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

BUSINESS

Consideration of Legislation

Motion (by Senator Ian Campbell) agreed to:

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

Horticulture Marketing and Research and Development Services Bill 2000

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS
LEGISLATION AMENDMENT (DEBT RECOVERY) BILL 2000

In Committee

Consideration resumed from 28 November.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.32 a.m.)—by leave—I move:

(1) Clause 2, page 2 (line 2), omit “8”, substitute “8A”.

(2) Schedule 1, item 20, page 14 (lines 15 to 18), omit the item, substitute:

20 Subsections 1231(2A) and (2B)

Repeal the subsections, substitute:

(2A) Subject to subsections (2C), (2D) and (2E), action under this section for the recovery of a debt or overpayment is not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

20A Paragraphs 1231(2C)(a), (2D)(a) and (2E)(a)

Omit “or (2B)”.

(3) Schedule 1, item 21, page 14 (lines 19 to 22), omit the item, substitute:

21 Subsections 1232(2) and (3)

Repeal the subsections, substitute:

(2) Subject to subsections (4), (5) and (6), legal proceedings for the recovery of the debt are not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

21A Paragraphs 1232(4)(a), (5)(a) and (6)(a)

Omit “or (3)”.

(4) Schedule 1, item 22, page 14 (lines 23 to 26), omit the item, substitute:

22 Subsections 1233(7A) and (7B)

Repeal the subsections, substitute:

(7A) Subject to subsections (7C), (7D) and (7E), action under this section for the recovery of a debt is not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

22A Paragraphs 1233(7C)(a), (7D)(a) and (7E)(a)

Omit “or (7B)”.

(5) Schedule 3, page 25 (after line 21), after item 7, insert:

7A Subsections 86(1) and (2)

Repeal the subsections, substitute:

(1) Subject to subsections (3), (4) and (5), action under section 84, 84A or 87A for the recovery of a debt is not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

7B Paragraphs 86(3)(a), (4)(a) and (5)(a)

Omit “or (2)”.

7C Subsection 87(3)

Omit “the day on which the debt arose”, substitute “the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt”.

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7D Paragraph 87(4)(b)
Omit “the day on which the debt arose”, substitute “the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt”.

7E Subsections 88(2) and (3)
Repeal the subsections, substitute:
(2) Subject to subsections (4), (5) and (6), legal proceedings for the recovery of the debt are not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

7F Paragraphs 88(4)(a), (5)(a) and (6)(a)
Omit “or (3)”.

7G Subsections 90(1) and (2)
Repeal the subsections, substitute:
(1) Subject to subsections (3), (4) and (5), action under section 89 for the recovery of a debt is not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

7H Paragraphs 90(3)(a), (4)(a) and (5)(a)
Omit “or (2)”.

(6) Schedule 3, item 17, page 29 (line 28), omit “7, 8”, substitute “7 to 8”.
(7) Schedule 4, page 31 (after line 22), after item 5, insert:

5A Subsection 205(3)
Omit “or (3), as the case requires”.

(8) Schedule 4, page 36 (after line 35), after item 8, insert:

8A Subsections 206(2) and (3)
Repeal the subsections, substitute:
(2) Proceedings for the recovery from a person of any amount that is payable by the person to the Commonwealth under or as a result of this Act are not to be commenced after the end of the period of 6 years starting on the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

(9) Schedule 4, item 9, page 39 (after line 2), at the end of the item, add:
(a) debts that are owed at the commencement of 1 January 2001; and
(b) debts that arise after that time.

The government amendments correct a drafting error in the original debt recovery bill. The Parliamentary Library identified this error. The government amendments simply remove the two rules that are currently in the legislation and replace them with a new single rule. A number of provisions are amended to give effect to this approach and thus the number of amendments. Similar amendments are also made to the family assistance law and to the Veterans’ Entitlements Act 1986.

Amendments agreed to.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.33 a.m.)—by leave—I move:

(1) Clause 2, page 2 (line 3), omit "1 January 2001", substitute "1 April 2001".
(2) Schedule 1, item 14, page 12 (line 23), omit "1 January 2001", substitute "1 April 2001".
(3) Schedule 1, item 34, page 18 (line 16), omit "1 January 2001", substitute "1 April 2001".
(4) Schedule 1, item 34, page 18 (line 18), omit "1 January 2001", substitute "1 April 2001".
(5) Schedule 1, item 34, page 18 (line 22), omit "1 January 2001", substitute "1 April 2001".
(6) Schedule 1, item 34, page 18 (line 25), omit "1 January 2001", substitute "1 April 2001".
(7) Schedule 1, item 34, page 19 (line 2), omit "1 January 2001", substitute "1 April 2001".
(8) Schedule 1, item 34, page 19 (line 11), omit "1 January 2001", substitute "1 April 2001".
(9) Schedule 1, item 34, page 19 (line 13), omit "1 January 2001", substitute "1 April 2001".
(10) Schedule 3, item 5, page 25 (line 8), omit "1 January 2001", substitute "1 April 2001".
(11) Schedule 3, item 17, page 29 (line 12), omit "1 January 2001", substitute "1 April 2001".
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(12) Schedule 3, item 17, page 29 (line 23), omit "1 January 2001", substitute "1 April 2001".
(13) Schedule 3, item 17, page 29 (line 29), omit "1 January 2001", substitute "1 April 2001".
(14) Schedule 3, item 17, page 29 (line 33), omit "1 January 2001", substitute "1 April 2001".
(15) Schedule 3, item 17, page 30 (line 2), omit "1 January 2001", substitute "1 April 2001".
(16) Schedule 4, item 9, page 37 (lines 3 and 4), omit "1 January 2001", substitute "1 April 2001".
(17) Schedule 4, item 9, page 37 (line 6), omit "1 January 2001", substitute "1 April 2001".
(18) Schedule 4, item 9, page 37 (line 8), omit "1 January 2001", substitute "1 April 2001".
(19) Schedule 4, item 9, page 37 (line 24), omit "1 January 2001", substitute "1 April 2001".
(20) Schedule 4, item 9, page 38 (line 19), omit "1 January 2001", substitute "1 April 2001".

Because of delays in the passage of this bill, including the debate on the amendments to the bill by the ALP and the Democrats, we identified that Centrelink was going to need time to undertake further systems development to reflect any changes. Therefore, it has been necessary to delay implementation to April 2001.

Amendments agreed to.

Senator CHRIS EVANS (Western Australia) (9.33 a.m.)—by leave—I move:

(1) Schedule 1, item 12, page 9 (lines 1 to 24), omit subsections (1) to (3), substitute:

(1) If a debt by a person to the Commonwealth under the social security law has not been wholly paid, the Secretary must give the person a notice specifying:

(a) the date on which it was issued (the date of the notice); and
(b) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred; and
(c) the period to which the debt relates; and
(d) the outstanding amount of the debt at the date of the notice; and
(e) the day on which the outstanding amount is due and payable; and
(f) that a range of options is available for repayment of the debt; and
(g) the contact details for inquiries concerning the debt.

(2) The outstanding amount of the debt is due and payable on the 28th day after the date of the notice.

(3) If the debt has not been wholly paid and:

(a) the person has failed to enter into an arrangement under section 1234 to pay the outstanding amount of the debt; or
(b) the person has entered into an arrangement under that section but has failed to make a payment in accordance with the arrangement or, if the arrangement has been amended, in accordance with the arrangement as amended;

the Secretary may give to the person a further notice specifying:

(c) the date on which it was issued (the date of the further notice); and
(d) the matters mentioned in paragraphs (1)(b) to (g); and
(e) the effect of sections 1229A and 1229AB; and
(f) how the interest under section 1229A is to be calculated.

(14) Schedule 3, item 3, page 21 (line 17) to page 22 (line 7), omit subsections (1) to (3), substitute:

(1) If a debt by a person to the Commonwealth under a provision of this Part has not been wholly paid, the Secretary must give the person a notice specifying:

(a) the date on which it was issued (the date of the notice); and
(b) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred; and
(c) the period to which the debt relates; and
(d) the outstanding amount of the debt at the date of the notice; and
(e) the day on which the outstanding amount is due and payable; and
(f) that a range of options is available for repayment of the debt; and
(g) the contact details for inquiries concerning the debt.
The outstanding amount of the debt is due and payable on the 28th day after the date of the notice.

If the debt has not been wholly paid and:

(a) the person has failed to enter into an arrangement under section 91 to pay the outstanding amount of the debt; or

(b) the person has entered into an arrangement under that section but has failed to make a payment in accordance with the arrangement or, if the arrangement has been amended, in accordance with the arrangement as amended;

the Secretary may give to the person a further notice specifying:

(c) the date on which it was issued (the \textit{date of the further notice}); and

(d) the matters mentioned in paragraphs (1)(b) to (g); and

(e) the effect of sections 78 and 78B; and

(f) how the interest under section 78 is to be calculated.

Schedule 4, item 7, page 32 (lines 2 to 25), omit subsections (1) to (3), substitute:

If:

(a) a recoverable amount has not been wholly paid to the Commonwealth; and

(b) the right of the Commonwealth to recover the outstanding amount has not been waived under paragraph 206(1)(b);

the Commission must give the person to whom, or on whose account, the recoverable amount was paid a notice specifying:

(c) the date on which it was issued (the \textit{date of the notice}); and

(d) the reason the outstanding amount was incurred, including a brief explanation of the circumstances that led to the outstanding amount being incurred; and

(e) the period to which the outstanding amount relates; and

(f) the outstanding amount at the date of the notice; and

(g) the day on which the outstanding amount is due and payable; and

(h) that a range of options is available for repayment of the outstanding amount; and

(i) the contact details for inquiries concerning the outstanding amount.

The outstanding amount is due and payable on the 28th day after the date of the notice.

If the recoverable amount has not been wholly paid and:

(a) the person has failed to enter into an arrangement with the Commission to pay the outstanding amount; or

(b) the person has entered into such an arrangement with the Commission but has failed to make a payment in accordance with the arrangement or, if the arrangement has been amended, in accordance with the arrangement as amended;

the Commission may give to the person a further notice specifying:

(c) the date on which it was issued (the \textit{date of the further notice}); and

(d) the matters mentioned in paragraphs (1)(d) to (i); and

(e) the effect of section 205AAB and 205AAD; and

(f) how the interest under section 205AAB is to be calculated.

These amendments will broaden the information that is required to be set out in debt notices and increase the time frame for recipients to respond to debt notices. The government, as well as other senators, would be aware of the problems inherent in existing Centrelink correspondence. For many who are in receipt of benefits, forms and letters from Centrelink, they are confusing and often devoid of what would be regarded otherwise as essential information. While some efforts have been made to improve their content and design over time—and I accept that that work has been going on—I think there is still some way to go.

Notices in respect of debts can simply advise a person that they owe thousands of dollars and must pay the money to Centrelink within 21 days of receiving the notice. Currently, these notices appear like some form of utility bill. More often than not, they provide no proper details of the basis of the
alleged debt. The result for the recipients of such notices is generally panic and disbelief. As such, we have moved these amendments to ensure that information about a debt is presented in a way that allows a person to act in an informed manner and provides sufficient time to respond.

Labor’s amendments as a package would ensure that the notice provides (a) the date on which it was issued—that is, the date of the notice; (b) the reason the debt was incurred, including a brief description of the circumstances that led to the debt; (c) the period of time to which the debt relates; (d) the amount of the debt outstanding; (e) the day on which the outstanding amount is due and payable; (f) the availability of repayment options; (g) contact details for inquiries concerning the debt and (h) the person’s appeal rights. We think all that information is necessary to improve the system and provide better information and an opportunity for people to respond.

Labor’s amendments will also increase the deadline for response and repayment from 21 days to 28 days. That brings it more into line with most other notices to pay bills, fines and debts in other arenas and allows a bit more time for people to be able to respond, as I say, what are quite often large debt notices. Often these debt notices, obviously, go to people who are not in the best of economic circumstances anyway. Many of them have not necessarily had a lot of education or have problems with literacy et cetera. So we think more time and more information will improve the process and empower those receiving the debts to be aware of their options. We think this improves the bill. I commend it to the Senate.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.36 a.m.)—Senator Evans just referred to (h), which I think he would recognise has already been taken out. I wanted to make that clear—(h) is not included. If I can immediately give the response of the government to these amendments, as far as the insertion of additional requirements into the debt notices is concerned, the amendment is accepted, even though it is unnecessary as it merely legislates for matters that Centrelink includes in debt notices as a matter of sound administrative practice.

Senator BARTLETT (Queensland) (9.37 a.m.)—I speak on behalf of the Democrats to Senator Evans’s amendment and to amendments circulated in my name a few weeks ago, which are very similar in nature to the opposition’s amendments and go to the issue of debt notices. Whilst I note the minister’s explanation and welcome her statement about this being already part of Centrelink practice, I think it is appropriate to note that this is a significant issue. It may seem very administrative to prescribe the detail of debt notices but, as Senator Evans has said, these notices often arrive in a circumstance which causes a lot of concern to people. To get a letter out of nowhere saying that you have a debt of thousands of dollars and that you have to pay it within 21 days or else—it is worded better than that, I accept—is how many people perceive the arrival of these notices. That obviously can cause a lot of angst for people who oftentimes, almost by definition, are low income earners. So it is important that it be a requirement that these sorts of details are here. The fact that people react like this now to the way debt notices are currently set out suggests to me that perhaps they are not as clear and specific as they should be and as has been prescribed by these amendments.

A not uncommon piece of feedback I receive from people from financial counselling services and welfare centres—they deal with people who are on the receiving end of debt notices all the time and with welfare recipients, particularly people who have been subject to a debt notice and are trying to wrestle with overpayments—is that it is a common story that the notices cause difficulty in terms of their detail and the way they are constructed.

It is worth re-emphasising that almost by definition many Centrelink customers are people who do not necessarily have a lot of dough. In many cases, they may have limited literacy or poor English comprehension and may need to seek assistance in dealing with debt notices from agencies and from organi-
sations such as those I have just mentioned, which are not necessarily overly well resourced either. It is something which can take a bit of time to seek assistance with. People can have poor health, limited mobility or lack of transportation. With regard to those issues, I think it is important to allow enough time as well. The main difference between the Democrat amendments and the ALP one, as I read it, is that the ALP amendment extends it to 28 days after the date of the notice and ours extended that further to six weeks. Given that the minister has indicated her support or willingness to accept Senator Evans’s amendment, we are certainly willing to accept his amendment as a constructive one—it is obviously a constructive one as it is so similar to the one the Democrats had foreshadowed. I think it would have been preferable to have a little longer time. The difficulty of the department having to wait six weeks or so, I think, is fairly minuscule compared to the benefit to the public and the individual person in waiting six weeks. I think that would have been a better outcome but, nonetheless, we welcome the extension of time that is contained in the ALP amendment.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.41 a.m.)—Just a quick response to Senator Bartlett: I wanted to pick up one thing that he said earlier about the letter arriving out of the blue and it saying, ‘Pay up or else.’ It does not in fact. It says, ‘If you have a problem about paying this, please contact us.’ The letter is not unfair in terms of indicating that people can make arrangements.

Amendments agreed to.

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Bartlett, are you withdrawing the next batch of amendments?

Senator BARTLETT (Queensland) (9.41 a.m.)—Yes. As I understand it, these were slightly in conflict with the ones we have just passed, so I will not proceed with those.

Senator CHRIS EVANS (Western Australia) (9.42 a.m.)—I was going to use the time that Senator Bartlett spoke to those amendments to work out what I was doing here. Senator Bartlett is far too quick today. I will formally move these amendments but, as I understand it, the government might be voting for some and not others, so we might have to actually group them separately. I will come to that in a minute. I think I will formally move, say, (2) to (5), speak to the general approach and then get some guidance from the minister as to how she would like to have them put and how the Democrats might like to have them put.

The TEMPORARY CHAIRMAN—You can move them all together and then we can put them separately to the vote.

Senator CHRIS EVANS—by leave—I move the group of amendments (2) to (5), (15) to (18), (25) to (27):

(2) Schedule 1, item 12, page 10 (after line 10), after subsection (2), insert:

(2A) Under this section, a person is not liable to pay interest on a debt, or the proportion of a debt, that was incurred because of an administrative error made by the Commonwealth or an agent of the Commonwealth.

(3) Schedule 1, item 12, page 10 (line 29), omit “later”, substitute “latest”.

(4) Schedule 1, item 12, page 10 (line 32), omit “21st”, substitute “28th”.

(5) Schedule 1, item 12, page 10 (line 33), at the end of subsection (4), add:

: (c) where a request for review (the initial request) has been made within 3 months after the receipt of a notice issued under subsection 1229(1)—3 months after the day on which an authorised review officer makes a decision in respect of the initial request.

(15) Schedule 3, item 3, page 22 (after line 25), after subsection (2), insert:

(2A) Under this section, a person is not liable to pay interest on a debt, or the proportion of a debt, that was incurred because of an administrative error made by the Commonwealth or an agent of the Commonwealth.

(16) Schedule 3, item 3, page 23 (line 11), omit “later”, substitute “latest”.

(17) Schedule 3, item 3, page 23 (line 14), omit “21st”, substitute “28th”.

...
(18) Schedule 3, item 3, page 23 (line 15), at the end of subsection (4), add:

; (c) where a request for review (the initial request) has been made within 3 months after the receipt of a notice issued under subsection 77(1)—3 months after the day on which an authorised review officer makes a decision in respect of the initial request.

(25) Schedule 4, item 7, page 33 (after line 11), after subsection (2), insert:

(2A) Under this section, a person is not liable to pay interest on an outstanding amount, or the proportion of an outstanding amount, that was incurred because of an administrative error made by the Commonwealth or an agent of the Commonwealth.

(26) Schedule 4, item 7, page 33 (line 31), omit “later”, substitute “latest”.

(27) Schedule 4, item 7, page 33 (line 34), omit “21st”, substitute “28th”.

These are all issues that go to interest on debt. The ALP’s amendments seek to ensure penalty interest and administrative charges are not levelled at individuals who receive a debt through administrative error. Labor has moved these amendments in fairness to those who have been inflicted with a debt, thanks to the administrative bungle of someone else. These people have not sought in any way to gain a benefit to which they were not entitled. They have done no wrong and have received payments in good faith. We think there is quite a difference in terms of the way they ought to be handled and that to apply some of the interest and administrative charges on these people is quite unfair. Whilst Labor has subsequent amendments to deal with administrative debts, we believe those who receive debts through no fault of their own should be given broader latitude to repay than those who receive a debt due to their own actions. We believe it is most unfair that the government would contemplate penalising those who have not done any wrong and are in fact the victims of another person’s oversight or error. That is the distinction we seek to make.

We are also moving amendments which will ensure that subsequent notices that are served on debts, which have not been wholly paid, indicate that the remainder of the debt is due on the 28th rather than the 21st day after notice before penalty interest or administrative charges are applied to the debt. In line with the amendments we have just carried, we think that is a more reasonable time frame. Amendments (5) and (16) deal with protecting the appeal rights of individuals and make it clear that interest on a debt and administrative charge cannot be applied to a debt if the decision is under initial appeal by an authorised review officer and is pending an outcome. So those amendments seek to protect those individuals from interest on a debt or the administrative charge while their decision is being reviewed or appealed.

That is a package of amendments which we think, again, makes the bill fairer and deals particularly with the question of those who have ended up with a debt through no fault of their own. We think there is a rationale for treating them differently. I understand the government may not accept that rationale, but we are constantly receiving complaints from customers of Centrelink who find that, through no fault of their own, they incur a debt. Obviously that puts them in a difficult position very often in terms of having to repay the debt. We are not saying that they should not have to meet their obligations, but it is a very different situation if you end up $2,000 or $3,000 in debt through no fault of your own because of an overpayment or an oversight. You have probably spent the money, you have incurred costs, you have continued to live on the basis of that income. To then be told that was income you were not entitled to and you are to repay it is often a huge burden. We think that, in addition to the difficulties that people will face when having to repay that debt, to add interest and administrative charges on them is unreasonable. We may have to tick-tack around the chamber in terms of how people want to handle the amendments and which ones need to be grouped together.
Madam Temporary Chairman, I draw your attention to the fact that amendments (2) to (5), (15) to (18) and (25) to (27) are the same amendments to three different parts of the act. When I respond to amendments (2) to (5), I am dealing with (2) to (5), (15) to (18) and (25) to (27). I suggest that, rather than go through the issues three times, that is a logical way to proceed. In that context, when I give the chamber an indication of the government’s response to amendments (2) to (5), it will have the government’s response to the other two sets of amendments.

I make it very clear to the chamber—and I think this is something which Senator Bartlett does not seem to have registered, and I do not quite know why—that people in receipt of a social security payment are not subject to the interest and administrative charge scheme. We are talking about people who have been on payments and who are now out of payments and in the work force. That is a very important matter to be made clear. Secondly, the interest and the administrative charge are only going to apply where a person has failed to make any arrangements to repay the debt—any arrangements at all. So, first of all, we are talking about people who are no longer on payments—they are out of payments and in work—and, secondly, these charges will only apply after they have failed to make any arrangements to repay the debt, despite the best endeavours of Centrelink. Over three months will elapse before these charges may be applied.

The scheme is designed to encourage debtors to contact Centrelink and to enter into or continue with voluntary arrangements to repay the debts. Voluntary arrangements are the preferred method of debt recovery. Repayments are made at a rate which will not put people into hardship. The government proposes to reduce the interest charge from the current punitive 20 per cent—that is the current legislated rate—to the lower deeming rate of 3.5 per cent. I think the government has been very reasonable in all these things. This will not apply to people who are on payments—only to people who are now off payments and who have failed to make any arrangements to repay the debt. Three months will have elapsed before the charges are applied. We would prefer voluntary arrangements. The repayments are not being made at a rate which will put people in hardship. We are reducing the punitive interest rate that currently applies of 20 per cent down to 3.5 per cent. All of those things are reasonable. Therefore, in that context, the government opposes the first amendment.

I turn now to the amendment to section 1229A to increase the notice period from 21 to 28 days. The government is prepared to support the increase in the notice period to 28 days. The social security law does provide for notices to be complied with within 14 days and our bill gives a concession to this usual practice by providing that the debtor enter into an arrangement to pay the debt within 21 days after the date of the notice. However, as I say, the government is prepared to support the increase in the notice period to 28 days.

Amendments (3) to (5) relate to interest on debt—the interest regime is delayed where a debtor lodges a request for a review. The government is not prepared to support the ALP amendments because they would allow a debtor to put off entering into an arrangement by asking for a review. That could lead to an increase in the number of frivolous reviews, which I do not think anybody in this chamber would believe was desirable. It would unnecessarily delay the application of the interest provisions. As I say, again, those provisions relate only to people who are no longer on payments and in the income support system and who have refused, or neglected, over a considerable period to make the repayments for which they are responsible. I cannot believe that the chamber would regard that as being unreasonable. I also believe that the chamber would regard the danger of frivolous reviews to be something that we should take into serious account. It is on those grounds that the government will oppose amendments (3) to (5).

Senator BARTLETT (Queensland)  (9.51 a.m.)—I wish to speak to the amendments moved by Senator Evans and also to the ones I foreshadowed on 8 November. The running sheet provides a running commentary for us in relation to these amendments. I congratulate the clerks and staff on melding our
amendments. Some of the amendments fore-shadowed by the Democrats are identical and others are similar to the ones that Senator Evans has moved and obviously in that context we are quite happy to accept the ones that have been formally moved by Senator Evans. The sheet states that Democrat amendments (8), (9), (22) and (31) are in conflict with the opposition’s (4), (5) and (18). I recall the minister saying that the government are willing to accept the amendment—I think it was amendment (4)—that extended the notice period to 28 days. Given that we have already done the 28 days and put in something else, in the spirit of reasonableness that I always try to bring to such debates, we are willing to accept that amendment and not proceed.

There is one area where there is some difference which I would like to explore further before we vote on the issue. I will speak slightly more broadly on the issue and respond to some of the remarks of the minister. I accept that this is a case that applies to people who are now no longer on benefits. That usually, although not always, means that they have got a job or a payment from somewhere. It does not necessarily mean they have a regular or adequate income stream. As I am sure all senators would be aware, many people who move off social security payments do so in a circumstance where they go into irregular work or low paid work or perhaps a permanent job but different hours and different amounts of work each week and different levels of money. That is a very common circumstance. We are still dealing with people who are not necessarily terribly well off. I acknowledge the point the minister made about the danger of one of these amendments providing an incentive for extra frivolous reviews and appeals through the appeals system. I think that is a reasonable point to make, but it needs to be balanced against the reality of what people face in these circumstances. I think to be able to charge interest on a debt that is being disputed is not desirable in principle, despite that risk of possibly providing incentives for people to delay paying interest because of having things reviewed.

Administrative errors do occur reasonably frequently and are unavoidable, particularly with the complexity of our system and particularly in areas like family payments. In those cases people can receive moneys in excess of their entitlement and often are not aware they have been overpaid; by definition, the department is not aware they are being overpaid. I have raised in this place, both in debate on previous social security legislation and in question time a month or so back, a recent Administrative Appeals Tribunal ruling that a family payment debt was incorrectly raised by the department. The AAT ruled the decision making process to decide that that was an overpayment to be in error. That ruling only applied to that particular appeal, but there are any number of other overpayments in the system, which have been raised and which people are probably paying back now, that were raised using that process the appeals tribunal has now decided was wrong. I am still awaiting further information from the minister on this. The department may not be legally obliged to review those cases but I think they are morally obliged to review them and see whether those incorrectly raised overpayments should be reconsidered. It would be useful to know how many people are in that circumstance. I know the minister committed at the time to seek more information on that and I realise these things can take a bit of time, but it is germane to the issue we are talking about now.

The minister frequently provides statistics in relation to debt recovery and overpayments, which are often presented in the context of stopping fraud. None of us here support fraud, of course, and we none of us here support people not being required to repay money they were not entitled to, whether through administrative error or innocent mistake or anything. But the figures that the minister tables are helpful in providing information of how many of those cases are in the area of family payments. Of those only a small percentage end up in the fraud basket. Many, many of the cases are people who have been overpaid either through their own mistake or their inability to correctly forecast their income—which is pretty hard for a lot of people to do, particularly these days with
fluctuating levels of work. There are a lot of people who have an overpayment raised through those circumstances without any intent of their own, as well as through administrative error such as in the case of the AAT ruling that I have just referred to. As I have said, the department makes errors from time to time—and that is not a criticism, because we all make errors from time to time.

The point is that it is unfair to impose interest on this category of debts. People who did not contribute to the circumstance of the excess payments should not be further penalised by having to pay more than the amount of the original overpayment because they are unable to pay within the time frame set by the department. I acknowledge the minister said that this only applies where they have not been able to come to an arrangement or where the repayment regime has broken down, but there is still the basic principle of people being charged interest on a debt that they incurred through someone else’s error. I am not saying they should not pay it back. All of us, if we get paid money we were not entitled to, through our salaries or whatever, have to pay it back as we should, regardless of whose fault it was, but I think paying interest on that is undesirable. I acknowledge the positives in the government’s legislation—as I always try to do—of reducing the level of overpayments; that is a welcome move. But a key part of these amendments goes to the payment of interest on debts incurred through departmental error.

The other key point is when people are seeking a review of a decision through the authorised review officer or by external appeal to tribunals. In the Democrats’ view, it is unfair that interest should be applied to a debt at that time. People are appealing against the debt being there in the first place. Surely the least that can be done is not have interest raised on it while that is happening. I think the minister would acknowledge that very few people appeal decisions just for a second bite of the cherry and rarely is the appeal frivolous. That does not mean that all appeals are successful; obviously many of them are not. But I am sure the minister would strongly defend people’s right to appeal and have their decisions reviewed. It is a complex act. Errors can be made by everybody; full facts need to be involved and interpretations need to be made as correctly as possible. So appealing of decisions, including ones like overpayments, is very important.

To be paying interest on that overpayment while you are appealing it is, in the Democrats’ view, also inappropriate. People cannot make the tribunals speed up their case. I am advised that at the moment appeals through the SSAT take about 10 weeks, and if cases are appealed on to the AAT the time frame is about nine months. People cannot speed that up. It can be quite a long time. If you have the initial review internally as well, which is usually very speedy, you can be looking at a period of about a year when you have some dispute, and you will be paying interest that whole time. We think that is inappropriate. About 30 per cent of decisions are set aside by tribunals, meaning that in at least one-third of the cases the customer is correct. People appeal all sorts of things; they are not all to do with overpayments, but some of them are, such as the AAT case I have referred to already.

The threat of financial penalty for exercising a right of appeal is, in the Democrats’ view, contrary to natural justice and fairness. The amendments propose that, where a person has exercised and finalised their right of appeal, interest will not be added to the debt during that time. The key component of the opposition amendment that we do have concerns with—because we do not think it goes far enough—goes to the very point that I have been talking about. The ALP amendment, as I understand it, allows for interest to be applied three months after an authorised review officer decision, by which time the SSAT appeal may be under way but not completed. Our view is that interest should not be applied until the whole appeal process has been completed, assuming, obviously, that the matter is resolved in the department’s favour. That is the key part, and I think that is in Democrat amendments (9), (22) and (31).

The Democrats are supportive of the opposition amendments, although we are concerned that (5), (18) and (25) do not go far
enough. The principle is appropriate, but it should be applied more strongly. If, like the Democrats, you accept the principle—the principle that, if people are not required to pay interest on a debt that they are appealing, particularly if it arose through administrative error by the department, the appeal should apply to appeals through the whole process—it is appropriate to support these amendments and to support Democrat amendments (9), (22) and (31), which I have not moved yet, rather than ALP amendments (5), (18) and (25).

The TEMPORARY CHAIRMAN (Senator Knowles)—Minister, would you care to clarify for the committee the groupings that you identified before.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.02 a.m.)—Labor amendments (2), (3) and (5) not only are all opposed by the government but are the same as (15), (16), (18) and (25). They are all the same as each other and the government is opposing them. Amendments (4), (17) and (27) are all ones that the government is prepared to accept.

Senator CHRIS EVANS (Western Australia) (10.03 a.m.)—I want to make one quick remark to indicate that it is not quite that simple, because I think the Democrats are voting for some but not others. Senator Bartlett certainly made that clear in his speech. But I will leave the question of which amendment that applies to to a better mind than mine. I would think it would be a lot quicker if we just roll through them. I do not think anyone is going to divide on them. At least that way, if we went one, two, three, four, we would all know where we stood. I am open to guidance from the chair. As long as the chair knows what we are doing, I will go with the flow.

In terms of the issue raised by Senator Bartlett, our amendment seeks to provide some protection during an initial appeal or review period for the person to be protected against some penalty. I suppose ours is half-way between Senator Bartlett’s position, which is to say that they ought to be protected throughout the appeals processes, and the government’s position, which is to say that they ought to incur the penalty. We are saying that it is a reasonable proposition that during the initial appeal period they be protected from the penalty of interest applying. The system envisages people being allowed to pursue appeal rights. We ought not to penalise them for that. We do not want to have a situation where people feel that they are unable to pursue their legal rights because of fear of the penalty of that. I know it is a balancing act, but it seems to me that, at least in the initial appeal process, people ought not to be fearful of appealing because of the cost they may incur if they are unsuccessful. It is a question of access to justice and the cost of that. We are a bit concerned that there is some suggestion that people may be deterred because of the fear that, if they lose, they have incurred extra costs.

We have prepared our amendment (6) to provide some protection during the initial appeal period. We are not prepared to go as far as Senator Bartlett proposes, but that is because, as I say, it is a question of balance about when you say that penalty ought to be applied. I understand what Senator Bartlett is saying. Our proposition is that that initial period be exempt. As I say, it is a question of balancing interests.

Senator BARTLETT (Queensland) (10.05 a.m.)—Madam Chair, you will be pleased to know it is not going to be as complicated as Senator Evans might fear. Given Labor’s insistence, despite my reasonable arguments, on pursuing their approach, obviously that is better than nothing from the point of view of the Democrats. To ensure that we do not knock each other out and end up with no reflection of the principle we have been outlining, of people being able to be not charged interest while they are having a decision reviewed, we would be willing to reluctantly support those amendments, which I think are (5), (18) and (25). Certainly we would be supporting all the other amendments in any case, as they were identical or similar to ones the Democrats had already circulated.

Amendments agreed to.
The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Bartlett, are you wishing to withdraw those amendments?

Senator BARTLETT (Queensland) (10.07 a.m.)—I will not proceed with those amendments which related to the topic we have just been debating.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.07 a.m.)—Amendment (26) was not one of those that was the same as the others. I specifically did not say that. It is a technical error and it should be removed. I hope you can understand this. It is consequential to an amendment that the ALP has now removed, which involves the words ‘later’ and ‘latest’. It was not removed—although I understand there was the intention to remove it—and it should now be removed by the Senate. That is the best I can do in explaining it.

Senator CHRIS EVANS (Western Australia) (10.08 a.m.)—I am prepared to accept the minister’s advice as to whether there are technical or flow-on amendments. I am sure the minister is interested in getting the best possible piece of legislation at the end of it, as we all are. If the minister says that her advice is that that needs to be done, I do not have the technical competence to argue with her and I am sure I will take her on trust.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.08 a.m.)—Senator Evans has said that he would remove amendment (26) from that.

The TEMPORARY CHAIRMAN (Senator Knowles)—It is therefore understood that those amendments that were just put and carried will now be recorded as carried with the exception of amendment (26).

Senator CHRIS EVANS (Western Australia) (10.09 a.m.)—I seek leave to move opposition amendments (6), (7), (19), (20), (28) and (29) together.

Leave granted.

Senator CHRIS EVANS—I move:

(6) Schedule 1, item 12, page 11 (after line 20), after subsection (1), insert:

(1A) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:

(a) failing to enter into an arrangement under section 1234 to pay the outstanding amount of the debt; or

(b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

(7) Schedule 1, item 12, page 12 (line 1), at the end of paragraph (b), add “without reasonable excuse”.

(19) Schedule 3, item 3, page 24 (after line 4), after subsection 78A(1), insert:

(1A) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:

(a) failing to enter into an arrangement under section 91 to pay the outstanding amount of the debt; or

(b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

(20) Schedule 3, item 3, page 24 (line 18), at the end of paragraph (b), add “without reasonable excuse”.

(28) Schedule 4, item 7, page 34 (after line 20), after subsection (1), insert:

(1A) The Commission may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:

(a) failing to enter into an arrangement to pay the outstanding amount; or

(b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

(29) Schedule 4, item 7, page 34 (line 34), at the end of paragraph 205AAC(6)(b), add “without reasonable excuse”.

These amendments seek to codify the circumstances in which a determination may be made that interest is not payable. There may be circumstances in which an individual is unable to repay a debt as agreed. This may include circumstances beyond their control. It is only fair that these circumstances are taken into consideration before there is a
determination that penalty interest or the administrative charge is imposed. I understand this determination is currently outlined in a disallowable instrument; our amendment merely seeks to include the reasonable excuse provision in the primary legislation. So it is an attempt to move it from the regulations into the primary legislation to codify the circumstances where the determination may be made that interest is not payable. That is the intention of this group of amendments. I think the government is happy with that, but I will let the minister respond.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.10 a.m.)—The government is prepared to accept these amendments.

Senator BARTLETT (Queensland) (10.10 a.m.)—Just for the record, these amendments allow for interest not to be payable where the person has a reasonable excuse for failing to enter into an arrangement or failing to make a payment in accordance with an arrangement. As Senator Evans said, it is codifying it a bit more in terms of reasonable excuse. I am sure that the minister would tell us that the department is always reasonable in its determinations, but it is comforting for some people to know that that is in the legislation. Certainly, the Democrats support these amendments.

Amendments agreed to.

Senator BARTLETT (Queensland) (10.11 a.m.)—I do not need to move amendments (11), (24) and (35) because they are opposing sections. Either way, we deal with these sections together. These amendments deal with the issue of the administrative charge, which is also an important issue of principle and one that, as I was saying yesterday in our brief discussion on this bill, can potentially affect many members of the Australian community. The proposed section that is in the bill, section 1229AB, attempts to reintroduce an administrative charge on debts. This imposition of administrative charges on debts is, in the Democrats’ view, punitive and will further push disadvantaged Australians into debt. A person’s inability to comply with a repayment arrangement, because almost by definition owing to their financial circumstances they have been unable to comply with a repayment arrangement, should not incur them an extra penalty.

As I said earlier, many debts are due to administrative error, and it is unavoidable with the complexity of our system, particularly with family payments. The bill means that, with debts of this nature that are due to administrative error by the department, the client actually repays more than the original overpayment, essentially meaning they have to pay extra for a Centrelink mistake. It causes inconvenience for people to have to repay money that they were not entitled to. It causes inconvenience for people if they have to pay interest on that money. There should not be the extra burden on them of paying an administrative charge for the so-called privilege of repaying that money.

Many thousands of Australians are already being breached by Centrelink annually and are already suffering financial penalties. Adding an administrative charge should they also incur an overpayment through administrative error is, in the Democrats’ view, excessive. We are dealing with people who are, on average, not amongst the highest income earners. I am sure all senators would know that many of those people who are in regimes of having to repay overpayments—clients of financial counselling services, etc.—already find it very difficult. Even the principle of an administrative charge being imposed is something that the Democrats do not support. We oppose outright the imposition of an administrative charge on debts on social security and veterans overpayments in these circumstances.

I note that the opposition amendments that are foreshadowed again appear to take a middle line. They do not oppose the charge but seek simply to drop it to $50 rather than the $100 that is proposed in the bill. Obviously, if the Democrats’ desire to remove these sections is not successful, we would see $50 as less of an imposition than $100, but I urge Senator Evans to at least give consideration to the principle that it is not appropriate for administrative charges to be paid on debts that have arisen through administrative error on the part of the depart-
ment. I do not think it is in tune with the Australian principle of a fair go, apart from anything else. It is really excessive and just one step too far.

As I have said before a number of times, nobody quibbles with the need to repay overpayments that people were not entitled to, whether it is through departmental error or their own mistake in terms of forecasting their income or not getting information in on time and those sorts of things. But to make people pay an administrative fee or even to have any potential for people to pay an administrative fee for a departmental mistake is simply unfair. I know budgets are always important for the department, and that is appropriate; it is public money. But, comparing the resources of the department and how much they may struggle with having to wear the administrative costs with the resources of people who have to make repayments, I think the balance should be very much in favour of the general public in these circumstances. So the Democrats oppose these sections of the bill that seek to impose the administrative charge. I urge Senator Evans to give consideration to doing likewise. If he is unable to take that position, the Democrats would support the opposition proposal to lower the charge to $50 as a fall-back which I would not call acceptable but is probably the best that we can achieve.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.16 a.m.)—For the record, the government opposes these amendments. I point out that the administrative charge would apply only after a period of at least 112 days, which is a pretty reasonable length of time, I would have thought, for anybody. If you put together the low rate of interest, which is going to be 3.5 per cent, and the removal of the administrative charge, I do not think you have got sufficient encouragement to have people enter into an agreement when they have already had 112 days. I remind the Senate once again that we are talking about people who are no longer on social security payments. It is not unreasonable, I believe, to have the administrative charge with the lower interest rate. That would be a very good combination. I remind you again that it is not going to apply until at least 112 days. The government sees no need to endorse these amendments.

Senator CHRIS EVANS (Western Australia) (10.17 a.m.)—I feel a bit churlish today because Senator Bartlett has been very cooperative and the minister has been very cooperative and I have been insisting on my amendments. I think the minister has answered some of Senator Bartlett’s criticisms. Labor’s view is that we cannot support the Democrat proposition to knock these measures out altogether. Those are measures that have to be looked at as part of a package, and the minister, I think rightly, makes the point that the reduction in the interest rate is an important measure in terms of reducing the harshness of the penalty on some of the people who may be affected, and that is a very big part of Labor’s thinking on its approach to this bill.

It is also the case that we do support the government’s intention and the need to encourage individuals to enter into repayment agreements and stick to them. We have sought to put other protections in. We have carried the amendments that seek to differentiate administrative debts brought about through no fault of the clients themselves and we have dealt with questions about financial hardship and appeal rights. I think the government is trying to put in a different system with reduced interest rates, and this administrative charge is part of that approach.

We are not prepared to go down the Democrat path of abolishing that altogether because, as the minister says, the charge is for people who are back off benefits who have had a lengthy period of time to respond, and it is a question of making sure there is some inducement for them to actually stick to arrangements to repay the debts. It is a balancing act again, but we think it is not unreasonable to adopt this sort of approach. Where we differ with the government is that we take the view—these things are always a bit arbitrary—that the $100 is too steep. Those affected will only just be re-entering employment and will obviously have a lot of financial pressures. Many people find it dif-
difficult to repay debts quickly, and we think that a $50 limit on the admin charge would be less onerous. It would still have a penalty and still have an inducement effect but without being quite as severe. These are subjective judgments, but I am foreshadowing that, if the decision to oppose the sections is not supported, then we will be moving those amendments to effectively reduce the administrative charge from $100 to $50. As I say, that is done in the light of the other changes the government has made and the changes which, with the support of the Democrats, we have been able to achieve in terms of treatment of administrative debts incurred through no fault of the individual.

