roses for workers.

A recent study by the National Centre for Social and Economic Modelling, NATSEM, by Professor Ann Harding—I think it was in June this year—stated that the income inequality and the wealth inequality in Australia are rising to extraordinary levels. The poor are getting poorer. The poor are not doing well out of the government’s enterprise bargaining scheme. Of course, this is a view shared by the Australian Council of Social Services, ACOSS, which has endorsed the findings of the NATSEM study. It is also the view of the Australian Chamber of Commerce and Industry. This widening of the gulf between the haves and the have-nots, between the low paid workers and the high paid workers, is a direct result of the government’s industrial relations policies. If we look at the other claim on the issue of industrial disputes, the Australian Bureau of Statistics tells us that the number of days lost due to industrial disputes has increased by 28 per cent in the 12 months to February 2000. In addition, the number of employees involved in disputes has increased by 32 per cent and the number of disputes has increased by 40 per cent in the same period. So the government’s approach to industrial relations has not reduced industrial disputation, either. What can we say on the issue of efficiency? There has been a 28 per cent increase in the days lost due to industrial disputes over the last year. No wonder there has been an increase in industrial disputes—the current legislation actually encourages them.

The bill contains a number of crucial ambiguities. In fact it is littered with them. There is an ambiguity that goes right to the heart of the definitions within the bill. There is considerable ambiguity about the term ‘course of conduct’ and about the term ‘bargaining’. What is it? ‘Conduct involving seeking common wages and entitlements’. What are they? What is a ‘campaign’ as defined by this bill? Most importantly, not explained are the criteria for determining whether or not a matter or an entitlement is ‘capable of being pursued in a single business alone’. None of these things are clear in the bill. They are not clear to the ordinary person, and I would have thought that they are totally unclear to the legal experts. That was clearly the evidence presented to the Senate inquiry of which I was a member.

In any case, under the existing legislation there is no provision to allow protected industrial action where negotiations are taking place across more than one employer or business. This provision is currently set out in section 170MI. There is nothing legal about industrial action linked to pattern bargaining at the moment. Therefore, this bill does not in fact render illegal anything that is currently legal. This depiction of the bill, on the contrary, is a sham. The minister has constantly practised this sham. It does not in fact provide for greater powers for the commission. It is claimed that it does but in fact the opposite is the case—it restricts the powers of the commission. It restricts it on the question of its own discretion.

There are new concepts that the government wants to introduce to the Australian industrial relations system that have absolutely no precedent in Australian industrial relations law. The concepts of pattern bargaining and so on have no history in law. There is nothing that a judge can draw upon to interpret them. I see Senator Cooney is here to speak on this matter. I look forward to his view on industrial relations practice in this country. Courts will have difficulty in determining the legislative intent because they have nowhere to turn. There is no reference point elsewhere in Australian law.

There are fundamental issues in this bill in terms of how to determine at law what matters or what industrial provisions are ‘capable of being pursued at the enterprise level’. In a practical sense, virtually every imaginable provision is capable of being pursued or sought at the local, enterprise level. Wages, leave and hours of work can all be pursued with individual employers. They can be if workers wish to. Legally speaking, however, no basis exists for distinguishing between these provisions. For instance, there is no legal basis to separate wage claims from other forms of payment such as superannuation, even though superannuation is very often resolved as an industry-wide matter in-
volving many overarching schemes. The only exception here might be the question of portability of provisions—for example, long service leave. In other words, this bill catches virtually everything imaginable within its ambit. It does not distinguish between reasonable kinds of claims usually and traditionally made by unions on the one hand and what the government sees as unreasonable or undesirable forms of pattern bargaining on the other.

The bill would essentially require that virtually all industrial matters be pursued at the enterprise level. This radically restricts the role of unions as organisations of workers. Quite clearly, that is the intent. The bill is also very inefficient. It de facto restricts the rights of employers as well as employees, despite its clear intentions to the contrary. For instance, take the car industry. Most in the car industry want common dates of expiry of agreements. It would appear that, under this bill, employers may find some difficulties. What about lift and escalator operators in Victoria all coming to the AIG and asking them to negotiate a common agreement around their industry. What about the Metal Trades Federation of Unions Framework Agreement with the AIG regarding wages related to the CPI, plus a range of conditions matters? What about public sector employees, such as those in education and health, where governments actually seek common outcomes?

The bill is in fact silent about the practices of employers per se with regard to their actions in pattern bargaining. It apparently seeks to redefine ‘industrial action’ as something undertaken by unions and by workers, not by employers. The bill would have the effect of inhibiting employers in seeking standard terms and conditions across an industry because it would make it extremely difficult for employers to enter into a negotiation with unions or employees about such matters. Once these negotiations were set in train, they would ipso facto contravene the act as amended. It would take only one renegade employer to stand out against an industry association, no matter how desirable industry-wide outcomes might be and no matter how widely they were supported. Under these provisions, one renegade employer may seek the remedies at law that would throw into chaos the entire industry.

In some industries, this government are trying to enforce pattern bargaining, which is the other great irony—the great contradiction. They are doing it by proxy. If you think about higher education, Dr Kemp himself has established a scheme which restricts payment of a two per cent increase of funds to universities to pay for salary increases. It restricts this on the basis of a set of 14 conditions, of which universities must meet nine in order to qualify for the funding. In this case, the government have argued there is no pattern bargaining because it is the government itself—which is not a party to the industrial claims—that is imposing the conditions. What a sham. It is completely disingenuous for the government to effectively put themselves up as the arbiter and impose conditions for an industry-wide settlement and then not claim that they are involved in the process. I am sure the government lawyers would have considered that the government may be in breach of its own industrial relations act. It certainly would be in breach, I would suggest, if this legislation were ever put to law.

Dr Kemp has been taken to the Federal Court by the National Tertiary Education Union over possible breaches of section 170NC of the act, which makes it an offence for a third party to take action to coerce parties engaged in enterprise bargaining. I look forward to seeing where the government stand on that matter.

The government, through the Department of Employment, Workplace Relations and Small Business, have set a framework for the striking of agreements between government agencies and employees. They have done this through a manual which sets out what agency agreements should and should not contain. Again we see an example where the government are engaging in pattern bargaining. The government themselves are engaging in what seems to be, on the surface of it, an attempt to coerce parties to an agreement.

It is not only unions and worker organisations which are constrained by this legislation, it is also employers and it is also the Australian Industrial Relations Commission.
The bill would force the commission, in cases where it found that pattern bargaining was taking place, to terminate the relevant bargaining period. The commission would have discretion only to terminate the bargaining period. This removes the type of discretion we have come to expect in our legal system. It would mean that the industrial umpire would cease to be an umpire and would become merely a tool of government policy. It would not be able to exercise genuinely independent discretion in adjudicating matters brought before it. The Industrial Relations Commission is obliged to terminate the bargaining period for all purposes even if one, two, three or a handful of matters that are the subject of a union’s claims are deemed to constitute pattern bargaining. Claims that were common in a small number of issues would force the commission to act without discretion. This is quite clearly a ludicrous situation.

The commission would also be constrained by a further provision of the bill—section 170MWB—that immunity for industrial action would have to be terminated by the commission in a case of pattern bargaining whether or not the industrial action was engaged in. This is another mandatory requirement that restricts the role and the discretion of the industrial umpire. This would be yet another case where, it might be argued, there is a legislative distrust in the commission. This government have now established a pattern in terms of their attitude towards the commission.

Section 170LGA provides for the views of the employer to be given special weight. It takes away the commission’s right to be independent. The commission is required to have particular regard to the views of an employer who is the subject of pattern bargaining claims. It constrains the commission still further. It could be said that the bill introduces a measure of unfairness into the act—I would say a level of institutional discrimination. There is no precedent in Australian law for such an action. We could ask whether the commission would also be required to take into special account the views of the government or the minister. Quite clearly, that is the inference that flows from these provisions.

You would have to ask what this says about our international obligations under the ILO. The ILO has formally raised concerns about the rights of Australian workers under the current industrial relations regime as imposed by this government. Australian workers’ rights are being seriously undermined as the law currently stands. This bill, if passed, would further contract the rights of workers. This bill is, I believe, in contravention of Australia’s international treaty obligations, particularly ILO Convention Nos 87 and 98 regarding, respectively, the right to organise and the right to take collective action. This in itself is a matter of very serious concern.

The Senate inquiry into this bill heard evidence that the bill, if it were to pass into legislation, would place Australia in the pariah state category from the point of view of the industrial rights of workers. We would be lined up with Swaziland, Chile and a couple of the Gulf states. If this bill passed, Australia would be amongst the pariah states of various Third World dictatorships. I think we would further lose international respect and our international reputation. This government has stripped back the resources available to the AIRC. It has cut the number of judges serving the commission and rendered it extremely difficult for the commission to provide decisions in a timely manner. At the same time, the bill places new demands on the commission to make determinations on matters within 48 hours, irrespective of the facts of the case.

Not content with undermining and attacking the AIRC, with this bill the government mounts an attack on the Federal Court. The court’s jurisdiction is attacked in that it is prevented from making ‘anti-suit’ injunctions designed to prevent a state Supreme Court from dealing with matters under the act—even in circumstances where the matters were issues before the court itself.

This move must be seen clearly in the context of a relentless vilification of the Federal Court by this government, as we saw in the MUA case and as we have seen in the vindictiveness exercised against various judges. Mind you, this kind of vilification is
not unprecedented. It is similar to the treatment handed out to the High Court in the period following the Mabo judgment. The High Court is lucky in comparison to the Federal Court because its jurisdiction is set out and guaranteed in the Australian Constitution. No such protection is available to the Federal Court, and we must look with dismay as this government seeks to strip its powers away. This bill is fundamentally unfair. This bill is fundamentally flawed. It is unreasonable, it is unjust, and it ought to be rejected by this Senate.

Senator COONEY (Victoria) (6.01 p.m.)—I rise to speak on the Workplace Relations Amendment Bill 2000. I will continue in the same vein as Senator Carr—perhaps not with the same flourish and depth of knowledge in this area but nevertheless I will continue in his theme. Senator Carr said that this legislation is aimed at upsetting the balance yet again between employers and employees in the workplace. There will always be tension within the workplace. The workplace can be cooperative and productive—and indeed it is the ambition of everybody in this parliament to see that that is the situation—but there is always that underlying tension there ever will be when people’s interests are in some respects different.

In the workplace, people are looking to make a profit for their shareholders or for themselves. As I have often said in this chamber, ‘profit’ is not a dirty word; it is the sort of thing that enterprises should be pursuing. On the one hand, you have enterprises pursuing profits for the owners—who might consist of one or two people—or, in big corporations, for the shareholders; on the other side, you have people who are looking for proper wages and conditions. In the pursuits that those two groups make of their respective objectives, tensions can arise. That is well recognised.

Over the years, this parliament and other parliaments have tried to make those tensions fewer and to make enterprises and workplaces more productive. To be fair—and that is what we should be looking for in this legislation—we must recognise first of all that the presence of tension is a reality. We must then look at what the strength is on each side of the divide—one side being the workers; the other side being the enterprise, the employers. The strength of the employers lies in their ownership of the facilities that are needed to produce the goods or services, and in their control of the workplace in the sense that they set out the strategies and the tactics needed to see that the enterprise flourishes. On the other side, the strength for the workers lies in the skills and abilities which they have to sell to get a fair wage. As I see it, that is the picture of the workplace—the place where we go to work to earn our living and to make this country rich and productive in goods and services.

In terms of that dynamic, if we allow one side to get such power that that side can be unfair to the other, we have a lot of thinking to do. This legislation attempts to shift the balance so that the employer is advantaged over the employee. The employees have their ability to work, their skills, their brain power and their physical strength. Essentially, in the workplace the strength of the employees is the ability to combine. That is a concept that goes back centuries. So, whereas on one side the strength is the ability to manage the tactics and strategy of the business and to possess the means to produce for the country; on the other side it is the ability to combine in more than a few numbers. If there is an ability for people to combine to put forward their points of view, you are more likely to get a fair balance than if the situation is otherwise and the people are not able to combine effectively. These concepts that I am expounding now are classic propositions that I think people accept.

With that knowledge, why does this legislation attempt to so weaken employees that they are not able to use that strength to combine in the way they should be able to? It is said that pattern bargaining—which, as I understand it, means bargaining across enterprises—should not be allowed. Pattern bargaining is a traditional way of bargaining in Australia. It is said that Australia is doing well. It is said that Australia is flourishing. Australia has flourished over the years—it has had its ups and downs, but it has flourished—and it has flourished under pattern bargaining. What is wrong with a group of
people in an industry, who are subject to the same pressures in one enterprise as they are in another, combining across enterprises to get what is fair? When, at the same time, you have the ability of the enterprise itself, or a combination of enterprises, to take steps to ensure that that pattern bargaining does not go beyond what is reasonable, why rule out pattern bargaining as a concept?

The workplace commission, where bargaining is looked at, has the power to do much to help in these situations in the workplace. That is proper and right. The Australian Industrial Relations Commission—I called it the workplace commission before—is a body that has in it very learned and very wise people, and we should trust in them. If a situation becomes unfair, we can go to the commission to have something done about that. I can understand that, but what I cannot understand is that a procedure or a way of bargaining should be crossed out as a concept. I think it is wrong, given the tradition of workplace bargaining and the realities in the workplace, that a mechanism of bargaining should be ruled out absolutely rather than being monitored by the commission. It seems to me that the only reason that this legislation is brought forward in this fashion, given that background, is to make sure that the bargaining dynamic, which should be kept balanced, is weighed down in favour of the enterprise. In other words, what is behind this legislation is the betterment of the enterprise rather than the betterment of the working men and women who operate in it. Otherwise, why would this legislation be attacking one of the weapons, one of the strategies, one of the advantages, that the employee can rely on—that is, the weapon, the strategy, of combining together in a very traditional and historic way to gain what is fair and reasonable, subject of course to the oversight of the commission?

While I am talking about oversight, I will go on to another matter raised in this legislation, and that is the issue of the judicial oversight of what happens in the workplace and the way in which the supreme courts of the various states can now exercise greater jurisdiction than they did before. I am a great admirer of the supreme courts of the various states and territories, just as I am a great admirer of the federal courts. But the Federal Court, specifically, has a tradition of looking after the legislation that operates in this area at a Commonwealth level and is very experienced in it. That is the first thing I want to say about it.

The second thing I want to say is that the legislation with regard to the supreme courts—for which, as I say, I have the highest regard—is brought forward in a context where there has been criticism of some members of the Federal Court by people who say that those members were appointed while the Labor Party was in government. The fact that a judge is appointed by a particular government should not be the point, because the whole set-up under which we operate—the constitutional tension that is set up in our society—is such that the government, no matter what its colour, appoints the judges. So that is not an issue. The issue is, I think, that these judges have made decisions that some people who have interests in the area—employers and people in employer organisations—do not like and, because they do not like those decisions, they denigrate very honourable men. I do not think there are any women. People would know to whom I refer. I am not going to name them now because that just adds to the injustice that has already been done to these people. I think it is outrageous that very honourable, very capable and very great—I use that word advisedly—judges should be, by inference, denigrated in the way this legislation does.

I want to say something further in that area about the Supreme Court, which exercises a common law jurisdiction and is often called upon to issue injunctions. When you look at the decisions over the years, you see there has been an inclination to grant an injunction to preserve the property and the situation of employers. That is a very reasonable consideration: people should not be subject to action which destroys their property or their enterprise. That should be a matter that is taken into account when a judge is considering whether or not to grant an injunction. But what is too often overlooked, in the exercise of a discretion in granting an injunction, is the position of the employee, the worker.
As I said before, the thing that he or she has is the ability to organise and the skills which he or she might want to withdraw. If an order is made, if an injunction is made, that interferes with the exercise of a worker’s right to take industrial action—and that is a long and honourable right—that is a matter of great importance as well. Just as you do not want to see enterprises adversely affected, courts should also take into account the proposition that a course of action by workers should not be interfered with, particularly if it has got up a head of steam. In other words, it is unfair that a group of people who are taking industrial action, have got up a head of steam and are getting somewhere should have that course of action taken away from them because of a court order. When a court is exercising its jurisdiction to grant an injunction, it ought to keep that in mind—and I do not know whether that has been taken into account enough in the past. So, yes, do take into account how the enterprise is affected but do take into account at the same time the way the industrial action is being interfered with as a result of whatever court order is made. Otherwise the fundamental right that people have of withdrawing their labour is so affected that it becomes almost a right in name only. People have a right to take industrial action, subject, of course, to certain conditions and to the general good of society. It is a fundamental right and it should not be so reduced that it becomes ineffective.

The second reading speech indicates an approach taken by this government which is very much aimed at one particular party in the industrial equation—that is, the workers. The language itself indicates that. It says:

Yet the enterprise bargaining system is today under serious threat, politically and industrially. The ACTU leadership and certain unions have opportunistically turned their face against it by supporting a return to industry wide pattern bargaining.

There is a conclusion in this passage that anybody that takes on pattern bargaining is wrong—and not only wrong but in some way evil—simply for pursuing a course of action and for proclaiming a course of action which has, in one form or another, been within the Australian industrial relations system for a long, long while. I can understand somebody saying, ‘I don’t agree with pattern bargaining,’ but I cannot understand somebody coming forward in this parliament and, in a second reading speech, denigrating the ACTU and very many honourable union leaders simply on the basis that those people want to do the right thing by their members. When we have that sort of attitude manifest in the industrial relations system, we have to worry very much about where the industrial system is going. These union leaders are elected and are subject to very stringent conditions set out in the Workplace Relations Act. To hear them denigrated is a shameful thing and this legislation, brought forward in that sort of context, should be voted down.

Senator CROSSIN (Northern Territory) (6.21 p.m.)—I rise to speak on the Workplace Relations Amendment Bill 2000 this evening with an overall look initially but then I want to talk specifically about the incidence of pattern bargaining in this bill. I think there can be no doubt—from the speakers that we have heard today and, of course, from not only the position of our party but also the position of other parties and the ACTU, and from the evidence that was put before the committee—about the intent of this bill. When this bill was presented and referred for inquiry, the committee was given a very short timetable—the bill was presented on 11 May and the committee had less than two or three weeks to conduct an inquiry and to write a report—but I will not waste my time with comments in relation to the way in which that time line was augmented and orchestrated by this government.

This bill is solely directed towards restricting the ability of employees to bargain collectively with their employers and to be represented by their unions. It proposes a number of amendments to the Workplace Relations Act, and some of the major amendments go to denying the legal protection that is available under the main act to unions, union officials and employees that engage in industrial action as part of a campaign of pattern bargaining. It also requires the Industrial Relations Commission to act within 48 hours on applications under 127 of the main act to stop industrial action. It pro-
vides for the commission to suspend access to legal forms of industrial action, and it gives the Federal Court express powers to determine if industrial action is protected action for the purposes of the principal act. I do not believe that any case has been made or that any valid evidence has been put forward by this government for any of these proposed changes to occur on either economic, social or industrial grounds. This bill simply seeks to revive the proposals that were last advanced as part of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill of last year.

In essence, this new bill proposes a number of measures designed to restrict or clarify access to what are commonly referred to as the protected bargaining provisions under the act. Until 1993, in common law and under federal industrial relations laws, all strikes and other forms of industrial action were unlawful. Reforms introduced by the Keating government—and continued in modified form by the present government—provide a limited right to strike during negotiations pursuant to new industrial agreements. Once you have served a log of claims and you are in a bargaining period and you give due notice to the commission, you are entitled to and protected by what is known as protected action. Legislation now also confers on employers a restricted right to lock out employees during the course of a dispute over new agreements. We saw evidence of this for the very first time back in 1997 in the Northern Territory, if my memory serves me rightly. It was tried and tested by the Northern Territory government during the infamous teachers strike—probably not long before the Workplace Relations Act was introduced into this parliament. It was no doubt a means of testing the provisions of the lock-out, and we saw teachers in the Territory undertaking a long and protracted bargaining process. The Northern Territory government was trying it on, trying it out and flexing its muscles. In the end, we saw a situation where those teachers were locked out for half a day. Lo and behold, some months later we see that exact same measure introduced in the federal industrial relations regime. But of course we know how close the Northern Territory government and this government have become over the last 12 months.

As part of the 1996 amendments to the federal industrial law, the Howard government altered the objects of the principal act to provide that:

... primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level.

There has been a continued focus by this government on ensuring that that becomes even more so the case. Other changes to federal laws have reduced the Industrial Relations Commission's arbitral powers, restricted the matters that may be dealt with under federal awards and limited legal protection to those instances where industrial action relates to proposed single employer or single workplace agreements.

The sole purpose of this bill, as has been the case with most of the legislative changes by this government, is to further weaken the capacity of unions to pursue better conditions of employment for their members. I might add at this point that the people sitting opposite us constantly have a go, have a dig, at those of us who have come from the trade union movement. It is always their catchcry, but I put it on the record with pride. You start off your life in an industry that you know well. You know where improvements in that industry need to be made. You know how you can represent the workers that best participate in that industry, and you move into the trade union movement. Senator Macdonald, each and every time that one of you seeks to align us or have a go at us about coming—

Senator Ian Macdonald—Malign.

Senator CROSSIN—Align us with the trade union movement—I know the difference between 'align' and 'malign', Senator. When you seek to align us with the trade union movement, we wear that with a badge of honour. We stand up here having taken pride in the fact that we have represented workers, that we have assisted them and made gains and that we were there to protect them through a whole range of incidents in their workplaces. Keep saying that to us—there are many of us that stand up here, having come from the trade union movement,
come from the trade union movement, with a great deal more expertise in some areas of this matter than the people opposite us. Is that not correct, Senator Forshaw?

Senator Forshaw—Seventy-six per cent of their frontbench are lawyers.

Senator CROSSIN—That is right. Thank you for reminding me, Senator Forshaw. Seventy-six per cent of your frontbench come from the legal fraternity. I do not hear many of you taking pride in that fact, but we all stand here taking pride in having represented workers. It is a badge of honour.

I now want to turn to the issue of pattern bargaining, and I will concentrate on this issue in the rest of my speech. Pattern bargaining is a bargaining process in which unions or employers may attempt to achieve common outcomes across different enterprises in an industry or a sector—for example, the adoption of standard agreements or a specified wage increase, which has not been uncommon in the past or even today. Because of the prevalence of awards, industry-wide agreements and multi-employer agreements under the conciliation and arbitration systems, the term ‘pattern bargaining’, until relatively recently, has not really been widely used in Australian industrial relations literature. In a sense, what we knew as pattern bargaining was pretty much the norm, although it may not have been tagged with that heading. The term had no precise legal meaning and may have been regarded as something of a term of art, even though pattern bargaining in a generic sense was an established and a deeply ingrained part of the industrial culture.

This bill does not make pattern bargaining unlawful. Instead, it seeks to discourage pattern bargaining by unions by denying them, their members and officials access to the protected action provisions of the main act where industrial action is undertaken as part of what can be characterised as a campaign of pattern bargaining. This bill places no such limitation on the right of employers, however, or employer organisations to act in a similar manner. So it discourages pattern bargaining when it is going to be undertaken by the unions on behalf of their members or by their officials but fails to impose the same sort of limitation in relation to the employers or employer organisations. It is this matter that I actually want to turn to in the remaining time I have, because I think there are a number of concerns in relation to pattern bargaining and in relation to the actions of the current federal government in their policies and application of those policies in the higher education sector.

For the purposes of the act, this proposed act in section 170 actually says that pattern bargaining means a course of conduct or bargaining or the making of claims. Does that mean, for example, that if you are in an industry, even if you seek to serve the same log of claims across a particular range of different enterprises in that industry, that action is captured by virtue of this amendment? In fact, the provisions are so broad in their potential application that they would apply in situations where a union serves similar or common claims on employers in a particular industry. Of course, this occurs in the higher education sector.

I want to go for a moment to that now infamous cabinet document that fell off the back of a truck last year under the name of Dr David Kemp. This cabinet submission, which has been out there in the ether for some time now, goes to workplace reform. We know that, since this cabinet document became public, the government have put in place their workplace reform program to the tune of $259 million. Let us have a look at what this leaked cabinet submission had to say. In the submission, Dr Kemp actually talks about higher education institutions being hamstrung by continuing workplace rigidities. He goes on to say that this is not helped by the persistence of the NTEU, the National Tertiary Education Union, dictating a pattern bargaining agenda. So he accuses the union of actually dictating a pattern bargaining agenda. He says that in the current round the union is seeking to impose conditions which in fact might worsen the rigidities in this sector. You might say this is a fair and valid claim from the federal minister for education. He is not the employer at any university, nor is he a member of any employer organisation that might seek to represent management at universities, but you might
say this is a fair and reasonable claim by the minister for education.

He then goes on to say that the Commonwealth could allow workplace reform in the sector to proceed in the manner and at a pace which suits individual universities’ management objectives. He also says that in his view some salary increases for academic staff are warranted. This is all in a climate where, though we used to be given salary supplementation for universities, under this government it has been stopped. He goes on to say, though, that there are limits on the institutions to raise revenue when the government controls the volume and price of their main activity. He says that workplace reform could be pursued immediately through an up-front injection of funds contingent on the achievement of specific workplace relations reforms reflecting government policy objectives. He goes on to say that the Australian Government Solicitor considers it appropriate to act on the basis that the Workplace Relations Act prohibition of coercion in relation to agreement making does not apply when the government applies conditions on a proposed grant of funds. So what does that all mean?

We saw the meaning of all that being translated into the $259 million workplace reform package. What this government then sought to do was to provide a two per cent salary increase in the higher education sector for universities— with a catch. Each university had to meet nine of 14 criteria.

In the estimates hearings this year we questioned some of the government officials, who failed to understand what pattern bargaining was and failed to understand the difference between a log of claims and a set of criteria, but nevertheless we battled on. We asked whether or not this was a form of pattern bargaining driven by the government. At that stage there were three universities that had been assessed and found eligible. Since then, another three have been found to be ineligible and I understand there are about nine waiting for assessment. We were told by Mr Gallagher that the three universities that failed to meet the test have been advised confidentially of the reasons. When we questioned the officials further, Mr Gallagher went on to say:

In any event, we are talking here about enterprise specific bargaining.

I would be interested to hear from Mr Gallagher what is the difference between this sort of enterprise specific bargaining and the pattern bargaining that the government is trying to outlaw under this legislation.

He went on to say that it is a voluntary program and the guidelines are available on the web, but he also said this:

The government has the view that the university sector needs to engage more realistically in enterprise specific bargaining.