We think our approach is a better balance. Obviously the minister prefers the $100 charge. We think that is a bit steep and we are not prepared to support that level at this stage, but we do support the intent of making sure there is some inducement for people to stick to repayment agreements. I know that under the current arrangements it is hard to have people not continually seek to renegotiate. While this is for a small number of people, at the end of the process you do have to have some means by which you force that to occur.

I make the point to Senator Bartlett that it is about those people who, at the end of a quite lengthy process, with all the protections which the government had and which we have strengthened today, were not prepared to stick to repayment agreements. We think the administrative charge is then reasonable, so we support the principle. We are not prepared to be quite as expensive as the government in its approach. I thought we would have this debate now rather than do it twice, but we will be supporting the retention of the sections and not supporting the Democrat motion to remove them. I foreshadow that then I will move my amendments which seek to change the charge from $100 to $50. I apologise to Senator Bartlett, who has been most cooperative, but I am not supporting his changes today—maybe next time around.

Senator BARTLETT (Queensland) (10.21 a.m.)—We can always live in hope. I noted the arguments that the minister and Senator Evans have put forward that people have nearly four months to make arrangements and fix things up, and that this is some sort of extra inducement. I still think the point needs to be made that just because people are not on payments anymore does not mean they have heaps of money rolling around the place. Overpayments can be quite sizeable, through no fault of people or any deliberate deceit on the part of people. Many Australians already struggle very much with the burden of the overpayments regime that is put on them.

If we are looking at the power in this situation, let us not forget that, while there are lots of legal protections in terms of appeals etcetera which are very important, there are opportunities to negotiate and there is assistance through welfare rights centres for people to negotiate with the department, the department is not exactly a shrinking violet in relation to overpayments. It pursues them very vigorously. That is not necessarily inappropriate but it is not as though people necessarily have a lot of say. At the end of the day they have to repay the money, as they should, and that often makes it very difficult for people. That is just a fact of life.

It is not a case of people deliberately defaulting on overpayments; most of the time it is people just finding it too much of a burden. All of us know that many in the Australian community struggle with financial burdens at the moment for all sorts of reasons. That is always going to be the case, sad as it may be, but the basic principle here is still adding an extra administrative fee on people in those circumstances, particularly in cases where it is not in dispute that the debt is raised through no fault of their own. The department already has widespread powers, as reflected in this bill. Already, even without this bill, it has widespread powers to dive into people’s bank accounts to retrieve money if those bank accounts are under their control. I saw reports recently of the department—incorrectly as it turns out, with the department repaying the money and apologising, so I just do not want to tackle the department in relation to this—trying to access money in a child’s trust account because it was assumed that the account was under the control of the person who had the debt raised
against them. These things may be appropriate and may be the only way to go, but they are still an indication that the department is not exactly a shrinking violet about these things; it can go in pretty hard.

The department may need to get the money back and it is still appropriate for people to repay—I am not saying it is not—but the principle here is that I do not think people need another $50 or $100 charge hanging over their head. I do not think that is why people default on overpayments. I do not think it is because in the vast majority of circumstances people find it hard to repay, and I think that the basic reality is the difficulty that people in the Australian community have in struggling with their financial situation for all sorts of reasons. Having to repay an overpayment in any circumstance, even if it is incorrectly paid through your employment—that always has to be repaid of course, as it should be—is still hard. It is hard to have to repay money if it is a sizeable debt incurred for any reason. In the Democrats’ view, people do not need the sword of a $100 threat hanging over their head to enter into repayments. In the vast majority of cases, people find it hard to meet a repayment regime because they are in difficult financial circumstances, and that reality needs to be recognised. There is already enough power for the department. I do not think they need this extra bit to clobber people into submission.

**The TEMPORARY CHAIRMAN (Senator Knowles)**—The question is that schedule 1, item 12, section 1229AB; schedule 3, item 3, section 78B; and schedule 4, item 7, section 205 AAD stand as printed.

Question resolved in the affirmative.

Amendments (by Senator Chris Evans)—by leave—proposed:

(8) Schedule 1, item 12, page 12 (line 10), omit “$100”, substitute “$50”.

(21) Schedule 3, item 3, page 24 (line 27), omit “$100”, substitute “$50”.

(30) Schedule 4, item 7, page 35 (line 10), omit “$100”, substitute “$50”.

Senator Newman (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.27 a.m.)—Sadly, the government are not able to support these either. We would have really considered supporting them if it had not been for the fact that the opposition’s amendment No. 2 has impacted on these amendments. Amendment No. 2 related to interest not applying if a debt was due to administrative error. What has happened is that now there will be a selective approach to debtors. We were prepared to consider the opposition’s amendments here on the charge being reduced from $100 to $50 if in fact that had applied to all debtors. But, because the opposition’s previous amendment has gone through, it now means that there will be different treatment of debtors. We are not prepared to change the administrative charge arrangements in those circumstances. It is a pity because we might have been able to get a resolution that was a compromise position, but that looks as if it is now not possible. I do not suppose I have really got anything much more to say than what I have already said on the Democrats’ amendments.

Senator Bartlett (Queensland) (10.28 a.m.)—As I indicated previously, I am not sure I would see this as an acceptable fall back. If $100 is an unfair thing to have hanging over people’s heads, $50 is an unfair thing, from the Democrats’ point of view. But it is a smaller threat to have hanging, so without a great deal of enthusiasm we support the amendments.

Amendments agreed to.

Senator Chris Evans (Western Australia) (10.29 a.m.)—by leave—I move opposition amendments Nos 9 and 10:

(9) Schedule 1, item 16, page 13 (line 4), omit “A debt”, substitute “Subject to subsection (2), a debt”.

(10) Schedule 1, item 16, page 13 (after line 16), at the end of section 1230C, add:

(2) Subject to subsection (3), a debt due to the Commonwealth under this Act is recoverable by means of a method mentioned in paragraph (1)(d) or (e) only if the Commonwealth:

(a) has first sought to recover the debt by means of a method
These amendments seek to codify the circumstances where legal proceedings and garnisheeing action may be commenced to ensure such action does not take place in inappropriate circumstances. Senators would be aware that this year’s Ombudsman’s report outlined circumstances where there had been overzealous action in terms of garnisheeing, particularly the incidence of garnisheeing of a child’s bank account.

Without reducing the necessity for flexibility in the most appropriate debt recovery method, Labor’s amendments set out clearly the methods, such as repayment by instalment, that must be considered before rash decisions to garnishee or implement legal proceedings. Basically, we are seeking to codify steps to ensure that action in seeking to deal with debts is not overzealous or over-harsh. The government’s bill sets out a means by which the debt may be recovered, and our amendments seek to ensure that they give priority to those less harsh measures and those measures which deal with encouraging repayment by instalments under an agreement rather than those that go straight down the path of legal proceedings or garnishee notices. We do not seek to prevent that happening when it is warranted, but we want to try to make sure that we do not get overzealous action in pursuing debts, which we have seen on some occasions—sometimes even in circumstances where the debt proved not to be of the same amount first claimed by Centrelink. We think this is an important protection. It codifies procedures which make legal proceedings the last step and which encourage Centrelink to pursue more reasonable endeavours in the first place, particularly with regard to entering into arrangements with the client. We think it is an improvement to the bill, and we hope it is supported by the Senate.

Senator Newman (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.30 a.m.)—The government accepts the amendments.

Senator Bartlett (Queensland) (10.30 a.m.)—I am not used to hearing the government being so accepting; I am glad to hear it. As that is the case, I do not need to rise up in righteous indignation about how crucial these amendments are because obviously the government already knows that, but they are worth speaking to briefly. As was indicated, the Democrats have similar amendments; as has been the case throughout this debate, our amendments are actually better than the ALP amendments, but we will live with their amendments.

The issue is an important one and it goes to recognising that in most of these cases you are dealing with people who are struggling financially. I think it is important—and the fact that we are all accepting the amendments indicates that no-one is disagreeing with that, so I am not presenting this as a criticism—to remember that this deal affects real people in the Australian community. As we all know, many in the community are struggling. I do not want to revisit the debate that I had on the previous amendments, but even $50 is a hell of a lot of money.

On the issue of debt recovery, the same sort of point needs to be acknowledged. I accept that some people will try to avoid repayment, but people on the whole do not default on overpayments deliberately; they do it because they are struggling financially. If you do not have a lot of money, it is hard work to have to repay a debt. As I referred to before, we have seen circumstances where the department, in my view, has been
overzealous. We are dealing with a huge number of staff throughout the country, and obviously they will make judgments.

It is probably worth clarifying the reality of how this whole area of debt recovery works. Centrelink staff have to try to negotiate and to work out the best way of recovering the overpayment—and it is appropriate to recover overpayments that people were not entitled to. The staff have to do this in a way which ideally causes minimum hardship to the person involved. The Centrelink person basically has the power at the end of the day to determine how much, how quickly and where from. When issues of discretion and negotiation are being handled by large numbers of people—I do not know the total numbers, but I would not be surprised if there were thousands throughout Australia that make these decisions on a regular basis—sometimes you will have individuals who are overzealous about it. That is human reality and human nature. As I have said many times, I have a great deal of respect for Centrelink staff, who have to do a very difficult job. There should be a few more of them, I would suggest—then they would be able to do an even better job. It is human nature in some circumstances to be overzealous.

Without trying to sound like we are moving into some sort of pseudo-Marxian power analysis, this issue deals with people who are not in a powerful position. They are in a weak position, and the department is in an incredibly strong position—that is why these amendments are important. I am pleased that the government is accepting them, because they do add that extra requirement on the department to seek other options before it goes to the last resort. That is a crucial point and part of why these amendments are welcome and why the government is accepting them. The minister will say that the department always seeks other options before going to the last resort, but these amendments will ensure that. The fact that the minister is quite happy to accept them indicates, not just in terms of the legislation but in terms of how she would like the department to be administered, that it is not always done in that way. As I said, human nature being what it is, there is always the prospect, despite the best intentions of whoever is the minister of the day, that the exploration of other options will not happen; these amendments will ensure that it does.

Amendments agreed to.

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Bartlett, do you wish to withdraw your amendments?

Senator Bartlett—Yes.

Senator CHRIS EVANS (Western Australia) (10.36 a.m.)—by leave—I move opposition amendments Nos 11 and 22:

(11) Schedule 1, item 23, page 15 (lines 9 and 10), omit subsection (4), substitute:

(4) The Secretary may terminate or alter an arrangement entered into under subsection (1):

(a) at the debtor’s request; or

(b) after giving 28 days’ notice to the debtor of the proposed termination or alteration; or

(c) without notice, if the Secretary is satisfied that the person has failed to disclose material information about his or her true capacity to repay the debt.

(22) Schedule 3, item 8, page 26 (lines 9 and 10), omit subsection (4), substitute:

(4) The Secretary may terminate or alter an arrangement entered into under subsection (1):

(a) at the debtor’s request; or

(b) after giving 28 days’ notice to the debtor of the proposed termination or alteration; or

(c) without notice, if the Secretary is satisfied that the person has failed to disclose material information about his or her true capacity to repay the debt.

These amendments require the secretary to give 28 days notice if they wish to advise of a change in the repayment arrangements. As I understand it, currently no notice is required. We went for a 28-day period earlier in some amendments that were carried; we think the current situation could lead to potential hardship on the individual. As the minister is going to support these amendments, I had better leave it there.
Amendments agreed to.

Senator CHRIS EVANS (Western Australia) (10.38 a.m.)—by leave—I move opposition amendments Nos 12, 23 and 31:

(12) Schedule 1, item 24, page 16 (after line 19), after subsection (2), insert:

(2A) As soon as possible after issuing a notice under subsection (2), the Secretary must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person’s account; and

(b) the reasons for the recovery action.

(23) Schedule 3, item 9, page 27 (after line 17), after subsection (2), insert:

(2A) As soon as possible after issuing a notice under subsection (2), the Secretary must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person’s account; and

(b) the reasons for the recovery action.

(31) Schedule 4, item 8, page 36 (after line 20), after subsection (2), insert:

(2A) As soon as possible after issuing a notice under subsection (2), the Commission must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person’s account; and

(b) the reasons for the recovery action.

These opposition amendments all go to the same issue—that is, recovery action from deceased estates. They require the secretary to the department to have the courtesy to advise deceased estates in writing that recovery action has proceeded on relevant accounts, if payments were incorrectly made after death, to ensure that the families or beneficiaries receive proper advice about such matters. I do not think they are controversial amendments.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.40 a.m.)—The government accepts those amendments.

Amendments agreed to.

Senator CHRIS EVANS (Western Australia) (10.40 a.m.)—I move opposition amendment No. 13:

(13) Schedule 1, page 17 (after line 26), after item 30, insert:

30A Subsection 1237A(1)

Repeal the subsection (including the note), substitute:

(1) Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

Followers of social security debates in the Senate will be much happier now because I think we are going to have a good old-fashioned argument about this amendment, and civility and agreement will go out the window. Senators behind me were getting concerned that I had lost my touch, moving amendments that the government could agree to, which was ruining my reputation. I understand the government is not going to support this amendment, so we are back to a more natural state of affairs.

This amendment seeks to broaden the coverage of section 1237A(1) of the Social Security Act that deals with the waiver of a debt arising from error. It will ensure that all debts or the proportion of a debt that is attributable to an administrative error are required to be waived if not identified within the specified period. This particular provision has been amended by both the former Labor government and the current coalition government. The last time the issue was discussed, the coalition intended to remove the discretion of waiver. Understandably, individuals receive debts through no fault of their own. Information may have been recorded incorrectly by Centrelink and an incorrect payment may have resulted. In the opposition’s view, it would be unfair to raise a substantial debt against these people, given that they received the payments in good faith.

As I understand it, the section requires that such debts be waived if they are not detected within six weeks of the initial incor-
rect payment. However, for this provision to have effect, the debts must be due solely to administrative error. In essence, an individual cannot be seen to have contributed in some way to the debt, no matter how slight. There are clearly circumstances where that is unfair. An example is where an individual declares earnings which may affect their payment, but they are recorded incorrectly by Centrelink or another agency. This may lead to an ongoing payment of benefit above that to which the person is technically entitled, without the individual noticing that to be the case.

Subsequently, a debt may be raised outside the existing six-week time frame because of the inclusion of the word ‘solely’ in the current waiver provisions. This is the case because a notice may have been sent regarding their payment adjustment and the information used to calculate the changed rate of payment. The receipt of this notice and apparent duty to report the error means that the individual may have contributed to the ongoing overpayment. Thus the debt would not be due solely to an administrative error. The reference to the word ‘solely’ was originally drafted under the Labor administration, but our experience has been that it is proving to be too restrictive. In light of the fact that the coalition have subsequently tightened the section, we believe there is a need to make it fairer.

The change we are proposing will not mean that those who deliberately let an error go unchecked get off scot-free. That is clearly not the intention. The section’s reference to the term ‘received in good faith’ will ensure that, where there is a substantial error, there is obviously a reasonable expectation that it would be noticed and Centrelink advised. We believe current case law regarding this provision supports this interpretation. We think this would be a useful addition to protect those persons who incur debts through no fault of their own. We think the interpretation would provide more room for those people’s interests to be protected.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.44 a.m.)—I am sorry to disappoint the Senate, but the government opposes this amendment. It is a perplexing amendment. The opposition amendment would change a provision that Labor itself put into the legislation when it was in government in 1995. If Labor had found that it had had a significant downside and needed to be put back to where it was, I could understand it, but the recent court decisions have confirmed that the provision does operate as it was intended. It is for Senator Evans to make clearer to the Senate why we should go back to the situation prior to 1995. I do not think he has done that. He is busy as I speak, but I will give him the chance to make it clearer.

The amendment does not substantially alter the language used. It has not been made clear why Labor want to amend the existing provision. It is also unclear what the consequences will be. The clause has been in place since 1995 and it has been through the courts. The interpretation of it is quite clear, and there does not seem to be a downside to it. All we are getting is an amendment that creates uncertainty where certainty has reigned for the last five years. The ALP government was the author of the amendment in 1995 that has been tested and has produced that certainty. It is a mystery why the opposition would want to change it when we have certainty. It has been tested. It does not substantially alter the language, but it does put uncertainty in place of the certainty that has been there for the last five years. The government is not prepared to swap certainty for uncertainty without evidence that it is needed.

Senator BARTLETT (Queensland) (10.46 a.m.)—Although we are willing to hear further arguments from the minister, the Democrats are inclined to support this, unless Senator Evans explains things so badly that it switches my mind the other way. I understand what the minister is saying—that
this will swap certainty for uncertainty. From my point of view, there is certainty in how the provision is being interpreted and operated. Whether the certainty reflects the intent of the Senate at that time, I do not know—I was not here. I have not read the speeches from that period, but I would say two things: any time you make a change to law, you are adding a bit of uncertainty because sometimes it can be interpreted by a tribunal or a court down the track. Until that happens, you will not be 100 per cent certain how that will be interpreted, particularly when you look at areas of discretion in the administration of the law. By definition, making any amendment can generate uncertainty. If you applied that principle completely, you would never change anything, which at least would mean we would not have to spend so much time here.

The other point is about how it operates at the moment. I do not know what the intent was when it was put in, but the Democrats certainly have concerns about how it operates at the moment. Just to make it clear to people following the debate, the amendment goes to the issue of waiving the right to recover the proportion of a debt that is attributable to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt. So it is basically subject to the other subsection in the act which requires the secretary to waive the right to recover the proportion of a debt if it was administrative error and was received in good faith.

My understanding of how things are interpreted as the act stands now is that, because of the court cases—probably the ones the minister was referring to; the one I am particularly aware of is the case in relation to Prince—the test of good faith is now interpreted very stringently. This amendment should allow waiver of those debts where the customer is deemed to have had some unintentional degree of liability, changing it from the current provision of sole administrative error—absolutely no error at all on the part of the person involved—to a slightly more generous definition of administrative error in general rather than ‘sole administrative error’. It should allow for people who did not know that they were being overpaid—where that overpayment arose from an administrative error on the department’s side of things—to have that waiver of the debt come into force.

Because of the way things have been interpreted in court cases, it is now very hard to have that test of good faith acknowledged. It has been made very stringent by court cases. Whether that was the intent of the amendment when it was made back in 1995 I do not know, but that is how it is operating. Even if it was the intent back then, the Democrats’ point of view is that we are not sure it was a good intent, and we have an opportunity to change our intent. As I see it, this amendment does that, and so the Democrats at this stage are still inclined to lend our support to it.

Senator CHRIS EVANS (Western Australia) (10.50 a.m.)—After that brilliant exposition of my amendment, I would be very disappointed if you did not vote for it, Senator Bartlett. I thought you put it very well.

Senator Newman—It wasn’t accurate.

Senator CHRIS EVANS—You will get your turn, Minister. The minister makes the point about certainty. I do not disagree with her. The current provisions are certain, and that is our concern. We are concerned that they are not fair. I am not arguing that; in fact, you are very clear. The interpretation of this ‘solely’ provision has meant that people who we think ought not be caught up in the net are being caught up in the net—where in good faith they have been overpaid, they are having debts raised against them which they should not have. I said in my opening remarks that I accepted that the Labor government had drafted the phrase. I know there is a long history to this, and I accept that. We are always accused of learning nothing in 13 years of government. Perhaps you can take it as an interpretation that I learnt something.

We are responding to what we see is concern about how stringently that is being interpreted currently. There is certainty, as the minister said, but we are concerned about the fairness. Our amendment seeks to provide a bit more flexibility, because we find that the
way the word ‘solely’ has been interpreted is
that many people have, in good faith, re-
ceived an overpayment which they may oth-
erwise have not noticed. I am not talking
about someone being overpaid $10,000 more
than they were entitled; we are talking about
people who may have over time incurred
debts by small extra amounts being paid, and
they ought not be caught up in this require-
ment to repay debts. As Senator Bartlett said,
the amendment says:

... the Secretary must waive the right to recover
the proportion of a debt that is attributable to an
administrative error made by the Commonwealth
if the debtor received in good faith the payment
or payments that gave rise to that proportion of
the debt.

In other words, if it was through no fault of
their own—the Commonwealth made a mis-
take, the client was overpaid and it is not
reasonable that they would have noticed the
overpayment—we say that there ought to be
the capacity for them not to be forced to re-
pay the debt. It is a mistake by the Com-
monwealth; it is no fault of their own; there
is no reason why they should have noticed it;
why should they incur the debt? These are
people who are on fixed incomes, are relying
on social security, and any sort of debt puts
an extreme pressure on them and their lives.
We are saying that, if it is not their fault, why
should they be made to pay? We think the amendment seeks
to do that, of making it operate more fairly.

Senator NEWMAN (Tasmania—Minis-
ter for Family and Community Services and
Minister Assisting the Prime Minister for the
Status of Women) (10.54 a.m.)—I can see
where the opposition is coming from a bit
better, but can I just point out what could be
the result of it that would surely give all of
us concern? It is not unusual to have a mix-
ture of things covered by the existing legis-
lation—for example, where there is a mix-
ture of administrative error on the part of the
administration together with a misrepresen-
tation by the customer as to their circum-
stances. So you can have two things coming
together in the one situation. Currently,
under the legislation as it was amended by the
previous government in 1995, only the ad-
ministrative error would be waived. If the
word ‘solely’ is introduced, the certainty is
gone, as I say, because we have to wait until
that has been interpreted and a court would
ask: ‘Why did the legislature find the need or
choose to change it?’ The danger in this cir-
cumstance would be, for example, that they
would say, ‘There was a reason for this; we
should perhaps waive both the admin error
and the misrepresentation of the customer.’

That is an example that I have quickly
gleaned from my advisers. I really cannot see
the benefit of putting in the word ‘solely’. I
can see dangers. I urge you to think again
about it. It is working as was intended by the
legislature. I do not think that there is any
evidence, really, that it is working badly.
Senator Bartlett did refer to good faith when
he referred to the Prince case. But the Prince
case is not relevant here, because that was an
issue of good faith. We are not talking here
about good faith. This is about the word
‘solely’ being inserted.

Senator CHRIS EVANS (Western Aus-
tralia) (10.56 a.m.)—I just want to say that I
thought it was about having the word ‘solely’
removed. I think the key response to the
minister’s argument is to say that the
amendment moved by the opposition specifi-
cally addresses that concern by saying:

... the Secretary must waive the right to recover
the proportion of a debt that is attributable to an
administrative error made by the Commonwealth

... We address that concern specifically in the
amendment. So I do not think that is a valid
argument. As I say, we think that the current
interpretation of ‘solely’ is too tight and that
people are being caught up in the net who
ought not be. This is an amendment about
trying to make provision so that they are not incurring debts where we think it is unreasonable or unfair to have them incur the debt.

Senator Newman (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.57 a.m.)—I would like to respond to this particular element. I advise the Senate that, in October this year, the Federal Court indicated that the correct interpretation of section 1237A is one that supports the intention stated in the explanatory memorandum. In Jazazievska v. the Secretary to the Department of Family and Community Services, the court considered that, aside from good faith, the relevant questions for the purposes of section 1237A are:

(a) whether any portion of the debt is solely attributable to administrative error; and
(b) if so, what portion of the debt is so attributable.

If that is your intention, that is already how it is being interpreted now. I do not think you are achieving anything in terms of the proportionality issue that is not already there.

Senator Bartlett (Queensland) (10.58 a.m.)—I have a couple of issues in response to what the minister has said which I would like to be pondering rather than speaking about, so if somebody else can find something to speak about for a minute that would be good. My understanding of the Prince case that the minister referred to is that the good faith issue is relevant. What this amendment seeks to do is not insert the word ‘solely’ but remove it. The interpretation of ‘solely’ in that particular case, as I understand it, related to a student assistance overpayment that arose through administrative error. As I understand it, there was no question that the student involved did not declare information appropriately. It was basically found that they should have realised sooner that they were being incorrectly paid and therefore they were in part responsible.

The test of faith there was so stringently applied that, without saying they acted in bad faith, overlaying that good faith aspect, if you like, with interpretation of ‘sole administrative error’ meant that it was not solely an administrative error; it was maybe 95 per cent an administrative error and five per cent the person should have realised or whatever—I am paraphrasing a bit. Basically it has made it very stringent and, as I understand it, has meant that this particular part of the act is not able to be used very frequently—that may be why it was put in; I am sure it is appropriate not to have this wide open door, but the Democrats are concerned, in terms of our information about how this is affecting people, to keep reminding us all that this is what it is about—and that the provision is not able to be used to the benefit of many people. The intent may be that it needs to be that tight, according to the department. Our view and our feedback is that it is too tight and that people who received overpayments through no real fault of their own are nonetheless not having access to the provision. That is my understanding of how it operates at the moment, although if someone else wants to speak for a minute that would be good.

Senator Chris Evans (Western Australia) (11.01 a.m.)—I want to reiterate our point. We were at cross-purposes with the minister earlier. What we are saying is that we accept the history of this. We say that it has been applied too tightly. We are trying to find a way of making it less restrictive. We are quite up-front about that. We accept the argument about a proportion of a debt that is attributable to administrative error. Our amendment seeks to reflect that practice, which is that only that proportion ought to be waived, not any other, and the amendment specifically includes that. We find in our experience and in our feedback from clients that this definition of ‘solely responsible’ is being used in such a way that basically nobody can escape because they are being caught in that trap.

We say that where people have incurred debts through no fault of their own, through an administrative error by the Commonwealth, there has to be some provision that those people have acted in good faith and reasonably do not incur debts. We just do not think that has currently been applied fairly enough. We think it has been too restrictive. I am sure it is certain and I am sure it suits the department, but we have clients saying to us...
that they—and we have examples—have been treated harshly and unfairly as a result of that definition. We are trying to loosen that to provide for the secretary to waive that proportion of the debt where someone has acted in good faith and the debt has been incurred through the error of the Commonwealth.

Nothing the minister has said has convinced me that we ought not pursue that. I think what the minister is effectively saying is that we have current systems in place and we are happy with them. That is fine; that is the government’s view. What we are saying is that we have a view that they are acting too harshly and too restrictively. We are seeking to use this method to provide a bit more leeway for those people who we think should not be caught up in that definition.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (11.03 a.m.)—In response to Senator Evans, there are other ways of addressing the concerns that the opposition has put on the table. I understand that there has already been an offer conveyed to the ALP that there are other ways to address the issues. We will be happy to work with them on that. We think it is a mistake to change something when everybody knows what it means by now. There are other things we could do. I would be interested to know what conclusions Senator Bartlett has come to.

Senator BARTLETT (Queensland) (11.04 a.m.)—Not to prolong this excessively in the absence, as always, of a judgment but basing our position on the feedback we have—I do not know the details of the offer the minister has just spoken about; if it is seriously a problem we can revisit it—I continue to support the amendment.

Senator CHRIS EVANS (Western Australia) (11.04 a.m.)—I understand that the minister refers to some suggestions put to my advisers about that issue. I accept that has been done in good faith. We are faced with a bill now. We are concerned that there is some legislative enforcement of that, rather than merely perhaps changing the guidelines. But as always, if following the end of this debate the minister wants to make a fresh approach to that we always have an open mind to discuss such things, as I am sure the Democrats would. At this stage I intend persisting with the amendment.

Amendment agreed to.

Senator BARTLETT (Queensland) (11.05 a.m.)—We oppose schedules 1 and 3 in the following terms:

(14) Schedule 1, item 31, page 17 (line 27) to page 18 (line 2), TO BE OPPOSED.

(25) Schedule 3, item 14, page 28 (lines 11 to 17), TO BE OPPOSED.

The Democrats wish to oppose schedule 1, item 31, and schedule 3, item 14, which both address the same issue of sentencing. Given that we are nearly at the end of this debate, I will take a bit of time on this issue because it is very important. I urge the Senate to consider this seriously. We have had comments in relation to previous amendments about introducing uncertainty. This is a particularly dangerous part of this bill.

The sections in question seek to change the current arrangement. Basically the intent of the existing paragraph, 1237AA, subparagraph 1, subparagraph (b), is that, where people are convicted of social security overpayment, social security fraud et cetera, and receive a custodial sentence because of that and are punished by being sent to jail, they are not then also punished through the payment of the debt—avoiding that double jeopardy or double punishment.

What this new paragraph seeks to do, one could suggest, is retain the same principle; but the Democrats are very concerned about how it would operate in practice. To avoid the double jeopardy or double punishment circumstance, this new section will now need to meet the following tests: firstly, that the court impose a custodial sentence on the debtor and that the court in imposing a sentence expressly state that, because the debtor was unwilling or unable to pay the debt, the sentence is longer than the court would otherwise have imposed. The intent there, I am sure, is that the government wants it to be clear that the person actually receives some custodial punishment because of their action—and they were not going to be sent to jail anyway. But the Democrats are very
concerned about how this may operate in practice in leaving a person’s fate to whether or not a judge is going to specifically say something in their sentencing remarks. I know the way some judges think in terms of judicial independence, and there may be the risk that some may be even less inclined to specifically state something in their remarks because they feel they have got some law that is trying to force them to do so. To suggest or to try to add some legal requirement on judges to say a specific thing in their sentencing remarks is a dangerous thing because the reality is now that many times they do not. That is probably why this change is being proposed, because they do not specifically say, and the department wants them to because it wants to be certain. I can understand that intention, but it leaves the person who, again in this case, whilst obviously guilty of some wrongdoing, is not exactly in a powerful position—it is one of the least powerful positions you could be in. Their whole fate is resting on whether or not the judge does the right thing in the sense of what is required by this paragraph and expressly states that the sentence is being imposed and that it is longer than it otherwise would have been. Unless the judge uses those magic words each time, we will have people who quite likely will be sentenced to jail having to then get this double punishment.

In terms of how things potentially could operate with this, a defence lawyer—someone who is defending the person who is charged—would be required to argue for their client to get a longer sentence. Now, you try to get any defence lawyer in the country to go out there and say, ‘Please, your Honour, put a longer sentence on my client so that this provision of the act will apply to them.’ I do not think many of them would want to be in that situation. And they would also be saying, ‘Please, your Honour, can you expressly state this in your judgment.’ Sometimes a judge will and sometimes they will not. I think it is a very dangerous principle. I do not know if there is a precedent for it in other legislation. If there is, maybe my concerns could be slightly assuaged. But I find this particularly dangerous. I understand the intent, but the effect of it is very worrying to the Democrats. I could go on about broader, loftier principles of independence and separation of powers and independence of the judiciary, but I am more interested in how it is going to affect the people in this case. Again, you are dealing with people who, sure, have done the wrong thing—that is why they are going to jail—but are having a potential extra risk put onto them. We need to punish people for wrongdoing but we do not want to obliterate them.

There is also the issue of trying to ensure that they can get back into things. As we are talking about social security law, I could talk long about how difficult it is for people when they are released from prison to get enough money to get back into the community and not run the risk of sliding back into crime and other areas. It is a real problem in itself. That is a little extraneous, but I raise it simply to say that we are dealing with people whose lives are already pretty stuff up and who are already going to have a fair bit of trouble getting it back together. It may be stuff up completely due to their own fault, but that is not the point. Our concern is that the way in which this may operate in practice may indeed be the reverse of what I am sure is its intent. The intent of the section is to avoid double punishment. Our concern is that it may mean more people being put in that circumstance because the test that is being put in place will be unable to be guaranteed. You cannot guarantee that a judge will expressly state anything in imposing a sentence. I think it will also put an unhelpful dynamic into the whole legal process from the point of view of the defendant and how they put their case in terms of how they would be dealt with by the court if they are found guilty—and obviously this only applies to people who are found guilty. So it is one that we are very concerned about, not necessarily with the intent but with how it may operate in practice. It is one that we think is a dangerous thing in principle and may well be a bad thing in practice.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (11.12 a.m.)—I have listened carefully to Senator Bartlett, but I
think that it is important that he understand just how this amendment has come forward from the government. The current legislation provides for where the court has indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt. In those circumstances, the current legislation says the secretary must waive the right to recover the proportion of the debt that arose in connection with the offence. But the government has received a formal request from the Director of Public Prosecutions that this provision be changed because it is inconsistent with sound sentencing principles. So the government has brought forward the changed legislation. We in the government have moved to satisfy the Director of Public Prosecutions by inserting ‘expressly stated that’. In imposing the sentence, instead of indicating, the court has to expressly state that, because the debtor was unable or unwilling to pay the debt, the sentence was longer than the court would otherwise have imposed, and in those circumstances the secretary must waive the right to recover the proportion of the debt. So at the request of the Director of Public Prosecutions, who says that the provision needs to be changed because it is inconsistent with sound sentencing principles, we have moved from ‘indicates’ to ‘expressly stating that’. I think the Senate would be very well advised, as the government has been, to take account of and to implement the advice that has been received from the Director of Public Prosecutions.

Senator CHRIS EVANS (Western Australia) (11.15 a.m.)—I am a bit caught on how to respond to this issue. I do not have any instructions in the sense that it is not an issue that we have looked at in detail. It was not part of our consideration of the bill. I must admit that Senator Bartlett has raised some concerns in my mind about this. I hear what the minister has to say. I am also conscious that some of the civil libertarians on my side like Senator Cooney will have me hung, drawn and quartered if I agree to something that—

Senator Abetz—Take a punt!

Senator CHRIS EVANS—As Senator Abetz would know, Senator Cooney would take a keen interest in such an issue. This is one of those occasions when the Democrats are arguing for the status quo and the government are the radicals. My general inclination in these things is to go with the status quo unless convinced. I accept that there may be a problem. I am just loath to—

Senator Newman—Can I assist you?

Senator CHRIS EVANS—I am happy for you to have another go, Minister. I just indicate that at this stage, subject to being convinced—because Senator Bartlett has raised some serious concerns—I would be inclined to vote with him and, therefore, leave the status quo in place. That is because I do not feel abreast of the argument rather than anything else. I have not had the chance to look at this more closely. I will be interested in what you and Senator Bartlett have to say. At this stage, as I say, I am not across the issue in the detail that one would want to be in making that decision. I have not had a chance to look at the DPP’s advice or at any sort of justification. Senator Bartlett does raise some issues which concern me. Obviously his comments about understanding the complex workings of the minds of judges and their sentencing is a fair point. Often a judge just comes down and says, ‘You have got nine months,’ and that is it. I am not sure how then this is intended to work. But I am happy for the minister to provide further advice. I am happy for Senator Bartlett to push his case but, in a sense—and I do not mind admitting it—this debate has come upon me when I am a bit unprepared, in the sense that I have not thought through the issues deeply. Basically, I am a little cautious.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (11.18 a.m.)—I draw Senator Evans’s attention to the fact that the Senate Scrutiny of Bills Committee has not made any comment on this and, as a former member of the Scrutiny of Bills Committee, I well understand your concerns that Senator Cooney be satisfied, but I think he would be guided by the Scrutiny of Bills Committee as
well. I offer that to you as a piece of information. Obviously, I have not convinced you. This has not come forward, if you like, as a whim of the government or the department, or for convenience. It has come forward because the DPP asked for it.

**Senator BARTLETT (Queensland)**

(11.19 a.m.)—I do not think anyone is disagreeing about the intent of how we want this section to operate. It is how it may operate in practice. I appreciate Senator Evans’s difficulty. It is a slightly frustrating situation to be in, I guess, although I would say that our amendments were circulated 20 days ago. Certainly, the main source of concern that was raised with the Democrats about how this provision may operate came from the Welfare Rights Centre. I would be surprised if they did not provide the same material to the opposition at some stage. That is not a criticism of Senator Evans: it is more an extra expression of frustration. I was not aware that this change has been generated at the request of the DPP. Far be it from me to argue with the DPP about legal principles. I find it perplexing as to why having the existing requirement that an indication be given of a statement is not a sound sentencing principle, but putting something in that requires an express statement is a sound sentencing principle. It perplexes me that that would also meet the requirements of the DPP.

However, I am more interested in how this will affect people. It may make life a bit harder for the department, and I do not seek to do that, but I am very concerned that it may make life a bit harder for the few people who are in a situation where they get a judge that does not expressly state. Obviously it is a tougher test to have to expressly state something than it is to indicate something. There may well be sound reasons why the government or the DPP wants a tougher test, but the impact on individual people, in the view of the Democrats, may be that that tougher test will lead to a few people being unfairly punished. That is a risk that we do not want to run. Whilst the current system may not meet sound sentencing principles, although I would be interested to see the exposition of that from the DPP at some stage, I have not heard any indication that it works in a way that means that the intent of this section does not operate as it should in relation to avoiding double punishment. My concern is that the way it may operate with this change is that that double punishment may be more likely to be inadvertently applied. That is a circumstance that I am sure none of us want to see. In the Democrats’ view, we are running a risk if we allow this provision to stand.

**The TEMPORARY CHAIRMAN (Senator Sherry)**—The question is that schedule 1, item 31, and schedule 3, item 14, stand as printed.

Question resolved in the negative.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**Third Reading**

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

**HORTICULTURE MARKETING AND RESEARCH AND DEVELOPMENT SERVICES (REPEALS AND CONSEQUENTIAL PROVISIONS) BILL 2000**

**Second Reading**

Debate resumed from 8 November, on motion by Senator Ian Campbell:

That these bills be now read a second time.

**Senator FORSHAW (New South Wales)**

(11.23 a.m.)—The horticultural industry is of great importance to the Australian economy both domestically and with respect to the revenue earned from exports. Indeed, in the latest figures I have available to me, the total value of the horticultural industry in 1999-2000 was in the order of $5.6 billion and the net export value was around $1.2 billion, a not insignificant amount in terms of our export earnings. The industry comprises some 80,000 growers, many of them small family enterprises and businesses, and of course there are a substantial number of employees in the value adding sectors. It is a group of industries, because ’horticultural’ encompasses quite a range of different products, various fruits, vegetables, and so on. The
industry has been going through some difficult times over recent years—not unlike other agricultural areas of course. Horticulture has been hit hard through such difficulties as problems with prices. We have seen the closure of some of the canneries in the fruit area. There are the ongoing difficulties associated with the importation of concentrates from overseas and the impact that that has upon prices received by Australian growers. We also are aware of the difficulties of trade barriers and protectionism that exist in other countries, which we are constantly endeavouring to break down through the WTO, the Cairns Group, and so on.

Issues related to quarantine and disease prevention have been prominent in the news in recent times. The Senate Rural and Regional Affairs and Transport Committee, of which I am a member, will be undertaking an inquiry early next year into the issues surrounding the draft risk assessment by Biosecurity Australia on the importation of apples from New Zealand. I notice Senator Calvert in the chamber. I think he moved the motion to hold the inquiry; he managed to get in first before quite a few others did. Senator Calvert is aware, as we all are, of the very serious concern regarding the potential introduction of fire blight into our industry. Equally, there are other potential difficulties that the industry may face. One that has also been drawn to our attention is the problem associated with Pierce’s disease in the California citrus industry.

I say all that by way of background because we need to understand that, when we are discussing the Horticulture Marketing and Research and Development Services Bill 2000 and the Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Bill 2000 that are before the chamber now, we are dealing with areas of research and development and of marketing for horticultural products now and in the future. If we as a nation and the industries are going to progress, then it is important that we examine closely the arrangements for research and development and marketing of our horticultural products. These two bills are the end product of an ongoing process over a couple of years essentially to privatisate the research and development corporations that have hitherto existed. This is not a new feature. Indeed, it appears that these days I am on my feet in this chamber reasonably regularly making speeches, as are other members of our Senate committee, on the processes of privatisation of various statutory R&D corporations. I think we are going to come to one in the next couple of days in the wool industry, but at the moment we are dealing with horticulture.

The legislation that is before the chamber establishes a new horticultural services company to be known as Horticulture Australia. It will be the result of the amalgamation of the two major industry umbrella bodies that currently exist. They are the Australian Horticultural Corporation, or the AHC, and the Horticultural Research and Development Corporation. The other major body is the Australian Dried Fruits Board. Under the legislation, that board will be abolished and its functions incorporated into the new company, Horticulture Australia. However—and I will come back to this later—there will be a specific trust account established to hold the approximately $2 million in funds of the Australian Dried Fruits Board for that industry to access for R&D and promotional activities.

The charter of the new company is to provide marketing and research and development programs to industry—in effect, to carry on the work that has been done or was the responsibility of the two corporations that I mentioned a moment ago. This new company will be an industry owned or member owned company, a not-for-profit company, and therefore will no longer be a statutory organisation. The members of the new company will be the industry representative bodies, who are, in turn, made up of individual growers throughout the horticultural sector. The funds for the new company will be provided by way of the member contributions through statutory levies and voluntary contributions that exist and will continue to exist under the new arrangement. The voting rights for individual members and bodies will be allocated according to the level of funds contributed by each entity.
As I said, the legislation has been some time in the making, and that has been because of the need to bring about industry consensus across the various sections or products groups within the horticultural industry. I understand that there are at least 29 such groups that currently have grower members or companies paying levies and in turn contributing to the corporations. I am advised that it has not been a simple process to bring all of these groups together and to negotiate with government on the new structure, but we are assured—and I note that in his second reading speech the Minister for Agriculture, Fisheries and Forestry made some comment about this—that there has been a substantial amount of consultation with industry, and also subsequent detailed assessment by government, to bring about this new single company structure. That is an important element because, as we have found in each of the privatisation exercises that have gone on in various industries—in the pork industry, the red meat industry, the wheat industry and now the wool industry, just to name a few—the critical factor has been to get industry consensus. If industry is going to take on more of the ownership and control of these organisations, there is a need for consensus to prevail.