So we are just going to help them out by saying to them that there is $259 million. ‘You can get assistance for two per cent of your salary increase if we can assess that each of the universities has achieved nine out of the 14 criteria that we specify.’ They went on to argue that there was a list of claims that the NTEU had suggested be pursued. Of course, we now know that in fact that is a log of claims, which is quite different from what the government are trying to do. The items they are pursuing are specifically designed to meet the enterprise requirements of those universities and they are common across the board.

What we actually have here is a government that is prepared to introduce legislation that goes to making restrictions on pattern bargaining, ensures that protected action by the unions or employees is not permitted and makes no comment at all about the actions employers or employer organisations may take if in fact they seek to undertake pattern bargaining in industries. At the same time, we have a federal government which is happy to get involved in the higher education sector and to coerce and encourage universities to do just that: to pattern bargain. If they want the carrot at the end of the day—the two per cent salary increase—they must meet nine of the 14 criteria. The government will say, ‘But we don’t actually employ anyone in a university. We are not the management in a university.’ The puppet does not dance unless someone pulls the strings. The monkey does not jump around with a cup in his hand unless there is an organ grinder playing. This government is right in there, in the cabbage patch coercing universities, and has made the
situation in terms of money and availability in universities such that they have no real option except to try to get this two per cent. It goes some way to the salary increases which the minister, Dr David Kemp, admitted in his cabinet document were so badly needed.

We have a situation where the federal government is embarking on participating in coercing universities in the higher education system, encouraging them, setting up and funding a program that does nothing short of pattern bargain. Each university must meet nine of the 14 criteria to pattern bargain, but of course under this legislation that is okay. It is okay for the employers and the employer organisations. Again we have seen another piece of legislation where it is not okay for the workers or for the union officials that represent them to seek a good outcome for their workers. This inconsistency, this hypocrisy, this two-faced policy where the left hand and the right hand are doing two separate things, we know is not uncommon from this government. In fact, it is something that we have seen repeatedly from this government—legislation on the one hand prohibiting something for workers and giving it a big tick for the employers but, on the other hand, there we are, deep amongst the mire, assisting universities to do nothing less than pattern bargain themselves.

May I digress and be a little cynical. These amendments, as with others that will come into the Senate later—a number of other amendments to the Workplace Relations Act have already been foreshadowed—bring to mind the words ‘awful’ and ‘dreadful’. There will be a plethora of these bills. In fact, it appears to be the Workplace Relations Amendment (More Jobs, Better Pay) Bill 1999 being handed up in slices. It seems that Mr Peter Reith is promoting these bills, aware of their fate. It seems at the end that it is novel, perhaps more novel that he may be the Don Quixote of industrial relations, tilting at these bills, hoping upon hope. But perhaps his Sancho Panza, his offsider, might be known better from the Australian Industry Group. It is worth going back into the history of how this particular amendment bill came about. On 8 February 2000, a media release was put out by the Australian Industry Group which stated:

The Ai Group declines negotiations on pattern agreements, claim the Australian Industry Group today, declined to enter negotiations with the Victorian Metal Trades Federation of Unions for an Industry Pattern Agreement to replace enterprise bargaining.

In a 13-page response to the MTFU claim for an industry agreement, the Ai Group called on the unions to reconsider their position for the wider good of Australia and Victoria in particular.

It went on with a range of statements about that issue. On 11 May 2000, Bob Herbert, the Chief Executive, stated in a media release:

The Workplace Relations legislation introduced into Parliament today is a most welcomed and timely endorsement of enterprise bargaining.

We come now to a media release on 6 June 2000 by Bob Herbert, Chief Executive Officer of the Australian Industry Group, which states:
The Australian Industry Group has expressed its frustration, disappointment and apprehension about the Australian Democrats' decision not to support immediate amendments to the Workplace Relations Act. The amendments would make it clear that industrial action in support of industry-wide claims is unlawful.

So we are starting to see the genesis of the current bill before this house. I then go to a media release of 9 June 2000, the heading of which says, ‘Ai Group seeks action from the Commission’. The release says:

The 30th of June is imminent. Several hundred Australian Industry Group member companies, employing some 50,000 Australians, have enterprise agreements expiring in Victoria on that date. Extravagant pattern bargaining claims are set to be pursued against these companies. They face the threat of a widespread and damaging industrial action unless they comply.

So we have Mr Herbert promoting a piece of legislation, setting the scene for a piece of legislation, underpinning the legislation with what could only be described as extravagant claims as well. By 25 July 2000—and, to put that in context, that was after the bill had been introduced, after the Senate inquiry had dealt with it in an extensive way and after the minority report by the Labor Party quoted Mr Herbert on the title page as providing a ‘free kick’, as he would see it, to workers—there were extravagant claims that there would be disaster upon Victorian industry and that the type of bargaining proposed was, in my words, outside of what he would consider ‘usual enterprise bargaining’, to put that quite mildly. On 25 July we find him saying:

The Australian Industry Group will report the satisfactory progress of enterprise bargaining in hundreds of Victorian manufacturing establishments. That is before this bill has become legislation. I seek leave to continue my remarks.

Leave granted; debate adjourned.

NOTICES

Presentation

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

That there be laid on the table by the Minister representing the Minister for Education, Training and Youth Affairs (Senator Ellison), no later than immediately after question time on the next day of sitting, the following documents:

(a) draft guidelines on the method of calculation of schools' SES scores as defined in subclause 4(1) of clause 7 of the States Grants (Primary and Secondary Assistance) Bill 2000; and

(b) SES scores of the 2,262 schools that participated in the 1998 SES simulation project conducted on behalf of the Department of Education, Training and Youth Affairs.

VALEDICTORY

Quirke, Senator John Andrew

Senator BOLKUS (South Australia) (6.49 p.m.)—I rise to say farewell from this place to not just a colleague of mine but a friend, John Quirke. We developed a friendship over quite a number of years—in fact, over quite a long time—and I suppose I was more surprised than most, if not as surprised as others, to hear of his collapse at the national conference of the Labor Party and the subsequent medical problems that he had. I knew, for instance, that he had been in hospital some time in the last 10 months or so but, like many others who knew John well, I thought that the problem he had was totally under control. The suddenness of John’s departure from this place underscores a number of things that we should probably all keep in mind as we continue in the heady and intense life of politics. It underscores our fragility as human beings; the fact that we may be, as John was, standing up and fighting on an issue on the morning of the national conference but later that afternoon being taken to hospital for treatment. It is a very fragile existence.
It also underscores priorities. Quite often, when we get wound up in this place and in the importance of it all, we tend to lose a balance of the priorities that we should have. We tend to devote more and more time, more and more tension, and more and more intensity to the duties that we have in this place and quite often forget the underlying need for health, both mental and physical. John’s sudden departure underscores that. For me also it underscores one of those great lines in pop culture written and sung by John Lennon: ‘Life is what happens to you while you’re busy making other plans.’ John was very busy making other plans and we were very busy making other plans together over the last 12 months or so. His departure now means that those plans, to some extent, have to be reviewed, particularly on John’s part but on my part as well. He has had to retire at an early age and at an age when much of his political destiny lay ahead of him.

I am sure he has made the right choice. In a sense he probably had no choice, but I am sure he has made the right choice for himself, for Davina and for the children. They of course will now be the beneficiaries of John Quirke spending more time in Adelaide and finding a new future for himself. Leaving here is a sad thing for him, but in a sense it now provides for him the opportunity to develop new directions. I am sure he will not lose the political addiction that is in his blood and we will rely on him, I am sure, to play an active role in the Labor Party in South Australia. I am sure that, with his talents, his experience and his contacts, he will continue to make an important contribution to South Australia in whatever capacity he develops.

We first met as members of the old Chinatown lunch club in South Australia. This lunch club started in 1974. As Senator Schacht said earlier on when he said that he had organised John’s first job in politics, Chris and I were quite instrumental in starting that Chinatown lunch club. Essentially, it was a meeting place for federal pollies and their staff back home from a heady week in Canberra—and they were heady weeks in 1974 and 1975. It was an opportunity for us to get together and swap notes and to do so with a broader group within the Labor Party.

It soon developed from four or five people to something like a dozen and, on occasions, something like 20. John was one of those who would always come in with the likes of former Senator Reg Bishop and Don Cameron, sometime Clyde Cameron, sometimes Mick Young, and some state politicians, Chris and me. It was a really useful forum for discussion. I suppose ‘plotting’ is another word to use for what we did a lot of in those days. They were the early days when I met him. Over the years we have developed friendships. We have developed allegiances and alliances. Those alliances came to their climax with the last preselection when John and I respectively got Nos 2 and 1 on the ALP Senate ticket for South Australia. We chanced fate that night we got preselection: we both jumped on the same table together to thank all of our supporters and it became pretty obvious that our combined weights were going to cause some problem for us if we were to stay on the table for too long.

His contribution to South Australia, to the ALP and to federal politics has been long-standing and has been quite pivotal and important. In the ALP, he has been a stabilising influence. He has offered much and, as I say, still has much to offer. In South Australian politics, he made an important contribution in the state arena at a difficult time after a massive loss of government in that state. In the ALP in South Australia, he has been an important cog in a coalition which has basically given the South Australian branch—and some may disagree to the extent that we have done it and I am sure some are close to me here—foundation for future success. We have been involved in a process of power sharing and joint management but, in doing so, we have brought about enormous regeneration and renewal of the ALP in that state. There have been some difficulties; you always have them. But when the South Australian public looks at, for instance, the South Australian frontbench of the ALP to face the next state election, they will probably find amongst it some of the most competent people in state politics around the country—probably overall the most competent package of frontbenchers. Normally I think you find in state parliaments two or three enormously competent frontbenchers. I think South Australia’s La-
bor Party will be blessed with at least two or three times that when they next go to the polls. In federal politics, John has been a strong mouthpiece for his constituents from South Australia and from other states, and for South Australian issues. Senator Harradine was saying around lunchtime that John was loyal to his constituents. He was respected by them, whether they were individuals, trade unions, community organisations or business people and business organisations. The contacts were strong and developing. That is the shame of his departure.

On a personal note, I will also miss Davina’s contribution. She has been quite an important influence on John and also on others in the Labor Party. I also hope she maintains the strong influence she has had in the past, although we will not see as much of her here in Canberra, of course. He is leaving this place and that is sad. He is starting a new life and that will be the benefit out of this. Davina and the children will benefit from this but, in many senses, John’s salad days may well be on the way. He goes back to South Australia for a much better lifestyle: good living, I will not say good wine because that may not have the desired impact on his health, and good food—and in a position where he will be able to draw on his long experience in state and federal politics. I wish him, Davina and the family well. I am sure that we will be working together, in a much more subdued and less intense way, in the future to the interests of the Labor movement in South Australia.

Senator KEMP (Victoria—Assistant Treasurer) (6.58 p.m.)—I join with my colleagues in expressing our good wishes to Senator Quirke. It is always a sad moment when someone leaves this chamber. I have always felt that the Senate is the best club in the world and good food—and in a position where he will be able to draw on his long experience in state and federal politics. I wish him, Davina and the family well. I am sure that we will be working together, in a much more subdued and less intense way, in the future to the interests of the Labor movement in South Australia.

Senator KEMP—Of course I would. I would even be happy to be patron of it. The problem is in finding members. That is the dilemma that we are faced with, Senator. You would probably have a similar problem.

Senator Coonan interjecting—

Senator KEMP—They are all coming out and trying to hop on the bandwagon. It is too late, I’m afraid: we have lost our chairman. Mr Acting Deputy President, I will not be diverted.

It is a sad day for the Senate that we will not be seeing Senator John Quirke here
again. He was, as Senator Bolkus said, a strongly committed Labor man. I have always found it very hard to understand why someone would be a strongly committed Labor person, but he certainly was that. He did not have a great love for Liberals, but he had that quality which is surprisingly rare in this parliament—that is, he was able to establish fairly good and warm relationships with his political opponents. That is not to say, in a metaphorical sense, that he did not live to see the day that he saw our blood in the street. He was a good man; he was a good senator. He is a big loss to the Labor Party and he is a big loss to the Senate.

Senator McKIERNAN (Western Australia) (7.02 p.m.)—I would like to add a few words to the comments of colleagues who spoke earlier in this debate in paying tribute to our former Senate colleague, John Quirke, who has announced his resignation from this place. John was a participating member of the Senate Legal and Constitutional References Committee. Through the secretariat of that committee, last week I got word that he would not be attending the hearings of the committee in Perth or Darwin because he was not feeling too well. You take that on the run because these things happen to people—not just participating members of the committee. I did not think any more about it because I had not heard of his collapse at Labor’s national conference in Hobart earlier. It came as a real shock to me when I rang my office during the luncheon break in the public hearing proceedings in Darwin on Friday and found out that he had resigned and had resigned for health reasons. It really was a shock.

My first thoughts at that stage were of good wishes for the future. Hopefully, things will work out for him and for his wife, Davina, and children. I also felt it was a very brave and courageous decision to be taking at that moment in time. One can just imagine how an individual would be feeling, after going through the trauma of treatment over an extended period for an ailment, then a fairly dramatic collapse and hospitalisation, when he arrived, under all of those and other pressures that arise from that, at the decision to end a career that he was absolutely dedicated to. He was dedicated from a parliamentary position, because he thoroughly enjoyed the parliamentary processes, and also from his position within the Labor Party—as has been remarked on a number of times. He really was a machine person within the party—not only as a serving member of parliament but in his life before becoming a member of parliament.