I am advised that the net assets of the two existing corporations amount to some $20 million. Those assets will be transferred to the new company, along with liabilities. Further, I am advised that all existing staff will be transferred to the new company, retaining their rights and conditions, as should be the case. I mentioned earlier that the Australian Dried Fruits Board will be abolished and integrated into the new Horticulture Australia company. They have some $2 million, I understand, in existing funds and they will be placed into a special trust fund earmarked for R&D for the members of that industry.

The position of the opposition is that we support the process. We recognise that it has been brought about through consultation and negotiation with industry, and it is in line with the general principle that is being implemented across various other agricultural and rural industries. Our support is not unqualified, because there are some important issues that we believe need to be referred to and further pursued during the committee stage of the debate, but in principle our position is that we do not oppose the legislation. We do wish to raise a few matters, and, as I said, we will come to these in more detail in the committee stage. I am sure my colleagues Senator O’Brien and Senator Woodley—maybe even Senator Calvert—will have some questions to ask. Let me mention just a couple of matters.

Firstly, one of the specific functions or powers that will exist under this legislation is that the Minister for Agriculture, Fisheries and Forestry can declare the company to be the industry services body and also the export control body for the industry. It is not necessarily the case that the one company would be declared to be both entities or take on both functions, but as I understand it that is certainly the proposal at this point in time. Indeed the minister, in his second reading speech, referred to this at page 4, but he also drew attention to the fact that there were a range of conditions to be met, one of which included that the company sign a deed of agreement with the government to fulfil industry and public accountability requirements. He then goes on:

If the company changes its constitution in a manner considered unacceptable to the government, becomes insolvent, or fails to comply with the legislation or the deed of agreement, the legislation provides for the government to retain the right to declare another body as the industry services body or the export control body or to retransfer the assets and liabilities to another suitable body.

This is a substantial power that the minister will have and is something that we need to explore a bit further during the committee stage. But it leads me to a very important issue, which is the whole question of accountability for funds. Until now, the R&D corporations have existed as statutory bodies and, accordingly, each year on a couple of occasions through the estimates process we have the opportunity to examine the accounts of the R&D corporations and to raise matters with the minister and with the public servants present at estimates. We also, of course, have the same opportunity through
the parliament because the portfolio budget statements are tabled, as are the annual reports of each of the corporations. Under the new arrangements, I understand that that will no longer be the case because this will be a private company.

Nevertheless, it will be a company that will be receiving matching funds from government. At the moment, that is of the order of $14 million per annum. We have no problem with the provision of matching funding from government or from the taxpayer—from the public purse—to this industry or indeed to other agricultural industries to help in the promotion of R&D, marketing and so on. That has been a longstanding practice in these industries. But we are concerned that the new companies be accountable for how they spend that money. They should be accountable to the government and more so to the parliament. We will be looking for some further clarification from the government in the committee stage as to just how that is going to be the case. I note that in the explanatory memorandum on the Horticulture Marketing and Research and Development Services Bill this issue of accountability is referred to, but it is of course by way of a deed of agreement rather than any specific obligations in the legislation.

The final point I would make at this stage, as I draw my remarks to a close, is another issue of some concern—that is, the powers vested in the minister under section 29 of the Horticulture Marketing and Research and Development Services Bill. Section 29 of that bill deals with the power of a minister to make ministerial directions. I will not read the entire section because the parliamentary secretary and others would of course have this in front of them. Of particular interest and concern is that it states in subsection (3):

The Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after direction is given, unless the Minister makes a written determination that doing so would be likely to prejudice:

(a) the national interest of Australia; or
(b) the body’s commercial activities.

We are concerned that it is up to the minister ultimately here to decide whether or not such a direction is a disallowable instrument. We would particularly like to get some further clarification on that issue in the committee stage. I will leave my remarks at that. As I said, we are supportive of the legislation in principle but there are a range of issues that we would wish to get some further clarification on in the committee stage. Hopefully, if they are clarified to our satisfaction, we can proceed further. (Time expired)

Senator WOODLEY (Queensland) (11.43 a.m.)—I too wish to speak on the Horticulture Marketing and Research and Development Services Bill 2000 and a further bill which supports this one. I want to speak on it for a number of reasons. Quite clearly, the opposition parties are in support of the legislation, but there are a number of issues which are worth raising in the context of this debate and which will serve to give the government notice of concerns that we have and which will continue to be raised. This legislation provides for the formation of a company to be established under the Corporations Law as the industry services body for Australian horticulture. As we have seen, and as Senator Forshaw has mentioned, this is part of a process which has been taking place in many commodity bodies and it is one that the Democrats have largely supported because it does give autonomy and control to producers to a very large degree.

Although generally we have many questions about privatisation as a principle in itself, certainly in terms of privatisation of these particular industries, where it means giving control to companies that are largely controlled by growers, we have been pretty much in support of the process. However, in terms of the transfer of autonomy to producers, with the special relationship and new relationship which exists between those privatised companies and government, there is a question which is both particular and philosophical. That question has to do with how much autonomy these privatised companies do have, how much they should have and whether or not at times that autonomy is overridden not because the particular company has any failing but because of government involvement in other instrumentalities
which bear on the operation of such companies. I will come back to that a little bit later.

In reference to the bill itself, we note that there are provisions for the continued support of the research and development program and the marketing program. These are important issues in any company operating in Australia today but they are of critical importance when we are talking about primary produce. As all senators know, for many of our rural producers and for many of our commodities it has been a real struggle. It has been a struggle in terms of continuing to receive support for research and development, which is the only thing which keeps many of these industries as world leaders in terms of the product which is grown. We know that many of our products are world leaders, but we also know that most of our commodities are sold into world markets which are corrupted, in many instances by governments that give to their own industries support which we do not give to our industries. So research and development is critical in keeping our producers and our products right at the very cutting edge of development. The same goes for marketing. We need to be right up there in our continued support by the Australian community generally for primary production in this country, and that support by the general community is generally channelled through government programs.

We note that the change in organisation is welcomed by the industry generally. It should lead to efficiencies, and the promise of a more directed research and development program—and therefore a more focused export program—I think is welcomed by everybody. The move by industry and government in this instance follows similar rearrangements of other agricultural industries in which the government seeks to support the industry but remains at arm’s length from its management. Often the involvement of government is because of levies which are still collected through government agencies. The problem is that the definition of arm’s length is often a very slippery one and very hard to get hold of. I think government would recognise that. Senator Forshaw in his speech raised a number of issues where this relationship in terms of continuing government involvement is one that is not clear. That is not the fault of government; it is simply that we are developing these relationships and the way in which they operate as we go along, and there is not always a consistency in the way in which continuing government relationships are defined in legislation, depending on which commodity we are talking about.

As well as the issue which Senator Forshaw raised, there is another issue which I suppose is a peculiar Democrat issue that I want to raise here. It is to do with the autonomy of producers. I want to say to the government that it is okay for us to want to transfer to producers responsibility for making decisions about R&D, export and other things. But producers sometimes feel that in certain instances they are not listened to and that there are decisions made by government which affect their industry over which they have little control, which raises in their minds questions about whether or not they really are autonomous and whether they really do have control of their own industry.

I suppose the classic is the current decision on imports which is being contested very hotly by apple and pear growers in Australia. This is one where the Democrats differ from the major parties. While we recognise that it is not possible to achieve zero risk in terms of imports— in other words, we cannot guarantee that there will be no environmental or economic impacts when we allow imports into the country—the Democrats believe nevertheless that zero risk is what Australian producers and Australian consumers want. I know that we operate on what is called managed risk, but it is another one of these very slippery definitions, because managed risk can mean anything. It can mean whatever the government, AQIS or whoever is involved in the decision happens to believe is acceptable at the time. I have real problems with that. I believe that the goal of any quarantine service ought to be zero risk.

We cannot achieve zero risk sometimes because of the cost—that is the problem—but I believe that nevertheless we should maintain that as the goal and do our best to
come up to that. The goal should not be an acceptable managed risk, because that is a very slippery goal indeed. That is why we are having all of these disputes arising and recourse to Senate inquiries after the fact. It has occurred with salmon; it is now occurring with apples. It raises the whole issue of whether or not these industry bodies have real autonomy. They have autonomy in terms of research and development and some issues to do with marketing but, if in fact they do not have the ability to influence decisions such as the decision about the importation of New Zealand apples, one puts a question mark over whether or not they do have control at the point at which it really counts. It is a philosophical debate and it is one that I presume we are going to engage in continually over coming years. It is a debate on which the Democrats have a particular view—if you like, a peculiar view—but nevertheless it is worth putting that view on the table.

Another part of that debate is the fact that, while the claim is made constantly that AQIS makes these decisions only on the basis of scientific data, it has been very clear in the inquiries we have had that trade imperatives seem to be given equal weight by AQIS, and I have to ask the question as to why. If it is the Australian Quarantine and Inspection Service, surely pure science is all that it should engage in and taking account of trade issues is not its job. I know that the whole issue of trade is dealt with by the Department of Foreign Affairs and Trade, but the distinction between the responsibilities at this point seems to be very blurred. That has come out very clearly in some of the inquiries that the Rural and Regional Affairs and Transport Committee has dealt with.

I will close with these comments. The issue of fire blight is one that has caused a lot of concern in the industry. Some would say that there has been an erosion of our quarantine standards and that the loopholes and this erosion should be dealt with. I guess, as we continue to progress our Senate inquiry, that debate will be very much to the fore. I note, as an illustration of what I am talking about—the concern of industry that sometimes it does not have the control over its future that it feels it should have—that next week, I think it is, there will be a complete shutdown of businesses in the town of Shepparton.

**Senator Troeth**—Yesterday.

**Senator WOODLEY**—Right, I thought it was Tuesday week but it was yesterday. Thank you for that information, Parliamentary Secretary. As you can see, I am not always up with the game. I am reading from the press release which dealt with that and I note that it was predicting a massive public rally. It said that it was a protest against Biosecurity Australia’s plan to allow the importation of potentially fire blight infected apples from New Zealand. We should take note of such protests. I do not think conservative business people in conservative communities—of which I believe Shepparton is an example, and I have had some relationship with Shepparton over many years—engage in these kinds of protests lightly. It raises again very clearly the question, which I think this chamber must take account of, of just how much control producers do have over their own industry if part of what the industry engages in is certainly under their control through this company but other decisions are made over which they feel they have no control. Certainly, it raises the issue of whether or not they really do have the autonomy which this bill seeks to give them.

I note that fire blight as a disease is very serious. I note that the press release of the Australian Apple and Pear Growers Association says:

“This is a people’s protest,” says local businessman David Jobling. “Closing the city is symbolic. It’s what will happen to Shepparton and many other country towns if Fire Blight is introduced from New Zealand. The apple and pear industry is the lifeblood of this area. If it goes under because of the importation of Fire Blight, we will go as well.”

It notes:

Fire Blight destroys pear orchards and severely damages apple crops. It is endemic in New Zealand and 40 other countries, but does not exist in Australia.

Independent researchers predict Fire Blight would cost Australia $1 billion in 6 years. It would cut pear production in this country by 50
per cent and apple crops by 20 per cent—90 per cent of the pear orchards around Shepparton would be destroyed.

So I am sure the government is just as concerned as we are about that issue and certainly about the obvious concern that is in the industry and associated industries. It is a very good illustration of the point I am making that, when we come to talk about autonomy and giving control of an industry to growers, sometimes it is very much a qualified control, and we need to take account of the concerns that are being raised here. In conclusion, let me say that the Democrats welcome the chance for increased efficiencies in the industry. We are pleased that growers will have autonomy in these particular instances. I close by saying that industries need to have real control and real autonomy in all of the issues that affect them.

Senator O’BRIEN (Tasmania) (12.01 p.m.)—As Senator Forshaw said, the horticultural industries are a key sector of the Australian rural economy. They account for around 20 per cent of the production value of Australian agriculture. That alone demonstrates the importance of the measures contained in the Horticulture Marketing and Research and Development Services Bill 2000 and the Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Bill 2000, and the reason why they should be given close scrutiny by the Senate in its consideration of this legislation.

Last year, 80,000 growers produced horticultural products worth an estimated $5½ billion, which was up from $2.4 billion in 1998-99. Last year, horticultural exports were worth $1.2 billion, which is an increase of 110 per cent over the past decade, and fresh produce exports were worth around $700 million. It goes without saying that these industries are key generators of jobs in regional Australia. For example, in 1999-2000 the fruit and vegetable processing sectors employed 11,200 people. My state, Tasmania, is a key player in this sector. The state of Tasmania has a cool to temperate climate, good soils, good water and a stable workforce; this enabled it to generate horticultural exports worth $54.4 million in the financial year 1998-99. My home and my electorate office are in the north-east of Tasmania, which is one of the key areas of horticultural production.

I recently visited Scottsdale, the location of one of the major potato processing plants in northern Tasmania, where I spoke with members of the community at a meeting I attended with the member for Bass, Michelle O’Byrne. I talked to people who were employed in the farming industry, the vegetable processing industry and other industries such as forestry. Certainly horticulture is a key industry and a key employer in this region, in terms of both production and processing. You will not be surprised to hear that, when we spoke to members of the community at that meeting, the big issue was not this piece of legislation; it was the cost of fuel. That is a matter that has received significant airing in this chamber recently and that will, given what is taking place in regional communities, be a matter of great concern for some time to come. Anyone you want to talk to wants to talk to you about fuel. It is an issue which, as I said, we will be dealing with in other circumstances.

In relation to this legislation, on 12 September this year, horticultural industry leaders signed a memorandum of understanding setting out the main operational and policy items agreed to between the industry and the government for the establishment of a company to be known as Horticulture Australia Ltd. I want to commend the work done by Senator Troeth in successfully negotiating this outcome with such a large number of identifiable industry sector groups—I think about 29 comprise the horticultural sector. Looking at the schedule on page 31 of the constitution of Horticulture Australia, it is evident that they are very disparate groups: the Australian Apple and Pear Growers Association, the Australian Avocado Growers Federation, Australian Citrus Growers Inc., custard apple growers; the Macadamia Society, the Vegetable and Potato Growers Federation, cherry growers, the Potato Industry Council, chestnut growers, almond growers, fresh stone fruit growers, mushroom growers, nashi pear growers, the garlic industry,
the passionfruit industry, the tomato processing industry, the nursery industry, Queensland Fruit and Vegetable Growers, the Australian mango industry, the Australian onion industry, the Dried Fruits Association, Strawberries Australia, pistachio growers, the Australian Nut Industry Council, the Australian Rubus Growers Association, the Tasmanian Farmers and Graziers Association, the Pyrethrum Growers Commodity Committee, the Australian Banana Growers Council, the Canning Fruit Industry Council and the Australian Sugarplum Industry Association.

Senator Forshaw—And there’s more!

Senator O’BRIEN—There may well be more. I am certain that this is such a disparate sector that 29 organisations could not possibly encompass the range of horticultural commodity producers and processors that this country can and, no doubt in the future, will support. That is why I say that one can do nothing but commend Senator Troeth for bringing those organisations together. As someone suggested to me, it may be that Senator Troeth was fortunate to get them on the one day that they can agree! One never knows what the future will bring with regard to such a disparate group.

Senator Troeth—Two and a half years.

Senator O’BRIEN—Senator Troeth suggests across the chamber that it took 2½ years. It took 2½ years to arrive at the one day when these organisations could agree. If that occurs every 2½ years, then the board of this organisation will be unanimous once in each term of government during the coming century. What an organisation we are going to deal with! The Commonwealth is going to deal with this organisation under the umbrella of this legislation. The key to the future of this sector, as with all other rural industries, is, among other things, an effective and efficient research and development effort. According to the last annual report from the Horticultural Research and Development Corporation, current investment in research and development is running at around $32 million. The total value of the research and development program at the end of the last financial year was $101 million. Last year, the number of projects in the corporation’s program was 566. There were 1,050 researchers working on these projects, located in 378 research centres, which is quite a network for this new body to oversee. Under current arrangements, with the organisations that are proposed to be replaced by this Corporations Law company, we have a set of arrangements for accountability to the parliament for the expenditure of a large amount of money. That relationship with the parliament and through the parliament to the Australian public is quite clear. Under the Horticultural Research and Development Act 1987 the corporation is directly responsible to the Minister for Agriculture, Fisheries and Forestry. I understand—that the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry may wish to correct me on this—that Senator Troeth has delegated responsibility in this regard. Senator Troeth is nodding. The Commonwealth Authorities and Companies Act requires the corporation to report also to the Minister for Finance and Administration.

According to the annual report there are currently two key stakeholders in the research effort: on the one hand, there are the industries involved in the production, processing, handling, storage, transport and marketing of horticultural products; and, on the other hand, the Commonwealth of Australia. Under the new arrangement to be established through this legislation, these accountability measures will be replaced by a memorandum of understanding between the new company and the Commonwealth. That means that this new entity—an amalgamation of marketing and research and development—will sit outside the direct scrutiny of the parliament. However, it will still have access, as I understand it, to around $14 million of public
funds. A deed of agreement will cover the expenditure of levy moneys as well as the Commonwealth’s contribution to research and development funds.

The revenue from the Commonwealth for this purpose was $13.7 million in 1999-2000. I note in passing that, when these bills were before the other place, the government did not provide the opposition with a copy of this important deed of agreement. The government subsequently changed its mind and provided the documentation necessary for the Senate—and, certainly, for the opposition in the Senate—to give appropriate scrutiny to this important shift in the arrangements for rural sector research and development and its administration. It has been suggested, with regard to the way this has been structured, that the government has taken the same approach as it took with the wool privatisation legislation—that is, it chose to push the bill through the parliament without providing any of the detail. In that case, it has been forced to change its mind and provide that detail, which the opposition would say it should provide.

Under the new arrangements, the two stakeholders remain the industry and the Commonwealth government, but the role of the Commonwealth has been radically changed. On the face of it, these bills represent an outsourcing of the marketing and research and development functions to the industry itself, but public scrutiny of the expenditure of significant amounts of public funds will shift from the parliament to the executive—that is, the minister. In fact, the new arrangements provide the minister with significant if not absolute power over the new corporate entity. I am concerned that, in attempting to limit the role of government in the day-to-day affairs of organisations such as those in the horticulture industry, the government may have created greater problems. For example, the minister has the power to give the new company a formal direction with which it must comply, but the minister is then not required to formally account for his or her actions in the parliament. That is one of the issues on which the opposition will be seeking clarification in the committee stage of these bills.

From what I am saying, it is obvious that we are going to support the bill in the second reading stage with a view to pursuing these matters in the committee stage. There is quite a range of matters which need to be pursued, and it is my understanding that the opposition will be prepared to maintain support for the bill, conditional upon the satisfactory answering of questions raised in the committee stage. It may be—the opposition will keep an open mind on this matter at this stage—that amendments need to be made to the legislation to properly provide the means to scrutinise certain executive actions. Those matters will be the subject of responses that we receive in the committee stage of the deliberation of these bills.

What I am perhaps suggesting is that the committee stage will take some time. Hopefully, it will be possible for the questions to be answered at the time they are asked and to be considered in a timely fashion but, if not, it may be that the committee stage will need to be interrupted for the provision of that information. I say that because we are not seeking to unnecessarily delay this bill. If the answers can be given in a timely fashion, hopefully we can consider them at the same time and move forward. I would not want the government to feel that the opposition are locked into supporting this bill whatever the answers are, because that is not my understanding of our position.

I do not really wish to put a lot more on the record at this stage, but I have quite a deal of material I want to raise in the committee stage. I did want to ask Senator Woodley to come back in the committee stage and explain to us what he meant by ‘peculiar Democrat issues’, because I think there was a bit of ambiguity in what he said. Rather than misrepresent him, I think he should have the opportunity, when we come to the committee stage, to come back and give us an interpretation of just which Democrat he was describing as peculiar or whether that was a general term he wanted to use in relation to his own organisation.

Senator HARRIS (Queensland) (12.16 p.m.)—I rise to speak on the Horticulture Marketing and Research and Development Services Bill 2000 and the Horticulture Mar-
keting and Research and Development Services (Repeals and Consequential Provisions) Bill 2000. I indicate the support of Pauline Hanson’s One Nation for the government’s bills and indicate that in the committee stage I will be seeking some clarification from the minister on a wide range of issues. Some of those issues have been briefly indicated by other speakers in the second reading process.

One of the concerns that we do have is that the minister’s accountability to the growers is not clearly defined in the bill itself. We will be seeking some assurance from the minister as to how the growers involved in this industry will be able to seek accountability from the minister for the implementation of the legislation and also whether the growers will have access to the minister in relation to the decisions of the board and a right of redress.

Another issue on which we will be seeking clarification from the minister is in relation to section 22 of the Horticulture Marketing and Research and Development Services Bill 2000. Section 22 speaks to the granting and assigning of a licence, granting a licence subject to compliance with conditions, varying a licence, surrendering a licence and revoking or suspending a licence. Section 23 of the bill gives powers to the secretary of the body if there is no industry export control body. We have some concerns that we could have a situation whereby a person from the department—a bureaucrat—would have the ability to grant or reject an application for a licence. Taking that one step further, I will be seeking some clarification from the minister as to whether, if there were no industry export control body, that secretary would be able to reject an export licence from an individual grower and subsequently grant an application from another grower. I will be seeking very clear answers from the minister about whether we could have the situation whereby a single applicant could be denied but another applicant in that same sector of the industry could be granted. If that is the case, I believe that would not be in the interests of the growers.

Other issues we will be looking at include whether the government is in any way interfering in the rights of the private sector to operate and run their businesses. In the marketing and research section, the bill speaks about the application of the bill both within and outside of Australia. I will be seeking from the minister some clarification as to the extent this bill can have application outside Australia.

The other concern we have is that, in passing this bill, we are centralising more power in the executive of the board. By this bill being brought into existence, are we getting to a position where the people who are participating in this industry are being removed a little further from being able to have control over their own industry and where they will ultimately lose the direction in which the producers would like the industry to travel? Will this company that is to be put in place jeopardise the producers’ ability in the future to dictate the direction in which they want the industry to go? As I said earlier on, we will be seeking some clarification from the minister about the accountability of the board to the growers and about the ability of the growers to have a right of appeal against the decisions of the board and to be able to petition the minister.

Our inquiries to people who are involved in the industry itself generally show that the industry does support the government in the introduction of this bill. I would just like to make the comment that the selection of the company that is going to provide this service will be extremely integral as to how this legislation will be administered and what it will deliver for growers. I believe there was an indication just recently in the media that it looks as though there will be an amalgamation of some of the companies that may have been vying for the ability to provide the service. So if the government’s intention was to have competing forces working within the marketplace to provide these services prior to establishing this company, that may have been circumvented to some degree by the players within this industry amalgamating. Again, I indicate that we will be supporting the bill but we will be seeking clarification from the minister on a wide range of issues.

Senator TROETH (Victoria—Parlia-
mentary Secretary to the Minister for Agri-
culture, Fisheries and Forestry) (12.25 p.m.)—I would like to thank all senators for their contributions to this part of the debate. As has been said, the purpose of these two bills is to create a new horticultural services company that will deliver more effective marketing and research and development programs to horticulture. Senator Harris, at this stage I will deal with your closing comments. We are not seeking to look for other companies to take up this role. What we are doing in this legislation is amalgamating the existing Australian Horticultural Corporation, which provides marketing services to horticulture, and the existing Horticultural Research and Development Corporation, which provides research and development services. In this legislation we are simply combining those two corporations into a new corporation that will perform the services of those companies. There is no thought by the government of looking for another company to actually perform those operations.

As has been remarked, horticulture is an extremely important growth industry in Australian agriculture. It ranks third behind meat and grains in its total value of production. More importantly, it also provides a great deal of employment. Some 80,000 people are directly employed in regional and rural Australia, with a further 11,200 people employed in processing. So it is a very important industry. The formation of the new company has strong industry support. If there was any thought that the industries were not being listened to I should explain that the office bearers of those industries went back again and again and again to negotiate with their levy payers to explain the process and to make perfectly sure that this whole process had the total agreement of the industry. So there can be no thought of industry not having been listened to. Industry was a very willing and competent participant in all of these processes, and there was massive consultation.

The proposed approach has strong levels of accountability built into it. That accountability is provided at three levels. The first level of accountability is between the company members, the 28 horticulture industries, that have signed on to the memorandum of understanding and the levy payers who are providing a majority of funds for the company programs. The levy payers will have the opportunity to consider the investment plans developed by an industry advisory committee for each horticulture industry at an annual levy payers meeting. The company will then arrange the most cost-effective delivery of those marketing and/or research and development plans. Each industry body or others that contribute funds to the company through either the statutory levies or the voluntary contributions will hold voting rights in the company in proportion to the level of funds they contribute. So that is the first level of accountability.

Secondly, the company has to sign a deed of agreement with the government to fulfil its industry and public accountability roles. That deed of agreement specifies the accountability requirements of the government for the company. It includes provision for the company to prepare a strategic business plan and an annual business plan within six months of establishment. It defines what research and development expenditure is eligible for matching funds under the government’s matching policy for research and development, up to 0.5 per cent of GDP of horticulture. It requires an annual audit to be undertaken of the use of matched research and development funds and marketing funds. Copies of the audit will be provided to the government.

The company annual report is required to provide a comprehensive accounting for the
use of funds as well as outcomes achieved for both marketing and research and development funds, public benefits achieved and the extent to which the company’s plans are being met. It will also include full financial accountability, including balance sheet and cash flow positions. As well, the deed provides for the company to give consideration to Commonwealth research and development priorities, which I frequently outline to research and development corporations, and also to have in place a fraud control, intellectual property and risk management plan. Every three years the company is required to conduct an independent review to consider the company’s effectiveness in meeting its plans and the value for money of its performance.

The government has also built strong accountability into the company’s use of export control powers. This includes the process for declarations and revocations of declarations of specific products and markets that will be regulated under those export control powers. That includes application and consultation, review of the application by the company board, assessment and approval by the Commonwealth Department of Agriculture, Fisheries and Forestry, decisions by the secretary of that department and a timetable of review of individual export control arrangements as well as the entire scheme.

The third and final accountability built into the approach to this company is the controls provided by the Corporations Law. If the company changes its constitution in a manner considered unacceptable to the government, if it becomes insolvent or if it fails to comply with the legislation or the deed of agreement, the legislation provides for the government to retain the right to declare another body as the industry services body or the export control body or to retransfer the assets and liabilities to another suitable body. These safeguards have been provided in the legislation to ensure that the company delivers what the industry and the government expect of it. The board will be required to meet Corporations Law requirements for financial and fiduciary responsibility and the company directors will be accountable in the normal manner, as for any commercial company.

Obviously, the government strongly supports this legislation because it will deliver a new and more commercial approach to the delivery of marketing and research and development services for the horticulture industry. It is a new approach which is driven by the industries included in that overall sector but it has strong accountability for performance built in to the horticulture industry, who will be its members, to the levy payers, who will be the substantive funders, and to the government, which is providing matching research and development funds on behalf of taxpayers. As has been remarked, the legislation is strongly supported by the 28 horticultural industries which have worked with the government to create the new company. Again, having worked with those industries on almost a daily basis over the last 2½ years, I would like to commend their commitment to this legislation and also commend those officers in the department who have worked so hard as part of the horticultural negotiating team to see that this has come to fruition. I commend the legislation to the Senate.

Question resolved in the affirmative. Bills read a second time.

In Committee

Senator O’BRIEN (Tasmania) (12.35 p.m.)—Given the time, I thought it might be productive if I outlined some issues that I wanted the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, Senator Troeth, to address in the committee stage. Whenever we return to this legislation, the parliamentary secretary and officers will be forewarned as to the issues which need to be addressed in the view of the opposition. For example, if I go to clause 9 of the Horticulture Marketing and Research and Development Services Bill 2000, the minister may declare a body to be an ‘industry services body’. That is permissive. The word ‘may’ is used. I would like some comment on why the minister is not mandated to take action on the meeting of the conditions set out within that provision but
rather, as it is expressed, is given a permission but no obligation to declare a particular body an ‘industry services body’. There may be good reason for that but I think the permissive nature of the provision needs to be addressed. It goes on in part (c) to say:

... the minister has had regard to whether the body’s constitution is appropriate for a body performing the functions of the Industry Services Body.

I want to know what factors the minister would be looking at in making such a determination. Are the factors to be considered simply the objects listed on page 2 of the constitution we have been provided with—that is, the draft 3, dated 22 September? I am assuming—and perhaps at some stage you would let us know—that that is the most recent draft. If there is a more up-to-date one, perhaps the minister could tell us what the changes to that draft have been, or tell us, alternatively, if it is the final form of the constitution. What other factors would the minister take into account? What processes is the minister required to follow in forming a view and then making a decision in this regard? For example, who does he have to consult with?

According to the Bills Digest on this bill—No. 58 on page 4—the determination by the minister is not a disallowable instrument. Can you tell us why that is the case, given that the minister is required to gazette his decision? Why is it that that is all he or she is required to do? In relation to clause 9(2)(c), what factors will the minister take into account in determining whether a body’s constitution is appropriate for that body to perform the functions of the industry export body? I assume—and perhaps you can correct me if I am wrong—that this decision also will not become a disallowable instrument.

Scrutiny of Bills Committee Alert Digest No. 14 of 2000 raised a number of questions about the issues relating to these two bills. I want to ask some questions about the issues raised and the government’s response to those issues. The Alert Digest points to the fact that clause 9 of the Horticulture Marketing and Research and Development Services Bill 2000 provides for the minister to declare a body ‘the relevant industry services body’ or ‘export control body’, and clause 10 authorises the minister to declare that that body ceases to be the relevant body. That committee sought advice from the minister as to why these declared bodies are not subjected to parliamentary scrutiny. The minister’s response advised that the declarations are the subject of judicial review. The minister’s response advised that the declarations are the subject of judicial review. The minister’s response advised that the declarations are the subject of judicial review.

Parliamentary Secretary, you advise in your letter that these arrangements will be transparent to industry, government and the parliament because the deed of agreement between the government and the new private entity will be a public document and that that will enable the industry and parliament to see exactly what the new entity is required to do, as distinct from what it actually does. Is that right—that is, the new entity will report on what it is required to do rather than on its actual functions? Is it fair to say that parliament will not have access to the information referred to in E45, E5 and E8 in the deed, starting from around page 13? Isn’t it fair to say that, if that is the case, there really is not appropriate transparency in relation to the expenditure of public moneys accountability?
of the industry service body or the industry export control body. A point was made in the Alert Digest of the Scrutiny of Bills Committee I referred to that the provision under clause 10(2)(b)—which allows a determination of what constitutes reasonable grounds for that decision—needs to be addressed and that it would be helpful if the parliamentary secretary could bring some information to the committee on that matter. I ask the question because, while this structure is being privatised, the minister, through these clauses, still holds the ultimate power over this company. I want to know how subjective the process is. I would also like—and I am sure the committee would appreciate—explanations as to the meaning of clauses (10)(2)(b)(i), (ii) and (iii). What would be the basis of a request from the secretary for a variation under section 13 of the deed of agreement?

Can the parliamentary secretary tell the committee how, under clause 16(2), the level of funding from the Commonwealth will be determined? That clause refers to section 4 of the bill. According to section 4, eligible research and development expenditure means the amount determined by the deed of agreement—schedule 4. It seems to be a circular reference. The deed states in B4.1:

“For the purpose of section 16(2) of the Act, the eligible R&D expenditure of HAL shall be determined in accordance with Schedule 4.”

But the act says at section 16(4) that the regulations may provide for the way in which the secretary is to determine the amount of the gross value of production of the horticulture industry for a financial year. I want to know what the regulations actually say. Further, it would be helpful if the committee could have explained to it the meaning of section 16(5)(b) which states:

(5) Amounts are not payable...

(a) in circumstances in which the deed of agreement specifies the amounts are not payable;

And (b) states:

... if those amounts have previously been paid to a body that was, at the time of the payment, an industry services body.

I realise that some of these issues are technical, but we are dealing with the technical issues about the establishment of provisions which will allow the authorisation of an entity to take over the roles of statutory bodies that are being abolished. There are further questions that I wanted to raise, but that will probably do for starters, given that we are rapidly approaching the appointed time for the conclusion of the consideration of this legislation at this time.

Progress reported.

MATTTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Sherry)—Order! It being 12.45 p.m., I call on matters of public interest.

Royal Women’s Hospital, Melbourne: Abortions

Senator McGauran (Victoria) (12.45 p.m.)—The Senate may be aware of a very sad but controversial incident that occurred at the Royal Women’s Hospital in Melbourne and became public in July this year. The incident that occurred was a late term abortion, of some 32 weeks, on the grounds that the baby was a dwarf. It is my belief that the Royal Women’s Hospital have shrouded the truth of this incident. They would say that it was an abortion of a foetus on the grounds of the mother’s extreme emotional stress, but the truth is that it was dwarfism of the baby that led to its destruction.

Given this shocking operation, it is then important to know what the standing of such a procedure is in Victorian law. While late term abortions are not specifically referred to in the law, the Crimes Act creates the offence of child destruction after 28 weeks, meaning that the child is viable at 28 weeks and an abortion cannot be undertaken. Further, medical evidence accepted by the courts states that a child capable of breathing naturally or unnaturally would come within the provisions of the Crimes Act of child destruction. Medical evidence, again accepted by the courts, found that breathing—that is, viability—can commence at 20 weeks. Therefore, the Victorian law recognises that the criminal offence of child destruction can commence at 20 weeks.

The reason the law treats a late term abortion as a criminal offence is because the baby can live separate from its mother—that is,
there is no contest of life between the rights of the mother and the child. In some circumstances, this view of no contest is supported by the very medical procedure for late term abortions. To begin with, the child is born, a birth certificate is required, the newborn is destroyed and a death certificate is written. However, as the Senate is aware, the issue of termination of pregnancy is a matter of conscience before the parliament. My position is that late term abortions are morally wrong and illegal under Victorian law. I believe that the majority of the general public have an ethical objection to late term abortions particularly on the grounds of a mere physical defect of the unborn.

It would then dismay the general public to know that the incident I have referred to of the late term abortion at the Royal Women’s Hospital is not a one-off but, rather, one of many. The evidence comes from a freedom of information request made to the medical records department to supply statistics for late term abortions for the past 10 years, excluding miscarriages. This was so the statistics reflected the deliberate medical act of late term abortions. The statistics showed that, for the years 1990 to 1998, no records were kept to distinguish late term abortions from early terminations. There was one total for both procedures. Not until 1999 were separate records kept. The 1999 figure for late term abortions over 20 weeks was 44. Nevertheless, to complete the picture of the last decade, I am reliably informed that, on average, there have been 32 late term abortions each year between 1990 and 1998.

I make three points in regard to these figures. Firstly, the 1999 figure of 44 is very high, almost one every week of the year, and a significant increase on other years. It is an unacceptable figure, given the general public’s view. Secondly, the hospital have failed to act in an open, transparent and accountable manner, particularly given their dependence on public funding. They have attempted to hide the records of one of the most serious procedures in their hospital. They have attempted to hide the records of one of the most serious procedures in their hospital. Thirdly, the statistics show an appalling cultural acceptance by the hospital of late term abortions—a culture accepted from the hospital board down. This culture is running rife through the Royal Women’s Hospital and was reinforced by a very public statement made by a senior and notable member of the hospital who, in the Sunday Age magazine some months ago, was quoted as accepting late term abortions for something as minor as a cleft lip. No other grounds are needed.

The culture has instilled in the doctors that they have no responsibility, but to act solely according to the patient’s wishes—no responsibility to the law, to any ethics, least of all to this stand-alone human being. This culture of acceptance of the most shocking late destruction of a child is the shame of the Royal Women’s Hospital. It is worthy of note that a late term abortion at the Royal Women’s Hospital need not even be based on the grounds of a disability—rather, just the judgment of the doctors as to the physical and mental health of the patient. The hospital is effectively saying, ‘To relieve your anguish, we agree to destroy your child.’ The board of the hospital is to be condemned for its weakness in allowing this culture of acceptance to flourish contrary to the law and public opinion. My claim is backed by information from more than one hospital source. The sources claim the board buckled under staff pressure and overturned the former chief executive officer’s very correct decision to suspend the offending doctors involved in the 32-week abortion.

Thankfully what the board could not do was overturn the CEO’s legal obligation to refer the incident to the state coroner for investigation under criminal law. This is where the matter now rests. It would seem the CEO paid a very high price for his actions. He resigned from his position very soon after the board’s repudiation, no doubt under pressure to do so. The only concession given by the hospital board to the public outcry at this particular late term abortion was to belatedly establish some guidelines and a review panel, all internally managed, of course, and a poor substitute for the high price paid by the child and society’s values. The panel is a token gesture to public opinion, especially if 44 late term abortions continue to occur each year. For such pitiless acts this does not seem strong enough action. It seems these proce-
dures have now become as normal as the some 3,700 early term abortions.

Given these facts, I call for the following outcomes. Firstly, the case of the 32-week abortion now before the Victorian coroner is a test case; the coroner has the power to recommend prosecutions in this particular case. It is my view that this is what the coroner must conclude. Secondly, it is imperative that the coroner brings down a judgment as soon as possible so as to put a halt to the increasing number of late term abortions. Thirdly, regardless of the coroner’s decision, the law should be clarified to put beyond doubt the illegality of late term abortions. It cannot be viewed as a moral equivalent to an early term abortion. Presently, the 1969 Victorian Supreme Court decision known as the Menhenit ruling, which allows for early term abortions, is being used to justify late term abortions, yet this ruling directly conflicts with the criminal code relating to child destruction. Therefore, a separate law for late term abortions is necessary. Fourthly, there is a prima facie case against the hospital for breaking the law consistently in regard to the 44 late term abortions as recorded in the 1999 statistics. An investigation is warranted and prosecutions deserving if the law has not been strictly adhered to. At the very least, an investigation would clear the hospital of public suspicions, because presently the circumstances of the 44 are unknown.

Questions need to be asked such as: how many of the 44 cases breach the Crimes Act? How many late term abortions should have been referred to the coroner? And, how many, if any, of the 44 have had a birth and death certificate written, as is required? I fear that without public attention being brought to the Royal Women’s Hospital’s actions these activities will continue unabated. Incidents like those I have mentioned will go unchecked and, worse, be allowed to become the norm of hospital behaviour, even against public opinion. It is incumbent upon the responsible parliament, the Victorian parliament, and concerned community groups to condemn and prevent this hospital culture from flourishing.

Road Transport Policy

Senator HUTCHINS (New South Wales) (12.55 p.m.)—This afternoon I would like to speak briefly about some of the difficulties I think the government is going to have over the next few years—hopefully, not after the end of next year, but over the coming period—when it deals with road transport policy. Over the last few weeks I have been lobbied by a number of independent operators and other people involved in the road transport industry who have expressed concern in relation to the direction of the government’s policy. I want to highlight a few issues that I think we will all need to address shortly, and I would ask that the government come clean in relation to where they wish to go in terms of funding and pricing of areas concerning transport over this coming period.

The first and most salient thing is that the transport cost of any good or service in this country could be anywhere between 18 and 23 per cent of the cost of that item or service, so road transport policy is an important aspect of the cost of any good or service in this country. I want to highlight some inconsistencies and some difficulties I think the government has at the moment and will be required to address in the future. The first is that the ACCC, the Australian Competition and Consumer Commission, has confirmed that, even if road transport operators do not register for the Diesel and Alternative Fuel Grants Scheme, they still must pass on the 17c a litre saving on fuel cost. If you read the transport journals you will see that a number of transport operators believe they have been unable to properly register and, as a result of that, they have been denied the opportunity to get access to this scheme. However, they are being badgered and taken to task by their clients for not ensuring that some of this rebate is passed on to them. The NatRoad president, Mr Doug McMillan, has in fact said that he did not believe that there was any justification for passing on any rate reduction that is—

The ACTING DEPUTY PRESIDENT (Senator Sherry)—Could I have some order down there in the far right. This is an important speech by Senator Hutchins. He is
entitled to normal courtesy. The level of conversation is so loud!

Senator HUTCHINS—Thank you very much, Mr Acting Deputy President. I am not sure that Senator Schacht felt comfortable over there with the extreme right. I am sure that, had Senator Schacht crossed over to the extreme right, he might not be in the predicament he is in.

As I was saying, there is a view amongst road transport operators that none of the so-called rebates should be passed on, that they are an overdue justification for the rates that they are working on now and that they need them to continue to operate. So even in the first instance, a bit of bureaucracy is being visited upon the road transport industry and the people there are not very happy.

As I think you may know, Mr Acting Deputy President, the road transport industry is very unhappy with the federal government at the moment because the diesel and petrol excise is indexed to go up with inflation. However, the rate of rebate that they receive is not. When they are being pressured by their clients to reduce their costs, they rightly say, ‘Go and see the federal government; get it to index our rebate in the same way.’ But of course the federal government has its hand in the pockets of everybody in this country. It will not reduce the rebate at all because of the amount of money it collects. I think it collects about $13 billion from the GST and about $11 billion from the fuel and petrol excise.

Over the last few days it announced it will throw a measly $1.4 billion at regional and rural roads over four years—$400 million a year. Big deal! Because of the competitive tendering policies that are visited upon local government, those roads will undoubtedly be completed as a result of competition. There will not be the additional employment flow into those electorates that I am sure the National Party wanted to occur. Boral, Bitupave, Pioneer and Readymix will do an excellent job in making sure that those roads are constructed or remained and then they will leave the town six or nine months later. I cannot see that this will sustain any employment outside the metropolitan areas.

The second area that may be seen as an inconsistency has been raised with the federal government and the Taxation Office but has not been addressed. It is in relation to refrigerated trailers. Before the Commonwealth v. Ha, operators were able to make an application to the state government for franchise fees to be reimbursed to them. For a number of them, it was 6c to 10c a litre. I do not think this franchise fee was available in Queensland. However, it was available in other states. I will explain what happened. Most of our produce, particularly fresh produce, is carried in refrigerated vehicles. They are often dropped at a site and they are kept turned on. They consume about 1.8 litres of fuel per hour. Under the previous tax regime, they were able to get compensation from the state government through franchise fees. Now they are refused any sort of compensation or relief. Over a 24-hour period, when we expect fresh fruit and other produce to be refrigerated in a van, whether it is on the road or stationary, they are consuming at least 48 litres and are not being compensated for it. In terms of any idea that the government may have as to how that cost would somehow or other be reduced as a result of the introduction of this scheme, the operators tell me that they have not been able to reduce their costs and that they will probably be keeping them neutral or increasing them, as I am sure they would like.

I move to the third area where I see some difficulties with the government’s scheme. I raised this yesterday when taking note of Senator Kemp’s answer. As I mentioned, in the November edition of Owner//Driver, Mrs McMillan said that even though she, in principle, agrees with a GST, she is having the damnedest of times trying to fill out the business activity statements. This is a lady who, prior to the introduction of this scheme, used to fill out one statement a year and submit it to the Commonwealth. Now she is required to fill out five. As you may recall from yesterday, Mr Acting Deputy President, Mrs McMillan was very scathing of the Taxation officials, the people involved in computers and everybody who was unable to assist her in making this so-called fairer and simpler scheme administratively simpler. Like a number of other lorry owner/drivers
and people in her predicament, she is finding it very difficult to make sure she gets the compensation she is entitled to and does not get hunted down by a money hungry government trying to suppress independent operators.

Also in the November issue of Owner/Driver is a column by Mr Ken Wilkie, under the name of Wilkie’s Watch. I will quote little bits of it:

I’ve stuffed up—yet again. Had a call from a lady from the Diesel Grants bureaucracy the other day. My fuel usage for the month of September did not meet the required parameters.

In July we’d shown an average of 1.4 kilometres to the litre and an average of 1.7 kilometres to the litre in August.

Those figures, according to the boffins, fell within the guidelines.

To my reading, that’s bloody high usage.

I got my act together in September though. Twenty-six kilometres to the litre. That has got the boffins in a flap.

No reimbursement for September until we demonstrate a better record trail.

What has happened is simply that we have some fuel stored on-site and we did not purchase any in the September period.

A number of interesting issues are highlighted here. Big standover brother has a good eye on us mere mortals these days.

Secondly, there is one law for us mortals—but a totally different one for the politicians.

Then he gives Mr Reith a bit of a basting. That is what the independent operators are saying in relation to the administration of this scheme.

I want to finish by mentioning two things we need to be very careful in dealing with in the future. The first is how we define the new standard for engines and fuel. Already there is agitation in the United States and Europe about going to a new standard for fuel and trying to make low sulphur fuel suitable for our engines. I say a number of things about that. Firstly, I do not think the engines of the vehicles we have in this country are suitable at this stage. Secondly, I do not think that our refineries have the capacity to go to that immediately. I understand there may be moves to go to this Euro standard in 2007. I think we want to be very careful as we move to that because that will incur additional costs on our operators for freight. In America, this new low sulphur fuel has increased the cost of fuel by something like 50c per gallon. In Australia we could see that go to 10.4c per gallon. I remind you, Mr Acting Deputy President, that our transport fleet is one of the oldest in the OECD countries.

Another thing we should be conscious of and be very careful about is what we mean when this Diesel and Alternative Fuel Scheme is replaced next year with the Energy Credit Scheme. If it is a backdoor attempt by the federal government to ensure that our fleet of nearly 600,000 articulated vehicles—the number of rigid vehicles I am not sure of—are up to some sort of European standards immediately and that, if people do not go to those standards, they will be punished by being ineligible for some Energy Credit Scheme, there will be significant riots out there, because at the moment people are not ready to go to these schemes and they are not ready to be forced into something that they are not prepared or cashed up to do.

I said at the beginning that I just wanted to raise those issues about road transport policy. I do not believe they have been adequately addressed by the federal government at this stage. I do not believe that the scheme they said was going to be fairer and simpler for independent operators to administer has become that. All I can see is that they have made a cumbersome scheme more cumbersome. They have excluded people from opportunities to make application for this rebate and, in the end, they should be very careful about their next steps in terms of the future of our truck fleet and what we are going to do in relation to the environment.

Judicial Independence: Northern Territory

Senator LUDWIG (Queensland) (1.10 p.m.)—I rise to speak on a matter of public interest regarding judicial independence in the Northern Territory—a very important matter not only for the Northern Territory but also for the Commonwealth. It was reported by Mr Bob Watt in the Northern Territory News on Wednesday, 15 November 2000, that:
Appointing a magistrate for a limited time “utterly destroyed” the separation of powers between government and judiciary, the territory court of appeal was told yesterday—which would have been on 14 November 2000.

The heart of the matter is whether there is a legal guarantee of a free and independent judiciary. This had its genesis in the ABC’s 7.30 Report, where it was revealed that the appointment of the Northern Territory Chief Magistrate was subject to, as I understand it, a secret pay deal between Mr Bradley, the Chief Magistrate, and Mr Shane Stone. I might point out here that this is not a matter that goes to Mr Bradley—I understand his credentials and his person are above reproach. The deal included, as I understand it, a remuneration package of something of the order of $27,000 above the publicly listed salary, a luxury car and a tenure limited to two years rather than life appointments and this was kept under wraps. It really raises the question why. Perhaps we can speculate on this, but it is a matter on which the government should come clean.

The nub of the issue is this: the Northern Australian Aboriginal Legal Aid Service sought to have Mr Bradley removed from the case on the grounds of apprehended bias. Later the scope of the action was broadened to include the question of whether Mr Bradley was validly appointed. It was argued by Mr Jones, the service’s lawyer, that the appointment of Mr Bradley was invalid and for an improper purpose. This put a question over the appointment. The new Chief Minister has not sought to fix the problem at all. He has not sought to remove the pall that hangs over the appointment of this judicial officer; instead, he seems to continue to try to exert what can only be described as influence over the judiciary of the Northern Territory. I do not believe he has succeeded, but again the question must be asked: why is Mr Burke headed down this path? This is just one example of this type of behaviour, which seems quite inappropriate for the Chief Minister and Attorney-General, which he was. In this instance, as reported in the Sydney Morning Herald on 10 November 2000, the Chief Minister and Attorney-General, Mr Denis Burke, called for the resignation of a magistrate who dared to criticise the mandatory sentencing laws. It is a unique course of action for an attorney-general to take with a judicial officer—and this is on top of the issue surrounding Mr Bradley.

The comment by the judicial officer about mandatory sentencing was, I understand, made in the court and confined to the sentencing process—quite appropriate. It seems quite a usual thing for a magistrate to do; it is not unusual for them to comment. Thank goodness the magistrates do not openly or more directly criticise the Northern Territory law on mandatory sentencing, as that may have tipped Mr Burke over the edge. Once upon a time the role of the Attorney-General, as the first law officer, was to defend the judiciary. It seems the world has moved on, and if that is the case then it should be of even less concern to Mr Burke if the magistrate takes to making comments in the Northern Territory. If Mr Burke wants to complain, he should take his proper role as the first officer of the Northern Territory and defend his Chief Magistrate and his other magistrates appropriately and deal with them responsibly.

The Chief Minister told ABC radio on 9 November:

If a magistrate doesn’t have confidence in the system in the Northern Territory, they’ve got a clear opportunity; I would think a responsibility, to resign.

Not content to talk to the magistrates through appropriate channels, Mr Burke wages his battles in the media where it is very difficult for a magistrate to reply. It is really a very poor way to go about that indeed. The Chief Minister and Attorney-General, and it seems now a judge, has a record of criticising magistrates. It seems obvious these attempts to bludgeon magistrates into toeing the government line—a bad government line at that—should fail.

Mr Burke has completely lost the plot. Quite clearly his view is that magistrates are nothing more than paid public servants who are there to do his political bidding on failed mandatory sentencing laws. Mr Burke, it seems, will say anything to prove to the world at large that mandatory sentencing
laws are okay and work. But no-one believes him, not even his court system. However, this just sets the scene for the substance of the matter today that I wanted to talk about—as I said earlier in my opening remarks—and that is an appeal by the service over the appointment of the Chief Magistrate in the Northern Territory. This matter originally went before Justice Olney. He found that, although the circumstances of Mr Bradley’s appointment may give rise to a ‘perception that his judicial independence had been compromised’, he should rule against the service’s application. It did not stop there, however. He went on to say that ‘the court had no power to interfere with the executive act of the appointment’ of Mr Bradley and, surprisingly, that there was no common law guarantee of an independent judiciary.

However, it was not left at that point. The service has sought to appeal the decision and NAALAS have now crossed the first hurdle in their appeal. The three judges upheld an appeal against the Northern Territory Supreme Court decision by Justice Olney and have granted the service leave to appeal. The Northern Territory government argued that the judgment of Justice Olney was correct and should be upheld in its entirety. They argued: firstly, that the arrogance of the Northern Territory government to think those judicial officers need not be independent of the executive; secondly, the government can set their pay and their terms of service, and they have no independence as a result; and, thirdly, they are subject to the Magistrates Act with no other common law guiding principle. If that is not bad enough, no court should then look at an executive appointment to the judiciary made on any basis.

It is very interesting when you read the counterpoint, the judgment of Priestley J, Doyle AJ and Brooking AJ, who sat on the court for leave to appeal. They came quite quickly to the conclusion that the appeal should be upheld and that leave should be granted for an appeal to proceed. This was predicated on the view, as I follow it, that the issue raised by the NAALAS statement of claim should go to trial. The signs are not looking good for the Northern Territory government on this issue. The test as to whether the appeal should be heard is based, as I understand it, on whether there is a serious issue to be tried. In fact, you need only state the argument for it to be heard by the court. Pages 12 and 13 of the judgment are insightful in that respect. On page 12, the court looks at the statement of claim by NAALAS, and the justices quote the submission:

The improper purposes were to defeat the principles of judicial independence enshrined in the magistrates act; to give effect to the agreement or arrangement alleged in paragraph 8—

in the NAALAS submission—to secure a short-term, special appointment to the office of Chief Magistrate; to create what was, in effect, a two-year appointment subject to review at the expiration of that time; to secure the appointment of a person who would at the expiration of two years be dependent on the Executive Government for remuneration and allowances to subvert the purpose of section 7 of the magistrates act, requiring magistrates’ appointments to be to the age of 65; and to defeat a fundamental object of the Act, namely that magistrates should enjoy secure tenure to the age of 65 free from influence and the appearance of influence of the executive government.

That was the submission that was put. The court then said in respect of both issues:

It seems to us to be a fair reading of paragraphs 8, 9 and 12 of the submission, when taken together, that the allegations of improper purpose included an allegation that the members of the Executive Government mentioned in paragraph 8 in agreeing with the first defendant that he should be appointed for a two-year term and in causing him to be appointed did so in order that he might be subject to the influence of the Executive Government in the exercise of his powers as Chief Magistrate.

That is not a very good place to be. That was the submission—that is what the court then
went to and had a look at. Clearly, the issues are there. The questions have to be asked.

In a moment of quiet reflection the issues become quite clear when juxtaposed with the arguments made by the plaintiff and gone to by the justices. It looks wrong and then you have the problem at its best: the role of judiciary in society should not only be good but look good. Citizens put their faith, and sometimes more, in the hands of the judiciary. The question then is: what other possible reason could there be for such an appointment other than to place undue pressure on a magistrate? The proof of this is in the stating of the argument itself. Where else in the Australian court system is there such an appointment that is secret for a two-year period with the trappings of suspicion all around it? I cannot think of an instance, and I doubt there would be one. It clearly introduces into the equation an influence that does not and should not exist in the court system.

The fundamental role of the judiciary is to apply the law dispassionately between the state and the citizen, but when you introduce self-interest into the equation you may end up with the magistrate not deciding on the facts presented and applying the law fairly to those facts. You may end up, as sometimes human frailty does, with the magistrate considering their job and how long they will be in their job before making a decision on a matter. I would not think ill of the magistrate confronted with this terrible position. Magistrates should not be put in such a terrible position. It is extremely hard for a person, once taken into the judiciary, to take off those robes and go back to being a barrister practising at the bar. How long do you think a strong magistrate such as Pat O’Shane, once a New South Wales magistrate, would have survived in the Northern Territory with the Chief Minister?

Senator Schacht—Ten seconds!

Senator Ludwig—Yes, 10 seconds, it seems. I take that. The Chief Minister has been caught acting like a bullyboy and this time he will fail.

It is proper for me to say that the grant of leave has not been decided. However, I can say from a political perspective that this Northern Territory government has overstepped the mark and has paid little regard to the need of judicial independence. Mr Burke has tried to reduce it to a legal argument where, if the statute grants the power, then he can do what the statute says using his interpretation, of course, without recourse to higher principles or even an eye on the public perception. In my view he has missed the public perception of his actions.

It is not my intention to exaggerate the NAALAS appeal, nor is it fair for me to say that Mr Bradley should stand aside or not be considered for reappointment, while this issue runs its course. My criticism clearly is about the gall of the Chief Minister in being able to continue these sorts of actions in the Northern Territory. Mr Burke knows full well that he has been caught with a try-on, and Mr Burke should now stop the silliness and fix the problem. Clearly, the Northern Territory government should not have appointed a judicial officer on an individual basis with such a short-term contract as that referred to earlier, even if he thought it was legal. It is a matter that will have to be determined.

Throughout this sorry mess, Mr Burke even attacked NAALAS, the body instituting the appeal. It seems that, in the Northern Territory, access to legal rights should not be pursued if Mr Burke thinks that his view or the view of his government is correct. It is high time that he understood and accepted the principles of open, fair and accountable government, including good FOI laws as well.

Mr Burke referred to Judge Olney’s decision in the following terms: ‘Well, anyone with an ounce of commonsense would read Judge Olney’s decision describing the case as hopeless and could not succeed and take that as enough.’ I wonder if the Northern Territory government made that decision in relation to the three judges who granted leave to appeal. It seems that Mr Burke is the one who does not have an ounce of commonsense.

Aquaculture Production

Senator Eggleston (Western Australia) (1.25 p.m.)—Aquaculture is a major
industry internationally, and the last 10 years have witnessed a rapid expansion of the aquaculture industry in Australia. In 1997, worldwide aquaculture production reached 34.1 million metric tonnes and had a value of $46.5 billion. In 1997, Australia’s aquaculture production had a value of $445 million. Its present value is estimated at $600 million. Aquaculture production accounts for approximately one-quarter of the value of the Australian fishery production. Australia’s share of the international market is small and, therefore, clearly there is scope for a major expansion of the Australian industry. At the National Aquaculture Workshop held in August last year, the aquaculture industry committed itself to achieving an annual production value of $2.5 billion by the year 2010.

Western Australia has a long coastline and diverse environments suitable for aquaculture, and aquaculture is certainly a major dimension in the Western Australian fishing industry. Western Australia has an aquaculture industry that is already well established and accounts for something like 40 per cent of the total aquaculture production in Australia. In Western Australia the aquaculture industry covers pearls, oysters, marine algae, mussels, yabbies, marron and marine algae. However, all of the other sectors of the aquaculture industry are minnows in comparison with the pearl oyster industry, with this sector having a production value alone in 1998 of approximately $182 million. Western Australia is the world’s top producer of silver white, south sea pearls derived from the *Pinctada maxima* oyster.

The pearling industry in Western Australia is centred in the Kimberley, particularly in the town of Broome where commercial pearling began in the mid-1800s as a source of both pearls and mother-of-pearl shell, which at that time was used to produce buttons and ornaments around the world. During the 1880s the pearl industry spread along the north-west coast and by 1910 there were some 400 luggers and 3,500 people directly employed in the industry. As many people know, most of the divers in Broome were Japanese, and Broome became the largest pearling centre in the world. The industry was hit hard by the advent of the synthetic button and the Second World War when the Japanese divers either returned home or were interned. Many of the luggers were destroyed when Broome was bombed by the Japanese during World War II.

After the war only around 15 boats were in operation, employing only 200 people. It was not until the advent of cultured pearls in the 1950s that the industry revived. Today Broome is renowned the world over as a market for top quality pearls. Western Australian pearls can be found adorning jewellery in all points of the globe. Today there are 16 pearling companies operating in Broome, all of which are required to have a licence, and the industry is regulated by the Western Australian Pearling Act. This act ensures the industry’s sustainability and helps maintain a stable price for the products of the industry. Each licensee has been allocated a strict quota of shells which they can harvest annually. This quota is around 572,000 shells, with a minimum size of 120 millimetres. The shells are collected from specially designated collection zones.

In addition to the collection of wild pearl oysters, the licensees are permitted to establish hatcheries so the companies can produce their own pearl oysters. Each of these oysters is then impregnated with a small plastic seed with an instrument rather like an orthopaedic arthroscope. From that plastic seed, a pearl is grown. These pearl shells are hung in cages under the ocean and divers go down every second day or so to turn the shells so that they are cleaned and the growth of the pearl in them is as round as possible. It takes about two years for the cultured pearls to reach a size and quality suitable for harvesting. Nothing is wasted, with excellent prices paid
for the oyster shell, the meat and the pearl itself. Most of the pearls are sold to Japan, with significant inroads also having been made into the United States, Hong Kong and European markets.

The Paspaley pearling company, which is the largest pearling company in Australia, has been an industry pioneer and its techniques in producing pearls have been adopted by other companies both in Australia and in other parts of the world. Paspaley has about 12 farms dotted along more than 1,000 miles of the northern Australian coastline, not only in the north of Western Australia but also in the Northern Territory. The largest pearl farm in the Paspaley group was established in 1956 at Kuri Bay, north of Broome in WA, and it was the first pearl farm of its type in Australia. The Kimberley’s natural resources and infrastructure are such that it is ideally suited to further aquaculture developments not only in the case of pearls but also in many other ways. In addition, the close proximity of the Kimberley coastline to Asia means that it is well placed to supply the world’s biggest aquatic food marketplace.

To assist in the development of new aquacultural industries, the Western Australian government and the Kimberley Development Commission have formulated an aquaculture development plan and an aquaculture development group. A key component of this strategy is the Broome Tropical Aquaculture Park. It has the facilities needed for aquaculture production, and companies are able to develop leasehold areas within the park. The park caters for hatchery style production and it is hoped that it will facilitate and encourage the development of culture technology for a wide variety of marine, brackish water and freshwater species and provide seed stock which can be grown at other sites.

A pearl oyster hatchery has already been established in the park, as well as a barramundi hatchery, producing both larvae and juveniles. A multispecies hatchery will soon be established. The species that will be cultured will ultimately depend upon commercial demand but may also include trochus and giant clams. The park incorporates a TAFE aquaculture centre, which offers relevant skills oriented courses and has culture sheds, a hatchery and a science laboratory, so that students can gain hands-on experience. The federal government has contributed over a million dollars towards the construction of the new centre.

Numerous sites throughout the Kimberley have been identified as being suitable for the culturing of a large range of fin fish and shellfish species in both marine and freshwater environments. There is already a barramundi cage farming operation on Lake Argyle. Other species considered suitable for production include Argyle bream, native aquarium fish and catfish. Feasibility studies undertaken by the state government suggest that Lake Argyle could support a freshwater fin fish aquaculture industry with an annual yield of around 2,000 tonnes. An aquaculture development plan has been developed for the Gascoyne, which is much further south down the Western Australian coast and is based on Carnarvon. At present, there is a pearl hatchery at Oyster Creek as well as grow-out operations in Shark Bay and Exmouth. There is also a prawn farm at Herron Point which, when fully operational, will consist of 100 ponds and employ around 60 people. Potential aquaculture species in the Gascoyne include oysters, scallops and various kinds of fin fish. Aquaculture production in the Pilbara consists largely of pearl oyster production, including a pearl oyster hatchery. Most of the sites are in the waters of the Dampier Archipelago off Karratha and the Montebello/Lowendale region, which are islands off the north-west coast. There are also several sites at Port Hedland and Point Samson. A number of species, including redclaw algae, which is used for beta-carotene production—which a good friend of mine, Peter Hinchcliffe, is involved in in Dampier—and aquarium fish are farmed using land based systems.

A further benefit from the development of aquaculture is tourism. It attracts tourists who are interested in seeing a fish farm and how the fish are grown and in taking home some easily obtained product, which they can claim they caught off the north-west coast rather than saying that they bought
them over the counter at a shop in an aquaculture production farm. Aquaculture also presents an opportunity for farmers and pastoralists to supplement their income. The yabby is a good example of this. Farmers in the wheat belt of Western Australia have already established yabby farms in the clay dams on their farms. At present, yabby production in the wheat belt ranges from 100 to 300 tonnes annually. These yabbies are a valued export to Europe and Asia, and demand is expected to increase. The Western Australian Outback Ocean Project, where 25,000 rainbow trout fingerlings were released into saltwater dams and lakes on 100 farms across the wheat belt, has demonstrated that rainbow trout may be a viable option for farmers in the wheat belt. If an industry could be developed, it would be worth up to $70 million annually.

Most importantly, aquaculture represents an opportunity for indigenous people to develop their own enterprises and therefore fundamentally improve the economic well-being of their communities. In view of this, the Commonwealth Department of Agriculture, Fisheries and Forestry is funding a consultancy study to develop a national policy and management framework for accelerating the involvement of indigenous communities in aquaculture. Aborigines are already involved in aquaculture activities in the north of Western Australia. The multispecies hatchery at the Broome Tropical Aquaculture Park is a project of the Kimberley Aquaculture Aboriginal Corporation and has been very successful. Aquaculture is a new industry with a very bright future. It is contributing very strongly to the economy of the north of Western Australia. I think it has a very exciting future.

Mitsubishi Motors Australia

Senator SCHACHT (South Australia) (1.40 p.m.)—I rise to make a few remarks on the recent publicity about the future of the Mitsubishi Motor Corporation in Australia, particularly in Adelaide. Yesterday we all welcomed the announcement by Mitsubishi that the parent company in Japan had agreed to make an investment of $172 million in Mitsubishi Australia—approximately half to retire debt and the other half to be invested in further upgrading the production facility and improving the marketing and service of Mitsubishi products and cars for the export market.

Over the last 18 months there seems to have been an incredible desire by a number of media outlets to write or report the blackest interpretation of any comment made, or of any unsourced gossip, about the future of Mitsubishi. Again and again the Mitsubishi Motor Corporation leadership in Adelaide has emphasised that the future of the company was in the hands of the company and its workers in Australia and that they would be successful in showing that they could run the plant profitably and produce quality cars for the Australian market and the export market. But a number of media outlets tried to find ways to, in my view, unnecessarily beat up stories that created great anxiety amongst the several thousand workers directly employed by Mitsubishi and many others employed in component manufacturing in Australia who supply the parts to Mitsubishi.

Last week the Mitsubishi Motor Corporation in Australia announced that it was actually making an official complaint to the ABC over the way it reported some remarks by a senior executive of the Mitsubishi Motor Corporation in Japan. I have seen the full transcript, and I have to say that I think the Mitsubishi Motor Corporation have at least a prima facie case for their complaint. I think this would be the first time in my 13½ years in this place that I have supported or partially supported a complaint against the ABC. I am not in the business of bagging the ABC—like some others who bag the ABC whenever they can—but I do think the ABC has a responsibility to respond to the complaint from the Mitsubishi Motor Corporation.

I have particularly acknowledged this complaint because in early November, at the end of an official parliamentary delegation to Central Europe, I privately went on to visit Stuttgart, where the headquarters of the company now called Daimler-Chrysler is based. This company was created by the merger of Daimler Benz and the American Chrysler Corporation, who earlier this year bought a controlling interest of about 34 per cent in the Mitsubishi Motor Corporation.
worldwide. It is clear that the future of Mitsubishi will now be very much under the long-term influence of the Daimler-Chrysler organisation and what it decides—and its headquarters is in Stuttgart. With the assistance of officials from both Mitsubishi Australia and Daimler-Chrysler in Australia I had a series of appointments during my visit to the Daimler-Chrysler headquarters in Stuttgart. I am not going to name the officials I spoke to because it was a confidential briefing, and that is the only way you can get reasonable access to information. However, I do not think they would mind me reporting some broad outlines of their comments, which contradict what the media was reporting only 10 days ago in Australia.

First of all, Daimler Chrysler’s view is that you do not make a profit by closing down every factory around the world just because for a period of time it might be losing money. They say you only make money by having factories that produce goods. They do not accept the automatic accountancy view that as soon as you run into a spot of trouble you close everything down. They said that in the end you would close everything down and you would not have a company at all.

The second point they made is that their involvement now with Mitsubishi makes them a truly global car manufacturer—No. 5 in the world. They will now not only be big in Europe, with Chrysler big in America; with Mitsubishi, with its Asian arrangements, they will now be big in Asia. Over a period of time, they want to show that they are a global manufacturer of cars and related products. As a global operation, they see operating in Australia as part of the globe. As long as people in Australia understand that they are a global operation, they do not have a pessimistic view about car manufacturing in Australia in the long term for the newly established, merged company.

They made a comment that they noticed that there is plenty of scope for Mitsubishi to improve its sales even within the Australian market. They recognise that the Magna Verada is a quality car and they noted that it has already had a substantial success in exports. They would not be drawn on the issue of Mercedes Benz, Daimler or Chrysler using the facility in Adelaide to produce other brand names, but clearly, as a global operation, those opportunities could occur. We all hope they do.

I found two other comments most interesting. The people I spoke to already recognise that Adelaide and Australia have well-established quality car component manufacturing arrangements. This is very important. If you go to a developing economy in Asia, you will have much greater difficulty outsourcing to quality car component manufacturing. They recognise that Adelaide has a reputation for quality car component manufacturers, and that is an advantage.

The other discussion we had was about industrial relations. To the horror, I suppose, of Mr Reith, they do not have an attitude similar to this coalition—that you have to belt and bash the unions, belt, bash and intimidate workers and reduce their—

Senator Boswell—That’s a bit unfair.
Senator SCHACHT—You are with the government, Senator Boswell, that had dogs and balaclava-masked people on the wharves only 30 months ago. I do not think it is too much to say. It may not be your view, Senator Boswell. I recognise that, as a person from a rural area, you understand some issues about workers’ security and long-term employment. But I think you are completely out of step, or Mr Reith is completely out of step with your views. What Daimler-Benz made clear was that you cannot produce quality cars like a Mercedes Benz if you are intimidating your workers, threatening them and making them feel insecure. You only produce a quality car that you can sell in the world, with real value added, if you have the full support of your work force. They are not interested in union bashing or worker bashing. What they are interested in is getting the full, committed support of their work force to produce a quality product.

During my visit for the day they took me to one of their several manufacturing plants around Stuttgart. I went into the factory and onto the assembly line. First of all, one is amazed at the level of automation and modern technology. The second thing that was
obvious was that the workers, in teams that they ran themselves, were working at the pace they felt comfortable with and were under no pressure. They told you with pride that in some sections it had been three months or more since they had found that they had made a mistake in the production line. It is that quality production which means that people around the world are willing to pay quite generous prices—profitable prices for the company—to buy a Mercedes Benz. It has a brand name associated with high quality and high technology and a status that people are willing to pay for.

I found that a most interesting comment. They also had a reasonable idea about the plant in Adelaide and information that it had a good industrial relations record. After that briefing, I came back to Australia and found amazing stories appearing, particularly on the ABC last week, completely at odds with the view that I had got. The announcement yesterday by Mr Phillips, the Managing Director of Mitsubishi, in front of his 3,500 co-workers, demonstrated that the briefing I got and the feeling I got were much more correct than the press speculation of a week ago. Mr Phillips is to be congratulated on his negotiations and being able to demonstrate that the plant in South Australia has a good long-term future, both in the domestic market and in exports.

I want to raise one issue for the government to seriously look at, and I think this relates to all governments in the future. The one area where Mitsubishi has run into problems is the decline in the value of the dollar, down to 50c. A significant section of the cost is in importing components to go into cars that are built in Australia and then re-exported. When you have a 50c dollar, the cost of the components being imported goes up and affects the bottom line. What we should be aiming to do is have an industry policy in engineering and manufacturing to further grow the ability of Australian companies to supply more of those components for Mitsubishi—and for General Motors, Ford and Toyota. Rather than having to import them, they could be manufactured in Australia. There is no reason why that cannot be done. Australia is not a high wage country by comparison with other OECD countries, and we have a well-trained, well-educated work force and a history of manufacturing and engineering. That is an area of industry that Australia has to look at—to improve the manufacturing of high quality, value added items that go into things like high value added motor cars. That is the way to improve the profitability of the car industry in Australia.

It was a great day yesterday, and I congratulate Mr Phillips and the workers at Mitsubishi for what they were able to achieve. They did it despite 12 months of at times unnecessary speculation by the media that created uncertainty and anxiety amongst the workers. They now have a very good future, and those of us from South Australia are very pleased that that has occurred.

Sitting suspended from 1.53 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Australian Taxation Office: Company Audits

Senator SHERRY (2.00 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware of the serious claims made in the Financial Review on 28 November that Mr Stephen Breckenridge, a partner at KPMG, has heavied senior tax office management to have special officers removed from audits or reviews of his big business clients on no less than eight separate occasions? What action does the minister propose to take to fully and properly investigate these claims?

Senator KEMP—A lot of claims are often made, Senator, and you and I are aware that often claims are made in relation to audits. Seeing you have raised this particular issue with me, I will seek a briefing from the department on it and see whether there is any particular advice that I am able to provide to you.

Senator SHERRY—Madam President, I ask a supplementary question. First, I must say I am surprised you have not sought a briefing already, given the serious nature of the claims. How appropriate is it for Mr Breckenridge, or indeed any other senior partner of an accounting firm, to pressure
senior tax office management to remove ATO officers from their firm’s big business case audits? How appropriate is it for the tax office to accede to requests to have ATO auditors pulled from big business accounts and then seek to have the officer concerned prosecuted over a supposed newspaper leak when no proof could be found?

Senator KEMP—There are a lot of statements in that supplementary question and a lot of assumptions which are made. I think the best thing in these matters is to always find out what are the precise facts. As you know, Senator, the tax office is an independent body charged with very great responsibilities in relation to the administration of the tax act. You have raised a particular issue. I will seek some information from the tax office and provide you with a response.

Roads: Funding

Senator PAYNE (2.02 p.m.)—My question without notice is to the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald. Would the minister inform the Senate of the basis upon which the Howard government’s Roads to Recovery initiative actually allocates funds to local governments throughout Australia? Would the minister further advise the Senate whether there are any alternative policies which might impact on regional Australia?

Senator IAN MACDONALD—Perhaps I will start with the second part of the question because that will not take me very long to answer. There are no alternative proposals that I know of, certainly none from the Labor Party. It was not even raised in any significant way at their national conference in Tasmania recently. They seem to have no interest whatsoever in nation building and in road construction. In spite of what they are now saying, actions speak louder than words. Let us have a look at what the Labor Party have done in relation to roads and nation building. Remember, there used to be a very good Black Spots Program. The Labor Party abolished it. Labor’s record in relation to infrastructure has been appalling, but where they have been very good is in introducing and incessantly increasing the tax on fuel. You might remember, Madam President, that it was the Labor Party who introduced the automatic indexation of fuel. In all of the time they were in government, they took the money and never once suggested reducing excise, as the coalition government has done.

Senator Payne asked me how the funds are distributed. I have to tell Senator Payne that they are distributed in a very fair and equitable way, and that is by the States Grants Commission—which was set up under legislation by the previous government—and through the state government grants commission. Senator Payne, who is based in western Sydney and who I know spends a lot of her time looking after local authorities in that area, will know from contact with those local authorities that they, like every other local authority in Australia, are absolutely ecstatic about the increase in road funding that they have received.

Mr Beazley cannot even get the sums right. Mr ‘Boondoggle’ Beazley, in the Rockhampton Morning Bulletin yesterday, said of the seat of Capricornia—one of the very few seats held by the Labor Party in rural and regional Australia—that the electorate was ignored as far as road funding went. I do not know about Mr Beazley, but I would think an almost $22 million additional investment in the seat of Capricornia is hardly ignoring it. Mr Beazley suggests that there is some funny business and that Capricornia is ignored because it is currently—I might say only for a very short period of time—held by the Labor Party. It gets $22 million, but the seat immediately adjoining it to the south is the seat of Hinkler, held by the National Party. It got the massive amount of $10-odd million—about half of what Capricornia got. The Liberal seat of Herbert a little bit to the north got the massive amount of $5 million—still less than the Labor seat of Capricornia got. All those seats got the right amount because it is an amount that is calculated on the basis, roughly, of the roads in the electorate and population. So all of them got the right amount because it is an amount that is calculated on the basis, roughly, of the roads in the electorate and population. In fact, in Mr Beazley’s own seat one of his councils has said that the grant given to them will allow them to do a lot of roads that they
have not previously been able to do. But no thanks to the local member, Mr Beazley. All he wants to do is whinge and carry on. He says it is a boondoggle. I wonder whether he is going to ask his councils to give it back. (Time expired)

**Australian Taxation Office: Company Audits**

**Senator COOK** (2.07 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware that Mr Chris Jordan is a senior partner of KPMG, the same firm which is alleged to have heavied the ATO on no less than eight separate occasions to have senior ATO officers removed from audits or reviews of his big business clients? Isn’t it also the case that Mr Jordan sits on the new Board of Taxation, which advises the government on the design and operation of Australia’s tax laws? Isn’t it the case that the Board of Taxation is in a position to recommend changes to transfer pricing laws which could benefit KPMG’s big business clients? Doesn’t this constitute a serious conflict of interest on behalf of Mr Jordan?

**Senator KEMP**—This is the usual standard of questioning from Senator Cook. The question is, Senator Cook, how low you can go, and I get it wrong often, I have to say. Mr Jordan, as you know, is a very distinguished accountant, a man with an extremely impressive record in his profession and a man who has played a very, very important role in the introduction of the new tax system. Senator, I notice that you have not been able to produce any facts that would be to the contrary. When you stand up here and attack an individual, you might like to show that the individual has acted in a certain manner. Of course, you have utterly failed to do that in your question. Your question is quite barren of facts; it is very strong on assertions. There used to be an old principle in this chamber, and I may remind some of my colleagues of it. This used to be called the Robert Ray principle.

**Senator Robert Ray**—You never followed it.

**Senator KEMP**—Can I say that the Robert Ray principle, as Robert Ray seems to have forgotten that principle, was, if I am quoting you correctly, ‘Ten yards to courage.’

**Senator Robert Ray**—Which you never showed.

**Senator KEMP**—That was the old Ray principle. That principle does not seem to apply any longer in the Labor Party, and nor, might I say, does Senator Ray bother to apply it. I say to Senator Cook: the allegations you have made are strong allegations. Let us test not only your sincerity; let us test your confidence in the facts. Let us test your courage. Why doesn’t Senator Cook walk outside and make these allegations outside the chamber and not hide within the privileges of parliament? Then we would see whether Senator Cook felt there was any substance to these matters. But the truth of the matter, Senator Cook, is that you have not directly linked Mr Chris Jordan with any of those matters; you have not said that he has acted in any particular fashion. What you have done is just make some assertions. This is your typical style, I have to say. This is a style which I think many people feel de-manskills this parliament.

**Senator Abetz**—Hear, hear!

**Senator Robert Ray**—You are joking, Eric.

**The PRESIDENT**—Order!

**Senator KEMP**—Sorry to get personal, Robert Ray—

**The PRESIDENT**—Senator Kemp, refer to the senator as ‘Senator’.

**Senator KEMP**—Thank you, Madam President. The point I am making is that Senator Cook gets up and tries to traduce the character of a distinguished Australian who I think has performed important services. Madam President, I think that we will test whether Senator Cook has any facts to back up his assertions, and we will watch with interest to see whether he is prepared to walk outside the parliament and make these allegations. Let me intrude with just one predic-
tion. My prediction is that Senator Cook is not prepared to follow the Robert Ray principle.

Senator COOK—That is one of the most deceitful answers I have heard in this chamber. It plumbs the absolute depths.

Government senators interjecting—

The PRESIDENT—Senator, do you have a supplementary question?

Senator COOK—The supplementary question is: my question was about a conflict of interest; would you answer the question about a conflict of interest? Can the Assistant Treasurer confirm that a report has been prepared by a senior ATO executive highlighting KPMG partner Mr Breckenridge’s actions in having ATO officers removed from audits of his clients? Is that a fact, Minister? Secondly, can you confirm the existence of the report? If so, will you make it available to the Senate or an appropriate committee of the Senate in order to inquire into these very serious claims? While you are answering those questions, you might go back and answer the one I asked you before: is Mr Jordan’s position one of a serious conflict of interest? That is the question you have to answer.

The PRESIDENT—A significant part of that supplementary question seemed to be more like a supplementary question to the first question rather than the answer.

Senator Vanstone—Madam President, I rise on a point of order. Perhaps I missed something but I understood Senator Cook to say that Minister Kemp had given a deceitful answer. He did not say that the minister misunderstood the facts; he said he gave a deceitful answer. There were calls for withdrawal but they were not taken up. That has to be a clear imputation against Senator Kemp. If you say someone is deceitful, you say that by intent they have misled, not by accident or misunderstanding. I ask you to ask Senator Cook to do what he should have done earlier, and that is withdraw.

The PRESIDENT—Senator Cook, you should withdraw that aspect of it.

Senator Cook—If I have said anything unparliamentary, I will withdraw it.

The PRESIDENT—I ask you to withdraw, Senator.

Senator Cook—I withdraw it. I wish he would answer his questions.

The PRESIDENT—Senator Kemp, with respect to the supplementary question, a part of it I do not believe was supplementary to that answer, but I leave it as a matter for you as to whether you have anything further to say.

Senator KEMP—I agree with you, Madam President—it was a very poorly constructed supplementary question. I am used to being called names by Senator Peter Cook—

Senator Herron—The famous quote!

Senator KEMP—Not a famous quote, Senator Herron—a very infamous quote.

Senator Cook—Madam President, I rise on a point of order. He is not answering the question. Will you ask him to answer the question? I did not ask him what he thinks of me; I know that. But I did ask him a serious question of parliament. Will he please do this chamber the justice of actually answering the question?

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

Senator KEMP—Senator Peter Cook has again proved that he has probably the largest glass jaw in this parliament. It was very interesting that Senator Cook then slid off his rather personal attack on Mr Chris Jordan and raised a completely different issue. Senator Cook, I will look into the comments you made and see whether there is any further information that I am prepared to provide to you.

Aboriginals and Torres Strait Islanders: Reconciliation

Senator EGGLESTON (2.15 p.m.)—My question is to the Minister for Aboriginal and Torres Strait Islander Affairs, Senator Herron. Will the minister outline the progress and practical reconciliation being achieved under the Howard government’s important initiatives to reunite Aboriginal families who were separated in the past?

Senator HERRON—I thank Senator Eggleston for the question and for his continued
interest. It gives me the opportunity to in-
form the Senate of the significant progress in
implementing the government’s $63 million
response to the Human Rights and Equal
Opportunity Commission’s Bringing them
home report. Many of you will recall—I
know Senator Faulkner will, because he
takes a keen interest in it—that the govern-
ment’s comprehensive assistance package
was a practical and realistic response to ad-
dress the fundamental issue of family sepa-
ration and its consequences. The Bringing
them home report said:
... assisting family reunions is the most significant
and urgent need of separated families.
The package I announced in December 1997
is facilitating family reunions and assisting
indigenous Australians to cope with the
stress and trauma of past family separation.
As part of the $63 million package, the gov-
ernment allocated $11.25 million to the Abor-
iginal and Torres Strait Islander Commiss-
ion to establish a national network of in-
digenous family tracing and reunion services
for people who have lost contact with their
families and communities. These services are
known as Link Up. I am very pleased to say
that, since we provided that funding, Link
Up has assisted over 9,400 people nationally
in two years, involving 370 family reunions.
In Queensland, for instance, almost 3,500
people have been assisted, with about 30
reunions. In New South Wales, 2,800 people
have been assisted, with a total of 95 family
reunions, and in the Northern Territory al-
most 2,500 people were assisted, with more
than 200 reunions. The number of people
assisted is likely to be much greater, given
that some clients do not seek family reunions
or are unable to be reunited because relatives
cannot be traced or may have passed away. A
national database is currently being estab-
lished and is expected to be fully operational
at about this time next year. It will help fur-
ther to collate information and to enhance
family reunions.