That is when I first made contact with John. His predecessor, former Senator Dominic Foreman, and I occupied the magnificent role of Deputy Government Whip in the Senate. We were both deputies at the same time and had to work together. Obviously, in working together you work with each other’s staff. That is where I first made contact with John and built up somewhat of a relationship with him in that role. I followed his career when he left this place and left Dom’s employment to go on to the state parliament in South Australia. I followed his elevation onto the front bench and with some surprise I noticed that he was coming back to this place to replace his former employer in the Senate. Of course, our relationship continued from there.

I must say that the relationship went to new heights during the recently completed inquiry of the Senate Legal and Constitutional Committee. John was a very dedicated participating member of that committee. He attended, from recollection, most of the public hearings and was quite active in questioning the witnesses before the hearing. I think Senator Harradine was one of the earlier speakers who referred to his role in that inquiry because of his great interest in the preservation of human rights. He assisted the committee and the committee secretariat in developing the work which was recently presented to the parliament. The report was entitled A sanctuary under review.

I am sorry that John has taken the decision that he has because it leaves somewhat of a vacuum in this place. When a similar inquiry to the refugee one comes along again—we are doing one at the moment on the stolen generations—we will not have the benefit of his wisdom, his commitment, his dedication, his hindsight, to rely on. All we can do, like other colleagues have done earlier, is to join...
in extending our very best wishes to Davina and to John for a speedy recovery and a long and very fruitful life for the future. He certainly has the best wishes of my wife, Jackie, who also wants to join in with these good wishes because, of course, the relationships extend beyond the mere members of the parliament. We wish him well.

Senator COONAN (New South Wales) (7.07 p.m.)—I wish to add just a few brief observations about our former colleague John Quirke and my counterpart Deputy Whip in the Senate. I do not want to cover previous ground, so I will be very brief. Listening to valedictories at various stages today when I have been in the chamber, it struck me that there are only 76 of us at any one time. I think it is extremely revealing that when someone leaves this place it becomes obvious who knew them well, who were their friends and, even perhaps more obvious, when some have to rely very heavily on biographical notes to contribute to valedictories. I just think that is very interesting because with only 76 of us, there are often times when we do not know each other very well. We do not know each other personally.

I think, as with most senators, we get to know each other not so much by contributions in this place, which are more often than not set pieces to set music, I suppose, and delivered in a staged environment, but more often with the work of committees. Indeed, I think that is where most of us get to know each other very well and where we form very solid friendships and very enduring respect for each other’s abilities. Of course, I had that experience with John Quirke. I do not know that anyone today has mentioned his chairmanship of a committee that he was absolutely passionate about—the Select Committee on the Socio-Economic Consequences of the National Competition Policy. I served with him on that committee. I think you could only describe his chairmanship of that committee as one of great verve and passion.

Even though competition has been a bipartisan policy of government since it was introduced in 1995, we all recognise that it can have some rough edges and that it is not very well understood. He had a great commitment to understand the processes of change brought about by competition and certainly to bring that understanding to some of the particular needs of rural and regional Australia and other sectors impacted by competition. I think that is a distinguished contribution he made and a feature of his time in this place, albeit only short.

Despite his somewhat fearsome, I suppose, reputation with numbers and factions, he showed considerable sensitivity when dealing with the difficult reference on immigration carried out recently by the Senate Legal and Constitutional References Committee. Once again he participated in that committee with great dedication. He showed at that stage a very different side to his personality. There is of course an old story that, in politics, if you can be born beautiful, if you can be born with brains, or if you can be born with the numbers, take the numbers every time. No doubt John had the numbers and probably the best of the numbers for quite some time. I hope the numbers continue to come up for you, John, that you have the numbers in the great adventure that is life and that you very soon regain your health, your equilibrium and, if you will forgive the pun, that great quirky sense of humour.

Senator COONEY (Victoria) (7.11 p.m.)—May I reiterate what everybody else has said so far. I must confess it was a surprise to learn in Darwin, as Senator McKierman has said, that John had ceased to be a member of this place. It is interesting to see what sort of reactions you have to that. I must confess the reaction I had was to place him amongst the category of abiding figures. What I mean by that is a person whom you will remember for the rest of your life. You meet people and you meet them on a particular basis. You do not meet them on the basis of their reputation but as you come across them, and that is a statement that is often made. I came across John in this place as a most gracious figure—that is how I found him—with a fund of stories. He used to analyse political situations and political people, and other people as well, in what I thought was a very wise and quite entertaining way. So I will miss him. In a certain sense—I do not know whether Senator McKierman would agree with me on this—you suffer from a survival syndrome in
I suffer from a survival syndrome in respect of John. I thought he would be here for a lot longer than you and I.

Senator McKiernan—Yes, indeed.

Senator COONEY—But there you go. In fact, I had picked him out as somebody whom I would approach if I needed to approach anybody up here in years to come. To that extent, I think it is sad to see him go. I had met his wife Davina and they seemed a great couple. So I would just like to put those thoughts on the record. I thought he graced this place. Along with Senator McKiernan, I knew him when he was the Guide of Senator Foreman. As everybody else has said, I think he was in this place for too short a period of time. If you are listening, John, may I wish you all the best in the future.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Order! I propose the question:

That the Senate do now adjourn.

Hope, Mr Alec

Semmler, Dr Clement

Senator FORSHAW (New South Wales) (7.13 p.m.)—On 27 June this year I spoke in the adjournment debate on the passing of one of our greatest poets of the 20th century—Judith Wright. Since the parliament went into recess, we have seen the passing of two other great figures of Australian literature of the 20th century. I refer to Alec Hope and Dr Clement Semmler. I just wish to make a few remarks tonight about their contribution to our literary heritage and culture.

Alec Hope, or A.D. Hope as he was more commonly known, died on 13 July at the age of 92. If Judith Wright was the grand old lady of Australian poetry—and I do not say that with any disrespect—then certainly A.D. Hope was the grand old man of Australian poetry. Indeed, he was regarded by many critics, academics and fellow writers both here and internationally as probably Australia’s greatest ever poet. That is a hard call to make but it is one that I know is shared by many. His poetry was an interesting mix of classic verse, drawing on the huge knowledge he had of Greek and Roman mythology, biblical allusions and Medieval and Old English. He was a genuine intellectual in the sense that he was forever trying to increase his knowledge. I understand he studied quite a number of different languages. One of the obituaries I read said that, having learned a number of languages, including German, Arabic and Russian, he finally gave up on Japanese. But his contribution to Australian poetry and to Australian literary culture and heritage was enormous.

He was a classical writer but, at the same time, he is also renowned for his cutting satire, his whimsy and, indeed, the sensuality of much of his poetry. In those days it was regarded as highly erotic but today it would probably be regarded as fairly mild. He was a visionary in many ways and had a profound commitment to the importance of universities as institutions which challenge ideas and promote intellectual rigour. In that capacity he set out to put Australian literature firmly on the map in Australian university studies. He was responsible for the establishment of the first full-time course in Australian literature at the Canberra University College, which later became the Australian National University. That led him living in Canberra and holding the chair of literature at the ANU for some 17-odd years, until he retired in 1967. I understand that he continued to regularly play an active role in the Australian National University and that he continued to write and study there throughout his remaining years.

So he was both a poet and a teacher and, as I said, his contribution to Australian literature was immense. I always had the feeling when I read Hope’s work that I was reading not just an Australian poet or work from an Australian literary figure but someone who stood among the great figures of literature of the 20th century in the international sphere. That is important because, while one should not regard our literary heritage as being in any way second-rate, certainly for a long time in Australian universities the study of literature was simply the study of English and American literature. It was Coleridge, Yeats, Tennyson, Blake and so on that you studied. There was really no move towards Australian literature until peo-
ple like Alec Hope and, subsequently, one of his students, Leonie Kramer, really pushed for its development as a course of study in itself. Alec Hope actually put Australian literature on the international scene, and that is something I am sure is appreciated today by many of our current writers and poets.

The other person I referred to who has passed away, and whose achievements and contributions I think should also be acknowledged by this parliament, was Dr Clement Semmler. I have to say that I do not think I had much in common with Dr Semmler’s views on a range of issues. He was an acknowledged conservative in his views. He was not a poet or a novelist. He was what those professions probably dread: he was a literary critic. Any student of literature knows that you have to read the critics as well as the writers themselves. Sometimes critics take on a status almost equal to the writers. One can think of great critics in literary history, such as Samuel Johnson or F. R. Leavis, who had as much fame as those they wrote about. Clement Semmler was foremost among Australian literary critics and certainly it was a requirement for any student at university, as I recall, to read his work. He was also a book reviewer for the *Sydney Morning Herald* for well over 20 years and in that capacity made a great contribution to promoting the development of Australian novelists.

But Clement Semmler had one other important contribution, and that was his role with the ABC. As I understand it, from reading up on some of the obituary notices, he worked for the ABC for over 30 years and he was very much associated with the development of Radio Australia. He held a senior position as deputy general manager within the ABC and in Radio Australia for, as I said, well over 30 years. He was a promoter of quality within the Australian Broadcasting Commission. He eschewed the chase for ratings and, indeed, I understand that programs such as *Four Corners* came about very much because of his determination to promote quality Australian programming on the ABC. I am sure that he would have been appalled at some of the things that this government has endeavoured to do to the ABC, for which he worked and contributed so much to throughout his life. As I said, I did not necessarily agree with his views—I do not think many on our side would have agreed with many of the views he held. They were conservative; nevertheless, he made an outstanding contribution both to Australian literature and to the ABC, in particular, and I think it is appropriate that that be recorded in the Senate.

**Zimbabwe: Election**

Senator SANDY MACDONALD (New South Wales) (7.22 p.m.)—I want to report to the Senate tonight on my membership of the Commonwealth observer group mission to Zimbabwe’s fifth parliamentary election, held on 24 and 25 June 2000. The Senate would be aware that the Australian parliament also sent an observer mission, headed by my colleague Senator Alan Ferguson, the chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Also on that mission was a distinguished former Zimbabwean, Senator Andrew Murray, who is in the chamber tonight.

This election in Zimbabwe was the first serious election since the post Lancaster House 1980 election that brought to an end the Ian Smith Rhodesian Front dominated Rhodesian government that had ruled Rhodesia for 15 years since the UDI, and through an increasingly bloody and publicised civil war. The issue in the 1980 election was peace or the real prospect of more war. The issue in the 2000 election was the possibility of change or the continuation in power of the well-entrenched ZANU PF government, or President Robert Mugabe effectively as a one-party state.

Zimbabwe has been a personal interest of mine for over 20 years. I had visited it before, in 1988, and I have read extensively of the period after UDI in 1965 and the building of the resistance movements, primarily ZANU PF and ZAPU, aided by the former Soviet bloc and the front-line states, especially Zambia and Mozambique. I also followed the Lancaster House agreement, the 1980 election, and the next two decades where President Mugabe and ZANU PF ruled Zimbabwe in an increasingly autocratic fashion, confident of the solid support of the heavily rural black electorate and quite pre-
pared to do or say anything to maintain their rule. It seems that one of the truisms of the use of violence and intimidation is that if it works for you—and it worked for ZANU PF from well before the 1980 election—you continue to use it.

The leopard has not changed its spots, but the tide of domestic sentiment has shifted, beginning in late 1997 with the breakdown of the rule of law and the continuing economic stagnation. It should be noted that in 1981 Zimbabwe was one of the most prosperous economies in Africa. It is now one of the least prosperous. The budget-busting compensation to the war veterans, the parallel announcement that the government would confiscate 1,500 white farms, and of course the death of the stabilising Joshua Nkomo, all helped cause the change in political sentiment. International sentiment has changed, too, over the years. International donor countries have increasingly voted with their feet. President Mugabe’s dated anticolonial rhetoric has been primarily directed at Britain, but almost everybody in the West, including the EU and the US, has been given the same treatment. His pursuit of the non-aligned leadership has left Zimbabwe increasingly isolated and dependent on other autocratic states like Dr Mahathir’s Malaysia.

Mugabe’s anticolonialist sentiments mean little to his domestic audience, over half of whom are under the age of 18. He is an interesting character—given every opportunity by history and by circumstance to be an early Nelson Mandela. He appears reasonable in person but put behind an election microphone appears to be in a bizarre time warp, attempting to use land and race to maintain support from an increasingly disengaged population and audience. What has made it possible for Zimbabwe to survive as well as it has through Mugabe’s mismanagement is that it is an incredibly abundant country, full of well educated and decent people, both black and white, who have a very strong commitment to civil society through the churches and many other groups. It was these people who formed the Movement for Democratic Change, the MDC, as an opposition party in September 1999—less than a year ago.

In the election campaign, the ZANU PF could not rely on their record, which included unemployment, inflation, interest rates over 50 per cent, fuel and electricity shortages, and no foreign exchange. Understandably, they knew they had to divert voter attention from the real issues, and with near absolute control of the airwaves and the major newspapers, they waged a campaign that virtually denied the right of their political opponents to exist. To oppose the ruling party was to simply be a traitor. The campaign was marked by consistent ZANU PF violence and many deaths—over 30, including five white farmers. The farm invaders I saw were hardly war veterans. Their average age would have been maybe 25, and they used up their time playing soccer, giving shopping lists of food requirements to highly intimidated farmers, and harassing the women in the local farm compounds.