I am also pleased to inform the Senate that
the federal and Western Australian govern-
ments have agreed to jointly fund a Link Up
service, which is expected to start operations
in that state early in the new year. I know
that Senator Eggleston, particularly, is inter-
ested in that. Expressions of interest are now
being sought for Aboriginal community or-
ganisations to provide family tracing and
reunion services, as well as associated coun-
selling and health services. The new service
will have comprehensive links to the state
Family and Children Services’ Family In-
formation Records Bureau and related serv-
dices. The federal government will provide
$580,000 this financial year, while the West-
ern Australian government will contribute
$800,000. ATSIC is also providing funding
for a range of enhancement initiatives, such
as information technology and training for
Link Up staff. Further federal funding of
$785,458 will be provided to Western Aus-
tralian Link Up over the next two financial
years.

It is also important to note that Link Up
referred over 800 clients to specialist coun-
selling and support services during the year.
Counselling services are provided for in the
government’s $63 million package, with $33
million being spent on 50 new counsellors
and clinical support services to assist people
suffering from trauma and emotional dis-
tress. We are also providing nearly $16 mil-
lion to enable further development of indige-
nous family support and parenting programs.
Another $2 million will fund the Australian
Archives to index, copy and preserve thou-
sands of files to improve accessibility to rec-
ords. Also, $1.6 million is being spent on an
oral history project to allow indigenous peo-
ple and others to tell their stories, and $9
million is funding language and cultural
centres to expand the important work of pre-
serving indigenous languages. The federal
government are proud of our record on indi-
genuous issues, and we will continue to as-
sist those families living with the conse-
quences of separation. I gave the 12th Joe
and Enid Lyons Memorial Lecture at the
Australian National University on Monday
last week, 20 November, detailing other ini-
tiatives, and I ask all senators to obtain cop-
ies of that. (Time expired)

Jordan, Mr Chris: Employment

Senator CONROY (2.20 p.m.)—My
question is to Senator Kemp, the Assistant
Treasurer. Can the minister confirm that the
Prime Minister’s former staff tax adviser, Mr
Chris Jordan, personally directed that the PR firm of Jackson Wells Morris be engaged on a $200,000 taxpayer funded contract to advise Mr Jordan on GST related media appearances in his part-time role as Chairman of the New Tax System Advisory Board? Can the minister inform the Senate of precisely how proper contracting process was followed in this case of one former staffer of Prime Minister Howard arranging to channel a continuing $200,000 taxpayer funded contract in the direction of another prime ministerial staffer, this time Mr Graeme Morris, the disgraced former chief of staff?

Senator KEMP—What an extraordinary question! When you pick up your morning papers, you see headlines about ALP scandals, ALP rorts and money in envelopes being passed to people. One of the troubles with the Labor Party is that they assume that others act in the same miserable, low way in which they act on a lot of issues. Senator Conroy, you should not assume that we follow the same standards as the Labor Party. The Labor Party’s standards are now being exposed in the press, as are your own activities in Victoria, Senator Conroy. It is extraordinary to get this sort of question from the Labor Party. These questions were raised by Senator Conroy during Senate estimates. My memory of the answers which were given to Senator Conroy by Dr Hagan—

Senator Robert Ray interjecting—

The PRESIDENT—Senator Ray, I call you to order.

Senator KEMP—Thank you, Madam President. It is very hard to answer questions while there is calling out from the other side. These questions were fully canvassed and answered by Dr Hagan during Senate estimates. I refer you to the answers which were given to you by Dr Hagan. You failed utterly in your very tedious questioning to establish the point which you have now asserted. Also, Graeme Morris’ name has been raised. Graeme Morris is a person of great talent. Those talents have been displayed over a long period. So again we have another attack, another assertion.

There was one particularly interesting exchange with Senator Conroy in the Senate estimates. I said to the senator, ‘If someone has had a particular association with a political party, does that automatically preclude that person from being employed at some later date by a government of the same colour?’ I asked Senator Conroy whether that was the point he was making. Senator Robert Ray raised a similar issue in Senate estimates. Senator Conroy failed to answer that question. Then I asked whether, in any way, he could establish that the services provided by this particular body were not provided well and effectively and that they did not do the job for which they were paid. Again, Senator Conroy failed to answer. So we are seeing here the typical smear that we see from the Labor Party. The Labor Party is under attack all over Australia for its quite disgraceful behaviour.

Senator Ludwig interjecting—

Senator KEMP—Yes, Senator Ludwig, they are, right over Australia. It is not only confined to Queensland. (Time expired)

Senator CONROY—Madam President, I ask a supplementary question. Can the minister confirm that Mr Jordan is being paid $150,000 for his part-time services as Chairman of the New Tax System Advisory Board? Isn’t it the case that the Howard government has insisted on portraying Mr Jordan as a so-called independent tax expert from KPMG, when it is clear that he is far from independent? Can the minister show anywhere on the public record where the government has referred to Mr Jordan as a former Howard staffer? Doesn’t the public have a right to know about this cloud over Mr Jordan’s independence?

Senator KEMP—Of course Mr Chris Jordan is an independent expert. Again, Senator Conroy has failed to establish that Mr Chris Jordan has not performed his duties in a fully effective manner. You have never been able to establish that. In fact, in some ways his performance was described at the Senate estimates committee as outstanding. The only thing I would say to Senator Conroy is that again I call on the Robert Ray principle, which used to govern the behaviour of the Labor Party. Senator Conroy, if you want to make those comments about Mr Chris Jordan, why don’t you trot outside and
make them? Madam President, I predict that he will not do it, in exactly the same manner as Senator Cook would not. (Time expired)

Immigration: Detainees

Senator BARTLETT (2.27 p.m.)—My question is addressed to the Minister representing the Minister for Immigration and Multicultural Affairs. I refer the minister to media reports that some hunger striking detainees are currently being subjected to force-feeding. Can the minister confirm whether this is occurring and, if so, whether doctors or nurses are involved in the force-feeding? Is it also the case that people in detention centres in Australia have fewer legal rights than any other human being in Australia? In relation to the widening concerns about conditions in detention centres and broadening allegations, will the minister consider expanding the internal inquiry which has been established to make it a full judicial inquiry to enable people to testify and provide evidence without fear of retribution, whether that be centre staff in fear of management or asylum seekers who are in fear of having their refugee claims refused?

Senator VANSTONE—Senator, I have some information here on the provisions relating to medical treatment of persons in immigration detention. I will give you that answer. As to the remaining questions, I believe they need to be referred directly to the minister responsible and I will do that. Provisions enabling medical treatment, including the administration of nourishment and foods, were first included in the 1989 migration regulations in September 1992, on behalf of the then Minister of Immigration, Local Government and Ethnic Affairs, Mr Gerry Hand. The purpose of the provisions was to enable the secretary to the department, acting on medical advice, to use reasonable force to cause a detainee to accept medical treatment in circumstances where the detainee has refused or failed to consent to the treatment or is not reasonably capable of giving consent for that treatment and, in the absence of such treatment, there would be a serious risk to life or health of the detainee.

The explanatory memorandum prepared by the then Labor government advises that the need for these provisions arose because two individuals whose applications for refugee status had been rejected, and who were held in immigration detention, had gone on a hunger strike. The provisions were amended by the Labor government in December 1992 to, amongst other things, make it clear that it is the secretary acting in person who has the power to authorise medical treatment to be given to a detainee, to make it clear that the use of reasonable force includes the reasonable use of restraint and sedatives, to provide that any medical treatment given must be given by, or in the presence of, a registered medical practitioner and to make it clear that a medical practitioner will not be expected to act contrary to his or her ethical, moral or religious convictions. The provisions have remained unamended since then, except for some very minor changes in terminology, and are now contained in regulation 5.35 of the migration regulations 1994.

Senator BARTLETT—Madam President, I ask a supplementary question. I thank the minister for the answer to part of her question and appreciate her seeking further advice from Minister Ruddock. Could the minister also answer the question on mandatory detention, given the Human Rights and Equal Opportunity Commission’s—and the Australian Democrats’—longstanding opposition to mandatory detention and the call for an exploration of alternatives by an expanding coalition of church, welfare and children’s rights groups? Will the government at least consider exploring options to find an alternative, in relation to children, given that virtually every other country in the world has managed to find another way of dealing with unauthorised arrivals other than locking them up for the entire time their asylum claims are assessed? Will the government consider options taken by other countries, at least in relation to children, to find a better way?

Senator VANSTONE—I will take that on notice and refer it to the minister. There is a bit more information I can offer you, which was in answer to a separate question. Somewhere between 30 and 51 detainees have been participating in the hunger strike since 17 November. Of course, the medical staff
are closely monitoring the detainees’ health. Food and fluids are available. The outdoor mosque area at the Woomera centre, where the protesters are assembled, is shaded. The reasons for the strike action had not been made clear at the time of writing of this answer, which was 2 o’clock on the 24th. The action will in no way assist their claims to remain in Australia. They have been urged to cease that action. I will take the remainder of your questions on notice.

Goods and Services Tax: Advertising Costs

Senator MARK BISHOP (2.32 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Can the Assistant Treasurer confirm that the GST advertising and promotional budget for the current financial year has almost doubled from $30 million to $58 million? Can he also confirm that total costs for the introduction of the GST—that is, for advertising, promotion and education—have blown out from $433 million to $616 million? Is it true that this massive increase is largely due to the tripling of the number of inquiries to GST call centres, reflecting the rising level of concern in the business community about their new role as de facto tax collectors for the Howard government?

Senator KEMP—In relation to the first part of the question, you raised some specific figures. I will check those figures and provide you with the precise details. The advertising campaign has been a very important part of making sure that people are aware of the new tax system. They are aware of where they can contact people to get answers to questions, which has been a very important part of the introduction of the new tax system. I think this has gone particularly well. The new tax system has been a massive change for the community, and it is one which Australia needed and which the community at large have long believed to be in the interests of Australia. I think that is why it is a sad thing that the Labor Party adopted a very negative approach to the whole issue of tax reform. Only in recent months have they changed their minds completely and decided they will support the GST. If there is an inglorious role in the whole issue of tax reform, it is not in the area of the implementation of tax reform, it is not in the area of the advertising of tax reform, and it is not in the education program; it is in the behaviour of the Labor Party in relation to tax reform.

As the Treasurer pointed out, the Labor Party have a position that the GST is so bad that the Labor Party are prepared to keep it. I think a lot of people in the community are probably very confused about the Labor Party’s position on the GST. Senator Bishop, I urge you and your colleagues to get out and explain precisely what the Labor Party’s position is in relation to the GST and the areas of roll-back you are talking about. As you know, roll-back is not a very popular policy out there in the wider community. I think you have a lot of selling to do on that issue.

Let me make a couple of comments in relation to the new tax system. We were pleased that the sun did rise on 1 July, quite in contrast to what the Labor Party were claiming earlier in the piece. Certainly a big challenge has been the filing of the first quarterly BASs. My understanding is that the compliance levels have been very high, and this was reported at the estimates committee of the Senate. A very large number of people—I think some 50 per cent—filled out their BAS statements themselves.

This advertising campaign has been very important to inform people about the new tax system and the compliance arrangements. It has been very important to make sure that they have access to the information they need in order to properly comply. I think it has been a huge challenge—it has been a very big challenge for the government, and it has been a very big challenge for the tax office—but I think it has gone particularly well. There are issues that people in the community have raised with us, and we always look very closely at constructive comments and suggestions. The advertising program and the education program were very important to make sure that people are aware of their obligations under the new tax system. In seeking to explain their own particular position on the tax system and particularly their position on roll-back, I urge the Labor Party to get out there into the wider
community and be prepared to debate these issues. (Time expired)

Senator MARK BISHOP—Madam President, I ask a supplementary question. Can the Assistant Treasurer inform the Senate when the last dollar will be spent on advertising the GST?

Senator KEMP—Let me make the point that we will always make sure that people are properly informed about the new tax system. We do surveys in relation to the understanding people have of the new tax system, and we will be guided by those surveys to make sure that people do have the information they need. If this requires some advertising, it will be carried out. This has been a very important program, in part because of the misinformation that the Labor Party has tried to convey to the wider community. The biggest element of the misinformation was that the Labor Party did not support the GST, which it has now changed its mind on. (Time expired)

Ovine Johne’s Disease

Senator HARRIS (2.39 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry. Is there any scientific case for the quarantining of properties because of Johne’s disease, or is the quarantining being blindly implemented by state government departments at the instigation of the Cattle Council and the Sheep Meat Council? Johne’s disease has existed for over 200 years in most temperate countries. The New Zealand sheep flock is said to have a 75 per cent incidence of the disease. There are records of the disease in rabbits in Scotland and, closer to home, it has been detected in wallabies on Kangaroo Island. Minister, is there any other country in the world that is enforcing the quarantining of properties and the slaughtering of stock with Johne’s disease?

Senator ALSTON—I am not sure that I have the full gist of that proposition but I think it was essentially that this is really a problem that has been around for a long time so we should not do anything about it. Was that basically it: you do not want to see any serious action taken because it might somehow interfere with what other people are doing? If I have got it wrong I am sure you will let me know, but it seems to me that that is not a terribly responsible position to adopt because, clearly, it is a serious issue and there are ways in which it can be tackled. There is always a balance to be struck in terms of citizens’ rights but, at the end of the day, I would have thought that if we did nothing about it you would be highly critical of the fact that we could have acted but we chose not to.

Senator HARRIS—Madam President, I ask a supplementary question. Will the minister comment on the producers’ claim that there is no scientific basis for quarantining, that there is no economic case for what is actually happening and that there is no social excuse for the sacrificing of animals and the hardship imposed on owners? The wool industry has been the principal industry supporting the Australian economy since Macarthur introduced sheep in the late 1820s. This is the very same industry now being sacrificed at the whim of peak bodies and vets. Minister, will the federal government now step in and support the producers and the sheep and wool industry?

Senator Murphy—That’s a tricky one for you, Richard!

Senator ALSTON—I do not profess to be an expert on the subject, but if you think you are I am sure you can contribute at the end of question time.

Opposition senators interjecting—

Senator ALSTON—Foot and mouth! I will tell you what: we will need to bring in the experts to clean you lot up. I cannot think of anyone over there who has not got it. It is a very serious problem.

The PRESIDENT—Senator Alston, I draw your attention to Senator Harris’s question.

Senator ALSTON—I would certainly be happy to take any action we can, but I suspect that there are more terminal conditions over there. IQs in single figures are certainly a symptom of the condition that we see, and if there is anything we can do to help we will. But, in the meantime, all I can say is that there are better men than I who address their minds to this issue.
Senator Patterson interjecting—

Senator ALSTON—There might even be some women around who focus on this issue, Senator Patterson. But, whoever they are, if they form the view that it is in the best interests of consumers and indeed farmers that action should be taken, I think their views should be heeded.

Australian Capital Territory: Legal Aid

Senator HOGG (2.43 p.m.)—My question is to Senator Vanstone, the Minister for Justice and Customs and the Minister representing the Attorney-General. Minister, are you aware that a proposed prosecution in the ACT Supreme Court for fraud on the Commonwealth, worth $8.725 million, is reportedly at risk because of the inability of the ACT Legal Aid Office to fund the defence in the case? Is this what the Howard government’s cuts to legal aid funding have come to—a likely stay of prosecution in a serious case of alleged fraud, flowing from the High Court’s view of trials of unrepresented defendants? Doesn’t the resulting inability to recover $8.725 million stolen from Commonwealth taxpayers make cuts to legal aid funding look like false economy?

Senator VANSTONE—Senator, I provide you the answer on the basis that you are talking about Mr Muir’s case, reported in the Canberra Times of 2 November. You might be interested to know that the Commonwealth has not received an application in respect of this matter. Nonetheless, legal aid commissions are independent statutory bodies established under state or territory legislation. The responsibility for assessing individual applications for legal assistance lies with offices of the state or territory legal aid commissions, and the Commonwealth does not intervene in that process. While the Commonwealth sets priorities and guidelines for the provision of legal aid for matters arising under Commonwealth law, it is the responsibility of legal aid commissioners to apply those guidelines to applications for legal aid, along with means and merits tests to determine whether to grant assistance.

The Commonwealth does not review decisions made by legal aid commissions about whether or not to grant legal aid. However, legal aid commissions do have mechanisms whereby an applicant who has been refused legal aid by a commission may appeal against the decision to refuse assistance. There is an expensive Commonwealth criminal cases fund that was established to assist legal aid commissions with cases that are likely to have a significant impact on the commission’s resources and, as I indicated, we have not received an application to that fund in relation to this matter.

The issue of access to the funding for defence proceedings is being considered in the context of the government’s consideration of the Law Reform Commission review of the Proceeds of Crime Act 1987. I will be interested in what the Law Reform Commission has to say there. It is a very interesting argument as to whether you allow alleged criminals access to the proceeds of the alleged crime to defend themselves. I would be interested, as I assume you will, Senator, to see what the Law Reform Commission says.

Senator HOGG—Madam President, I ask a supplementary question. I do understand that there is a contingency fund in the order of $9 million over four years for all the states and territories—and this gets to the issue at hand. In making these savage cuts to legal aid funding in 1996-97, why did the Howard government not provide other additional funding for contingencies such as this case, where serious fraud against the Commonwealth is alleged and involves $8.725 million of taxpayers’ money? I understand that that is the nub of the problem. Isn’t this particularly the case for the ACT Legal Aid Office because the ACT courts are often used to undertake lengthy and expensive trials with charges relating to the Commonwealth government which should not take the large amounts of legal aid funds designed for the residents of the ACT?

Senator VANSTONE—Senator, what you refer to as cuts to legal aid was a commitment by the Commonwealth to fund Commonwealth matters and not to fund state matters. That has simply been described by your side of politics as cuts to legal aid, whereas what I would say is that it is a recognition that the states have been cost shifting in that area for too long. Senator, there
will never be enough money for legal aid. There wasn’t when you were in government—people wanted more money, and they want more money now. There is an endless stream of litigants who would be happy for other taxpayers to pay for their matters. There is, nonetheless, a fund. It is up to the individual states and territories to administer their fund. I have indicated to you, and you agree, that there is an additional fund for expensive Commonwealth criminal cases to assist legal aid commissions with these significant cases. The Commonwealth has not had an application in relation to this matter to that fund. (Time expired)

World Heritage

Senator SANDY MACDONALD (2.48 p.m.)—My question is to the Minister for the Environment and Heritage, Senator Hill. Minister, will you inform the Senate of the Commonwealth’s role in building Australia’s impressive reputation for the management of our world heritage properties?

Senator HILL—The Howard government is proud of the leadership that it is showing in relation to world heritage. Australia has more world heritage listings for natural values than any other country in the world. That is something of which I am sure all Australians would be proud. The contrast between this government and the previous government is that the previous government listed world heritage assets and then did so little to support their proper management. The contrast is stark, as demonstrated by the fact that I can announce today a further $10.8 million for projects enhancing Australia’s world heritage areas. This will be to support a further 37 projects in our 13 spectacular world heritage areas.

Apart from the block funding that we have been providing to such assets as the Great Barrier Reef, the Wet Tropics in North Queensland, Uluru-Kakadu and south-west Tasmania, this government has provided over $72 million since it came to office—extra money—for more than 300 specific management projects in our world heritage properties. The announcements that I am making today include long-term restoration work, feral animal eradication, controlling threats to the unique ecosystem of each area—in other words, sensible, practical outcomes on the ground, to protect conservation and conservation values, something so neglected by the previous government. Each of these projects will work towards improving the management of these properties, whether it be for upgrading the rainforest walking track in Dorrigo National Park in New South Wales, a major reconstruction of the boardwalk in Eli Creek on Fraser Island or controlling problem weeds within the Springbrook National Park.

This government has also enhanced the legislative protection of our world heritage areas through the Environment Protection and Biodiversity Conservation Act. This will mean that when a proposed action could have a significantly detrimental effect upon world heritage values it would require first the approval of the Commonwealth environment minister—something significantly lacking in the previous government’s legislation, which got Senator Faulkner in such a mess over the Hinchinbrook debate, of course.

Senator Ian Macdonald interjecting—

Senator HILL—His management of the matter was bad, but his legislative framework was inadequate, I confess, as well. We have enhanced the legislative framework. We have provided significant funding for practical management on the ground, and that is a good story. It is worth remembering that world heritage obligations include identification, conservation and presentation. This government is all about presenting the assets to the Australian community, allowing Australians to work with and enjoy these assets in ways that are compatible with their natural heritage values.

I want to mention the fact that Australia has been invited to take over—and has taken over—a role as a focal point for world heritage in the Asia-Pacific region. This was at the request of the World Heritage Secretariat in Paris and, of course, it is in recognition of the leadership that we are showing. I also want to mention the role that we are playing in relation to incorporating indigenous traditions within our world heritage areas. Four of our listings are already listed for cultural values and, in conjunction with the World
Heritage Committee meeting that is taking place in Cairns, we hosted for the first time an indigenous persons forum which provided significant and valuable information. (Time expired)

Senator Knowles—Madam President, I rise on a point of order. I seek your guidance as to whether it is within the standing orders that Senator Faulkner can sit there for the entire time and interject about his family relatives—the cane toads—and just simply try and over-talk Senator Hill or any other minister who is on their feet. Is that within the standing orders for him to be able to do that incessantly?

The PRESIDENT—It is not, but I was more focused on another senator who was actually, I think, making more noise than Senator Faulkner.

Goods and Services Tax: School Programs

Senator ROBERT RAY (2.53 p.m.)—I direct my question to the Special Minister of State, Senator Ellison, representing the Minister for Education, Training and Youth Affairs. Is the minister aware that the Australian Secondary Schools Association has complained that the nightmarish administrative burden of the GST is forcing schools to rethink extracurricular activities they offer students? Have these concerns been brought to the attention of the government? And is it true that the government’s attitude is that schools will simply have to accept the GST burden, no matter what the cost and no matter what the disruption to school programs?

Senator ELLISON—I understand Senator Ray is talking about the comments that were quoted in the press from the Australian Secondary Principals Association. Whilst the new tax system has changed the tax landscape for schools, it has done that for the whole Australian community, and the compliance costs will be more than compensated by the surge of resources available to the sector through a reformed, efficient tax system. We have also announced in the GST start-up office an additional $17 million to assist the education sector with the implementation of the GST. Treasury has estimated that the cost of delivering education will fall by about a billion dollars over four years. That is an enormous cost saving to the educational sector over four years. The Commonwealth grant payments to non-government schools have been grossed up to take into account the GST and have not been reduced due to the abolition of the wholesale sales tax, which I understand is one of the concerns mentioned. There will be an overall reduction in Commonwealth grant funding in the foreseeable future.

The government position on the GST is quite clear: all educational activities that are related to a school’s curriculum are GST free. What we have here is a new tax system which offers great benefits to the community across all sectors. What we have is a new tax system which is offering a cost saving of a billion dollars over four years—and that is a Treasury estimation. We have announced measures to assist with the implementation of the GST in the education sector, and I mentioned $17 million going into that. What we have here is a new tax system which is going to benefit the parents of those students attending Australian schools. What we have is benefits, income tax reductions, for the majority of parents who send their children to Australian schools—and that is across the board, whether it is the government or non-government sector. We stand by our new tax system and we stand by the benefits that it will bring to the education sector across both the government and non-government sectors.

Senator ROBERT RAY—Madam President, I ask a supplementary question. Minister, are you in fact saying that schools have absolutely nothing to complain about in terms of the complexity and the administrative burden that has been placed on them by the GST? Are you in fact saying that they are complaining for no good reason at all? And will you, as minister, or the minister you represent, approach the Australian Taxation Office and try to have the paperwork simplified so that many of these extracurricular activities can continue, to the great benefit of students?

 Senator ELLISON—I mentioned the GST start-up office has $17 million for the implementation of the new tax system to assist in these very measures that Senator
Ray has mentioned. We have announced that we realise that it is a new tax system and that there are changes across the board. But we have also announced assistance from the GST start-up office for these sorts of measures. I would say to those people Senator Ray has referred to that they should go to the GST start-up office and make use of that valuable assistance that is there for them.

**Banking: Services**

Senator RIDGEWAY (2.59 p.m.)—My question is to the Minister representing the Minister for Financial Services and Regulation, Senator Kemp. Has the minister seen reports that the Commonwealth Bank chief executive, Mr David Murray, is fearful of politicians increasing antibank rhetoric in an effort to capitalise on community anger towards the banks? Minister, has the government sought to inform Mr Murray that the Australian public at large is extremely unhappy with the behaviour of banks and considers that they should not be applauded for the hundreds of branch closures, the thousands of retrenchments, the reduced services and perpetually increasing fees? Is this government prepared to consider the imposition of a mandatory social charter which would oblige banks to provide basic services and maintain basic standards for all Australians, particularly for the benefit of those residing in rural and regional Australia?

Senator KEMP—I will make a few general comments and then turn to the specifics. This is a matter for the Minister for Financial Services and Regulation, Mr Joe Hockey. We have said, in relation to banks and financial services, that one of the important things that this government has done has been to increase the competitive pressures in the financial sector. This has meant that there are more options for consumers. We have always said that, if a consumer is unhappy with the service or fees of a particular bank, they should shop around. There are many more options available now than there have been in the past. That is the first point I would make regarding the government policy. Secondly, as to any inference about the government, the government will always act in a fair manner. The government is particularly conscious of the needs of consumers and it is particularly conscious of the needs of those in rural and regional Australia. Mr Murray, and indeed all the banks and those providing financial services, would be well aware of the government’s views on this matter.

I think I can say that consumers have benefited from a very large increase in the financial system’s points of access over the last 10 years. Today I saw an interesting statistic on access, which was one of the issues Senator Ridgeway raised. There are over one-third of a million points of access for a population of less than 20 million. This increase has meant that, in many ways, some people are better able to access services than they were in the past. The government also places an emphasis on providing an environment for increased competition so that consumers can reap the benefits.

The government is also mindful of the potential impact of bank closures on communities in rural and remote areas. As a consequence, an objective of the government’s rural transaction centres program, which has so often been referred to by my colleague Senator Ian Macdonald, is to improve access to basic transaction services and to do so in a way that encourages private sector or community based provision. I am pleased to advise Senator Ridgeway that the government intends that RTCs should enhance or complement any existing or planned transaction services in rural towns and, of course, not crowd them out. I think that deals with the issues that were raised in the question. However, I would say that the government is particularly conscious of the need to make sure that consumers do have access to services. This is one of the driving forces behind the government’s move to make sure that we can increase the competitive pressures in the financial services sector.

Senator RIDGEWAY—Madam President, I ask a supplementary question. I thank the minister for his answer. I note that bank fees are increasing and banks are finding new ways to continue to increase fees. Minister, do you and the government believe that it is time to take action and genuinely canvass the prospect of reregulating the banks, or will you continue to rely on the same old
line—namely, that competition will at some unknown time miraculously deliver improved services and lower fees to customers?

Senator KEMP—What I said in my original response was that, where customers are unhappy with fees and charges, we always encourage those customers to shop around and to find alternatives. As I said, we have been able to increase the competitive pressures and that is providing real gains for consumers. That is the direction of the government policy. The direction of our policy was marked out in the Wallis report, which was adopted by the government. I think that is the way forward. In many ways, we are seeing improved services to consumers. Where the banks are falling down, this government is always the first to look at the particular issues. I have mentioned one of the initiatives that the government is particularly supportive of and that is the rural transaction centres. (Time expired)

Senator Hill—Madam President, I ask that further questions be placed on the Notice Paper. 3.05 p.m.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Aged Care: Commissioner for Complaints

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (3.05 p.m.)—Yesterday Senator Evans asked a question of me directed to the Minister for Aged Care. I have received an answer from the Minister for Aged Care and I wish to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—

AGED CARE: APPOINTMENT OF COMMISSIONER FOR COMPLAINTS

SENIOR EVANS (2:35PM) - My question is directed to Senator Herron, the Minister representing the Minister for Aged Care. Does the minister recall evidence to the community affairs estimates committee that Mr Rob Knowles, the aged care complaints commissioner, is paid $80,000 a year for working three days a week? Can the minister explain why the position of complaints commissioner was not advertised nor any interviews conducted for the position? Can he confirm that Minister Wooldridge organised the appointment of his friend and Victorian colleague to this position?

SENIOR EVANS—Madam President, I ask a supplementary question. I thank the Minister for his answer to a question I did not ask but was going to ask at some time. He did not answer the key question of whether or not the job was advertised or interviews conducted. I would appreciate him giving me the answer to that. Can he also confirm for me that the job description and role for the complaints commissioner were finalised on only 31 August, more than a month after Mr Knowles was appointed to the position and began receiving his $80,000 a year salary. If you could take that on notice too, I would appreciate that, Minister.

SENIOR HERRON—The Minister for Aged Care has provided the following answer to the honourable senator’s question. The position of Commissioner for Complaints was created to provide an effective vehicle for the oversight and operation of the Aged Care Complaints Resolution Scheme and is part of the progression of the Government’s aged care reforms. The role of the Commissioner for Complaints is formally established in the Committee Amendment Principles 2000 (No 1) signed on 31 August 2000.

The announcement of the imminent appointment of Mr Knowles was made on 25 July 2000. The appointment was made on the recommendation of the Minister for Aged Care. The level of remuneration was set by the independent Remuneration Review Tribunal.

Australian Taxation Office: Company Audits

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.06 p.m.)—I move:

That the Senate take note of the answers given by the Assistant Treasurer (Senator Kemp), to questions without notice asked today, relating to the goods and services tax.

This is a serious matter. It is of major concern that the minister is now leaving the chamber and not facing the criticism that can justifiably be made of his answers.

Senator Herron interjecting—Senator COOK—I accept that interjection by Senator Herron. Nothing that I asked the minister, save the question—is there a conflict of interest here?—is not on the public record, so I reject any argument that there is any misuse of the parliamentary forum in that. I am quite happy to meet Senator Kemp outside, if that is what he wants to do, because it is a matter of fact that Mr Chris Jor-
dan is a senior partner of KPMG, which is the question I asked, and it is a question which the minister declined to answer. It is a matter of fact that Mr Chris Jordan was a former staff adviser to the Prime Minister—something that the minister did not answer or confirm either. That is an unexceptional issue: it is on the public record. Why is he ashamed of admitting it?

It is a fact that the same Mr Jordan was appointed by the Howard government to the Howard government’s new Board of Taxation, and it is a fact that the Board of Taxation was set up by the Howard government to advise it on changes to tax law. I asked the minister about those issues. Did he answer any of those questions? No. He accused me of attacking people within the parliamentary forum in an unwarranted way. Well, the reason why the last question—‘Is there a conflict of interest here?’—was the one that he was desperately keen to avoid is the issue of this motion to take note of the answer. There is a serious question about a conflict of interest, about the use of favouritism by this government and about the intimidation of the tax office by accountancy houses, and from time to time by others, that goes on in order to get better tax deals for the big end of town.

Ordinary taxpayers in Australia have their taxes deducted from their wages—there is no room to fiddle with that—and they are audited. And so they should be, because they are entitled and required to pay their full amount of taxation. But what is also true here is that major accountancy houses for the big end of town make representations to the tax office on behalf of their clients to claim deductions and have deductions recognised that reduce their tax obligations. This is not an open and transparent issue. The Channel Nine Sunday program did an expose of this about two years ago. There has been a Senate inquiry into this, and it has been a matter of continuing concern to the Senate. So when it is said that a leading partner in a major accountancy house has forced the removal of eight—not one, not two, but eight—different auditors appointed in the tax office to examine, review and audit accounts from major corporations who are clients of that accountancy house, is that a small matter? Is that not a matter in which all of the facts should be put on the table? Is that not a matter which, if there is a problem here, should be dealt with instantly? If there is no problem here, should not the minister let the facts speak for themselves and prove that there isn’t one? But when we asked this minister whether he would produce the report of the inquiry that has been conducted and which was referred to in yesterday’s Australian Financial Review, did he say: ‘Yes, we’ll have open disclosure. We’ll have transparency. There’s the report. Read for yourself?’ No, he did not answer the question. He left the chamber without actually answering the question. We are none the wiser as to what this report contains. We only have the Australian Financial Review’s record.

It is a matter of national concern, because tax depends on this principle: everyone pays their fair share. If someone is not paying their fair share by manipulating this process, then other taxpayers will disregard it and disrespect the system, and no tax authority can allow that to happen. Therefore, we want to see from this government the tax office report into the allegation that accountancy houses can use influence to remove auditors from the big end of town’s tax cases. (Time expired)

Senator BRANDIS (Queensland) (3.10 p.m.)—What we have heard from Senator Cook in the last few moments and in the series of questions that he and his colleagues directed to the Assistant Treasurer was an unedifying and shameless attack on the reputation of a respected professional man, Mr Chris Jordan. There is absolutely no basis of fact upon which the reputation of Mr Jordan or the other partners of accountancy firms who have been attacked in the Senate today can be impeached. It is a cowardly thing for a member of this chamber to come into this chamber and on the basis of innuendo alone suggest impropriety or a conflict of interest when they cannot point to a single scintilla of evidence that there was impropriety or a conflict of interest. It is a fact that members of accounting firms, large and small, represent clients. It is a fact that those clients, as taxpayers, whether they be the big end of town, the small end of town, individ-
ual persons, charities, corporations or, for that matter, trade unions—whatever their character may be—are entitled to professional representation. It is a fact that the professional services to which they are entitled include having representations made on their behalf within the law to the Australian Taxation Office. It is a disgrace and it is intellectually dishonest for any senator to assert that a person taking advantage of those professional services is doing something wrong. It is a disgrace and it is intellectually dishonest for a person to assert that a partner of an accounting firm who makes representations on behalf of his clients is doing anything wrong; and it is in particular a disgrace and it is intellectually dishonest to assert that because a senior partner of a respected professional firm may indeed act for major corporate clients he therefore has a conflict of interest in being an adviser to the government in relation to taxation matters. Any Australian government needs to have the advice, in any sphere of policy, from the leading experts in the field. And if those leading experts in the field happen to be professionals in the private sector it is a nonsense, it is unsustainable and it does not pass muster in the mind of any intelligent person to suggest that they have a conflict of interest.

Senator Patterson interjecting—

Senator BRANDIS—I am being charitable, Senator Patterson: I have said it does not pass muster in the mind of any intelligent person to suggest they have a conflict of interest. I am bound to say that the line of cowardly attacks upon respected, leading professional men and women in this country that we have seen from the Labor Party this afternoon is part of a cover-up, part of an attempt to deflect attention from their—

Senator Cook interjecting—

Senator CONROY interjecting—

Senator BRANDIS—We all know that Senator Conroy is the master of innuendo. As Shakespeare once said, ‘willing to wound but afraid to strike’—the definition of a coward.

Senator Conroy interjecting—

The DEPUTY PRESIDENT—Order! Senator Brandis, would you please withdraw that. That was an imputation upon a member of this place, or very close to it.

Senator BRANDIS—I withdraw the imputation. I will let the quotation from Shakespeare stand on its own feet. The Labor Party is seeking—

Senator Cook—Madam Deputy President, I raise a point of order. He cannot get away with withdrawing the language and leaving the imputation, which is what he has tried to do. It is disrespectful of the chair. He should withdraw the lot.

The DEPUTY PRESIDENT—I have asked Senator Brandis to withdraw any imputations.

Senator BRANDIS—I withdraw the imputation. The Labor Party, through the stratagem we have seen it pursue in question time this afternoon, is of course engaged in another exercise in damage control and deflecting attention from its own very considerable embarrassments in Queensland and no doubt elsewhere. Those embarrassments are being revealed daily before the Shepherdson inquiry. The names of so many Labor Party figures and members of parliament have now been drawn into this maelstrom, this cesspit of corruption and misuse of office and power, that it was only a matter of time before—

Senator Conroy—If it’s good for the goose, it’s good for the gander.

Senator BRANDIS—Senator Conroy, indeed what is good for the goose is good for the gander, and it was only going to be a matter of time before the role of the Premier of Queensland, Mr Peter Beattie, in the affairs of the Queensland ALP was revealed. Rather than deal in innuendo, let me quote the words of Mr Peter Beattie, as an object lesson to the Labor Party senators here. If you want to make an accusation, at least get your facts right. I am going to read to the Senate, if I may, some words that Mr Beattie used about 10 years ago in his autobiography In the Arena, when he was reflecting on the process by which he himself won Labor Party preselection. Mr Beattie said—(Time expired)

Senator MURPHY (Tasmania) (3.16 p.m.)—I do not need to reflect on any senator
on the other side with regard to his contribu-
tion to this chamber in respect of innuendo, and I do not need to quote anything from Shakespeare either. The questions that were asked at question time go to the very integ-
rity and independence of the tax office. That is what those questions were about, for Senator Brandis’ information, and whether or not undue influence can be effectuated upon the tax office. The reality is that, arising out of a newspaper article, questions were raised about the influence of some accounting firms on the tax office through the removal of tax officers doing their work in respect of as-
sessments of particular company tax affairs. That is what the questions were about. What is very surprising, certainly to us on this side of the chamber, is the fact that the Assistant Treasurer came into this place a full day and a half after the matter had been raised pub-
licly and was not able to respond, either on behalf of the tax office in respect of which these claims had been made and asserted in the paper, or in respect of whether he and the government are prepared to protect the integ-
rity and independence of the tax office.

This is not the first time these sorts of as-
sertions and claims have been made against the tax office. I chaired an inquiry which dealt with a number of allegations of this type in respect of high wealth individuals and large businesses in the international tax sectors of the community. A number of claims were made. It is not as though we are talking about small dollars. The tax office’s responsibility, and the responsibility of the government in overseeing the tax office’s responsibility, is to ensure that the tax office treats all Australians equally under the tax law of this country. That is the reality. There have been many allegations and claims made that the big end of town can influence the tax office. The article in the *Australian Finan-
cial Review* reflects that. Indeed, it is ac-
nowledged that the tax officer who was dealing with this case was removed from the case. As I said, it is not the first time that allegations of this nature have been made, innuendo or not. It is obligatory upon the government to address these questions. It is obligatory upon the Assistant Treasurer and Treasurer of this country to address these questions, to make sure that the integrity and the independence of the tax office are prop-
erly protected.

As I said, we are not dealing with small biscuits here. There have been assertions—
they have been acknowledged—that, in respect of the large business and interna-
tional division of the taxpaying community of this country, and the high wealth individual sector, there are billions of dollars at stake. As Senator Cook pointed out, ordinary wage earning taxpayers get their tax deducted out of their pay. There are plenty of examples where people that have overestimated their tax claims have been pursued with vigour by the tax office, and the tax office would ac-
knowledge that. There is plenty of evidence of that. But there is also evidence to suggest that there has been a softness on the big end of town. That is why—

**Senator Brandis**—Perhaps next time you should read the evidence.

**Senator Murphy**—Yes, evidence for your benefit, Senator Brandis, unlike some of the innuendo in the contributions you have made in this place, which is all you have managed to produce. There is evidence, be-
cause assessments have been made and then changed—often changed to the tune of hun-
dreds of millions of dollars. Yet other tax-
payers, wage earning taxpayers, have been pursued for a few hundred dollars. That is why the tax office must be able to be free of interference and influence. That is why it is fundamental to the integrity of the tax laws of this country that we do not allow undue influence. Even if it is seen as prima facie that there is a possibility of undue influence, it must not be allowed to happen. That is why the Assistant Treasurer ought to have been able to come in here today, answer the question and provide some response at least to the article that was in the *Australian Fi-
nancial Review*. I do not know what assis-
tance this Assistant Treasurer is to the Treas-
urer, Mr Costello. None at all, it would seem. He has failed in 4½ years to come in here and address a question even though he has been given a day and a half’s notice. It is about time some things changed. We will continue to pursue the questions that are relevant to protecting the tax office and
making sure that it treats all Australians equally.

Senator MASON (Queensland) (3.22 p.m.)—What we do know is that Mr Chris Jordan is a significant Australian with a significant background in this area, and there is no evidence at all of any wrongdoing or that any assessments were interrupted. All we have seen today and over the last few weeks is allegedly the best and the brightest of the ALP in the Senate—

Senator Brandis—They are the best and the brightest of the ALP?

Senator MASON—That is the sad thing, perhaps, Senator Brandis. They talk about issues—and they are mud-slinging—such as the Prime Minister’s curtains and the hiring of a red carpet. Senator Cook scored a goal the other day talking about the GST on petrol. There are no substantive issues at all. Senator Cook and the other best and brightest—

Senator Cook—The GST on petrol?

Senator MASON—Let’s get onto the GST in a second. All they ever do in the ALP at the moment is sling mud because they have no ideas on any substantive policy agendas at all. Nothing has been raised by the ALP on policy at all in months. These are the people in opposition who want to be the alternative government. They have no policies at all. It gets much worse. Senator Cook over there and the others do not believe in anything. They believe in absolutely nothing. This is a party that these days has no soul at all. What is required today to do something is to trot along to university, get a degree, work for a trade union for a while, learn how to rort and away you go. You take a spiv and put a silk tie around them and you call them a Labor senator. That is how it works today. This is simply a party—

The DEPUTY PRESIDENT—Senator Mason, would you please withdraw that imputation.

Senator MASON—I withdraw, Madam Deputy President. The party today is simply a party of opportunists—and that, Senator Cook, as you well know, is the truth. The ALP’s opposition to the GST was the most pathetic act in this country in a decade. This party knew it was the right public policy agenda and they failed to support it, even though Mr Keating, Mr Beazley, former Senator Richardson and former Senator Gareth Evans were for it. They did it simply because they thought there were votes in it. Their debate on the GST waxes and wanes in this chamber: one minute they are all for it and the next week they are against it, depending upon the opinion polls.

Senator Cook—We’re opposed to the GST. Get it right!

Senator MASON—Depending on the opinion polls, Senator Cook, they are for it and then they are against it. All they look at are opinion polls—a soulless, gutless and courageless party with a doleful policy agenda. What you should be worried about, Senator Cook, is what is going on in Queensland.

Senator Brandis interjecting—

Senator MASON—I am reading a book at the moment, Senator Brandis, about Richard Nixon, and there are a couple of questions that apply at the moment to Mr Beattie. They are the Richard Nixon questions: what did Mr Beattie know and when did he know it? He says he knew nothing.

The DEPUTY PRESIDENT—Senator Mason, this is a broad-ranging discussion but you might like to actually bring it back to the question that was asked and answered.

Senator MASON—What did Mr Beattie know and when did he know it? He says he knew nothing about it. This was a state secretary—

Senator Cook—Madam Deputy President, I raise a point of order. We have taken note of answers to questions on tax, and they are related to an article in the Australian Financial Review yesterday and allegations made in that article. I fail to see what Mr Beattie thinks about anything has got to do with this. This is clearly a transparent attempt to use a debate on tax to smear Mr Beattie. Madam Deputy President, I do not think that is within standing orders and you should ask the speaker to confine himself to the issue that is before the chair.

Senator Conroy—Madam Deputy President, on that point of order, I have to defend
Senator Mason. I am not sure I can agree with the narrow definition that you may be thinking of. I think Senator Mason should be encouraged to continue his performance for our amusement.

The DEPUTY PRESIDENT—There is no point of order, but I would ask Senator Mason to at least relate in some way to the question and the answer, which did relate to an article that appeared in the *Australian Financial Review*. Although Senator Conroy’s point of order was somewhat spurious, Senator Mason, I am sure that you can relate to the question.

Senator MASON—It goes to credibility and Senator Cook’s credibility on any of these issues. This is a party that opposes good public policy on the basis of opinion polls. That is what the ALP does, repeatedly, and it does not have any credibility. Mr Beattie, sadly, is caught in that net. This is the Premier who knows nothing about rorting in Queensland. This is the Premier who was state secretary and who knows nothing about it. He wrote this in 1990:

Doorknocking the area was an interesting experience. One female party member was not at home when I called on her at the vacant allotment where she purportedly lived. To my not particularly great surprise, she later voted in the preselection. Another party member was a seaman operating somewhere north of Cairns. I contacted him by radio so that he knew to send down his postal vote.

This party has nothing to say on substantive policy issues but wants to fling mud about the hiring of red carpets, the curtains in the Prime Minister’s office and puerile points on petrol prices—nothing substantive at all. There is not one substantive issue. If you are going to fling mud, Senator Cook, against either Mr Jordan or anyone else, quite badly for you there is much, much more that can be flung back at you.

Senator Cook—Sadly for you, petrol prices are an issue.

Senator MASON—Senator Cook, no-one believes that you would do anything about it. You do not have any credibility on these issues. That is the problem: you have none.

Senator CONROY (Victoria) (3.28 p.m.)—What we have seen today is a pathetic defence, an attempt to avoid the very subject which this motion is about, and that is talking about how many Liberal snouts can this mob get into the trough of the GST. That is what the questions we were asking were about: the tax office and the undue influence of spivs who come in from the other side and put on their ties. They are spivs with law degrees who think they can go out and represent the big end of town. All the spivs are loose.

The DEPUTY PRESIDENT—Order! Senator Conroy, I am not quite sure but you sound like you are going very close to making an imputation against members of the government. I would ask you to withdraw it.

Senator CONROY—If the shoe fits lawyers, then I plead guilty. I did not actually impute anything to anybody on the other side.

The DEPUTY PRESIDENT—You might like to make clear what you are talking about.

Senator CONROY—It may be a general imputation about lawyers. How many of them there are on the other side is a matter of public debate, but there are at least four that I can see from here.

What this debate is about is how many Liberal snouts can this mob lead to the trough. We have seen in the last few days the matter of Chris Jordan, the independent expert. We have seen the uncovering of the fact that Chris Jordan in 1987 worked in the Prime Minister’s office.

Senator Brandis—It is on the public record.

Senator CONROY—There is nothing wrong with that, Senator Brandis. You do not need to be ashamed. This is not a reflection on Chris Jordan; this is a reflection on the propriety of those on the other side. All you needed to do to avoid this debate was to declare that Mr Jordan was a former staffer for the Prime Minister. That is all you needed to do. But, no, the government knew they could not have Mr Jordan masquerading as independent if it had come to light that in actual fact he was the Prime Minister’s former tax adviser. How on earth could they credibly
put up a bloke who was the Prime Minister’s former tax adviser?

This is not a reflection on Mr Jordan’s competence; this is a reflection on this government’s deceit in its attempts to mislead the Australian public about the impartiality of this start-up office. What is the first thing that Mr Jordan does? He is hired as an expert in the area. He is hired as someone who can give many lectures and can talk fluently and publicly, and what is the first thing he does? He gives a $200,000 contract to another member of the Liberal mates club. To make sure it continues, it has got Graeme Morris, that disgraced former chief adviser to none other than the Prime Minister, who coincidentally happened to be the chief of staff for John Howard when Mr Jordan was working for Mr Howard. We have got another huge government taxpayer funded contract going to another disgraced staffer for this government.

Then we discovered last week that the Tourism Council of Australia, the only tourism organisation in this country which advocated support for the GST, had revealed in its own 1999 accounts that it was insolvent—it could not pay its debts. What did this mob do? They gave a $2.3 million contract to run GST seminars to their mates in an organisation that was insolvent, just to prop it up. Who were the stars behind the Tourism Council? Bruce Baird, former New South Wales minister, currently in the other place. He ran it into the ground. He finished up in 1998 and they were going down the gurgler financially in 1998. Scott Morrison came on board around the same time and left in 1999. Where did Scott Morrison go to? He is the New South Wales director of the Liberal Party now. This is a mob that gave a $2.3 million contract to an insolvent organisation of their mates to keep it afloat.

But it does not stop there. We have got Mark Pearson, who is in the book The Victory at page 159:

When he arrived, Pearson drew a big circle on his whiteboard and labelled it ‘we’. This was the Australian electorate, he said, and Howard had to get to the centre of it—a point which they defined as ‘standing for everyone’ ... Every Coalition advertisement would give expression to this highly divisive theme. It was one of Pearson’s great findings, Horton declared jubilantly.

He was another of the mates, and what happened there? For 7½ months work, what does he get paid? It is $405,000 for 7½ months work—another Liberal mate cashing in big on the GST. They have run out of Liberal mates to give contracts to promoting the GST. We are up to $3 million or $4 million to a bunch of Liberal Party former staffers who all worked on the Liberal Party election campaigns. (Time expired)

Question resolved in the affirmative.

Ovine Johne’s Disease

Senator HARRIS (Queensland) (3.34 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston), to a question asked by Senator Harris today, relating to Ovine Johne’s disease.

In Senator Alston’s answer he made inferences about whether I was proposing to the Senate that we take no action whatsoever in relation to Johne’s disease. That was not the thrust of my question. The issue that I was raising is the situation where, if a property is designated to be infected, those animals on that property require testing and analysis, and I believe that there is some support relating to that cost. However, properties that adjoin that identified property are also in a situation where they are restricted and cannot move stock, but for those adjoining properties there is no assistance whatsoever for the cost of having those stock tested. We now have a situation where the bureaucrats are blaming the industry, the peak bodies are blaming the bureaucrats, and the peak bodies are also not willing to take responsibility for the program. I believe that in Victoria alone the program is now $16 million in debt and there is another $4 million that has to be paid. Of that amount, $1.2 million has come from annual fees from the producers through a transaction levy of 12c per head of stock.

Johne’s disease, as I indicated in my question, has been around for some 200 years. Research must go on, as it is in other countries, relating to vaccines and nutrition. There is some work being done that may indicate that the addition of copper and lime
to pastures may be one method of controlling the disease. This has not been scientifically proven, but there is a case for considering the situation where Johne’s may be more prevalent in acid soils. If this is the case, the addition of lime and copper may well go towards finding a cure for this situation. Scientists from different places around the world—Ireland, Holland, Belgium, Hungary, Scotland, Norway, Canada and the USA—are all doing research work relating to Johne’s. It has been established that the bacteria of Johne’s can actually live in water for 19 months and in soil for up to two years. Livestock and sheep producers in this country now find themselves in a situation where a designation of the disease on their property is absolutely a deathknell. There have been suicides attributed to the pressures that this has brought on, and in raising the issue I am questioning the minister as to whether the scientific basis does stand for the introduction of these areas—(Time expired)

Question resolved in the affirmative.

NOTICES

Presentation

Senator Ian Campbell to move, on the next day of sitting:

That consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports not be proceeded with on Thursday, 30 November 2000.

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

That the Select Committee for an inquiry into the contract for a new reactor at Lucas Heights be authorised to hold a public meeting during the sitting of the Senate on 5 December 2000, from 5.30 pm.

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

That in camera evidence taken from Mr Michael Nicholls, Mr Brian Plain, Mr Peter Laird, Mr Tony Gooch and Mr David Wolfenden, in the course of the inquiry by the Rural and Regional Affairs and Transport Legislation Committee into the provisions of the Wool Services Privatisation Bill 2000, be published.

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

That the Senate—

(a) notes that the Member for Paterson (Mr Horne) and the Member for Hunter (Mr Fitzgibbon) have both criticised the Federal Government’s new Roads to Recovery program, despite the fact that their electorates will receive more than $20 million in total assistance;

(b) condemns Australian Labor Party criticism of the $1.6 billion Federal Government boost for roads across Australia, when it was the Keating Government that scrapped the ‘Black Spot’ program, which improved the safety of roads, and it was during the 13 years of Labor Government that country roads were forgotten; and

(c) welcomes the commitment to the Hunter Valley from the Federal Government, with 5 electorates receiving more than $44 million in funding under the Roads to Recovery program.

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

That the Fisheries Research and Development Corporation Amendment Regulations 2000 (No. 1), as contained in Statutory Rules 2000 No. 270 and made under the Primary Industries and Energy Research and Development Act 1989, be disallowed.

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


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

That GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No. 2), made under paragraph 177-10(4)(c) of the A New Tax System (Goods and Services Tax) Act 1999, be disallowed.

Senator CALVERT (Tasmania) (3.39 p.m.)—On behalf of Senator Coonan and the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move that the following delegated legislation, a list of which I shall hand to the Clerk, be disallowed.

The list read as follows—

1. Fisheries Research and Development Corporation Amendment Regulations 2000 (No.1), as


3. GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No.2) made under paragraph 177-10(4)(c) of the A New Tax System (Goods and Services Tax) Act 1999.

Senator CAL VERT—As usual, I seek leave to incorporate in Hansard a short summary of the matters raised by the committee.

Leave granted.

The summary read as follows—

Fisheries Research and Development Corporation Amendment Regulations 2000 (No. 1), Statutory Rules 2000 No. 270

The Regulations specify the research component for the levies attached to the Corporation for the 1997/98 and 1998/99 financial years, and correct an error in the commencement date for amendments made relating to the 1996/97 financial year. The Explanatory Statement notes that ‘the Attorney-General’s Department has previously provided oral advice that such a retrospective commencement is both legally valid and, from a policy perspective, acceptable.’ Given the substantial retrospective application of these amendments, the Committee has written to the Minister seeking written confirmation of this advice.

Fishing Levy Amendment Regulations 2000 (No. 3), Statutory Rules 2000 No. 271

The Regulations specify the levy payable for each permit for the South Tasman Rise Fishery. The Explanatory Statement to these Regulations advises that the levy has been set following a review by AFMA in consultation with the South Tasman Rise Australian Trawl Association and all permit holders. However, there is no explanation of the actual basis on which the $3000 amount has been determined.

GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No. 2) made under paragraph 177-10(4)(c) of the A New Tax System (Goods and Services Tax) Act 1999

This Determination amends the original Determination to allow specified categories of health goods which are released or developed after 1 July 2000 to be included in the GST-free category. The Explanatory Statement notes that the list of products in the original Determination contained ‘a number of unintended inclusions and omissions’. However, the Statement does not advise whether, as a result of the unintended omission, GST has been imposed on specific drugs and products when it should not have been imposed and whether, as a consequence, any person other than the Commonwealth has been disadvantaged.

COMMITTEES
Selection of Bills Committee Report

Senator CAL VERT (Tasmania) (3.40 p.m.)—I present the 20th report of 2000 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator CAL VERT—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE REPORT NO. 20 OF 2000

1. The committee met on 28 November 2000.
2. The committee resolved to recommend—
(a) That the following bills be referred to committees as follows:

<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>Charter of Political Honesty Bill 2000</td>
<td>Immediately</td>
<td>Finance and Public Administration</td>
<td>24 May 2001</td>
</tr>
<tr>
<td>Electoral Amendment (Political Honesty) Bill (see Appendix 1 for a statement of reasons for referral)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(b) That the following bills not be referred to committees:

- Auditor of Parliamentary Allowances and Entitlements Bill 2000
- Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Bill 2000
- Defence Reserve Service (Protection) Bill 2000

The committee recommends accordingly.

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

(deferred from meeting of 15 August 2000)
- Trade Practices Amendment Bill (No. 1) 2000
- Treasury Legislation Amendment (Application of Criminal Code) Bill 2000

(deferred from meeting of 5 September 2000)
- Maritime Legislation Amendment Bill 2000

(deferred from meeting of 3 October 2000)
- Human Rights (Mandatory Sentencing for Property Offences) Bill 2000

(deferred from meeting of 31 October 2000)
- International Monetary Agreements Amendment Bill (No. 1) 2000

(Paul Calvert)
Chair
29 November 2000

Appendix 1

Proposal to refer a bill to a committee

Name of bill(s):
Charter of Political Honesty Bill 2000
Electoral Amendment (Political Honesty) Bill 2000

Reasons for referral/principal issues for consideration
To examine the effectiveness of the bills in meeting community expectations for the monitoring and enforcement of electoral and parliamentary standards; whether the bills meet international standards of accountability; and the practicality of the proposed mechanisms.

Possible submissions or evidence from:
Federal political parties
Australian National Audit Office
Department of the Senate
St James Ethics Centre
Specialist academics
ACTU
Business Council of Australia
Australian Chamber of Commerce and Industry

Committee to which bill is referred:
Finance and Public Administration Legislation Committee

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

(signed) Vicki Bourne

LEAVE OF ABSENCE

Motion (by Senator O’Brien)—by leave—agreed to:
That leave of absence be granted for Senator Cooney for the period of 27 November to 8 December 2000 inclusive on account of absence due to ill health.

COMMITTEES

Finance and Public Administration References Committee

Reference

Motion (by Senator Lundy) proposed:
That the following matter be referred to the Finance and Public Administration References Committee for inquiry and report:

The Government’s information technology (IT) outsourcing initiative in the light of the Auditor-General’s report no. 9 of 2000-2001, and the means of ensuring that any future IT outsourcing is an efficient, effective and ethical use of Commonwealth resources, with particular reference to:

(a) the need for:
   (i) strategic oversight and evaluation across Commonwealth agencies,
   (ii) accountable management of IT contracts, including improved transparency and accountability of tender processes, and
   (iii) adequate safeguards for privacy protection and security;
(b) the potential impact on the capacity of agencies to conduct their business;
(c) savings expected and achieved from IT initiatives; and
(d) the means by which opportunities for the domestic IT industry, including in regional areas, can be maximised.

Amendment (by Senator Stott Despoja)—by leave—agreed to:
After, “in the light of”, insert “recommendations made in the Committee’s report, ‘Contracting out of Government Services: First Report-
Information Technology”, tabled in November 1997, and”

Original question, as amended, resolved in the affirmative.

Scrutiny of Bills Committee
Report
Senator O'BRIEN (Tasmania) (3.43 p.m.)—On behalf of Senator Cooney, I present the 17th report of 2000 of the Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 17 of 2000 dated 29 November 2000.

Ordered that the report be printed.

MINISTERIAL STATEMENTS

Australia’s Development Cooperation Program
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.43 p.m.)—I table a statement by the Minister for Foreign Affairs, Mr Alexander Downer, on the 10th annual statement to parliament on Australia’s Development Cooperation Program.

DOCUMENTS

Auditor-General’s Reports
Report No. 16 of 2000-01

TRADE PRACTICES AMENDMENT BILL (NO. 1) 2000
First Reading
Bill received from the House of Representatives.

Motion (by Senator Ian Campbell) agreed to:

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

Bill read a first time.

Second Reading
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.44 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The purpose of this bill is to amend the Trade Practices Act 1974 to improve the way the Act delivers protection to Australian small business and consumers.

The reforms contained within this bill are designed to ensure that the Act’s mechanisms for creating a competitive and fair environment work more effectively, thereby enhancing the welfare of all Australians.

This bill does not change the substantive legal rights and obligations of any person. Rather, it ensures that the enforcement and remedies provisions of the Trade Practices Act remain relevant in Australia’s current economic and social environment.

The amendments clarify and expand the sanctions a Court may impose where the Trade Practices Act has been breached. The bill will also improve access to the remedies available under the Act and enhance the Australian Competition and Consumer Commission’s powers to ensure the efficient operation and enforcement of the Act.

In a globalised economy, it is imperative that Australian businesses operate in a competitive domestic environment in order to remain internationally competitive. This can only be achieved where the law encourages competitive practices.

The bill incorporates a package of amendments that seek to consolidate the legal rights and responsibilities of the Australian community by ensuring the Trade Practices Act operates effectively. The amendments target the problems documented by the Australian Law Reform Commission in its report Compliance with the Trade Practices Act.

The bill also incorporates amendments to the Act announced by the Government in response to the Joint Select Committee on the Retailing Sector.

This bill is about consumer sovereignty. It is about promoting competition, ensuring fair outcomes in the marketplace, and about benefiting the Australian community.

It will do this by:

• increasing the maximum penalty levels under the Act to $1 million for offences against the consumer protection provisions;
allowing the ACCC to protect consumers and small business by intervening in private proceedings and instituting representative actions;

• extending the limitation periods of the TPA to 6 years; and

• ensuring the Courts give preference to compensation over fines and pecuniary penalties.

The Government is committed to ensuring that the Trade Practices Act continues to deliver appropriate protection to Australian business and consumers while promoting the availability of the choice, information and redress necessary to ensure that business and consumers can make their own decisions.

I commend this bill to the Senate.

Ordered that further consideration of this bill be adjourned to the first day of the 2001 autumn sittings, in accordance with standing order 111.

ASSENT TO LAWS

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

Health Insurance (Approved Pathology Specimen Collection Centres) Tax Bill 1999
Tobacco Advertising Prohibition Amendment Bill 2000
Vocational Education and Training Funding Amendment Bill 2000
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 2000
Family and Community Services (2000 Budget and Related Measures) Bill 2000
Health Insurance Amendment (Rural and Remote Area Medical Practitioners) Bill 2000
Patents Amendment (Innovation Patents) Bill 2000
Veterans’ Affairs Legislation Amendment Bill (No. 1) 2000.

HORTICULTURE MARKETING AND RESEARCH AND DEVELOPMENT SERVICES (REPEALS AND CONSEQUENTIAL PROVISIONS) BILL 2000

In Committee

Consideration resumed.

Senator O’Brien posed some questions just before we broke at lunchtime—

Senator Faulkner—Very good questions, too.

Senator TROETH—They were very good questions, Senator Faulkner, and I have devoted considerable time to seeking answers for him. I can only proffer them for his inspection and then see where we go. First of all, I will deal with clause 9, where he questioned the wording ‘the Minister may declare a body to be the industry services body’. That clause needs to be read in its entirety. It is designed to provide discretion to the minister to declare the body to be the industry services body only if conditions (a) to (d) are met and if, in particular, the constitution is appropriate and if the body has signed the deed of agreement.

You also asked what factors the minister would take into consideration in deciding if the constitution is appropriate. Certainly, the minister needs to be satisfied that the agreement reached between industry and government in the MOU, the memorandum of understanding, is fully reflected in the constitution of the company. Particular areas of scrutiny for the minister are the objects of the company, the different classes of membership, the agreed voting allocation, processes for the appointment and composition of the board, the establishment of industry advisory committees and their operation, provision for the annual levy payer meetings, the fact that no agripolitical activity is to be carried out and the fact that the company does not undertake commercial trading of horticultural product.

In relation to section 9(2)(c), the minister would have regard to whether the constitution of the body is considered appropriate for the administration of export control powers. Factors to be considered would include: that the company does not have a trading function which would place it in conflict with export licenses, that the company continues to deliver marketing services to the industry as outlined in its constitution, and that the government is satisfied that circumstances exist which require export control powers to apply—that is, that public benefits will be
provided by the use of export control powers.

Senator O’Brien’s next question was: what processes are required for the minister to sign off on the constitution, and who does he consult with? The constitution has been developed with full industry consultation, as I indicated in my second reading speech, to reflect the interests of industry and the government. It has been drafted by independent legal advisers to comply with the Corporations Law and the government’s requirements in terms of the scope and intended operation of the company to deliver marketing, research and development services and export control functions to the industry. It will be a registered document held by the Australian Securities and Investments Commission and will be publicly available.

Another question from Senator O’Brien was: why are the declarations under clauses 9 and 10 not directly scrutinised by parliament? The declaration or cessation of declaration of the industry services body and the export control body are administrative decisions to be taken by the minister under clauses 9 and 10. The decisions must be made by the minister on the criteria set out in clauses 9(1), 9(2) and 10(2). A decision by the minister under these provisions will be subject to judicial review. Provision is made for public notification of these decisions in the Gazette within 14 days so that the industry, the parliament and the public generally are kept fully informed of the minister’s decisions. The parliament is in a position to question the minister about these administrative decisions through the normal parliamentary processes should this be considered necessary. The normal parliamentary processes referred to would include questions in the parliament, letters to the minister, direct representation to the minister and committee inquiries, including Senate estimates.

Senator O’Brien also asked what form of judicial review the minister had in mind in references to clauses 9 and 10. The reply to the Senate Scrutiny of Bills Committee indicated that decisions by the minister under these provisions will be subject to judicial review. The judicial review provided for under the bill will be done under the Administrative Decisions (Judicial Review) Act 1977 in the Federal Court to test the legality of the decision making process. This judicial review will satisfy the question of whether the minister’s decision is lawful under the act.

Senator O’Brien also asked: will the parliament have access to the documents covered in clauses E4 to E8 of the deed of agreement? These clauses provide for accountability to the government for corporate planning, performance review, records and access, audit reporting and accountability, as per schedule 8 of the agreement. This is in accord with the current arrangements whereby the three current statutory bodies must provide their corporate planning documents to the government of the day. The corporate planning documents will be distributed widely throughout the industry for use in their planning investment decisions in marketing and research and development through the industry advisory committees. While there are no formal requirements for regular performance reviews with the current bodies, the government has built this requirement into the new company’s operations. Full and accurate records are a requirement of the current bodies under the companies and corporations act, which applies to all statutory authorities. Because the new company will not be a statutory body, the government has built in this additional layer of accountability. An annual audit report is required, as per Corporations Law, and would be published in the annual report, which will be publicly available.

Senator O’Brien also asked: with regard to clause 10(2)(h), on what basis would the secretary require a change to the deed? This clause allows the government of the day to change the deed of agreement with the company to meet any future changed circumstances that the government believes should be taken into account by the company, for example, if there were a change in government policy concerning government funding or levy collections. With regard to section 16 and expenditure and funding of the industry services body, which was also a question from Senator O’Brien, this reflects the current arrangements that are in place under the Horticulture Research and Development
Corporation Act which have been in practice since 1987. There is no intent by the government to change the matching arrangements or the method of payment to the company. That is, the government will match the levies collected from the industry and paid to the company up to a limit of 0.5 per cent of GVP. It should be noted that, under the deed of agreement, there are additional accountability requirements built in to ensure that marketing and research and development funds are kept separate.

As well, there was a question as to how the government will determine the GVP. Clause 16(4) allows for a regulation to be set to determine the amount. It has been a long-standing practice of governments to request ABARE to calculate the GVP of the whole industry each year as an aggregate amount to be used for matching purposes. This is deemed the most practical arrangement, given the many small and variable commodity groups within horticulture where it is difficult to obtain accurate figures. Senator O’Brien’s question which he asked just before we finished at 12.45 p.m. was: why does clause 16(5)(b) make provision for amounts not payable? This clause is to protect the government from being required to make double payments to an industry services body for marketing or research and development should there be a change from one declared industry services body to another during the course of the financial year.

Senator HARRIS (Queensland) (3.56 p.m.)—The parliamentary secretary has answered a considerable number of the questions that I was going to put to her, but there is one that I would like her to clarify for us. Considering the industry service body will be funded from grower levies, what level of input would the growers have into the management and final decisions of that industry service body?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (3.57 p.m.)—The new company will have an annual general meeting, which all levy payers may attend. They also have access to decisions made by their own industry groups and the new company through the annual general meeting, their own industry groups, the industry advisory committee—which will be advising on research and development decisions—and, lastly, at the annual general meeting of the board. In my experience, any grower in horticulture who wants to make an opinion known or pass on his view of the way in which the money has been spent always knows who his industry representative is. Certainly there is free-flowing opinion through all of the horticulture groups that are represented in this new body. I do not think you need to have any doubt about the ability of an individual grower to make his opinion known at any stage of the process.

Senator TROETH (Victoria) (3.59 p.m.)—The only expense to the government is the administrative expense involved in collecting the levies before they are passed over to the new company, and that is contained within a section of the levies unit of Agriculture, Fisheries and Forestry, which exists at present. That function and its expenses will not change. That is what exists now. That function and its associated expenses will be exactly the same.

Senator FORSHAW (New South Wales) (3.59 p.m.)—I have a couple of questions with regard to the interaction between the minister and the operation of the deed of agreement. As I understand it, the way in which accountability is to be provided is by virtue of a deed of agreement entered into between the Commonwealth and the company. Clause 12 of the bill says: The Minister may, on behalf of the Commonwealth, enter into a deed of agreement with a body ... for the purposes of this subsection.
Section 9, which gives the power to the minister to declare a body to be the industry services body and/or to be the industry export control body—and Senator O’Brien has already drawn attention to this—is again couched in the terms that a minister ‘may’ make such declarations. In both 9(1)(d) and 9(2)(d) the conditions attached include a requirement that:

... the body has entered into a deed of agreement with the Commonwealth ...

under subsection 12(1) and subsection 12(2) respectively. As I read that, the minister has the discretion as to whether or not he enters into a deed of agreement. He has the power to declare a body to be the industry services body and has the power to declare a body to be the industry export control body, but he can only exercise that power if that particular body has entered into a deed of agreement with the Commonwealth. Further, such a body can be the one company for the purposes of being both the industry services body and the export control body. But that is not necessarily the case; it can be two separate bodies or companies.

Having said all that, I would like to know why it is couched in the terms that the minister may enter into a deed of agreement with the Commonwealth ...

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.04 p.m.)—The intent of the legislation is to make the new company the industry services body and the export control body, but we have used the phrase that the minister may declare a body to be the industry services body to give him or her maximum flexibility in the future. As I have already described, the situation may arise in the future whereby this one body that has been designated to be both may not be fulfilling correctly its designated constitutional charter, according to the factors which he or she has to take into consideration, of being either of those two forms of organisation. Therefore, it is possible for the minister to declare another body as the industry services body or yet another one as the export control body. It is simply for a degree of flexibility so that, if this new company is not fulfilling its objectives properly, the minister may designate another body as that particular body. But obviously we assume that it would be doing just that.

Senator FORSHAW (New South Wales) (4.06 p.m.)—Thank you for that answer. I did understand the point you just made, but I am particularly interested in the first part of the question I asked regarding the fact that the deed of agreement is intended to be where the accountability measures are contained. The explanatory memorandum says:

The Bill allows for the industry services body to receive funding from the Commonwealth and requires both the industries services body and the export control body to act in accordance with a Deed of Agreement. The Deed of Agreement imposes obligations on the body and contains details about the body’s accountability to the Commonwealth.

It may be a semantic point, but what I am a little confused about is that, on the one hand, the legislation says that the minister ‘may enter into a deed of agreement’—which assumes that he may not, for whatever reason—but, on the other hand, if the company is to be designated as either the industry services body or the export control body there must be a deed of agreement. The
minister does not have any power to designate the company as the industry services body or as the industry export control body if a deed of agreement does not exist. The conundrum I have is that, if there is to be accountability, surely the legislation should make it mandatory that there be a deed of agreement that contains the accountability measures. That should be an obligation upon both the Commonwealth and the company.

The follow-up question to that is: why is it the case that the deed of agreement method, if you like, is used to reflect the accountability requirements? Why can’t that be included within the legislation itself? Further to that, could you clarify whether or not this model to be used for the horticultural industry, which says that if there is to be accountability for this company there will be this deed of agreement, has been used in the privatisation of other R&D corporations? It is my understanding that that is not necessarily the case.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.09 p.m.)—I will deal with Senator Forshaw’s comments in the order that I think he made them. Firstly, the deed of agreement is not the only basis for accountability on which these whole new arrangements are based. We also have the legislation, and that includes any regulations or any other statutory instruments. We have the deed of agreement and we have the company constitution, and that includes any other corporate governance arrangements between members. The memorandum of understanding is made between the peak industry bodies acting on behalf of industry and the government and other key stakeholders. That is to formalise the policy-level agreement to the key elements of the reform package as well as to provide a blueprint and ongoing policy framework for the new arrangements.

The legislation, which is another prong of this, provides the basis for the public roles of the new company—that is, the industry services body, which is funded by marketing and research and development levies and matching R&D payments, and the industry export control body, which is administering a statutory regulatory scheme. As well, the legislation provides for the transfer of the assets, the liabilities and the staff of the statutory authorities to the new company. It also provides the public accountability framework for what I have just mentioned, including the possible withdrawal of the company’s status as industry services body or industry export control body. It provides for other miscellaneous matters as required, including a definition of research and development. As I said, it may include regulations or other statutory instruments.

The deed of agreement specifies the agreed detailed public accountability requirements of the new company in respect of levy and matching funding for industry marketing and R&D services; the administration of the industry export control powers; and the assets, liabilities and staff of the statutory authorities transferred to the new company. This deed is entered into in accordance with the legislation and it is structured to operate in conjunction with the legislation and the company constitution. So the existence of this new company does not live or die by the existence of the deed of agreement. There are other prongs to this as well. There is also, of course, the Corporations Law accountability. The company’s affairs are governed by the constitution and the Corporations Law. The company is owned by the members. The board has day to day management and control of the affairs of the company. The members—that is, the levy paying members—oversight the company’s affairs through access to annual reports and company books, have the power to appoint or dismiss the board at a general meeting, and have the power to change the constitution at a general meeting and, in some cases, to bring legal proceedings on behalf of the company or in their own right.

As highlighted in the green paper, the standard Corporations Law governance arrangements can be modified by the company constitution. Some of the elements that are in the company constitution that may address your concerns are that the constitution is to implement the agreed policy position and to meet the public accountability requirements. They are things with which we are all famil-
iar, such as the objects of the company; the membership and voting entitlements; the board composition and appointment process; the voluntary levy; levy contribution processes; corporate planning; industry advisory committee structures, processes and funding; peak industry body consultation funding and levy payer meetings; internal decision making processes for the imposition of export controls in some cases; prohibition on agricultural activities; and the limitation on the distribution of assets to members on any winding up of the company. In relation to your last point, I am advised that similar conditions to this were brought into operation, for example, with the privatisation of Meat and Livestock Australia. So we do have a precedent for this.

Senator HARRIS (Queensland) (4.14 p.m.)—Could the minister, for the benefit of the committee, clarify who the secretary is that is referred to in clause 24, on page 26 of the bill?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.15 p.m.)—The secretary referred to in that clause, Senator Harris, is the Secretary of the Department of Agriculture, Fisheries and Forestry. While I am on my feet, Senator Harris, you had some questions before we broke for lunch to which I might refer. You asked, for instance, whether if growers did not like the decisions of the board they would have access to the minister. The intention in privatising the industry services body is that the growers will have greater control and input into the decisions of the board. The minister would be available but he would be the last resort. To all intents and purposes, this is a self-governing company which is run with the authority of the growers and administered by the board that they choose to appoint.

Senator Harris was also concerned that the company could grant export licences subject to certain conditions, and he asked whether this would constrain private companies’ activities. I must say to Senator Harris that export licences are only issued at the request of industry with the majority of industry support. Up till now, industries have come to the government and asked for the issuing of an export licence. The government only acts as a response to industry.

Senator Harris also asked whether the ability of the Secretary of Agriculture, Fisheries and Forestry, in certain circumstances, to grant licences would restrict people’s ability to export and trade. Yes, it will restrict people’s activities in order to better manage markets but it must have industry support. I would cite the present export control that operates over the export of Australian citrus fruit to America, which became managed under an export control licence after a request by industry that that system be put into operation. That is an example.

Senator Harris also observed that the application of the bill will be inside and outside Australia, meaning that research and development moneys could be invested in overseas projects. Yes, the board or the company will be able to invest in overseas projects as per the current research and development arrangements. Those arrangements operate now. If the board chooses to continue or to initiate new overseas investment programs, that is exactly what would happen.

Senator HARRIS (Queensland) (4.18 p.m.)—I thank the parliamentary secretary for those answers. I would seek some clarification from the parliamentary secretary regarding the proposed industry advisory committee. Can the parliamentary secretary advise us as to the make-up of that advisory committee? Also, would that industry advisory committee have any representation on the board of the industry service body?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.18 p.m.)—I am advised that each industry has its own industry advisory committee, which has a very broad base. The sorts of people who are on industry advisory committees are not only growers but also processors and transporters, so that the industry advisory committee is as wide as possible. Although those industry advisory committees will not be directly represented on the board, they advise and can consult with the board as to the way in which industry plans can be implemented. So there
is certainly direct input, even though they will not be directly represented on the board.

Senator O’BRIEN (Tasmania) (4.18 p.m.)—I thank the parliamentary secretary for the answers which were given to those matters which I gave notice of prior to 2.45 today. In relation to this arrangement in clause 9 of the bill and the permissive nature of the powers granted to the minister, if I can put it that way, I understand what she says about the flexibility that is intended to be granted to the minister now and in the future, but the difficulty is that for the minister to be able to exercise those powers the minister has to have entered into a deed of agreement with the Commonwealth. It seems that, having entered into the deed of agreement, the permissive nature of the powers is a little irrelevant.

You raise the issue of the cessation of declarations under clause 10 of the bill and how the minister might need flexibility at that point to enter into another arrangement, even though there was an existing deed of agreement between the Commonwealth and, for the purposes of the argument, the current Horticulture Australia Ltd body. That is the body that will be, at the first point, potentially the subject of clause 10 of the bill.

This goes to the other point I made about these provisions being reviewable at law in an administrative sense. You advise that that is reviewable through the Federal Court—and those proceedings may well take some time. It raises the question in my mind of what occurs in the process of such a review if one body is seeking to have a decision to cease declarations under section 10 of the bill and the minister, at the same time, is entering into alternative arrangements under section 9 of the bill, having signed off another memorandum of understanding or agreement or whatever as provided in 9(1)(d) and 9(2)(d). What would the effect be of entering one agreement where there was a review by the court which struck down the original decisions of the minister under section 10 of the bill? Might I say that nothing in the answer has dealt with the issue of whether the parliament ought to have a greater right to review any of these decisions, be they the decision to enter into a deed of agreement or to make declarations to cease deeds of agreement.

Under sections 9 and 10 of the bill, I note that you say that the decisions will be published and available and be able to be dealt with by the committees, including the estimates committee, of the parliament. But I would like to know a little more of the reasoning as to why essentially the power within the parliament is restricted to the executive and there is no provision apparently intended to give effect to the declarations by a regulation which would then be the subject of review by the parliament. One might suggest that, particularly at decisions to act under section 10 of the bill to cease declarations, these sorts of matters might be better dealt with by an action which would be reviewable by the parliament and, because of the way in which those matters are dealt with, could be dealt with much more expeditiously than proceedings before the Federal Court and might well obviate the problems that would arise by the review process that the parliamentary secretary suggests is adequate and provided by the legislation.

Another question which I might put in relation to these arrangements—I have to use this because it is the only thing available to me—is about the constitution of the new company and the constituent parts of that company; that is, the 29 organisations contained in the schedule on page 31. It is certainly not unknown that within grower groups of various commodities from time to time alternative organisations arise and there are significant groups of growers who seek alternative representation. But these arrangements would effectively lock in the representational groups, as I understand it, to the groups specified in the constitution. Now it may be—and this may be the answer; but I seek some clarification from the parliamentary secretary—that the minister might make some direction as to the constitution of the body, but I am not sure where that appears in the bill. I can see that the minister can enter into deeds of agreement and may vary the deeds and require variation of deeds but, when the representational capacity of the Corporations Law body is called into question by changes within representational bod-
ies within the constituent groups, is there anything in the bill which would allow the minister to require the admission to the Corporations Law company of significant bodies that are no longer represented by the constituents of the original company?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.27 p.m.)—I am sure Senator O’Brien would appreciate that at present the industry bodies that have signed up to the memorandum of understanding are designated as peak industry bodies because they are deemed by the minister at present to represent the people in that particular industry and they are seen as the main group within the industry. It is undeniable that in some industries—and not just in horticulture—there are other smaller groups which also claim to have some representative power and want to be or would like to be designated as the peak industry body. The avenue for them to do that is always possible at the annual general meetings of the peak industry bodies where, I presume, a vote of no confidence or what have you would need to be passed in the peak industry body and presumably, if sufficient majority industry support could be gained, another group may become the peak industry body. The avenue for them to do that is always possible at the annual general meetings of the peak industry bodies where, I presume, a vote of no confidence or what have you would need to be passed in the peak industry body and presumably, if sufficient majority industry support could be gained, another group may become the peak industry body. But that is largely a matter for organisation by the industries themselves. The government does not presume to interfere in that. So it is usually apparent what the major group is in each industry. If another group within the industry seeks to challenge that, they would need to do that through the organisational structure of the industry itself.

I turn to Senator O’Brien’s first question where he asked whether it was necessary to have a much longer and wider view of the ability of the minister to declare or to cease to declare the industry services body and the export control body as such. The minister needs to have that power because, if he made a cessation of declaration of those two bodies and that action then became embroiled in the courts, it would obviously be necessary for the minister to declare another body as the industry services body or the export control body in order to keep operations going. I have no doubt that, if it was necessary to take such an extreme course of action, it would be the subject of debate in parliament. When setting up a new company, it is always advisable to keep arrangements flexible. I certainly do not mean flexible and open-ended in the sense that anything can happen. What I do mean is providing for contingencies so that if any company, either the industry services company or the export control body, did become unworkable, somebody would be able to act in the best interests of the industry to keep those two organisations going by declaring another body or another organisation as the one that would carry out that function. That is the reason why this clause has been written in the way that it has.

Senator O’BRIEN (Tasmania) (4.31 p.m.)—That demonstrates the point that I make. If there is a delay occasioned by extensive proceedings before the court, the problem that the parliamentary secretary raises has no solution in the bill—in the sense that she suggests something would have to be put in place quickly so there was not a vacuum. By putting something in place you would either prejudice the outcome of the proceedings before the tribunal as to what would happen if you lost, or alternatively you would end up, at the end of the proceedings, with two organisations which were authorised. That is one of the reasons why I would persist with the point. I suggest that, in all likelihood, it would be much more expeditious to have this process the subject of review by regulation, or other reviewable instrument, whereby the minister’s decision was reviewable by the parliament. Given the number of sitting days that these matters lie on the table, I suspect that would probably be a much shorter period than the period for judicial review. It may be that judicial review will occur in some cases in any event. I would need to take advice on that. I suspect the minister would be in a much better position if he or she gave effect to that decision by way of an instrument reviewable by the parliament where the parliament had not reviewed that decision.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.33 p.m.)—As someone who has some acquaintance
with agriculture, I am sure Senator O’Brien would be the first to recognise that these types of horticultural bodies in particular, which depend so much on valuable export markets for their returns, need to have a degree of certainty with regard to operations, particularly with the writing of contracts and the keeping of contracts, especially with our overseas trading partners. It was felt necessary to write this legislation in such a way so that there would be a solution to the failure of the designated company to provide these services. You cannot very well say, ‘We need a solution if something happens, but this is no solution.’ With the greatest of respect, a parliamentary inquiry or a review by parliament may be the least professional way of dealing with it. Certainly, the minister should have the capacity to put something immediately in place so that a proper examination could take place through the judicial review and the operations of the company on a day-to-day basis could go on as normal so that industry’s viability was not jeopardised in any way. That is the way the government sees it.