The result of the poll was that ZANU PF narrowly won, by a margin of 62 to 57 seats, over a less than one-year-old MDC. Every urban seat, including the 19 in Harare, was won by the MDC. The turnout was huge in Zimbabwean terms, with over 60 per cent of eligible voters participating. Some MDC candidates were unable to enter their constituencies for weeks. One was reported to have been forced out of his constituency for six weeks and still lost by only 100 votes. Under the Zimbabwean constitution, President Mugabe has the power to appoint an additional 30 members of parliament. Therefore, in the new parliament, ZANU PF will effectively have a majority of 92 seats to the MDC’s 57. Significantly, with its 57 seats, the MDC can block any ZANU PF constitutional changes, which require a two-thirds majority to pass.

The elections, from any view, mark a dramatic shift towards real democracy in Zimbabwe. After 20 years of essentially one-party rule, a viable and credible opposition has emerged. Real democracy has been given a firm footing by the electorate. In the words of the MDC leader, Morgan Tsvangirai, Zimbabwe will never be the same again. I feel very privileged to have been part of the 44-member team, which was well received in all quarters of Zimbabwe because of Australia’s
role in the peace settlements two decades ago and because of the continuing Commonwealth involvement in that country. It was at times intimidating, and I am sure my colleague Senator Murray will agree with me there, but anything we felt as international observers pales into insignificance compared with the way that farmers, families—both black and white—political participants and the supporters of the MDC may have felt throughout the process. Certainly courage is not scarce in Zimbabwe.

I have passed on to the Australian government two particular recommendations for possible future assistance we might give. The overpowering spread of HIV, including especially the thousands of AIDS orphans, is an area of enormous need and is quite heart rending when you go there. In the practical running of elections, Australia is well placed to provide assistance in the way that we have done in a number of countries—in particular, the historic 1999 Indonesian elections, to which one of the members of the Australian delegation, Ross McKay, had been. He came simply as an observer to the Zimbabwean elections. This assistance could be provided for the next presidential elections in two years time or for the next general elections in five years time. This will be money well spent in an area of assistance, especially in the electoral process where there were many aspects where the electoral process itself was flawed.

I had contact with the high commission, and I would like to place on record my thanks to the High Commissioner, Denise Fisher, and her staff. She is a very good representative and has built on the very good work that our former President, Kerry Sibraa, did there after leaving the Senate. He too served with distinction in Harare. There is a strong bond between Australia and Zimbabwe, and I hope the circumstances in the future will allow that to continue.

**Courts: Remand and Bail Conditions**

Senator MURRAY (Western Australia) (7.32 p.m.)—Western Australians recently received a grim reminder of the importance of bail hearings when it was revealed that a man on home detention bail had brutally murdered a young boy. On the other hand, many innocent and unconvicted people denied bail sit in our jails awaiting trial. Given the seriousness of the consequences of bail hearings, I was amazed to learn that most last for only a couple of minutes, and very few last more than 10. I cannot imagine that the decisions made in such brief proceedings are informed by sufficient analysis.

There are currently around 3,000 prisoners in Australian jails who have not been convicted of the crimes for which they are imprisoned. In Western Australia, only around one-third of remandees are ultimately convicted and given custodial sentences. A massive one-third are acquitted. Translated nationally, that would mean that 1,000 of those 3,000 remandees are wrongfully imprisoned. That is shocking. Studies suggest a dangerously cavalier attitude by police, prosecutors and magistrates to what can be a very arbitrary practice. There are certainly circumstances in which remand is necessary, and there have undoubtedly been cases in which defendants have been granted bail when they should have been remanded. My concern is that the system as it currently operates is insufficiently thorough and is insensitive to the demands of the due process of law and the presumption of innocence. The inalienable right to individual liberty is being denied to thousands of Australians every year in the absence of a criminal conviction. This is often done as a standard practice rather than as a carefully considered measure in circumstances of demonstrated necessity.

I wish to outline a number of ways in which existing remand legislation promotes the unacceptable denial of civil liberties. The first is the use of legal presumptions in favour of remand. In New South Wales, the Northern Territory, Victoria and at the Commonwealth level, there are statutory presumptions in favour of remand in certain circumstances. This is tantamount to a presumption of guilt during the pre-trial period. The presumption of innocence is one of the most fundamental rights held by citizens of this country and in most democracies. Getting tough on crime strategies should not be allowed to include the denial of important and inalienable individual liberties such as the right to liberty and security of person.
There should be a presumption in favour of granting bail in relation to all offences. If there are grounds for denying bail, they can be heard and examined by due process of law. In a modern liberal democracy, how can we tolerate a system that enforces a presumption of law against respecting our citizens’ inalienable right to liberty? How can we permit the use of the power of the state as an instrument of terror by arbitrary imprisonment?

The second area of concern relates to the use of conditional bail. Anecdotal evidence suggests that conditions are sometimes attached to bail undertakings that are not relevant to the grounds for objecting to bail. One example is where a curfew is imposed—a condition designed to prevent further offending when the ground for objecting to unconditional bail is that the defendant will fail to appear in court. At least some of the time, it appears that the legal system is all too eager to place restrictions on the liberty of people who have not been convicted of a crime.

The most concerning example of the misuse of conditional bail is the inflexible use of sureties. A surety is where a person agrees to forfeit a sum of money if the defendant breaches their bail conditions. Magistrates often impose surety requirements almost automatically with little regard to the circumstances of the case. Many prisoners come from financially challenged backgrounds and cannot find the person with sufficient assets to act as surety. In Western Australia, 25 per cent of these cases involve sureties of less than $1,000. Most prisoners eligible for bail continue to be held after five days. On the other hand, sureties are required by rote, when they are obviously not necessary. Why do you need a surety for assault, for instance?

Those who can arrange a surety cannot always do so immediately. About 18 per cent of remand prisoners are released within two days. They still have to endure the stress of imprisonment and the humiliation of a strip search and delousing. A number of these prisoners face only minor charges. Most go through this only to walk free after trial. There is no compensation, no apology, no counselling. Our citizens are treated in an utterly inequitable fashion by the state. It is not going too far to say that, for many, this experience represents a terrifying abuse of power by the state. Those wronged by the legal system are discarded and their plight ignored. The sometimes lengthy periods spent in prison awaiting trial result in loss of employment, damage to personal relationships and reputation and the obvious distress involved in compulsory detention. Some measure of compensation should be available to help remandees who are acquitted of the charges they faced to resume their ordinary lives.

Much of this could be avoided if the practice of requiring surety undertakings and determining their quantum was more flexible and sensitive to the circumstances of the individuals involved. Prisoners granted bail but unable to meet the conditions should have the terms of their bail reviewed by a court within three days. Additional resources should be allocated to assisting prisoners to arrange bail to prevent unnecessary remand.

Finally, I find it amazing that the fundamental rights of Australian citizens are different in each state and territory. It is about time all Australians had the same basic rights, freedoms, duties and responsibilities in law; otherwise, what is the point of being Australian? A person charged with certain drug offences in New South Wales will effectively be presumed guilty for the purposes of remand. The presumption is reversed for a person charged with the same offence in Western Australia. Securing a basic measure of protection from arbitrary criminal procedures for all Australian citizens is an issue on which the Commonwealth must lead the way.

Remand prisoners are more than twice as likely to be involved in incidents of self-harm as sentenced prisoners. In Western Australia suicide attempts have been made by people accused, but not convicted, of such minor offences as driving without a licence and possession of cannabis. A number of these people should not be in prison at all. Current estimates suggest that there are about 1,000 prisoners in Australian prisons right now who will not be convicted of the offence with which they are charged. There are many who simply do not need to be there and have been
wrongly imprisoned. The law as it stands in these cases conflicts with the dictates of justice and essential human freedoms. Those people are there because they and their families do not have the money to provide a surety, because they were presumed guilty from the outset or because the system of remand is perfunctory and prejudiced. The inflexible stupidity and injustice of the courts and the laws they administer in these matters result in more people being forced into an expensive and already overcrowded prison system. Many people’s lives are ruined by this abrogation of their civil liberties. Sadly, some lives are lost.

A criminal justice system that respects human rights would not promote imprisonment in the absence of a criminal conviction. Such treatment should be a last resort for those who are identifiably dangerous to society. It should not be a standard approach required by presumption of law. Both from an economic and a humanitarian perspective, it makes little sense to push someone into the already overcrowded prison system when it is not genuinely and absolutely necessary. The measures I have outlined and the attitudes I have suggested should prevail would be significant steps forward in developing a criminal justice system that gives greater recognition to fundamental rights and does not fill our jails with people who should not be there. We should defend in this country the liberty of our citizens. For 1,000 people to be wrongfully imprisoned in this country is a disgrace.

Northern Territory: Aboriginal Communities

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (7.41 p.m.)—I rise in the chamber tonight to report on my recent electorate tour of the Northern Territory in the first days of the government’s new tax system. While I am pleased to report that most of the feedback I received was positive, I found that the more pressing issues had to do with problems in Aboriginal communities. Over the course of a week or so I visited five Aboriginal communities, two cattle stations, a goldmine and the towns of Tennant Creek and Alice Springs. I found that Territorians were concerned about finding new priority strategies to deal with the problems caused by substance abuse, unemployment and poor health in Aboriginal communities. Some Aboriginal communities had already recognised the effect alcohol abuse was having on their members and the resulting epidemics of poverty, domestic violence and poor nutrition for children, and were struggling to find ways of dealing with the after-effects, let alone getting to the root cause. Other communities, however, were approaching local problems from a much broader, more innovative perspective. One of the clearest voices I heard on this trip was that of Miriam-Rose Baumann AM, an elder of the Nuiyu, Daly River, community. Speaking at an Aboriginal Mining Enterprise Task Force meeting which I attended—incidentally, the first such meeting held in an Aboriginal community—Miriam-Rose said that it was vital that there was a shift in outlook amongst Aboriginal community leaders and members. I seek leave to table Miriam-Rose’s full speech.

Leave granted.

Senator TAMBLING—Let me highlight some of the main points that Miriam-Rose made by quoting from her speech. Miriam-Rose said:

Employment and education are at the heart of most of the problems. The more difficulties that are present in everyday life, the more Aboriginal people seek refuge in mind-numbing solutions such as grog, marijuana or denial of personal aims and objectives. In many cases the simplest solution is often overlooked.

To the credit of communities and governments the level of opportunity has never been better. For example, secondary education is available to all children; yet if this is so, why are so many communities now slowly drowning in pools of despair, well-meant welfare systems and low personal self-regard?

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The welfare systems of today while well meaning in intent, are sowing the very roots of destruction of Aboriginal people. Welfare is viewed by Aboriginal people as the total abrogation of personal responsibility for themselves and their children. Someone else takes responsibility. The family has lost its power.
Those are very important quotes. Yet all of this is going on in an environment that Miriam-Rose readily describes as offering many more opportunities for Aboriginal people in education, in employment and in a better health system than existed a generation ago. Let me quote her further:

Community leaders are trying to make the best of their situations and with the help of governments, are introducing training and employment opportunities which were not available a generation ago...

The opportunities in any community far outweigh those which a young person could possibly get in the larger urban centres where he or she would be competing with others on a greater scale...

It is clear that the welfare system—so entrenched in many Aboriginal communities and, until the government’s recent overhaul of the wider welfare system, amongst white Australians as well—is just not working. The deadly cycle starts early. For example, it is too easy for students, lacking family and community support, to drift back into the easy life away from school and away from discipline. That lack of education commences a downward spiral into unemployment, which engenders poor health, and the cycle starts all over again with the next generation. But health must be right in the first instance.

What do we need to do? How do we need to address it? I would suggest we instil, once again, a sense of personal discipline, and help people reach their own destiny.

It is another ‘big picture’ concept but, as Miriam-Rose says, we should not ignore even the simplest and smallest steps towards any solution, even though they may be the hardest to take. For example, let me highlight one strategy. At Warburton in Western Australia there is an incentive to get kids to school through the enticement of the swimming pool. There are other strategies, such as the following ones. Under CDEP no-one can be sacked—a mandatory CDEP or work for the dole system, while perhaps unpalatable to Canberra theorists, might be an ultimate saving grace for many communities. However, this must be linked to education. Positions of responsibility for Aboriginal people are achievable if they have a reasonable and realistic level of education. Introduce intermediate positions in schools and health clinics. Add a dash of local encouragement and return a measure of responsibility to families for their own destiny and the present trend of dependency on others may be reversed.

These are very salient points that have been echoed by another prominent Aboriginal leader, Noel Pearson, who spoke at the Light On The Hill lecture on the weekend. In today’s Sydney Morning Herald Mr Pearson highlighted the problems in Aboriginal communities, saying:

Petrol sniffing is in some places now so endemic that crying infants are silenced with petrol-drenched rags on their faces...

‘Progressive’ thinking about substance abuse such as alcoholism held it was ‘only a symptom of underlying social and psychological problems’. But addiction is a condition in its own right, not a symptom. It must therefore be addressed as a problem in itself.

This comment continues the theme set out by Miriam-Rose in her speech, that people have abrogated their responsibility to deal with all sorts of issues, addiction being just one of them. If these ideas are promoted—that people are not responsible for the problems they face every day—then how are communities to ever feel they can surmount issues? Concepts of personal and family empowerment need to be once again pushed as the answer to Aboriginal problems—and the key to that is promoting the holy trinity of health, education and employment. Dependency and passivity must be seen as the devils to be avoided. Just as the government has worked to turn around the situation in the wider Australian community, the focus must now be turned towards the Aboriginal experience. Instead of calling for more government handouts, developing strategies that will help Aboriginal people find new ways to help themselves and new ways of growing confidence and esteem—new ways towards self-determination—are the keys to making a difference.