**Senator O’Brien (Tasmania) (4.35 p.m.)**—I thank the parliamentary secretary for her comments. That may well be the way the government sees it, but I understand the Senate Scrutiny of Bills Committee continues to disagree with the government’s approach on this matter. I refer to what I understand to be the relevant passages in the parliamentary secretary’s original correspondence as to why the declarations under clauses 9 and 10 are not directly scrutinised by the parliament. The committee states:

> The Committee thanks the Parliamentary Secretary for this response which indicates that ‘administrative decisions’ such as the declaration or removal of a company as the industry services body will be subject to ‘the normal Parliamentary processes’.

Under the proposed arrangements, some Parliamentary oversight of such decisions might be possible (for example, through the authority of Senate Legislation Committees to inquire into annual reports and the performance of departments and agencies). However, it is clear that this oversight will be more limited than that which presently exists. For example, it is unlikely that any declared industry services corporation will remain subject to the Senate Estimates processes.

Given this more limited oversight, the Committee continues to draw Senators’ attention to these provisions as they may insufficiently subject the exercise of delegated legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee’s terms of reference.

As this was presented to the Senate only in the last hour, it is a matter which the Senate might like to think about. Even though there have been representations between the parliamentary secretary and the committee, the committee continues to feel that there is an inadequacy in this provision as to parliamentary scrutiny.

> With all the goodwill in the world I think it is difficult to come to the view at this stage that the measures that the government seeks to put in place are adequate. I do not want to unnecessarily draw attention to a particular officer, but I am reminded that, for example, in relation to questions asked in estimates about things such as AWB Ltd and the dairy industry activities where matters have been removed from the government’s purview to that of a private company, Mr Roseby has been at pains to advise the committee that he cannot answer the questions, that they are matters to be put to particular companies and that really there is no point in raising those sorts of matters at the estimates committees. This is the sort of potential scrutiny problem which arises. It does not just arise in relation to this aspect of the arrangement; it arises in relation to others.

What appears to be the problem here, as I said in my contribution to the second reading debate, is that this is a device which is designed to concentrate the control of this issue in the executive rather than in the parliament. Combined with what the minister’s powers are, when that is the relationship between entities which are declared under section 9 of the bill, this is going to create problems in a scrutiny sense in going behind matters as to financial arrangements between the Commonwealth and these companies and other matters which are relevant—because of this barrier in the formation of the Corporations Law company.
I would be interested if the parliamentary secretary could give us a view particularly on what the Scrutiny of Bills Committee has to say about provisions in clauses 9 and 10 of the bill, given that there has been a degree of interchange between that committee and the parliamentary secretary. The parliamentary secretary has attempted to convince the committee that the government approach is correct, and at this stage the committee is saying that they do not agree with the view of the parliamentary secretary.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.40 p.m.)—Yes, I have noted the view of the Senate Scrutiny of Bills Committee, but I would like to point out to Senator O’Brien that the whole point is that we are moving from a statutory body to a private company under Corporations Law, as we have with the meat industry and as we have with the grains industry, and that requires a different set of reporting arrangements, outside the traditional ones that have applied to date. That is why the government has worked so closely with the industry to establish new reporting arrangements, to ensure that the government’s information requirements are met.

I indicated in my opening remarks on this legislation that the last 2 1/2 years have been spent in almost daily contact with the leaders of the 28 organisations that have signed on to the memorandum of understanding. Those industry groups are totally comfortable with the arrangements that we have put in place for their future, and this legislation in its present form has—more than the majority—the unanimous support of industry. I note the comments of the Senate Scrutiny of Bills Committee, but recollecting from my time on the Senate Scrutiny of Bills Committee are that this is legislation which deals in part with the body which is going to expend Commonwealth funds. The issue arises: how should that be scrutinised and indeed how should decisions of the minister to appoint and to revoke the appointment of such bodies be reviewable by the parliament? They are the provisions which we are reviewing at the moment.

There is another provision which we have not touched on at the moment, which deals with their response to section 29 of this bill, where they come to an almost identical view. We will come to that later. We are not here debating whether the organisations who have signed up to the constitution and the memorandum of agreement freely did so. We are debating the legislation which underpins that and the ramifications of the legislation—how it is going to work now and in the future and what the role of the parliament is going to be in that. I understand the government’s position and the minister’s preference for that power to be held within the executive. The concern that ought to be expressed is that a great many senators would have some difficulty with effectively removing part of the power of scrutiny of the parliament—and I stress the word ‘part’—because of the new arrangements.
We could have a full debate about the effect of corporation, privatisation and commercial-in-confidence material that we come upon during the estimates process on many occasions, but here we are dealing with a piece of legislation which will create the circumstances which give us problems in other areas. In this case, they are magnified, because even decisions on appointment and revocation are not reviewable by the parliament, so even more of the equation is being moved from the parliament by this process. That is the point I am making. I know where the government is coming from, and it needs a more persuasive argument from the government to justify this aspect of the bill.

Senator FORSHAW (New South Wales)

(4.45 p.m.)—I want to add a couple of comments, because what Senator O’Brien said is quite correct. Indeed, if you go back to the speeches in the second reading debate made by Senator Woodley and me—and by the shadow minister in the other place—this question of accountability for Commonwealth matching funds is very much at the heart of the issue. We recognise that there is a tension, if you like, built up in the sense that, if you are privatising the entity and trying to put more control in the hands of growers and industry, that is an appropriate objective in these circumstances. But what seems to be happening—it is something that we have raised on a number of occasions, and it has been raised by members of all parties through the committee process—is that this is leading to a significant reduction—almost elimination—of the opportunity of the parliament, and certainly of the Senate committee, to pursue issues of accountability.

Just to elaborate on that, the parliamentary secretary mentioned earlier that she was following the model of the meat industry. There are different models. Certainly in the case of the wool industry—that bill is going to come on tomorrow—I am sure we will raise similar issues. The question of accountability in the wool industry has been raised by members of parliament not only under the new structure, but also under the existing structure. There have been concerns expressed—I think it is well known—that, even under some of the existing arrangements, whereby information is provided through the portfolio budget statements and/or the annual reports, both those of the department and also those of the specific corporations, you have still got to do a lot of detective work, a lot of searching, to get the information that you want. That has certainly been the case in respect of one major matter in the wool industry. I am sure the parliamentary secretary knows what I am talking about without my going into detail. I highlight the fact that, at least under the current structures, the R&D corporations, when they are all published in the PBSs and the annual reports, provide an opportunity on the surface, laid on the table, to pursue these issues. Similarly, our committee is shortly to report on another issue in the meat industry. Again, the question of accountability—this time not so much in respect of accountability regarding matching funds but in terms of accountability to do with decision making processes which ultimately benefit some people in the industry as against others—was an important matter for the committee to inquire into. We have been doing that.

As I said, I do not want to go into detail in those matters, because they are still to come before the parliament in the next few days, but I am very concerned—and I know other members of the committee are concerned; I am sure all senators would be concerned—that this is a somewhat convoluted process. As Senator O’Brien said, you get officials of the department before the committee—notwithstanding the fact that, generally speaking, in our committee in estimates we have a pretty good understanding with the departmental officers, who at all times try to be as helpful and as forthcoming as possible—who nevertheless respond by saying, ‘We’re sorry, we are just not able to advise you as to what happened to those matching government funds, because they are in a private company.’ That has now occurred in, I think, two or three situations.

That also points to the problem that, notwithstanding your comments about what ability the members might have, we find often that, because it is industry bodies or industry organisations that are represented, the grower members themselves are often the
ones that are left in the dark. You need only to look at the saga of what happened to AWARP, the wool research and promotion body. That was the end result. I note—and I ask you to comment on this as well—that, from reading the legislation and the memorandum of understanding, there is more emphasis on accountability in terms of the minister’s powers to impose penalties such as withdrawing their status as an industry services body or export control body and so on than there is in terms of being proactive about providing an opportunity to the parliament to pursue accountability issues. I note from the explanatory memorandum that all of the rhetoric is about what the minister can do to penalise or punish the company for doing the wrong thing, rather than focusing on what should be required in the first place to make them open and accountable so that the likelihood of imposing those penalties would be really very much a last resort.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (4.53 p.m.)—I would firstly say that accountability has actually been raised under the new structure for wool, but that is something that we will no doubt be discussing tomorrow. What the Labor Party are actually saying is that they do not accept the model which has been developed after 2½ years work with the industry and government, and they want to unravel it. There is plenty of accountability built into the model. What I think you do not understand is that, instead of the old statutory authority arrangements which were set in place by the government and administered by the government, these new arrangements for industry are a partnership. They are a partnership between industry on the one hand, which has to constitute and work in the sense of keeping the wheels rolling along, and a new company. There are various conditions which industry, through its ownership of the company, must meet in order to maintain the government flow of matching dollars.

The government should not be running agricultural companies. That is the view of this government and, I believe, in part it was the view of your government. That is why over the last 10 years there has been a movement away from government running businesses, leaving industry to manage their own affairs. We have imposed conditions on this new company and it must strictly adhere to those because the deed of agreement is a legally enforceable document. If the company does not conform, you are quite right: we will move to what the government then needs to do to designate another company which will carry out the functions for which the company was set up. The ultimate sanction is undeclaring the company so that it cannot receive levy funds, it cannot receive matched funds and it cannot administer export control powers. You cannot have it both ways. There is a partnership between industry and the government. Each side must fulfil its side of the bargain.

Apart from what the minister can or cannot do, the annual reports of the company will be public documents. There will be a company annual general meeting and, as we have seen in various private sector companies in recent weeks, annual general meetings can be very interesting affairs. I would expect the levy payers of the new horticultural company to take the same amount of interest in the way that their money is spent. There are levy payer annual meetings, there are corporate plans which are circulated widely and there is the whole system of parliamentary scrutiny. To go by your remarks, Senator Forshaw, and those of Senator O’Brien, you would begin to imagine that the whole system of parliamentary scrutiny had suddenly been removed, that we had no more questions in question time, that we had no more questions on notice, that we had no more Senate committees and that all of that level of scrutiny was totally removed. It has not been removed; it is in place, just as it has always been. I am sure that if a parliament wishes to inquire into the workings of this company, that is exactly what it will do. But there must be a level of ability on the part of the minister to act when necessary. I am sorry that perhaps the Senate Scrutiny of Bills Committee and I do not see eye to eye on this matter, but we believe that the level of accountability which has been built into this legislation is more than adequate for the purpose for which it is designed.
Senator HARRIS (Queensland) (4.57 p.m.)—Would the parliamentary secretary, for the record, indicate who is the current secretary of AFFA, which is the agriculture, fisheries and forestry department? Also, turning to the bill, in section 25 it says:

No action, suit or other proceeding for damages lies against the industry export control body or officers of that body for any loss or injury directly or indirectly suffered as a result of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance ...

What we have in the government’s bill is the intention to have those officers protected against any action that could be brought against them by a grower or any other third party in relation to their actual carrying out of the functions of their office. When we look at part 2 of the bill, which refers to the industry service body and the industry export control body, it lists it as a company listed by guarantee under the Corporations Law. So we have all of a sudden a company limited by guarantee under which the officers in that entity are immune from prosecution for any actions that they subsequently carry out or, equally as important, any omissions or actions that they do not carry out in relation to those duties. I would seek from the parliamentary secretary an explanation from the government as to why they believe that this section in the bill is required.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.00 p.m.)—I should indicate to Senator Harris that the current Secretary of Agriculture, Fisheries and Forestry Australia is Mr Michael Taylor. Secondly, with regard to his comment on that particular clause, the clause is standard in all Corporations Law companies, and I would advise Senator Harris to read further to where at the end of that section it says ‘unless the act or omission was in bad faith’. So there is a capacity for those officers to be prosecuted or moved against in a legal way, and that is standard practice for that particular way of interpreting things.

Senator O’BRIEN (Tasmania) (5.01 p.m.)—If I can return to the comments that the parliamentary secretary made in response to my earlier remarks, I am not sure whether there was a specific provision in the agreement between the industry bodies and the government that these arrangements would not be reviewable by the parliament or whether there was a general agreement that was signed up to without considering that issue. Be that as it may, the reality is that the difference that we have about parliamentary scrutiny is not on the issue of whether this arrangement should be achieved by way of a Corporations Law company. That has not been the point of my question at all, Parliamentary Secretary. To the extent that you suggested that it was, I think you are not representing my contribution very accurately at all.

What we were saying was that, when the arrangements between the Commonwealth on the one hand and the Corporations Law company on the other hand are dealt with by the bill, it was more appropriate that the activities of the Commonwealth be reviewable by the parliament and not left in the hands of the executive. That is the thin line of the arrangement that we are really directing our questions at. So it is not accurate to represent our views as being fundamentally opposed to the arrangements that you are seeking to put in place. What we are opposing is the very same matter that the Scrutiny of Bills Committee is saying is a breach of principle 1(a)(v) of that committee’s terms of reference, which is that the arrangements may insufficiently subject the exercise of delegated legislative power to parliamentary scrutiny. It seems to me that we should forget the argument about the industry arrangements for the moment, because we are not really arguing about what is in the memorandum of agreement and we are not really arguing about what is in the constitution of the new body; we are really having the debate about the role of the minister and the role of the parliament in this. If we can restrict ourselves to that, we will not get sidetracked to irrelevant issues too often.

Whilst that is under consideration, having had the matter of the secretary injected into the debate, I note that the industry export control body will have certain powers but will not have the power to determine which
horticultural product and which markets will be regulated—that is a matter for the secretary. The secretary only will have the power to prohibit export of agricultural products, and that is a power which the Australian Horticultural Corporation currently possesses. I want to find out why this power is being transferred to the secretary and why it does not proceed to the new company. I suggest that, on the face of it, it appears that there is a centralisation of some of the powers of the AHC to the executive, not devolving it to industry, as is apparently the objective of this measure.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.05 p.m.)—In answer to Senator O’Brien’s query, the reason that that power is now vested in the secretary is that it is a regulatory impact, if you like, or something which needs to be regulated by a regulator, I suppose you could say, rather than a company, which at the moment happens to be the Australian Horticultural Corporation. Because it is seen as a regulatory office or a regulatory function, it was deemed that that was best vested in the secretary.

To return to your earlier comments, I understand perfectly the argument you are putting to me, so I would not like it thought that I was attempting to divert the point of the argument. I do understand that the point you are making is about the power of the minister and the parliamentary processes which should and will occur. I simply return to my earlier point that none of those parliamentary processes have changed, that there is the whole gamut of parliamentary scrutiny which can and no doubt will take place. I have never yet noticed that a Senate committee which is intent on pursuing a particular point of scrutiny or undertaking scrutiny of a particular action or whatever is able to be diverted from its course. That is still perfectly possible, and I am sure that in the future it may well take place. I would also like to point out to Senator O’Brien that this actual letter to me from the Scrutiny of Bills Committee indicated that the point of making the minister’s powers as they were may be a breach—may be a breach. I will simply leave it at that.

Senator HARRIS (Queensland) (5.07 p.m.)—In the minister’s second reading speech mention was made of savings of half a million dollars in relation to fees. Can the parliamentary secretary indicate to the committee who will actually benefit from those suggested savings? Will it be the government, the industry or actually the individual growers who will benefit from a reduction in the fees that are payable?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.08 p.m.)—Those savings are not actual cash savings as such; they are savings that will be gained through the merging of the two corporations, given that the two corporations were separately occupying two separate buildings at opposite ends of Sydney and that two sets of operational staff were being employed in the corporations, and other costs were associated with that. So the actual savings are not cash savings and they will simply be absorbed as less money being spent in the new company’s operational structure.

Senator O’BRIEN (Tasmania) (5.09 p.m.)—The other matter that is raised by the Scrutiny of Bills Committee is clause 29 of the bill. Parliamentary Secretary, you have debated this with the Scrutiny of Bills Committee. In response to their initial Alert Digest, you gave an example relating particularly to section 29(1)(a)(i). You gave as an example the suspension of a joint research project with a country with which Australia might have suspended diplomatic relations. You also gave an example where there might be a disease outbreak that might require a national response. It would appear, however, that there is no limitation on the exercise of ministerial power under this provision; it is open ended. Therefore decisions could perhaps be subjective if left to the minister alone without any guidance. Under this provision, direction to the board of the new company would mean that the board had no choice but to comply. It is true to say that the minister can permit this decision to be a disallowable instrument but only if the minister
wishes it to be so, so it is an optional disallowable instrument, if I can call it that.

Given that the same finding in this area has been made by the Scrutiny of Bills Committee—that is, that it may ‘insufficiently subject the exercise of delegated legislative power to parliamentary scrutiny’; that is the wording of the finding of the committee in the report to the parliament—it would be interesting to get a response, particularly as your initial response to the Scrutiny of Bills Committee has not changed their view as to what they feel may be an insufficiency in this measure in terms of parliamentary scrutiny.

Whilst that matter is being considered, there were matters raised in the Bills Digest on this bill which raised the issue of what the terms the ‘national interest’ and ‘exceptional and urgent circumstances’ in this provision might mean. Presumably, the government had something in mind, or the legislative drafter had something in mind, with that provision. Given that at the moment the bill gives almost protected action status to the minister’s action if he or she so wishes, perhaps we should have something more on the record about that. In your comments to the Scrutiny of Bills Committee, you state:

The minister can be questioned about any directions through the normal parliamentary processes once parliament is informed of these through the regular reporting requirements imposed on the company.

If the minister chose not to table a direction in the so-called national interest, when and how would parliament become aware of that direction?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.13 p.m.)—Perhaps I could deal with Senator O’Brien’s last comment first. The minister would normally need to table that and therefore parliament would become aware of that quite rapidly. Secondly, he asked the reason why the bill makes no provision for parliamentary scrutiny of directions under clause 29 or how parliament is to be made aware of and able to scrutinise determinations not to table such directions. Clause 29 of the bill is consistent with section 32 of the present Australian Horticultural Corporation Act 1987 in that it provides for a direction made by the minister under clause 29 to be tabled in parliament within 15 sitting days. Neither the present Australian Horticultural Corporation Act 1987 nor the bill goes the further step of providing for such directions to be disallowable instruments, and this would be inappropriate given the exceptional and urgent national interest grounds on which a direction can be given by the minister.

The only circumstance where tabling would not occur is if the minister made a written direction that tabling would be likely to prejudice the national interest of Australia or the body’s commercial interests. This provision is designed to protect the nation and the company in circumstances where tabling the direction could be harmful to those interests. It is seen as necessary to provide such safeguards in the legislation, although it is acknowledged that parliament would not be informed immediately of the determination. I repeat that the minister can be questioned about any directions through the normal parliamentary processes once parliament is informed of them through the regular reporting requirements imposed on the company.

In answer to the question from Senator O’Brien regarding what the national interest and exceptional and urgent circumstances are, I think that the two examples I gave in my response to the Scrutiny of Bills Committee stand up very well. For example, the national industry services body could be required to immediately suspend a research and development program or marketing program because to continue the spending would place the national interest at risk, such as ongoing research expenditure with a country with which we had suspended all diplomatic and commercial relations. A similar situation would be if we suddenly became involved in a military conflict with a country. The outbreak of a horticultural disease is also possible, and that would require an urgent national response, including urgent research and development and/or marketing initiatives to be taken in the national interest. This provision of the bill would allow the minister to immediately engage the company and, if necessary, to direct the company to
allocate resources to the necessary research and development and marketing programs.

Senator HARRIS (Queensland) (5.16 p.m.)—I would like to move to the Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Bill 2000. Section 22 on page 15 of the bill goes to the amounts payable to the industry services body, amounts based on the charges and levies that are received by the Commonwealth. Given that we are moving into a situation where the growers are going to have a limited corporation administering the industry, can the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry advise us as to how those levies and charges can be altered? What happens if this corporation gets into trading difficulties? What happens if substantial research is required—for example, if Australia were unfortunate enough to have an outbreak of Pierce’s disease? This is taking over part of the responsibility of the original horticultural groups that were representing the people drying fruit, particularly in Victoria and southern New South Wales. If there were an enormous call on research and development—as we saw in North Queensland with the papaya fruit fly—would the corporate body be responsible for that R&D or the physical eradication of the disease, or would that responsibility still remain with the government departments? Could the parliamentary secretary clarify for us whether the growers—the hard-working Aussie farmers—could be exposed to higher charges and levies because of this change to a corporate body?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.20 p.m.)—The government has guidelines for the initiation of and changes to levies, and there are approximately 12 clauses to that guidelines section. I will not delay the Senate by going right through them, but basically any change to a levy must come as a request from the industry for the government to set in place regulations changing that levy. As I am currently the person responsible for levies within the government, the industry must demonstrate to me that that change in the levy rate has the support of a significant majority of the industry. I do not change the rate of that levy until I am perfectly satisfied that there is significant majority support behind that change, which has been requested by the industry. So that request must come from the industry, and I have to be satisfied as to the level of support behind it.

With regard to trading difficulties, I am not sure quite what Senator Harris means by that, because this company will not be involved in commercial activities; it will simply provide marketing and research and development services to the industry. There is not an element of trading in that, and obviously any undue level of financial difficulty would be picked up in advance, I would say, by the annual report, by the financial audit—by all of those provisions that I outlined earlier in the debate.

With regard to the allocation of funds for disease, yes, it is the function of the board to decide how the funds that the company has within its disposal will be allocated. Within the bounds of coping with any disease outbreak, there are other sections of government which would also be assisting an industry to cope with that, such as quarantine and other plant and animal health arms of government. Industry would not totally bear the brunt of that, but may well decide as a board to allocate money from its available funds to deal with that disease outbreak—but that is a decision for the board.

Senator HARRIS (Queensland) (5.23 p.m.)—Could the parliamentary secretary also clarify whether or not this company, which is supported both by industry levies and charges and by government contributions, would be allowed to engage in share transactions of any other companies listed on the Stock Exchange? In other words, is it limited in its ability to speculate in any way, shape or form, considering that it is administering the funds of both the growers and the taxpayers of Australia?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.24 p.m.)—No, the company is prohibited from speculating, share trading or owning shares. That is not within its role.
Senator FORSHA W (New South Wales) (5.24 p.m.)—During the second reading debate and during the committee stage, the opposition indicated that we were supportive of this legislation in principle, but we did have some concerns about the adequacy of the accountability measures in the legislation, which we believe are lacking. What has transpired during the committee stage thus far leaves us with substantial concerns that the accountability measures are not sufficient. Further, we note that the report of the Senate Scrutiny of Bills Committee—and it was tabled only this afternoon—has raised the same concerns that we have raised and has done so very specifically. That committee, which I remind the Senate and the parliamentary secretary is chaired by a government senator—

Senator Troeth—It is always chaired by an opposition senator. You should know that, Senator.

Senator FORSHA W—My apologies. It is chaired by an opposition member, that is correct, but it does contain members of the government. That committee has continued to raise its concerns, notwithstanding the responses in the interchange which has taken place between the parliamentary secretary and the committee. On that basis, we feel we have to consider the real possibility of moving some amendments to the legislation with particular relating to the sections which go to declarations and other actions by the minister. I understand this has been raised with the Government Whip and the parliamentary secretary. Therefore, I move:

That the committee report progress and seek leave to sit again.

In moving that motion, in no way can it be taken that the opposition are seeking to delay this legislation. We are as keen as the government to have it disposed of. I am sure that is self-evident. These are real issues which we believe need to be given proper consideration. It is only in the context of the debate in the committee and the report of the Scrutiny of Bills Committee tabled only an hour or so ago that we have been put in this position.

Question resolved in the affirmative.

Progress reported.

PRIVACY AMENDMENT (PRIVATE SECTOR) BILL 2000
Second Reading
Debate resumed from 28 November, on motion by Senator Ian Campbell:
That the bill be now read a second time.

(Quorum formed)

Senator BOLKUS (South Australia) (5.31 p.m.)—I rise to speak on the Privacy Amendment (Private Sector) Bill 2000. Over the last few years, I am sure most people will agree that the growth of e-commerce and the use of the Internet in business have been truly staggering. In the future, we can expect that more and more consumers will look to the Internet to select and to purchase all sorts of goods and services, whether they be filling up the virtual grocery basket or butcher's basket; buying tickets to theatre or sport; or something I suppose I have fallen victim to: purchasing CDs, books and other items; or choosing an investment service from one of the thousands that are on offer. I think that senators who have ever bought a service or product over the Internet will be familiar with the new ritual and how much time we all seem to spend not just shopping but also seeing what is available on the world market.

What normally happens is that a dialogue box opens and the consumer is required to provide those items of information necessary for the Internet retailer or service provider to complete the transaction. This includes the name of the person, a delivery address, phone numbers, fax numbers, credit card numbers and often a range of other items of personal information. Sometimes the consumer is asked to check a number of boxes to show other areas of interest. Quite often we find that a week or so after we have completed a purchase we are emailed by the supplier to tell us that other people who bought the same item have bought a whole range of other items, and the supplier informs us about them and suggests that maybe we would be interested in purchasing those items as well.

The information we provide is used to fill the immediate order placed by the customer. All the information can be added to a data-
base and made available for matching and comparison with other items of personal information the Internet retailer has been able to glean from other sources. By combining personal information from different sources, it is possible for the retailer to provide us with a list of other items we might be interested in and for organisations to build up a complete picture of tastes, preferences, needs and purchasing habits of each consumer. This allows companies to market their goods and services by allowing them to target those customers they already know have an interest in such goods and services. There is no doubt that this offers businesses the ability to improve the targeting of their business.

The collection and storage of personal information, provided that it is with the full consent of the individual concerned, will allow companies to provide higher levels of service. ‘With full consent’ is a fudgy concept in this context. Quite often we find that the consent one way or another is forced out of the consumer. If we want to access information, we are quite often told that, unless we are making our computer available for cookies, we will not be able to access the information or the service we seek. So consent sometimes can be a meaningless concept, and we need to be concerned about that.

The databasing of personal information also has the capacity to interfere with consumer privacy and may leave some people out in the cold for vital services. There are grave risks that, if used incorrectly or insensitively, personal information which is held, sometimes without the knowledge of those people to whom it relates, may have the potential to disenfranchise customers, thereby cutting them off from the markets and making it even more difficult to get by in a rapidly changing world. For example, information profiles built up on individuals could be used to automatically route individuals to predetermined queues, with the treatment given depending on the consumer profile stored in relation to that caller. It is not too difficult to imagine the most wealthy, highly valued customers being routed for immediate service, middle-ranking customers being routed into a regular queue and problem customers or repeat customers being routed to either a junk mail diversion or to an answering machine where they receive no personal service but are invited to leave messages—or, worse still, have to listen to one. That is an example of the very undesirable way in which it is possible to exploit personal information collected from customers. Personal information amassed on individuals can be used without consumers knowing that the information about their preferences, their previous history of dealings with a company or companies or their credit rating have been stored by businesses to make decisions about how they will deal with the customer and the sort of treatment the customer will receive.

We believe that the fundamental control of personal information must be given back to those people who are the true owners of it—they, of course, being private citizens, in this case customers. The key principle that must underlie any effective privacy regime in this area is that of choice. We believe we must recognise that, if someone does not wish a company to collect and use their personal information, that wish must be respected. I for one would like to get access to the New York Times daily service, for instance, but I am not prepared to allow them to insist on me making my machine available for cookies so that they can develop a profile of me. I say the New York Times because it is not just the sideshow operators who are keen to access this information and put unreasonable demands on people in doing so but some of the major, more respectable operators are also part of the game.

Therefore, the collection and use of personal information and the rules that govern these practices are vital threshold issues in the developing information economy. Effective federal privacy regulation for the private sector is long overdue. The exponential increase in the amount of data that has been collected and the potential for misuse of that information have provoked community and consumer concern about the way in which businesses use that information. I think it is of major community concern that the federal government’s treatment of private sector privacy issues has been a history of embarrassing backflips. In 1996 the Howard govern-
ment announced that it would introduce legislation that would extend privacy protection to information held by the private sector. I am proud to say that I was responsible for legislation that extended privacy protection into the area of credit reference agencies and databanks, but that was over 10 years ago and much has changed in the collection and the speed of collection of information in the computer based society that we have now. In 1996 the government made a commitment, and it backflipped on that commitment in 1997 when it announced that it would not be introducing privacy legislation for the private sector but would encourage greater self-regulation within industry to address privacy concerns. Encourage greater self-regulation: that is a totally hollow concept. This left the undesirable likelihood that each state and territory would develop independent and quite often conflicting mechanisms for regulating private sector privacy. As the Privacy Commissioner later reported:

... it quickly became clear that the major issue is the need for national consistency in privacy standards. Everyone wants to avoid a patchwork of different standards applying across industries, technologies and State and Territory boundaries. The result has been a confusing and expensive mess. But the projection of government policy obviously emanates from those whimsical days that the Prime Minister still holds dear of locally based economies, corner stores and the like. What we now have in Australia and across the world is markets that are nationally, if not internationally, based. The sorts of state based regimes that the government anticipated being developed—as I say, born of a whimsical view of the world and driven by an ideology that says ‘leave everything to the states’—are now inconsistent.

Naturally, business was aghast at the prospect that there would be different types of privacy compliance in each of Australia’s eight primary jurisdictions, and so they should have been. As I say, commerce crosses boundaries—it crosses national boundaries and it crosses state boundaries. The case for national privacy regulation, I believe, is so strong that it practically goes without saying. Yet, as we have seen time and time again on this issue, the Howard government squibbed on the national leadership that was so clearly required in this area. So when it finally saw some sense in 1998 and announced a national approach in December of that year, we were told that the government would legislate to introduce ‘light touch’ national private sector regulation based on national privacy principles, which at that time were entirely voluntary. At this time, the government stated that the legislation would have a flavour of ‘coregulation’. There was a period of consultation with industry, and to a lesser extent with community and consumer groups, and this concluded with a publication of ‘key principles’ in 1999. Time goes on—we are talking about over three years that they have been in government—and they have moved from a position of no position to one of a ‘light touch with coregulation reflected in key principles’. These principles now form the basis of the bill that is finally before us, introduced in April this year.

While the government may seek to portray this bill as introducing a coregulatory framework, the reality is that it is nothing of the sort. The bill has been widely, roundly and justifiably criticised as introducing the weakest possible protection for privacy, given the federal government’s commitment to legislate for private sector privacy protection on a national basis. It is not light touch; it is feather touch—it has very little real effect. Important national privacy principles relating to access, correction, use and disclosure do not apply at all to information collected prior to the commencement of the legislation—one year, in fact, after the legislation has passed. Existing systems need to be tackled. The Privacy Commissioner, while being given some power to regulate the use of personal information by private sector organisations, will in many circumstances be left out in the cold, without any effective way to monitor or regulate privacy practices. Flagrant and systematic breaches of privacy will go unpunished because the bill has no effective sanctions for culpable behaviour of this kind.

While the government and this bill may hide behind a thin veneer of coregulation, in
essence what we have in this legislation adds very little to the current position, which is industry self-regulation. This bill falls far short of the minimum standards that are necessary to provide reassurance for consumers by putting in place a comprehensive and readily enforceable consumer privacy protection regime. The bill also allows for industry bodies to contract out of the privacy protection system by developing their own self-regulatory codes. Once the Privacy Commissioner has approved a code, the industry will then be wholly responsible for applying its interpretation of the code to all complaints that fall within its scope. Under the legislation, the Privacy Commissioner has no powers to audit compliance with the code, has no powers to review decisions made under the code and has no powers to direct code adjudicators on how they should go about the task of resolving complaints made under this code. The only thing the Privacy Commissioner will be able to do is, essentially, read the annual report prepared by each industry sector adjudicator and, based on very limited information that is required to be provided, make a decision as to whether or not to continue to approve the industry code.

This is weak, ‘feather’ regulation. Essentially, it is just not good enough. It will lead to the problem of multiple and conflicting interpretations of similar code provisions. The interpretation of each code will proceed in a self-contained silo. There will be no central authority to ensure that privacy laws are built up in a consistent and balanced way. We believe that the key role of the Privacy Commissioner in supervising the development of private sector privacy jurisdiction has been totally undersold. The Privacy Commissioner, we believe, should exercise a supervisory role over industry complaint bodies set up to administer approved industry codes. If this does not occur, there is a risk that the codes will be applied differentially across different industry sectors. This will obviously diminish confidence in the protection of privacy.

But it does another thing—which is anathema to what this government says it believes in. Different codes, inconsistencies and in-consistent regimes in different sectors across the country basically give you a legislative mess. They give you an unworkable system. They give you a system that other countries will not trade with. Already we have problems with the European Community because of the soft regime that this government has signalled. People doing business across the world are insisting on adequate protection on privacy grounds. This government’s regime as proposed for our community is nowhere near the sorts of regimes that are acceptable to most developed economies to protect both business and private individuals. As a consequence, we are in real danger of finding ourselves frozen out of the international marketplace because of the inadequacy of the regime that this government is proposing.

This bill also contains no sanctions for those companies which engage in systematic violations of privacy or which persistently flout the national privacy principles. There will always be the cowboy operators who ignore the rules and attempt to exploit personal information for profit without any regard to privacy. Cowboy operators in this area are no longer on the sidelines of the debate. A cowboy operator can very quickly find himself or herself at the centre of data collection and, as a consequence, affect millions of lives. This bill provides no deterrent mechanism for those companies which break the rules again and again. Accordingly, there is a real risk that companies that ruthlessly exploit personal information for profit will go unpunished.

Accordingly, we will move a number of amendments to introduce penalties to deter grave breaches of privacy. Part IIIA of the existing Privacy Act already contains strict penalties for breaches of the consumer credit information provisions of the act. They are the provisions that I brought in in the late 1980s. Labor’s amendments will create an offence of ‘serious privacy breaches’ to ensure that business takes seriously its privacy obligations. The issue of the treatment of existing data is also, as I signalled earlier, an important one. In respect of this, this legislation will not affect the use of information held in a massive database by Axciom containing the personal information of some 15
million Australians. It has been reported that the information was collected from merging personal information obtained from numerous Internet sites. It will remain possible under this law to sell that information, even though Australian citizens unquestionably did not consent to their personal information being used for that purpose.

I am sure that all of us bled at the thought of Kerry Packer losing $3 million because of the very poor performance by the West Indian cricket team when we read about it in the paper this morning. What this legislation does, however, is more than compensate for that. One of the big winners under this legislation is Kerry Packer and his data collection operation, which was formed quite some time ago and which already has information on millions of Australian citizens. I suppose, as a compensatory measure, the Prime Minister is keen to ensure that Kerry is not hard done by this Christmas. So we will be moving amendments to prevent the inappropriate use and disclosure of existing information. It is important that we do that.

Another area needs to be addressed—a third area which is deficient. It lies in the fact that there is no special treatment of information collected from children. This compares, for instance, with the US Children’s Online Privacy Protection Act of 1998, which requires that operators of commercial web sites and online services directed to children provide parents with notice of their information collection practices. It sets up a regime to protect children and parents. The American legislation was developed in response to research by the US Federal Trade Commission which revealed that some 89 per cent of 212 commercial children’s web sites collected personal information from children but only about 24 per cent posted privacy policies and only one per cent required parental consent. If it was good enough for a Republican presidency, a Republican Congress, to pass such legislation in the USA some 12 years ago, why is it not good enough for this government to put parents back in charge of their children’s personal information in this country in the year 2000? Families need to be given the tools to control who collects personal information from the kids, to dictate how that information is used and, most importantly, to determine whether it is shared with third parties.

So the government’s response to this enormously important issue, this issue of immediate and enormous public concern, is weak, it is disappointing and it provides the greatest comfort to big business at the expense of real consumer protection and real privacy protection. So we will be moving a number of amendments in the committee stage to address what we see as the major shortcomings of the bill. We would urge the Senate to support those. Unless we come out of here with some effective regime, as I said earlier, Australian citizens will be the losers and, at the end of the day, so will Australian business because of inconsistent regimes and because of the way that the rest of the world with its regimes will view our legislation here.
And they claimed that the government would:

... work with industry and the States to provide a co-regulatory approach to privacy within the private sector and comparable with best international practice.

This commitment was further cemented by the statement of the Attorney-General when launching a discussion paper on 12 September 1996 when he said:

... privacy protection will be enhanced for all Australians with the extension of the Privacy Act 1988 to the private sector ... I intend to be in a position to develop legislation for introduction next year.

In essence, the Attorney-General was proposing industry codes of practice, supervised by the Privacy Commissioner and subject to statutory backing—primarily a coregulatory approach. However, in March 1997, the following year—when we would have expected legislation to be introduced—after a Premiers Conference the Prime Minister reneged on this promise. He announced that the Privacy Act 1988 would not be extended to the private sector, claiming:

The Commonwealth opposes such proposals which will further increase compliance costs for all Australian businesses, large and small.

It was an enormous backflip. It was another election promise broken by this government. Those comments marked potentially an end to Australia’s international best practice privacy scheme, and it was another election promise broken. The reasons for this decision by the Prime Minister and the relevant information on which the Prime Minister relied in order to make this decision were not made available at the time. Even since then, it has been very difficult. Those people who have talked about compliance costs for businesses large and small have not necessarily provided the significant detail that I think is necessary to prove that compliance costs should be an inhibiting factor to the introduction of such legislation.

As the Democrats said at the time, this backflip was at odds with the major industrialised countries, which have recognised the economic and social benefits of privacy protection. The ministerial meeting of G7 industrialised countries in February 1995 and the APEC ministers meeting in May identified privacy as an issue which was important for commercial reasons. At that time, the EU had adopted a legally enforceable law in the form of the Privacy Directive, which, of course, can prevent the flow of data. Our neighbour, New Zealand, had its own privacy legislation, creating its own comprehensive national privacy scheme applying to both the public and private sectors. In that context, the failure by our government on a federal level to introduce a comparable scheme had the potential to threaten our interactions among nations. We now have a situation—almost four years after that promise was made by the Attorney-General—in which the Senate is presented with a bill which fails in a number of areas. It does not compare with international best practice in its current form. I hope that we can address some of those shortfalls in the committee stage of this bill, and I certainly urge the government to adopt some of the amendments before the chamber. That would significantly improve this bill, whether it is tightening the powers of the Privacy Commissioner or ensuring that there are penalty provisions or tightened exemptions in relation to this bill. This bill has significant and serious deficiencies that should be addressed. I seriously hope that the government will consider the amendments from both the opposition and the Democrats which would do just that.

The Democrats have a long history in relation to privacy debates. We have long been advocates of stronger privacy protections in Australia. Indeed, I would argue our record is second to none. We have long maintained that it is a fundamental principle that a person has the right to know what personal information is held about them and that, if that information is lawfully held, the information is correct. The International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights identify privacy in terms of their specific concerns. In the international charter, article 17 provides that:

... no one shall be subject to arbitrary or unlawful interference with his (or her) privacy.

The human rights article 12 provides that:
No one shall be subjected to arbitrary interference with his or her privacy, family, home or correspondence, nor attacks upon his or her honour and reputation.

These are fundamental human rights set out in agreements to which Australia has attested, and our domestic laws should reflect these international commitments. I have said it before and I will say it again: privacy is a human rights issue.

In 1997, on behalf of the Democrats, I brought to the Senate an exposure draft document which addressed many of these concerns. Once again, the Democrats were years ahead of the pack—certainly ahead of the government and the opposition. When tabling that private member’s bill, the Privacy Amendment Bill 1997 and its explanatory memorandum, I stated on behalf of my party:

The Democrats believe that personal information should be protected through a comprehensive national legislative scheme.

... a strong enforceable privacy protection which covers both the public and the private sectors with powers vested in an independent body to investigate and enforce its decisions based on clear principles of what constitutes a breach.

The proposed amendments to the Privacy Act 1988 set out in the privacy amendment bill 1997 will address this intention in a scheme where industry is either covered by legislative privacy principles or develops its own codes of practice with the co-operation of the Privacy Commissioner and subject to approval by the parliament.

The privacy principles and codes of practice maintain a comprehensive and enforceable privacy protection with powers conferred on the privacy commissioner which are similar to those presently set out in the Privacy Act 1988.

That speech on the second reading and the explanatory memorandum I tabled at that time reflected the long-held beliefs of the Australian Democrats on this issue and the fact that we believe this is a fundamental human rights issue. The Democrats are glad, therefore, to be having this debate today. Finally, we are debating a bill that extends privacy laws to the private sector. However, as I have mentioned, there are significant deficiencies in this bill and, in fact, there are opportunities that have not been taken or missed by this government that would have ensured that we do have a world’s best practice regime. We are concerned that the exemptions in this bill are far in excess of those required for the satisfactory passage of the legislation. We acknowledge, of course, that privacy is by no means an absolute right and, accordingly, some exemptions are required in certain circumstances. However, blanket exemptions that remove complete sections of the community from the jurisdiction of the bill, rather than targeting and then solving problems, are clearly unacceptable and prevent the bill from meeting its potential.