It is just not good enough for theorists from outside the Territory to impinge their trendy views on Aboriginal communities if they have no experience. Let me illustrate a case in point. On Monday evening, in an adjournment speech, Senator Brian Greig, the Western Australian Democrat, in his naivety seemed to think that the previous arguments I
presented to the Senate, in a reflection on mandatory sentencing, were the mere rhetoric of those with vested interests. I suggest he take a look at the reality of the situation in the Northern Territory. Just because he does not agree with the legislation, that does not make it an unjust law. The legislation was enacted in the first place due to a deep and widespread sense of injustice amongst Territorians. Senator Greig complains about the government’s refusal to have an open debate and a conscience vote and then castigates the government once again for its supposed interference in the voluntary euthanasia debate. Senator Greig may well like to recall that that was the result of a conscience vote.

The government’s capacity to override state or territory law is in fact extremely limited. Despite Senator Greig’s assumptions, the Northern Territory government does not consider that, once laws are passed by a state or territory parliament, they are set in stone vis-a-vis the considerable changes to the legislation and to the practice of mandatory sentencing laws which have taken place. People are not being sent to jail for trivial offences: we are talking about serious property and break and enter crimes, crimes committed by repeat offenders. In the case of juveniles, they are given three chances before detention is imposed—not the one chance, as he implied in his speech. And, as he would be well aware, the age at which a person is classified as a juvenile has been raised to 18. Perhaps Queensland and Victoria might like to shift their juvenile age to 18 in line with the Territory.

The Northern Territory Chief Minister, Denis Burke, outlined 21 registered diversionary programs implemented by church and Aboriginal organisations which were in place before the recent amendments to the laws. But now there are more options: aside from the age of juveniles now encompassing 17-year-olds, the precourt options for juvenile offenders have been broadened. The role of police in all of this has been criticised by some but they have been included because no other agency has a similar presence on the ground. The diversionary strategies/programs, in concert with the Aboriginal interpreter service, which has recently handled its 100th interpreting job, provide new opportunities for young offenders to avoid the formal justice system and the cycle of crime that too many fall into. Programs are tailored to meet the needs of individual juveniles. They will help juveniles be more appropriately and more effectively dealt with in the community, with police help and under police supervision.

Senator Greig says that the wider community is in fact demanding the repeal of the legislation—but 2,000 demonstrators in Melbourne, a city of four million, do not constitute the wider community. What about the wider community of the Northern Territory, not to mention the wider community of Aboriginal people, including Aboriginal Territorians, who have had their belongings stolen and their property violated? The fact remains that, alongside urban Aboriginal people in the Territory, Aboriginal people in the communities are sick of their possessions and property being stolen and trashed. That is the mandate that mandatory sentencing has fulfilled. (Time expired)

Senate adjourned at 7.52 p.m.

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

- Dairy Produce Act—Dairy Structural Adjustment Program Scheme Amendment 2000 (No. 2).
- Sydney Airport Curfew Act—Dispensations granted under section 20—Dispensations Nos 9/00 and 10/00.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Registrar of Aboriginal Corporations

(Question No. 2233)

Senator Woodley asked the Minister for Aboriginal and Torres Strait Islander Affairs, upon notice, on 22 May 2000:

With reference to whether the Registrar of Aboriginal Corporations is acting in an appropriate manner given that the Registrar is dealing, in many instances, with small, remote Aboriginal communities.

(1) Is it a fact that the legislation under which Aboriginal Corporations were established was designed to control large business corporations; if so, why was it used to register Aboriginal corporations.

(2) Are the reporting requirements for these small Aboriginal corporations the same as those demanded from large companies; if so, is this appropriate.

(3) Is the failure to fulfil these reporting requirements another reason for deregistration.

(4) Is it a fact that: (a) many members of these Aboriginal corporations have little skill in reading or writing English; and (b) there is no organisation set up to help the members of Aboriginal Corporations with complex requirements of the legislation.

(5) What action will the Minister take in order to modify the often excessively bureaucratic language of letters sent to Aboriginal Corporations.

(6) What resources does the department offer to Aboriginal groups to enable them to comply with the legislation.

Senator Herron—The following information is provided in response to the honourable senator’s question:

(1) No. The legislation administered by the Registrar of Aboriginal Corporations, the Aboriginal Councils and Associations Act 1976, was designed to provide Aboriginal and Torres Strait Islander communities, groups and organisations with a simple and inexpensive means of incorporation.

Aboriginal associations may be formed under the Act by Aboriginal and Torres Strait Islanders for any social or economic purpose, including holding land. The operations of existing Aboriginal corporations cover a wide range of activities including holding land, provision of training, youth support services, housing, legal and medical services, community business and private businesses.

Aboriginal corporations may be set up with a minimum of twenty-five members, except where corporations are being formed principally for the purpose of owning land or holding title to land or engaged wholly in business. In these cases a minimum of five members is required.

(2) No. The Act requires Aboriginal corporations to keep proper accounts and records of their transactions and affairs, and to have these examined (in effect audited) by an authorised person. The audited report must then be filed with the Registrar by 31 December in each year.

The Registrar has advised me that he readily exercises his discretionary powers to exempt Aboriginal corporations from the requirement to provide annual financial reports. For example, in 1998/99, the Registrar granted exemptions to 377 Aboriginal corporations. The exemptions granted covered, in total, some 779 financial years. In the 1999/2000 financial year, the Registrar has granted exemptions to 391 corporations, the exemptions granted covered some 929 financial years.

(3) In mid-1998, in order to address the unacceptably high number of Aboriginal corporations that were in continuous breach of the financial reporting requirements of the Act, the Registrar initiated a program aimed at achieving higher levels of compliance.

Since this time concerted efforts have been made by the Registrar to bring Aboriginal corporations into compliance with their reporting obligations. To 30 June 2000, some 834 Aboriginal corporation have been actively followed up by the Registrar. As a result of this follow up:

. 80 corporations were wound up by the courts;
. 372 corporations have been de-registered as being inactive or defunct;
. 134 corporations have provided, or undertaken to provide, outstanding annual reports; and
. 248 corporations currently have action in progress.
(4) (a) I am aware that, by virtue of their location in remote and isolated areas of Australia, many Aboriginal communities do not have access to the same level of facilities and services as those available in more populated centres.

I am also aware that in many Aboriginal communities the literacy levels are below those of the wider Australian community.

However, I am also aware that the Registrar adopts a flexible approach in administering the financial reporting requirements of the Act. Corporations are given ample opportunity to submit annual returns or apply for an exemption from lodging annual returns. I am also aware that the Registrar makes a concerted effort to assist corporations understand the financial reporting requirements of the Act.

(b) I am of the view that the requirements of the Aboriginal Councils and Associations Act 1976 are not complex. The financial reporting requirements of the Act are reasonable and help protect the interests of corporation members and the public.

The assistance provided to Aboriginal corporations is detailed to my response to question 6.

(5) The Registrar has assured me that he is continually looking for new opportunities, and reviewing existing procedures and practices, with the aim of enhancing the level of support his office is able to offer indigenous corporations. This includes providing general correspondence to Aboriginal corporations in a simple and easily understood form.

(6) Although not specifically required by the Act, the Registrar has put in place a client support program. The support program is aimed at promoting good corporate governance and to assist corporations comply with the requirements of both the Aboriginal Councils and Associations Act 1976 and their own rules.

The key features of the support program include:

- advising and assisting Aboriginal and Torres Strait Islanders on procedures for incorporation, and subsequent changes to names, objects and rules,
- providing a complaints service to Aboriginal corporations and the wider community,
- daily assistance in responding to telephone and written inquiries from corporations in respect of the requirements of the Act and their rules,
- information sessions and training workshops to corporation members and staff,
- training brochures being distributed to corporations dealing with topics relating to the business of a corporation incorporated under the Act,
- information packages being sent out to all corporations on the financial reporting requirements of the Act,
- radio advertising in Aboriginal languages and training videos.

Many resource agencies have been set up, and receive funding for the purpose of assisting remote and small corporations conduct their business.

Further assistance is also available from local Aboriginal Land Councils and resource agencies; many of which provided the initial impetus and advice to indigenous groups, particularly in the Northern Territory, to seek incorporations in the first place.

**Central Land Council: Land Issues**

(Question No. 2234)

Senator Woodley asked the Minister for Aboriginal and Torres Strait Islander Affairs, upon notice, on 22 May 2000:

Will the Minister confirm the details of each of the following cases and indicate what action he will take to remedy each situation.

(a) four very old women live on a lease from Inverway Station. They are happy on their small block away from problems elsewhere, and their families come to visit. None of these ladies read or write English, and they speak just enough to get by. The Central Land Council (CLC) discovered after the event that Brisbane lawyers for the Registrar of Aboriginal Corporations commence and action to liquidate their modest corporation. The CLC assisted the group to travel to a meeting and fulfil their compliance obligations. The Registrar then instructed his lawyers to discontinue the proceedings, and eventually waived costs sought by his lawyers, which the old ladies would never have been able to pay.
Those old ladies were put through some considerable anxiety and their living area and houses were saved by chance;

(b) the Ukaka Corporation struggled for years to get title to a small piece of traditional country. It consists of one square kilometre of land on which live 60 people. They have houses, a small school, teacher’s residence and a clinic. The Brisbane lawyers, Minter Ellison, recently approached the CLC in an effort to recover costs of $11,501. The CLC has never acted for Ukaka in the matter, and it is very likely the taxpayers will have to pay. Due to the bureaucratic application of the law meant to be beneficial to Aboriginal people, and ‘culturally appropriate’, the community now has no incorporated body to hold tide to, or to keep control of its land; and

(c) on the successful Aboriginal cattle station, previously Mistake Creek, is the small Mistake Aboriginal Corporation. It holds title to a small parcel of land which is home to 2 extended families, numbering about 20 people. The members hold one of two shares setting up Bluegloss Pty Ltd, the company which runs the Mistake Creek Station. Bluegloss is a trustee company, and that share brings in no income. The CLC received a letter from Mr Ebbage, the liquidator appointed by the Queensland Supreme Court on 11 August 1999 asking what were the assets of the corporation. The Brisbane Deputy Registrar agreed to dispense with the requirement to gazette this application. Gazetting is normal procedure and, had it been gazetted the CLC would have seen the notice in time to help the small community. Now they stand to lose all they have.

Senator Herron—The following information is provided in response to the honourable senator’s question:

The circumstances outlined in Senator Woodley’s question replicate the statements made by the Reverend Jim Downing, AM in mid-March 2000. I have no first hand knowledge of the circumstances of the three Aboriginal corporations. I am therefore unable, with one exception, to confirm the veracity, or otherwise, of Reverend Downing’s statements.

The one exception relates to the Mistake Creek Aboriginal Corporation and the Reverend Downing’s assertion that:

“the [Brisbane] Deputy Registrar [of the Queensland Supreme Court] agreed to dispense with the requirement to [to] gazette this application [to the Court to wind up the corporation].

This assertion is not factual. The notice of the winding up application to the Queensland Supreme Court (number 4835 of 1999) was published, in accordance with normal practice, in the Commonwealth of Australia Gazette on 29 June 1999.

In my view this fact undermines the accuracy of Reverend Downing’s subsequent assertion that

“…had [the notice of winding up application] been gazetted the [Central Land Council] would have seen the notice in time to help the small community’

In relation to this particular issue, the apparent inability of the Central Land Council to assist the corporation in this matter, resulted from the Council’s failure to identify and act on the notice of application to wind up, rather than a departure from standard practices by the Registrar.

It is also my view this particular situation clearly refutes Reverend Downing’s implications, in the same article, that the legal actions taken by the Registrar do not accord with standard practice and are intended to deny Land Councils the opportunity to assist local Aboriginal groups and communities.

There would appear to be a number of other issues and considerations relating to the appointment of liquidators in general and the actions the Registrar takes in this regard, which the Rev. Downing was either unaware, as I understand that he did not consult with the Registrar or his office, or if aware, chose to ignore when writing his article. Many of these issues have been outlined in the answers I have provided to previous questions.

Aboriginal corporations incorporated under the Aboriginal Councils and Associations Act 1976 have a legal obligation to comply with the requirements of the Act, including the requirement to file annual financial returns or seek an exemption therefrom.

Whilst the Act exists in its current form, the Registrar has a statutory duty to ensure compliance with its provisions.

The Registrar has kept me informed on this matter, and based on his advice, I am satisfied that he adopts a flexible approach in administering the Act and its financial reporting requirements and that
corporations are given ample opportunity to submit the returns or apply for an exemption from lodging annual returns. I consider the process followed is open and fair.

I have previously stated that I remain of the view that the actions taken by the Registrar against Aboriginal corporations that have failed, over a number of successive years, are consistent with his responsibilities for administering the Aboriginal Councils and Associations Act 1976, and reasonable in the circumstances.

Department of Transport and Regional Services: Financial Arrangements with the Maritime Industry Finance Company Limited

(Question No. 2295)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 1 June 2000:

(1) What, if any financial arrangements exists between the department and the Maritime Industry Finance Company Limited (MIFCo) regarding the provision of administrative support.

(2) Is the Commonwealth grant of $2,750,000 made to MIFCo for the payment of administrative expenses repayable; if so, what are the conditions that apply to the repayment of the grant.

(3) Did MIFCo’s administrative expenses cost $284,949 in the 1997-98 financial year and $1,535,371 in the 1998-99 financial year; if so (a) can a breakdown be provided of those expenses in both the 1997-98 and 1998-99 financial years; and (b) who, including any consultants and other external service providers, actually provided those services.

(4) With reference to the advice given by Dr Feeney during the course of the Senate inquiry into the Stevedoring Levy (Collection) Amendment Bill 1999, that expected costs would approach $6 million due to the intricacies of MIFCo’s operations; given the draw down of $2 million to date, what is the likely pattern of future administrative costs.


(6) What is the composition of payments to suppliers, employment agencies and consultants identified in MIFCo 1998-99 annual report.

(7) Can an explanation, and breakdown, be provided for borrowings costs of $4,633,895 that are recorded as an outflow in the MIFCo annual report.

(8) Can an explanation, and breakdown, be provided of the payment of $94,817 for bank charges recorded in the MIFCo annual report.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The deed of agreement between the Commonwealth and MIFCo (Grant Agreement) describes the roles of the Commonwealth and MIFCo in facilitating reform in the maritime industry. In addition, the Department of Transport and Regional Services (DoTRS) has agreed to provide MIFCo the following services:

. officers to serve as Directors and Members;
. company secretarial services, other than the related services provided by Clayton Utz;
. provision of administrative support to the Directors and Members;
. preparation and distribution of documentation concerning the operations of MIFCo;
. coordination, management and liaison with service providers to MIFCo;
. liaison with various government and non government bodies;
. management of the Company audit and preparation of annual reports; and
. administration associated with applications for payment, in accordance with the Grant Agreement between the Commonwealth and MIFCo; and

. overall management of the redundancy related payment process for each applicant.

Under the terms of the agreement, DoTRS calculates the costs of the provision of these services, which MIFCo reimburses on presentation of an account. The calculation of costs includes salary costs plus on-costs, charged at rates consistent with ‘at cost’ rates charged across the Australian Public Serv-
ice. The Department is not in a position to charge directly for the costs of telephone calls, faxes, postage, stationery etc. these costs are recouped through an overhead charge, based on salary costs. All other costs, if incurred are charged at the direct cost rate.

(2) The Commonwealth grant of $2,750,000 made to MIFCo for the payment of administrative expenses is not repayable by MIFCo. However, in accordance with the Government’s commitment that the cost of the scheme would be met and absorbed by industry the grant will be recouped via the stevedoring levy.

(3) MIFCo’s administrative expenses did cost $284,949 in the 1997-98 financial year and $1,535,371 in the 1998-99 financial year. The administrative expenses of $284,949 disclosed in MIFCo’s Financial Statements for the year ended 30 June 1998 and of $1,535,371 disclosed in MIFCo’s Financial Statements for the year ended 30 June 1999 contained respectively in the 1997-1998 and 1998-1999 MIFCo Annual Reports represent administrative expenses incurred in the year calculated on an accruals basis. In both cases such expenses reflect cash payments for the year less the reversal of accrued expenses from the previous year (for 1997-1998 financial year there were no accrued expenses to be brought forward) plus the taking up of accrued expenses at 30 June 1998 and 30 June 1999.

The breakdown of the costs is detailed below.

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<td>-</td>
<td>4,750</td>
</tr>
<tr>
<td>Saloman Smith Barney</td>
<td>-</td>
<td>11,250</td>
</tr>
<tr>
<td>Salaries &amp; Wages—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Workplace Relations</td>
<td>3,674</td>
<td>38,360</td>
</tr>
<tr>
<td>Westaff Australia</td>
<td>-</td>
<td>11,568</td>
</tr>
<tr>
<td>Dept. of Transport &amp; Regional Services</td>
<td>-</td>
<td>71,243</td>
</tr>
<tr>
<td>Software—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MYOB</td>
<td>-</td>
<td>309</td>
</tr>
<tr>
<td>Stationery &amp; Printing—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. of Workplace Relations</td>
<td>561</td>
<td>-</td>
</tr>
<tr>
<td>Canberra Printing Services</td>
<td>150</td>
<td>210</td>
</tr>
<tr>
<td>CPP Instant Printing</td>
<td>-</td>
<td>1,326</td>
</tr>
<tr>
<td>Telephone—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. of Transport &amp; Regional Services</td>
<td>-</td>
<td>210</td>
</tr>
<tr>
<td>Travel costs—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. of Workplace Relations</td>
<td>2,630</td>
<td>1,923</td>
</tr>
</tbody>
</table>
### Administrative Expenses

<table>
<thead>
<tr>
<th></th>
<th>1997-98</th>
<th>1998-99</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cabcharge</td>
<td></td>
<td>805</td>
</tr>
<tr>
<td>Dept. of Finance &amp; Administration</td>
<td>1,654</td>
<td>3,749</td>
</tr>
<tr>
<td>Dept. of Transport &amp; Regional Services</td>
<td></td>
<td>10,565</td>
</tr>
<tr>
<td>Other travel costs &amp; reimbursement</td>
<td></td>
<td>5,595</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$284,949</strong></td>
<td><strong>$1,535,371</strong></td>
</tr>
</tbody>
</table>

(4) Dr Feeney advised the Senate on 27 August 1999 that it was estimated that the total administrative costs of MIFCo and his division would be in the order of $6 million, over 12 years. MIFCo’s current projected administrative expenses from the 1999-2000 financial year to 30 June 2010 are $2.7 million. The estimated administrative expenses of the department from the 1999-2000 financial year to 30 June 2010 are $3 million. Therefore, the current estimated cost of total administrative expenditure from the 1999-2000 financial year to 30 June 2010 is $5.7m.

(5) The $8,338,319 provided to MIFCo in the 1998-99 financial year represents levy collections available for repayment of MIFCo’s loan.

(6) The composition of payments to suppliers, employment agencies and consultants identified in the MIFCo 1998-99 Annual Report is as follows:

<table>
<thead>
<tr>
<th>Suppliers, employment agencies and consultants</th>
<th>1998-99</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountancy fees—</td>
<td></td>
</tr>
<tr>
<td>PKF</td>
<td>373,984</td>
</tr>
<tr>
<td>Audit fees—</td>
<td></td>
</tr>
<tr>
<td>Australian National Audit Office</td>
<td>20,000</td>
</tr>
<tr>
<td>Bank charges—</td>
<td>94,817</td>
</tr>
<tr>
<td>Directors remuneration—</td>
<td></td>
</tr>
<tr>
<td>T Clark sitting fees</td>
<td>15,000</td>
</tr>
<tr>
<td>General expenses</td>
<td>45</td>
</tr>
<tr>
<td>Legal costs—</td>
<td></td>
</tr>
<tr>
<td>Allen Allen &amp; Hemsley</td>
<td>91,094</td>
</tr>
<tr>
<td>Clayton Utz</td>
<td>842,826</td>
</tr>
<tr>
<td>Buchanan Robert</td>
<td>5,600</td>
</tr>
<tr>
<td>Postage &amp; freight—</td>
<td></td>
</tr>
<tr>
<td>Australia Post</td>
<td>204</td>
</tr>
<tr>
<td>Ansett Air Freight</td>
<td>6</td>
</tr>
<tr>
<td>Financial advisors—</td>
<td></td>
</tr>
<tr>
<td>Oakvale Capital</td>
<td>4,750</td>
</tr>
<tr>
<td>Saloman Smith Barney</td>
<td>11,250</td>
</tr>
<tr>
<td>Salaries &amp; Wages—</td>
<td></td>
</tr>
<tr>
<td>Westaff Australia</td>
<td>11,218</td>
</tr>
<tr>
<td>Stationary &amp; Printing—</td>
<td></td>
</tr>
<tr>
<td>Canberra Printing Services</td>
<td>360</td>
</tr>
<tr>
<td>CPP Instant Printing</td>
<td>1,326</td>
</tr>
<tr>
<td>Travel costs—</td>
<td></td>
</tr>
<tr>
<td>Cabcharge</td>
<td>805</td>
</tr>
<tr>
<td>Dept. of Finance &amp; Administration</td>
<td>5,020</td>
</tr>
<tr>
<td>Other travel reimbursements</td>
<td>5,595</td>
</tr>
<tr>
<td>Other—</td>
<td></td>
</tr>
<tr>
<td>Dept. of Workplace Relations</td>
<td>41,939</td>
</tr>
</tbody>
</table>
The payments to suppliers, employment agencies and consultants of $1,559,764 as shown in the Statement of Cash Flows for the year ended 30 June 1999 contained in the 1998-1999 MIFCo Annual Report represent actual cash payments made to these entities during the year for administrative and other expenses.

(7) The explanation and breakdown of the borrowing costs of $4,633,895 that are recorded as an outflow in the MIFCo 1998-1999 Annual Report are as follows.

<table>
<thead>
<tr>
<th>Borrowing costs</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Syndicated $155m cash advance facility – Establishment Fee</td>
<td>300,000</td>
</tr>
<tr>
<td>Interest</td>
<td>4,333,895</td>
</tr>
<tr>
<td>Total</td>
<td>$4,633,895</td>
</tr>
</tbody>
</table>

(8) The explanation and breakdown of the payment of $94,817 for bank charges recorded in the MIFCo 1998-1999 Annual Report are as follows.

<table>
<thead>
<tr>
<th>Bank Charges</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Duties</td>
<td></td>
</tr>
<tr>
<td>MIFCo bank account no. 1</td>
<td>1,400</td>
</tr>
<tr>
<td>MIFCo bank account no. 2</td>
<td>7,839</td>
</tr>
<tr>
<td>Syndicated cash advance facility</td>
<td>12</td>
</tr>
<tr>
<td>Account Servicing Fees</td>
<td></td>
</tr>
<tr>
<td>MIFCo bank account no. 1</td>
<td>15</td>
</tr>
<tr>
<td>MIFCo bank account no. 2</td>
<td>11</td>
</tr>
<tr>
<td>Syndicated cash advance facility</td>
<td>-</td>
</tr>
<tr>
<td>Undrawn Commitment Fee</td>
<td></td>
</tr>
<tr>
<td>MIFCo bank account no. 1</td>
<td>-</td>
</tr>
<tr>
<td>MIFCo bank account no. 2</td>
<td>-</td>
</tr>
<tr>
<td>Syndicated cash advance facility</td>
<td>25,540</td>
</tr>
<tr>
<td>Agency Fee</td>
<td></td>
</tr>
<tr>
<td>MIFCo bank account no. 1</td>
<td>60,000*</td>
</tr>
<tr>
<td>MIFCo bank account no. 2</td>
<td>-</td>
</tr>
<tr>
<td>Syndicated cash advance facility</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>$94,817</td>
</tr>
</tbody>
</table>

* The Agency Fee debited from MIFCo bank account no. 1, was paid in respect of the Syndicated Cash Advance Facility.
Department of Employment, Workplace Relations and Small Business: Fringe Benefits Paid

(Question No. 2311)

Senator O'Brien asked the Minister for Employment, Workplace Relations and Small Business, 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 Alston—The Minister for Employment, Workplace Relations and Small Business has provided the following answer to the honourable senator’s question:

Department of Employment, Workplace Relations and Small Business (DEWRSB)

The following figures from DEWRSB incorporate expenditure on behalf of the Office of the Employment Advocate (OEA) and the Defence Forces Remuneration Tribunal (DFRT), because their financial transactions are conducted through the department’s financial and Human Resource system.

(1) The following FBT payments were made by the department during the period 1997 to 2000.

1997–1998 $444,577
1998–1999 $451,835
1999–2000 $615,000

(2) The monetary and non-monetary benefits attracting FBT were motor vehicles; HECS; housing; Living Away From Home Allowance; car parking; meal allowances; spouse accompanied travel; approved use of departmental issued computers set up in staff private residences; remote air fares for regional staff, and entertainment.

(3) The following compliance costs for calculating the FBT were incurred by the department during the period 1997 to 2000.

1997–1998 approximately $94,000
1998–1999 approximately $160,000
1999–2000 approximately $160,000

(4) The department pays performance bonuses, which do not attract FBT.

(5) The compliance cost associated with the calculation and payment of performance bonuses for 1998–1999 was approximately $500 (around two days of processing and verification at the APS 5 level, including on costs). The cost of assessment of performance is integrated into the overall cost of the management of the department.

Comcare

(1) The following FBT payments were made by Comcare, during the period 1997 to 2000.

1997–1998 $83,657
1998–1999 $51,866
1999–2000 $52,507

(2) Benefits attracting FBT were:

- motor vehicles;
- car parking;
. telephones;
. health/fitness allowances;
. entertainment;
. study assistance; and
. vaccinations.

(3) The following compliance costs for calculating the FBT were incurred by Comcare during the period 1997 to 2000.

1997–1998 approximately $3150
1998–1999 approximately $3300
1999–2000 approximately $4000

(4) Comcare pays performance bonuses, which do not attract FBT.

(5) The compliance cost associated with the calculation and payment of performance bonuses for 1998–99 was approximately $200. The cost of assessment of performance is integrated into the overall cost of the management of Comcare.

Australian Industrial Registry (AIR)

(1) (b) The following levels of Fringe Benefits tax (FBT) payments were made by the AIR during the period 1997 to 2000.

1997–98 $355 558
1998–99 $362 447
1999–00 $397 165

(2) The benefits attracting FBT provided to Registry staff and Members of the Australian Industrial Relations Commission (AIRC) over the above periods, were:

. residential telephone costs;
. use of leased private plated vehicles;
. use of leased Z plated vehicles under the home garaging arrangement; and
. provision of car parking bays for leased vehicles.

For the above years the compliance costs of calculating FBT were approximately $500 for each year.

(3) Benefits other than those attracting FBT paid to Members of the AIRC were:

. airfare costs for spouse accompanied travel; and
. tertiary study fee payments (e.g. HECS).

Airfare costs for spouse accompanied travel, were also provided to Registry staff at the Senior Executive Service level during that period.

(4) Compliance costs for each year were less than $100.

National Occupational Health and Safety Commission (NOHSC)

(1) (b) The figures below give the value of FBT payments made by NOHSC during the period 1997 to 2000.

1997–98 $29 062.33
1998–99 $33 536.57
1999–00 $49 066.93

(2) Benefits provided to employees, attracting FBT during the financial years 1997 to 2000 comprised:

. car benefits to SES officers;
. reimbursement of home telephone bills for the Chief Executive Officer;
. private usage of NOHSC issued mobile phones;
. entertainment expenses for NOHSC staff at official functions, luncheons and dinners where non-NOHSC staff are also present; and
. car parking for SES vehicles at a NOHSC site.
(3) Compliance costs for calculation of FBT are given below.
1997–98 $1200
1998–99 $1400
1999–00 $1400
(4) Payments to NOHSC officers, not attracting FBT comprised:
statutory Office Holders Allowance; and
performance based pay for some SES officers.
(5) Compliance costs associated with the calculation and payment of non-FBT incentives were minor
administrative costs.

Equal Opportunity for Women in the Workplace Agency (EOWA)
(1) (b) The list below gives the value of FBT payments made by EOWA during the period 1997 to
2000.
1997–1998 $9133.04
1998–1999 $11 812.18
1999–2000 $14 513.27
(2) Benefits provided to EOWA officers, attracting FBT during the financial years 1997 to 2000
comprised:
a motor vehicle;
entertainment provided by an income tax exempt body; and
car parking.
(3) Compliance costs associated with the calculation of FBT were approximately $1300 per year
(salary and seminar costs).
(4) Payments to EOWA officers not attracting FBT were educational expense payments.
(5) Compliance costs associated with the calculation and payment of non-FBT incentives were $190
per year (salary costs only).

Australian River Co. Limited: Travel
(Question No. 2400)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional
Services, upon notice, on 26 June 2000:
With reference to the answer to question on notice No. 2144 (Hansard, 28 June 2000, page 15926):
(1) On how many occasions since 1 September 1997 have spouses of members of the board of the
Australian River Co. Limited (ARCo) travelled with the member at ARCo’s expense.
(2) In each case: (a) what was the purpose of the travel; (b) what was the cost of the spouse’s travel;
and (c) were any other costs associated with the spouse’s travel, accommodation or other costs met by
ARCo.
(3) If any other costs, other than the cost of travel, were met by ARCo: (a) what was the nature of
each payment; (b) what was the amount paid; and (c) who approved the payment.
Senator Ian Macdonald—The Minister for Transport and Regional Services has provided
the following answer to the honourable senator’s question:
(1) On nine occasions a spouse has travelled with a member of the ARCo Board at ARCo’s expense.
(2)

<table>
<thead>
<tr>
<th>Date</th>
<th>Purpose</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1998</td>
<td>Australian Chamber of Shipping Annual Dinner</td>
<td>$609.40</td>
</tr>
<tr>
<td>July 1998</td>
<td>ANL Annual Staff Ball</td>
<td>$579.40</td>
</tr>
<tr>
<td>October 1998</td>
<td>ANL Pre-Board Dinner</td>
<td>$1227.30</td>
</tr>
<tr>
<td>December 1998</td>
<td>Dinner with President of Mitsubishi Heavy Industries (Major ANL client)</td>
<td>$340.70</td>
</tr>
</tbody>
</table>
 Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 27 June 2000:

With reference to Activity 010 of the Philippines-Australia Governance Facility (Seeding a Consumer Movement in the Philippines):

1. (a) What is the role of the Foundation for Economic Freedom (FEF) in this program; (b) how much is it being paid; and (c) what is it required to do.

2. (a) What credentials and track record does the FEF have as a consumer organisation; (b) who are its principals; (c) what is its structure; and (d) from where else does its funding come.

3. (a) Is the Minister aware that the FEF is regarded by community groups in the Philippines as a conservative free-market advocacy group, with no credentials as a consumer organisation; and (b) what is the Minister’s response to these claims.

4. (a) Which other consumer organisations were considered to undertake this work; and (b) why were they rejected.

5. What cooperation is the project receiving from individuals and groups in the Philippines who have been invited to tender for components of the work.

6. Is the Australian Competition and Consumer Commission (ACCC) involved; if so, in what capacity.

7. (a) What proportion of the funding is going to Australian and New Zealand individuals, organisations and consultants; and (b) what proportion to Philippine individuals, organisations and consultants.

 Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

1. (a) The Philippines-Australia Governance Facility (PAGF) was established under Australia’s Development Cooperation to the Philippines to provide responsive and appropriate support to governance initiatives at national, regional and local levels within government and also civil society and business organisations where they are the development partners of government or local communities. The proposal submitted by the Foundation for Economic Freedom (FEF) has been approved for PAGF assistance.

(b) No payment to the FEF is involved. PAGF assistance is provided in-kind in the form of short-term advisers, training, study tours, small amounts of equipment and attachments with relevant Australian organisations, public and private. The FEF proposal requests assistance in the form of advisers, a work placement in Australia with organisations such as the Australian Competition and Consumer Commission and the Australian Consumers Association, and some equipment in support of its efforts to organise a pro-consumer advocacy movement in the Philippines and to promote pro-consumer legislation.

(c) The FEF will establish with the Australian funded assistance a website, produce a consumer advocacy primer on consumer rights and prepare draft amendments to strengthen current consumer legislation in the Philippines.
(2) (a) The FEF was established in October 1996 to undertake research on the implications for Philippine consumers of pro-market policies and has recently decided to engage in consumer advocacy and public education.

(b) It has a 7 person Board of Advisers, namely:
   - Ramon del Rosario
   - Florentino Feliciano
   - Delfin Lozaro
   - Patricia St. Tomas
   - Rev Fr Joel Tabora, S.J.
   - Bernardo Villegas
   - Cesar E A Virata
   
   It has a 7 person Board of Trustees, namely:
   - Mahar Mangahas (Chair)
   - Romeo Bernardo (Vice-Chair)
   - Calixto Chikiamco (Vice-Chair)
   - Alexander Magno (President)
   - Rene Banez (Corporate Secretary)
   - Francis Varela (Treasurer)
   - Anthony Abad (Legal Counsel)

   Other Board members are:
   - Cayetano Paderanga, Jr
   - Vitaliano Nanagas II
   - Raul Fabella
   - Dante Canlas

(c) The FEF is organised into 4 departments - research and publications, database, corporate relations and administration - with a current establishment of some 13 staff that includes the President/Chief Executive Officer (Alex Magno) and Executive Officer (Liz Bautista).

(d) The FEF has received seed funding from the Philippine Business for Social Progress (PBSP) Small and Medium Enterprise Credit Program. The FEF has also received smaller grants on a per project basis from the Philippines Exporters Confederation through its Trade and Investment Policy Analysis and Advocacy Support Project (TAPS) and from a USAID program, AGILE (Accelerating Growth, Investment, Liberalization with Equity).

(3) (a) The FEF is an independent, non-profit and non-partisan organisation.

(b) The Philippine Government’s aid coordination agency, NEDA (National Economic and Development Authority), has endorsed the FEF proposal for PAGF assistance.

(4) (a) and (b) No other consumer organisation in the Philippines has submitted a proposal for assistance under the PAGF.

(5) AusAID has appointed an Australian Managing Contractor, GRM International, to manage the PAGF. GRM are required to select subcontractors in accordance with Commonwealth Government Procurement Guidelines to implement the Australian funded assistance. A tender process is currently underway to select a subcontractor for the FEF proposal.

(6) The ACCC has not submitted a bid.

(7) Contract details are unavailable as GRM has not selected the subcontractor.
Senator Allison asked the Minister representing the Minister for Education, Training and Youth Affairs, upon notice, on 28 June 2000:

(1) What was the outcome of the promise by the Minister, reported in the Age on 2 February 2000, of immediate consideration of a proposal by the Australian Council of State School Organisations (ACSSO) for federal support for a national leaflet on bullying to be sent to all parents with children in schools.

(2) (a) At what level was the proposal considered, if at all;
   (b) what reasons, if any, were given for its rejection or acceptance; and
   (c) was a final, binding decision made.

(3) Does the Minister see any scope for federal action on bullying, given his reported statement reported in the Age on 2 February 2000 that in some cases bullying had ‘long-term effects, including depression, psychosis and suicide’.

(4) Is the Minister aware of the program dealing with bullying, being run at the Quarry Hill Primary School, Bendigo.

(5) Will consideration be given to evaluating the program for wider application.

(6) (a) What is the position on ACSSO’s call for the Federal Government to fund counsellors in all Australian schools;
   (b) have any cost estimates been asked for; if so, what figures were arrived at.

(7) (a) Is the Minister aware of ACSSO’s $350 million estimate of the cost of providing this service; and
   (b) are there any specific programs, as part of the Quality Teacher program, providing professional development for teachers on handling bullying, and identifying, supporting and referring students at risk.

(8) What is the Minister’s stance on the recommendation contained in ACSSO’s report, ‘Creating Safe School Environments’ for the abolition of corporal punishment in all Australian schools.

(9) Are any new programs being considered to replace full service schools in order to combat violence in schools through professional development of teachers; if so: (a) what models are under consideration; and (b) how much funding would be allocated.

(10) Will the Minister consider restoring targeted funding to disadvantaged school communities in order to combat violence in schools through professional development for teachers.

(11) Will the Minister consider re-establishing the national Students at Risk program.

Senator Ellison—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

(1) An information leaflet about bullying is currently being produced for distribution to all parents with children in schools. ACSSO has been consulted on the content of the leaflet.

(2) (a) The ACSSO proposal was considered by the Department of Education, Training and Youth Affairs. (DETYA). A meeting was held between representatives of ACSSO and officers of DETYA to discuss a range of matters including bullying.
   (b) The Commonwealth agreed to produce an information leaflet on bullying as it supports the promotion of safe school environments free of violence.
   (c) As indicated, the Commonwealth is producing an information leaflet about bullying for parents. The proposal from ACSSO was taken into account in the development of this leaflet. Distribution to schools will take place in late August 2000.

(3) The Commonwealth is consulting with government and non-government education authorities about policies and approaches which address bullying. This is being done under the auspices of a Working Group established by the Conference of Education System Chief Executive Officers (CESCEO). A framework for schools that encapsulates the best policies, strategies and practice available for managing bullying, harassment and violence in schools, and for developing safe and supportive school environments is being developed.
(4) Quarry Hill Primary School is one of many schools to have introduced anti-bullying programs. The school’s program, called “Solving the Jigsaw”, was the result of school-community collaboration. It is aimed at upper-primary students and engages them in discussions about bullying, peer pressure and relationships during weekly sessions. Its success has lead to its adoption in a number of schools.

(5) The Government has no plans to evaluate this program. The primary responsibility for the delivery and evaluation of school education, including policies and strategies relating to bullying and harassment in schools, rests with the State and Territory government and non-government school authorities and individual schools.

(6) (a) The Government is aware of ACSSO’s National Plan for Action on Bullying and Harassment in Schools which includes a proposal to fund counsellors in all Australian schools. The provision of support staff in schools however, rests with State and Territory government and non-government education authorities.

(b) The Government is aware of ACSSO’s estimate of the cost of counsellors but has not separately asked for cost estimates.

(7) (a) Yes.

(b) The principal objective of the Quality Teacher Program is to strengthen teachers’ skills and understanding in the priority areas of literacy, numeracy, mathematics, science, information technology and vocational education in schools. The provision of professional development on handling bullying and identifying, supporting and referring students at risk is not a focus of this program. However, whole school approaches to professional development may address this issue in the broader context of special school and student requirements.

(8) The responsibility for the management of student behaviour, including policies, strategies and legislation relating to corporal punishment in schools, rests with the State and Territory government and non-government education authorities.

(9) (a) The Full Service Schools (FSS) program was not specifically established to combat violence or bullying in schools. Teacher professional development is an element of the FSS program which has: assisted participating teachers to develop strategies and skills to identify students at risk; and assisted teachers to develop and implement appropriate educational and personal programs to meet the needs of ‘at risk’ students so they can successfully engage and achieve positive outcomes.

The Prime Minister’s Youth Pathways Action Plan Taskforce is at present investigating youth transition issues through education to training and work, and investigating a range of different strategies to assist young people make successful transitions.

(b) Implementation of any new strategies would be determined in the context of the Government’s response to the Youth Pathways Action Plan Taskforce.

(10) From 1997, the Commonwealth’s full level of support for disadvantaged schools was broadbanded into the Literacy and Numeracy Program specifically to improve the literacy and numeracy skills of students in disadvantaged schools. These funds are targeted at the most educationally disadvantaged students. State and Territory government and non-government education authorities are responsible for the detailed administration of this program in their systems and schools. This includes making decisions on whether to support professional development for teachers. It could be expected that schools where unacceptable levels of violence in the school are adversely affecting their students’ literacy and numeracy learning would be among those receiving support under the Literacy and Numeracy Program.

(11) The Government is not considering re-establishing funding for a national Students at Risk (STAR) program. The Government has in place a range of programs to address the needs of educationally disadvantaged students.