We have maintained that the exemptions in relation to small business, for example, are too wide. The main justification behind the government’s move to exempt small business from the application of the NPPs has been the issue of compliance costs, reflecting those statements made back in 1997 by the Prime Minister. Despite this being constantly brought up as the major justification for the broad-ranging exemption, there has been limited discussion on this, certainly in relation to the Senate committee, and limited evidence to substantiate some of these claims. The Democrats believe that the lack of substantial compliance costs or other significant difficulties associated with business and the implementation in other countries might indicate why those other countries have implemented privacy regimes in the recent past without those wide-ranging small business exemptions. They have been able to do it; why can’t we? For example, Hong Kong, the EU, Canada, the UK and New Zealand have all enacted similar privacy regimes to that proposed in the bill but none of them came forward with similar exemptions for small business. The Democrats will be supporting some of the measures outlined by the Labor Party to try and tighten those exemptions or improve those areas. We will support those amendments.

I recognise that this has been a significant and a tough year for many of Australia’s businesses as a result of the implementation of a new tax system. I commend the way that businesses have coped with that transition and the compliance costs associated with that but, on balance, we believe it is achievable to both implement this legislation by the pro-
posed date in the ALP amendments and to do so in a way that does not have too onerous compliance costs. It is worth doing because it is high time that Australians had a privacy regime that applied to the private sector. We are particularly concerned though about the extent to which the small business operator exemption does apply. Certainly, there was enough evidence before the Senate inquiry into this legislation, and the House of Representatives inquiry, to call for significant tightening and changing of those exemptions. The evidence to the committee—in fact, it was the government’s own evidence—by the Department of Employment, Workplace Relations and Small Business demonstrated that around 94 per cent of Australian businesses fall under the threshold originally proposed by the government. The fact that an overwhelming majority of Australian businesses are not subject to the bill is clearly an issue of concern. We hope to see that rectified. Again, we will be supporting amendments that have been put forward to tighten those exemptions.

Another issue which was discussed, certainly at the Senate inquiry on the bill, was in relation to e-commerce. According to the Internet Industry Association, 95 per cent of Australian Internet businesses would not be subject to the legislation. Given that personal privacy and security of data are major consumer concerns relating to the Internet and e-commerce, the provisions of the bill are unlikely, therefore, to give consumers the confidence they need in these new technologies. There is no doubt that new technologies are increasing consumer concerns about privacy. I note the recent findings of the Arthur Andersen legal Internet privacy survey 2000 which, I believe, mirrored the survey undertaken by the FTC in the United States. The survey identified several areas of concern. Seventy-two per cent of the top 100 sites collected personal information. However, only 51 per cent published a privacy policy and only 285 notified users about the specific personal information being collected. Of those sites with a privacy policy, 71 per cent notified that personal information may be disclosed to third parties—though only a third of those sites gave users a choice to allow this disclosure or not. And only 14 per cent of the sites surveyed said that they would give users the opportunity to have at least some personal information about them deleted from their web site records.

Many of these issues have been examined not only by the Senate Legal and Constitutional Committee but also by the recent Senate IT committee, which looked at e-privacy. Finally getting a reference to that committee was a welcome relief to the Democrats. These surveys demonstrate the community’s concern. Senator Bolkus, I think, referred to the Acxiom debacle and the concerns raised by consumers as a consequence of that story and issue, although I do not think it is an isolated case. I note also the conclusion of the United States Federal Trade Commission’s survey of the 100 most popular web sites in the US: that industry efforts to implement a broad based and effective self-regulatory regime for privacy protection were inadequate. That is what it concluded. The FTC, therefore, recommended a change in policy to the United States Congress in that it should enact legislation to ensure adequate protection of consumer privacy online rather than continue to seek to rely on purely self-regulatory methods. I note that Senator Bolkus also referred to the FTC in the context of providing protections in relation to children. The Democrats will support those amendments as well. We know that consumers are increasingly concerned about issues such as telemarketing. There are plenty of constituent letters and emails that I could refer to to back up that position, but I think most people understand the increasing concerns that consumers have.

Today we also have a unique opportunity to address an area of privacy that has received little attention by the Australian legislatures up until now, and that is the issue of genetic privacy. People in this place know that the Democrats have spent a lot of time working on this issue, arguing for greater privacy protections for Australians generally and, specifically, a legislative framework in relation to the protection of people’s genetic information—that unique sensitive information. We have always maintained that genetic privacy and genetic discrimination as related to that topic are best dealt with within a
comprehensive privacy regime. Certainly, my private member’s bill—the Genetic Privacy and Non-discrimination Bill 1998—identifies genetic privacy as an issue for public debate and seeks to protect Australians from misuse of this unique and powerful health information.

Today we do have a historic opportunity to pass legislation in this area. I will be moving amendments on behalf of the Democrats to ensure that genetic privacy is a component of this bill in such a way that recognises the distinct differences between health and genetic information—general health information and specific genetic information. I hope that both the old parties will recognise the value of those amendments and will pass them to ensure that, for the first time, we have specific protection of genetic information in Australia. I should note that personal information and personal genetic information are different. The key difference between personal information and personal genetic information is that genetic information is a permanent part of our lives and that of our biological relatives. This is often shared personal information which requires some procedures and some special measures to protect. I have also outlined in this place on a number of occasions the fact that genetic technology opens up the possibility for discrimination on the basis of information made available about a person’s genes. Of course, there are case studies already available. That highlights how important it is for Australians to be given some assurance on a federal level, a national level, that their personal genetic information is being protected.

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I wish to place on record the role of the Democrats in this long-running debate. Former Senator Michael Macklin’s bill in 1987 instigated the debate which culminated in the Privacy Act 1988. At that time, the Democrats sought to extend the Privacy Act to the private sector. I acknowledge Senator Bolkus’s comments about his role in the debate but I do not think he believed he would get away without me referring to Senator Macklin and the role of the Democrats at that time. Not only did we instigate, I think, the privacy legislation that resulted, but at that time 13 years ago we were talking about extending—

Senator Bolkus—You instigate? You didn’t instigate it. You can’t rewrite history like that!

Senator STOTT DESPOJA—I will acknowledge Senator Bolkus’s interjection. He accuses me of rewriting history, but I think if you look at the Hansard you will find the key role that Senator Macklin played in that debate. And even 10 years earlier than that you will find reference to Democrat policy and the need to have a comprehensive, enforceable, national privacy scheme that applied to both the public and the private sectors. At the time that Senator Bolkus was playing his role in that debate, the Democrats were arguing that that legislation should apply not only to the public sector but to the private sector. It has taken a long time to get to a point where we are not only debating but examining legislation that does just that. The Democrats support a comprehensive regime which extends privacy protection to the private sector, and have done for a long time. Our bill in 1997 would have extended the Privacy Act in this way but was of course followed by the government’s undertaking to introduce its own regime to ensure private sector privacy. Today should be an opportunity to establish such a comprehensive regime and to give Australians, finally, the confidence that their personal information is safe. I hope that the government will take advantage of this opportunity and will pass the amendments that will improve this bill. Otherwise, once again Australians will have good reason to feel that their personal information, be it genetic, health or other information, is not being adequately safeguarded.

Senator PAYNE (New South Wales) (6.10 p.m.)—I rise to participate in this debate and to move slightly away from the mutual admi-
ration society that developed on the other side of the chamber towards the end of the remarks of the previous speaker. I would like to place on record the importance of the Attorney-General’s contribution to this process—his persistence in consulting broadly across Australia and in ensuring that input to the development of this legislation has been as broad as possible. Rather than engaging in a significant traversing, again, of the lengthy years up until the election of the Howard government, I wish to move from about December of 1998, when both the Attorney and the minister for communications announced that the government would legislate to support and strengthen self-regulatory privacy protection in the private sector.

This bill has been developed with what I would describe and what many of the participants in the process would describe as a consultative approach. The government decided that the privacy standards in the bill would be based on the national principles for the fair handling of personal information which were developed by the Privacy Commissioner in 1997 and 1998. Those principles themselves evolved from a broad consultation process which involved business, industry, consumer and privacy interests. The government convened a core consultative group in 1998 which consisted again of industry and consumer groups, of privacy advocates and the Privacy Commissioner. It was discussions with that group which prompted the government to determine the approach of embodying a coregulatory system in this bill. At the Attorney’s request the Privacy Commissioner continued with the consultative approach in 1989 in relation to the application of the national privacy principles to health information. The end result of that consultation was an information paper released late in 1999. Further in 1999, the government released the key provisions of the bill.

Both the previous speakers in this part of the debate have referred, to some degree, to some of the parliamentary committees which have considered the bill since its introduction. I would have to concur that those considerations have been extensive. They have included the House of Representatives Standing Committee on Legal and Constitutional Affairs, the Senate Legal and Constitutional Legislation Committee, and, as Senator Stott Despoja mentioned, the Senate Select Committee on Information Technologies. In some of the public debate that has surrounded this bill in recent times there has been some criticism, depending on from whom it is emanating, that the bill is being rushed or alternatively that the bill is being delayed. Those disparate criticisms are brought together with the facts, which is always inconvenient for people who wish to criticise without any foundation.

This was a decision to legislate which was announced two years ago. Since that time, all interested parties have had many opportunities to make their views known to the government and many have done exactly that. Many of those that criticise are those whose views have not prevailed, and that is of course often the case in public debate. There are some who continue to make a constructive contribution. But there does come a point when decisions have to be made, and it is the view of the government that these are the appropriate decisions to make. What we are about in bringing forward this bill is trying to strike an appropriate balance between the competing interests that other speakers have referred to, and to enshrine in legislation the protection for personal information held by the private sector. The bill is effectively described as reflecting a ‘light touch approach’. After the principles have been set out, much of the detail is left to guidelines which will be developed by the Privacy Commissioner. So it is not a heavy-handed scheme. It is a complaints based system which will lead to remedies available to the individual whose privacy has been breached. This reflects the current approach in the public sector application of the Privacy Act that we have been told has worked so well since 1989. In pursuing that same line, this is a consistent approach from the government.

In terms of the commencement of the legislation, it is important to note that it will come into effect 12 months after it is passed by both houses and receives royal assent. That time frame will enable organisations to
have time to adjust their practices in order to comply with the new obligations.

I have referred already to the national privacy principles which will provide the standards for handling of personal information, and I have noted the coregulatory approach that the bill takes. I think it is also important to notice—and it has not been acknowledged so far in this discussion—the very important and effective role that we believe the Office of the Privacy Commissioner fulfils in this process. There has been no credit given to that office and those who fill the roles in that office, no credit given to the breadth of consultation they have undertaken or the efforts they have made to work with particular industries that use certain types of information or particular organisations to develop codes that are tailored to those areas. It is very important to acknowledge that.

This will bring about a uniform national scheme that provides for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by organisations in the private sector. This is absolutely vital for the effective operation of business in this country and for the most effective and efficient compliance levels and activity for business to observe. It is almost impossible to imagine what an inconceivable mess there would be if we had ended up going down the road of having separate jurisdictions implementing their own privacy requirements and legislation.

As I have mentioned in this place before, I was involved, both personally and professionally, in the discussion and development of this new legislation before I even came into this place. The horror that was struck into the hearts and minds of businesses in Australia at the thought of having to comply across eight jurisdictions if they operated on a national basis was enough to send most businesses into terror. Having put this together into a single national system, it is a very effective response to those concerns.

I want to comment briefly—and I am only intending to speak briefly this evening—on some of the concerns that have been raised about exemptions. I particularly want to go to one of the remarks of Senator Stott Despoja in relation to small business. Whilst Senator Stott Despoja indicated that the Department of Employment, Workplace Relations and Small Business gave certain evidence to the Senate Legal and Constitutional Legislation Committee—which indeed they did, and I believe that was an accurate representation—they also noted, and this is recorded in the committee’s report:

Although the number of small businesses is high, the amount of business activity that they represent is estimated by the ABS at only 30 per cent. Therefore, a minimum of 70 per cent of business activity would be included in the legislation.

I think it is very important to place that on the record. The other exemptions which have been raised as matters of concern and which I know were addressed in amendments which have been circulated in the chamber and will be discussed at the committee stage particularly concern employee records. The Senate committee recommended that there be a sunset clause inserted in the bill which would allow the exemption to operate for two years while analysis was undertaken by relevant agencies to ascertain whether existing workplace relations and state and territory legislation is adequate to protect the privacy of employee records.

The government has not, as I understand it, accepted that recommendation in whole but has made what I regard as a very important response to it. It has undertaken, I understand from a statement from the Attorney-General today, to review existing Commonwealth, state and territory laws to consider the extent of privacy protection for employee records and whether there is a need for further measures. This review will commence after the bill is enacted but before it comes into effect. It is a review which will be carried out by officers of the Attorney-General’s Department and the Department of Employment, Workplace Relations and Small Business, and again it will involve consultation with state and territory governments, the Privacy Commissioner and other key stakeholders. This is, I think, an important response to issues of concern which were raised by the Senate committee and which have been raised in other committee reports on this issue.
What the government does not consider necessary is the imposition of additional administrative and financial burdens on Australian employers without giving proper consideration to the need for such controls. What we are about in all of this legislation is an approach that balances the interests and concerns of individuals in relation to the protection of their personal information and the needs of Australian business to operate in an effective manner, at the same time observing, most importantly, the protections which are required under this legislation. I think that covers some of the most important aspects of the legislation from the government’s perspective.

Senator LUDWIG (Queensland) (6.20 p.m.)—The Privacy Amendment (Private Sector) Bill 2000 has quite a long history. It came about firstly—and I suspect more in detail—with the Senate Legal and Constitutional Committee, which conducted an inquiry into privacy protection in Australia which was linked to consideration of the measures contained in the Privacy Amendment Bill 1998. We know that privacy matters have come before this parliament longer ago than that, but the genesis of the current bill was at about that point. I would like to discuss a number of aspects of this committee’s report first before leading into the current committee report and the current bill before us.

The report on the Privacy Amendment Bill 1998 is particularly relevant to the current position. The report firstly notes that there is an increasing level of interest in the community in the protection of personal information and that the community expects government institutions as well as commercial bodies to maintain their personal information in a confidential manner. The committee heard evidence that the protection of privacy has been given a new impetus by emerging technologies which enable access to and manipulation of data. This is particularly important in the areas of health data and genetic information. There are clearly needs for specific legislation, control and access to medical and other health records.

The report also looked at international responses to the issue of privacy. Many industry groups have referred favourably to the United States system, which is predominantly self-regulatory. Others have accused the system of favouring business to the exclusion of personal rights and it has been suggested that the principles adopted by the European Union offer more rights to consumers. Canada has a similar system to that in Australia, with a federal act applying privacy principles to most federal agencies. However, self-regulation of privacy issues appears now to have given way to proposed legislation which will cover both the public and the private sectors.

The committee looked at establishing a model of privacy protection based on the following criteria. It will have core principles that, if observed, will protect privacy. This criterion is the content of the privacy protection scheme. It will have a guarantee, to a level acceptable to the community, and internationally, of compliance with accepted privacy principles. There will be a guarantee to provide a means for people to exercise and protect their right to privacy—that is, provide an accessible enforcement mechanism. There will also be a guarantee to provide redress when a privacy right is breached, by way of specific remedies, sanctions or compensation. The committee also noted that aspects of this approach were generally accepted within Australia, although to varying degrees, and internationally. The report stated that parliament should consider the wider public interest of developing a system that provides privacy protection but also retains flexibility to be able to meet the demands of evolving technologies and the particular demands, structures and issues that arise across various industry sectors.

There are five sources of international law and standards relevant to Australia in considering the need for privacy protection. Without going into them all, as I suspect they are well known in this house, they include article 17 of the International Covenant on Civil and Political Rights; the Universal Declaration of Human Rights; the Organisation for Economic Co-operation and Development, OEDC, Guidelines for Governing the Protection of Privacy and Transborder Flows of Personal Data; and of course the
European Union Data Protection. The opinions of witnesses of the committee were divided on the significance that these provisions have for Australia, and in particular the effect on Australian trade with the EU in the event that Australia’s privacy controls are found to be inadequate. The 1998 inquiry of the committee concluded that Australia should adopt a privacy regime applying to the private sector which guarantees an individual’s privacy rights. So we have, in effect, a lead that is heading towards privacy protection in Australia.

What we then came across was a report developed in consideration of a bill. In the modern age, a right to privacy is no longer a trendy phrase. Personal information, more than ever before, can also be an avenue for making money. It is no longer only one of those civil libertarian rights that needs defending; personal information can now be described as commercial information which requires protection. The commercial sector now seeks out this information and defends it against getting into the hands of its competitors, uses it and tries mostly to make a profit from the collection, storage and dissemination of personal information and other types of data.

Individuals are increasingly recognising that their personal details are valuable and that the individual should have some say as to how this information is used. Of course, what is heightening this are the emerging technologies that are making raw data more useful. We have already come across a whole range of new phrases that are particularly peculiar to this industry. There were phrases that I came across such as ‘data mining’, which conjures in the mind a huge goldmine or metal mine with a range of mechanical instruments—but far from it. It is a unique phrase, and behind this term is a situation whereby the electronic and digital storage of information, combined with telecommunications technologies, allows people to access and retrieve data, match it in certain ways and bring about information from a whole range of diverse sources. It allows the creation of detailed personal files from diverse sources which, when combined, reveal a profile of a person and their spending patterns, which can be very valuable in the hands of many commercial operators.

There have been legislative responses across Australia to these types of situations. In April 1998, as an example, the report from the Legal, Constitutional and Administrative Review Committee of the Queensland parliament looked at this very issue. It was called *Privacy in Queensland* and it recommended the enactment of a privacy act and the appointment of a privacy commissioner. What we have is a range of states looking at the particular issue of privacy. We have heightened community awareness. We have individuals concerned about their right to privacy and their right to personal privacy in relation to the data. We have, on the other hand, companies, businesses and commercial enterprises seeking to use that data in a variety of ways for commercial profit.

In respect of the Privacy Amendment (Private Sector) Bill 2000, the shadow Attorney-General criticised the new legislation introduced by the government as being too soft. This evening we have heard it called a ‘light touch’. In the commercial world, we all know what a light touch means. The bill aims to establish a national privacy scheme for the private sector and seeks to harmonise the various disparate interests. These interests include Australia’s international obligations and its international concerns, individuals’ interests in having their privacy protected, and social interests in ensuring that privacy issues do not trammel human rights.

Businesses do have a legitimate right to have a free flow of information and the need to have a privacy regime that is not so costly that it causes significant business harm. However, tilted against this are individual privacy and human rights concerns that a loss of these privacy rights could cause serious harm to the fabric of society. Obviously a fair balance needs to be struck. This bill does not set a fair balance. However, Labor’s amendments will assist to strike a fair and reasonable balance—one that the citizen can understand and one that the commercial operators and business enterprises can set their sails against—so that we can come to a position, at least on the scales, which provides
pathways for all parties to feel secure about their personal information.

It is clear that the Privacy Commissioner requires stronger powers as well to ensure that privacy rights are appropriately protected. The principles that underpin the bill are the national principles for the fair handling of personal information. However, there are still many concerns—concerns that are reflected in the wider community, as I have said. This bill establishes a coregulatory approach to privacy laws. However, it must be a genuine coregulatory scheme. Labor is pleased that this government has not adopted a self-regulatory approach, but vigilance is still required. There must be enough supervision and regulation of the private sector to guarantee a truly effective, efficient and fair coregulatory approach. The government has described the approach as a light touch. The concern is whether this is a euphemism for an inadequate mechanism to protect Australians from misuse of personal information. Labor is not about to wait and see but has decided that the best course of action in the interim is to look at amendments to see if they can strike a fair balance.

Some of the amendments Labor will be moving to create such a position go to such issues as preventing the misuse and disclosure of personal information which has already been collected, providing people with the right to access and correct existing information and increasing the powers of the Privacy Commissioner to enforce privacy standards and to audit the performance of alternative industry privacy codes. In addition, we seek to ensure one of the fundamental tenets of our society: the right of appeal from industry privacy code adjudicators directly to the Privacy Commissioner. We want to create new penalties for serious privacy breaches and discourage grave or systematic interferences with privacy, and provide special protection for children by giving parents more control over the information collected by commercial web site operators. These are but a few of the general areas or thrusts of the argument that we will put in more detail during the committee stage. It is not my role to go to those particular amendments in detail but to provide an overall overview of what Labor say would provide a fair approach to this bill.

In addition, I think the Senate can look at ensuring that not only is the Privacy Commissioner properly funded but also the operation is transparent and consumers can make informed decisions about the level of information that they put out and that is kept by companies and commercial operators. Of course, it is not a simple case of yes or no. There are degrees of what people can feel comfortable with, so there must be a range of acceptable levels of information so that in a graduated way the consumer can identify, say, a company or a certain amount of information and say that it is fine for this company or it is fine for this sort of information to be released, but for another company or for other types of information it is not fine, and the consumer can feel confident in saying no.

The system will not work if it is not funded sufficiently. The Office of the Privacy Commissioner becomes a key player in this. It is one of those matters that the Senate is able to return to in estimates again and again if necessary to ensure that the Office of the Privacy Commissioner is maintained in a properly funded way, is properly staffed and resourced and can continue to ensure that the bill, when enacted, is looked after. The government must make appropriate funding available, and I would give the benefit of the doubt to the government on this issue. The government said that the system will work and that it will fund it appropriately. That is a question that we can pursue.

One of the concerns is that the bill does not have adequate teeth and might be considered a toothless tiger. It contains, for example, no real sanctions for those companies that flout national privacy principles. This is an area where the government could play a constructive role in ensuring that there are measures that act as a deterrent. Hopefully, the Office of the Privacy Commissioner will report on trespasses in respect of the national privacy principles so that, if there are problems, the issue of comprehensive penalties can be considered again. The issue of small business, as has been said, has been ducked in this bill. It appears that they are exempt,
although the definition used to decide whether a business is in or out is extremely complex.

On another note, there is an overarching concern that the bill as it stands may not meet the European Union data protection directive on the protection of individuals with regard to the processing of personal data. It is designed to ensure the free movement of such data and the main objective is to remove any potential barriers to trade. I await a clear indication from this government that this bill would meet those requirements and that our trade will not get caught in red tape as a consequence. I would seek an explanation from the minister so that the differences, such as the exemptions relating to employee records and small business, are fully explained and fully compared with the overseas situation. I would seek that a commitment be given that, if there are problems, this government will address them immediately and also a commitment that, if there are problems that affect trade, this government will amend the bill. Balanced against these rights is the cost of implementing the coregulatory model as against a more prescriptive model or a less prescriptive model. However, it must be recognised that in developing privacy protection systems it is necessary to strike an appropriate balance with respect to costs and the need for privacy.

I will turn to the inquiry conducted by the Senate Legal and Constitutional Legislation Committee which looked at the elements of the Privacy Amendment (Private Sector) Bill. The report states that the bill aims to help the private sector which deals with personal information to develop privacy codes of practice and provide at least the same level of protection as the national privacy principles, including complaint handling procedures. Terms like ‘independence’, ‘transparency’, ‘fairness’ and ‘accessibility’ should become the norm when we are dealing with these sorts of issues in relation to privacy protection. The dissenting report of Labor senators on the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the Privacy Amendment (Private Sector) Bill 2000 stated that the legislation has been a long time coming. The 1998 report was not responded to by this government.

The House of Representatives Standing Committee on Legal and Constitutional Affairs advisory report on the Privacy Amendment (Private Sector) Bill 2000 was presented by the committee on 26 June 2000. It was a unanimous report by the committee. However, sadly, the government’s response, made on 7 September, was short. Of the 23 recommendations that were made, only five were accepted and some others were accepted in part or in principle. That is not a very good record.

In addition, very little detail was worked out and presented by the government in answering the position, so very little can be said about the government’s position on those recommendations. In short, the dissenting Labor senators’ comments state that the bill is poor and in reality should be withdrawn, more work should be done and the bill should be reintroduced. Unfortunately, the government wishes to persist with the bill in its current format, and in the committee stage Labor will move detailed amendments to improve the basis upon which the bill will be used in the wider community. The test in respect of privacy is encapsulated in this question: does it meet the needs of the community? In the report, the Labor senators remain unconvinced. The Labor senators highlighted a number of concerns. As I have said, they highlighted the concerns that were reflected earlier in my speech, which went to the small business exemption and, in addition, employee records and other matters.

The government’s response was to allow a revolving door in relation to the small business issue. The position with the national privacy principles was going to be such that small businesses could come and go as they pleased. That creates all sorts of problems. What about information already collected by a small business should it opt out? What about the use of information should a small business fail and then opt out or be taken over and the new business chooses to opt out, or if there is a merger or a sale of a small business and the new business or the new owners do not wish to continue? One won-
ders what actually happens to the information.

In my view, the government senators squibbed out in the majority report. In relation to the European Union directive, they said that the views of the European Union with regard to the operation of the bill should be considered as part of the broader review of the legislation, which was to occur in two years time. So we have another review, another two years wait and another two years of commercial operators spinning information for sale. We started in 1998 with an inquiry which had its genesis some two years earlier, we are now looking for another review—part of the government’s response in its report—to spin it out to 2002 and we are also told today that another review appears to be—(Time expired)

Senator LUNDY (Australian Capital Territory) (6.40 p.m.)—I would also like to make some comments with respect to the Privacy Amendment (Private Sector) Bill 2000. In doing so, I would like to draw senators’ attention to the dissenting report of Labor senators in consideration of this bill by the Senate Legal and Constitutional Legislation Committee. Labor members of that committee recognised the privacy amendment bill as a final capitulation to a 1996 coalition election promise, which was to extend the provisions of the Privacy Act 1988 to the private sector. That pre-election promise was alive when on 12 December 1996 the Attorney-General, Mr Daryl Williams, released a discussion paper which set out a privacy scheme based on the then existing information privacy principles of the Privacy Act. However, Mr Williams’s quest to honour the election promise was quashed a short time later when Prime Minister Howard announced on 21 March 1997 that the Privacy Act would not be extended in accordance with coalition policy. The reasons given for breaking this promise were vague and unclear.

The government introduced the Privacy Amendment Bill 1998 into the House of Representatives in early 1998 and, after less than three hours of debate at the second reading stage, the bill passed its third reading on 1 May 1998. Later, on 14 May, the Senate referred the bill to the Legal and Constitutional References Committee for inquiry with a report date by 12 August 1998. The reporting date was extended on a number of occasions and, after the intervening election, the report was finally presented to the Senate on 25 March 1999. The government certainly ignored that report and went on to again ignore the House of Representatives Standing Committee on Legal and Constitutional Affairs advisory report on the Privacy Amendment Bill 2000. This attitude has been quite consistent in the government’s treatment of the issue of privacy and it concerns me greatly that even with this bill that arrogant attitude towards privacy in Australia persists.

My colleagues have already outlined the approach that Labor are taking in our attempt to amend this bill to make it more acceptable. I would like to draw the Senate’s attention to yet another inquiry that has been conducted, not as a direct reference to the privacy amendment bill but almost in association with an issue that I believe is really causing a lot of citizens and consumers concern about privacy in the information age.

In the report entitled Cookie Monster? Privacy in the information society by a committee chaired by Senator Ferris, a series of recommendations specifically relating to privacy in the electronic environment were made. I would like to take the time to refer to each of the recommendations contained in that report, as they all provide a further insight into or a further drawing out of the issues relating specifically to the Internet and the challenges of privacy that do arise in the digital or electronic environment. The first recommendation of that committee is that the Federal Privacy Commissioner develop and authorise for display ‘a privacy webseal’.

The report says:

The webseal will—hopefully—

assure consumers at a glance of the privacy credentials of a particular organisation and will offer at least the following information and services to consumers: It will:

• enable consumers to opt out of any direct marketing communication from the outset of the customer relationship;

• provide advice on how to obtain access to and correct one’s personal records;
facilitate the complaints process by identifying the code adjudicator and providing either a complaints form, or advice about how complaints should be submitted;

• provide details on the industry privacy code, if any, that applies to the organisation;

• provide the complaints statistics of the applicable code ...

• provide clear and unambiguous advice about the information handling practices of the organisation ...

It will also provide a link to the web site of the Federal Privacy Commissioner. The committee believed that this proposal would be of benefit to both consumers and online businesses and would assist consumers to protect their own privacy by informing them up-front of their privacy rights and empowering them to take action to protect themselves. Online businesses, on the other hand, would be able to demonstrate a commitment to the privacy principles by providing consumers with a means of doing so.

The second recommendation is something I feel very strongly about:

The Committee recommends that the Federal Privacy Commissioner review the August 1994 ‘Advice for Commonwealth agencies considering contracting out (outsourcing) information technology and other functions’, paying specific regard to security and privacy functions, including:

- risk assessment of privacy threats arising from outsourcing; and

- procedures for monitoring and ensuring the privacy compliance of an external service provider.

The Committee recommends that the Federal Privacy Commissioner issue similar guidelines for private sector organisations that are involved in outsourcing IT functions to external service providers.

This is a particularly important issue because the recent Australian National Audit Office report into Minister Fahey’s IT outsourcing initiative highlighted several flaws in the treatment of privacy under contracts between external service providers and the Commonwealth government. I cannot overstate the sensitivity of this issue, particularly because we are talking about citizens’ information being in the hands of private organisations, information that has been quite appropriately collected by the government on their behalf—for example, health information, tax information and social security information—that is incredibly sensitive and that is indeed protected by the provisions of the very act that we are seeking to amend today.

This issue has been previously raised in a variety of forums, including Senate estimates hearings. The Senate was given assurances by those in the bureaucracy managing the contracts that the privacy of citizens’ information would be protected by private external service providers by virtue of a contractual clause which transferred all the privacy protection mechanisms contained in the Privacy Act 1988 to the contractor and yet, in doing so, did not excuse the Commonwealth agency or department from the ultimate responsibility for the protection of privacy. That was all the insurance we had. Despite requesting it, I was never provided with specific copies of the clauses that found their way into the signed contracts, albeit I was shown clauses from the request for tender documentation for various IT outsourcing contracts which certainly looked on the surface as though they would at least transfer that responsibility and the provisions of the act to the private sector.

Nonetheless, the Australian National Audit Office found significant flaws in the system. They also found that the clause in one particular contract did not provide the degree of specificity necessary for the external service provider to guarantee that privacy would be protected. The agencies involved had also failed to put in place an adequate process to independently check that these privacy provisions were adhered to. Despite assurances on the public record given by both the agencies and the Department of Finance and Administration—which are managing the issue of privacy—a very detailed investigation by the Auditor-General has shown that these provisions were not met. As a result, there is an urgent need to look specifically at how this bill extends and protects the privacy of those individuals, and I am not convinced that it does. In closing, I would like to run through the remaining recommendations of the privacy report:

**Recommendation 3**

The Committee recommends that the media exemption in the Privacy Amendment (Private
Sector) Bill 2000 be amended to prevent media organisations from publishing bulk records about Australian citizens that include details of names and addresses, and to enable consumers to obtain access to information about themselves that is held by a media organisation.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Hogg)—Order! There being no consideration of government documents, I propose the question:

That the Senate do now adjourn.

National Youth Roundtable

Senator LUNDY (Australian Capital Territory) (6.51 p.m.)—I rise tonight to discuss the outcomes of recent events in the youth arena and, in particular, the presence of the Youth Roundtable in Parliament House only a few months ago. I raise this tonight on the basis that it is absolutely critical that not just the government but all parliamentarians have the opportunity to hear about the outcomes and recommendations of the Youth Roundtable. Shortly, I would like to work through those recommendations quite specifically.

I would like to preface my comments with a general summary of the Youth Roundtable and the way the government has approached this forum. I need to be a little historic in my reflections because the Youth Roundtable came up as the coalition’s response to how young people were represented in Australia, particularly following the defunding of the Australian Youth Action Coalition, which provided a peak body for youth organisations around the country and a cohesive voice for issues confronting young people. Once that organisation was defunded, it was very clear that the coalition were proceeding with their strategy to take away the voice of anyone who opposed them and were not prepared to fund organisations that were critical of how the coalition conducted themselves.

The Youth Roundtable was then positioned by the coalition government as being the alternative consultative model or the alternative voice for young people in this country. However, the Youth Roundtable did not reflect the structure or nature of the youth peak, given that the youth peak itself clearly organised and prepared its structure and thereby its voice. Alternatively, the Youth Roundtable is very much a construct of the government. I am on the record as saying that its nature is much more that of a focus group bringing together 50 young people from around the country to discuss and explore policy issues confronting those 50 young people at the time and related specifically to their field of experience.

While much has been made of the appropriateness or otherwise of the Youth Roundtable, tonight I want to focus on the work of those 50 young people. It is an incredibly important work, despite my concerns about the structure of the Youth Roundtable. The efforts that they have put in need to be not only respected but also listened to and followed through. That is what the government said they would do. I will always persist with my concerns about the Youth Roundtable not being accessible to the wider parliament and, although I was pleased to have been given more access at last year’s roundtable, I again place on the record my specific request to the Minister for Education, Training and Youth Affairs, Dr Kemp, and ask that the opposition shadow ministers and indeed those with portfolios on the crossbench be given the same sort of access to the young people participating in the Youth Roundtable as the government ministers are. This is a taxpayer funded forum, and I believe that all members of parliament should have the opportunity to access the insights of the 50 young people who are privileged to be involved in the program.

I would now like to turn to the recommendations of the various topic groups of the Youth Roundtable, to place them on the record, in particular the education topic group. Firstly, in relation to disability the recommendation states:

More funding for interaction programs to allow young people with disabilities to participate in mainstream education. This included increased funding for:

- Teacher’s aides,
- Better resourced facilities,
- Prompt action to requests for environment modifications, greater flexibility to accommodate individual needs (ie therapy sessions) and
• Programs to support students in the transition from Primary school to high school.

With respect to vocational education and training, the general comments from the participants included:
• Start VET earlier i.e year 8 or late primary school in addition to mainstream education. This allows young people to start to become aware of career pathways to get a sense of vision and direction for their future.

The recommendation states:
VET should be in all schools and receive adequate funding.
• Inconsistencies with the implementation of VET programs.
• The quality of programs often relies on the motivation of school staff and the local industry.

Recommendation 2: National marketing campaign dispelling negative images of young people participating in vocational education programs and to promote VET as being of equal value to academic education streams.
• VET needs a new image as current one carries connotations of not being as good as academic streams of education that affects enrolments.

Recommendation 3: Establishing VET programs in years 11 and 12 where young people can volunteer to work for a few days a week in a supervised and supported workplace.
• Employers take responsibility for equipment and material costs.
• A National register of businesses willing to take students should be established.

They then make a general comment with respect to peer support and say:
Peer support allows young people to discuss issues of concerns not related to the school curriculum with older peers.

Recommendation 1: Peer group support programs to be established in all high schools.
• Teachers should provide back-up support by acting as student liaison officers.

The next issue is career information in schools and they make the general comment:
• Young people of NES backgrounds are disadvantaged when it comes to receiving career info.
• More information is required on part-time apprenticeships.

Recommendation 1: career information needs to be more accessible to all students.

With respect to university morale, the recommendations are:
Recommendation 1: The Government needs to have a dialogue with students and universities to discuss more funding for smaller classes, retention of lecturers, better facilities and more research grants.

Recommendation 2: There is a need for greater mentoring and pastoral care services.

Recommendation 3: Introduce a ‘Foundation’ year for all first year students.

Recommendation 4: There is a need to establish links between academia and industry while students are studying.

Recommendation 5: All lecture notes and papers should be posted on the Internet.

I turn to the employment topic group, which stated:

Recommendation 1: Foundation skills should be recognised as a core component of education.

With respect to volunteerism, they state:
Recommendation 1: There should be incentives for young people to participate in volunteering activities.

Concerning young people and mental illness, they state:
Recommendation: Establish a nationwide campaign to reduce stigmas associated with mental illness and employment.

With respect to apprenticeships, they state:
Recommendation 1: Apprentices should be eligible for rent assistance and healthcare cards.

Recommendation 2: Establishment of a workplace mentor program to support new apprentices and educate them about their rights and available services.

Recommendation 3: Establishment of a workplace code of conduct.

I now go to the health and wellbeing topic group, with respect to young women and sport:
Recommendation 1: Restructuring of national coaching accreditation courses to better encompass the needs of individual athletes.

With respect to sexuality based issues:
Recommendation 1: Teachers should receive specialised training to raise awareness of discriminatory language and antidiscrimination education policy.

It is very clear that I will not have the time to work through all of these recommendations so, with the leave of the coalition, I would like to incorporate the rest of the recommendations provided by the Youth Roundtable in the Hansard. I know I have not shown them
to the coalition, but I am keen to place these recommendations on the record so that all parliamentarians can see them.

Leave not granted.

Senator LUNDY—It is very disappointing that leave has not been granted. I will take the opportunity to place them on the record at another time. (Time expired)

Lyneham, Mr Paul

Senator FERRIS (South Australia) (7.01 p.m.)—In the last week or so, dozens of eloquent words have been written about Paul Lyneham, one of Australia’s most effective journalists, whose funeral I attended in Canberra this afternoon. My friendship with Paul goes back 30 years when, as a young journalist at the Canberra Times, I was greeted one night by a swaggering young man with lots of black curly hair, wearing an old raincoat and smoking a brand of very strong French cigarettes. I have always disliked smoking, and I suggested to him—quite politely, I am sure—that he get rid of the stinking thing. In his usual confronting way, he took a deep breath and, with a theatrical sweep of his hand, puffed it straight at me. Not surprisingly, I have never forgotten our first encounter.

Paul always like to challenge conventional wisdom whenever it crossed his path, and as a police rounds reporter on the Canberra Times in those days, I often wondered how he managed to so finely balance the divide between what he called the cops and the crims. But he did. His reputation as a young man around the town—an accomplished musician, singer, writer and a bit of a rebel—is well known and has been quite well documented over the few days since he died last Friday.

There were many sides to Paul Lyneham’s character. Some of them are less well known, as several speakers said in their eulogies this afternoon. Paul loved kids, and on occasions he babysat one of mine when I was called back to work. That preschooler is now far older than Paul was when he was the babysitter, but he still remembers very clearly the songs Paul sang and the stories he told. He also remembers his skill with plasticine. In fact, a treasured possession for a long time in our house was a miniature plasticine grand piano—complete with keys, music and a stool—and a large white plasticine elephant that was preserved in our fridge for months. But white elephant Paul Lyneham was not. He left an indelible mark wherever he went, whether it was on the Australian National University campus—where he was President of the Liberal Club when it was far from fashionable—whether it was playing pool late at night at the Press Club or whether it was verbally filleting some hapless politician on radio around Australia.

Men and women from every state—and probably overseas as well—have special memories of Paul Lyneham. One of mine involves his singing with his band, the Bitter Lemons, dressed up to the nines in a dinner suit and on the stage at the Press Club. Before long, he got down to the shirt sleeves and then to an old Stones T-shirt. The black trousers were dropped for the old jeans, and Paul Lyneham was as close to Mick Jagger as you would ever find at the press club.

Just 10 days ago, when I saw him last, his spirit was strong and his sardonic sense of humour was the way it had always been. But as he said himself, he was engaged in an exhausting battle with the Indian arm wrestler. Unfortunately, it was one battle he was not able to win. When I awoke this morning to the sound of rumbling thunder across the Canberra skies, I thought it was probably Paul staking out his territory up there, maybe meeting up with Andrew Olle to catch up on what we have been doing up here on the hill since they have been apart.

Paul called himself a hunter and gatherer, and he tried to ask the questions that our enemies wanted to ask us. He was fearless and funny, masterful and mercurial. There would not be a politician in this building who did not feel a shiver down their spine when he began his interviews with, ‘And tell me, where did the money really go?’ The 7.30 Report was never the same after Lyneham left. While a few in politics might have breathed a sigh of relief to escape that awesome gaze, there is no doubt that the public debate in politics in this country was diminished by his departure. Paul’s wife Dorothy, his children Joel, Chloe and Matthew, his
mother and his sister have lost a very special man, but Australia has lost an important contributor to the public debate whose self-styled bullshit meter did its best to keep the rest of us on track. Rest in peace, old friend.

Lyneham, Mr Paul

Floods: New South Wales

Senator SANDY MACDONALD (New South Wales) (7.06 p.m.)—I would like to associate myself with those very moving words about Paul Lyneham. There are many of us who have not had the opportunity to speak about him but appreciated his professionalism and his contribution to the media in this country. He had quite a remarkable career. When you consider the partnership between him and Andrew Olle, the fact that they are both gone now is a sad loss for Australian media.

Tonight I also want to report briefly to the Senate on the disastrous impact that the flooding last week has had on the people and prospects of those who live in the north-west of New South Wales. Farming these days is a pretty tough game. Almost all the farmers who survived the cost price squeeze of the Labor years, the falling value of commodities and the high inflation of the 1980s are good farmers. They cannot afford any failures because their costs do not allow any room for error. Almost all carry an enormous debt load, and to effectively produce summer and winter crops these days requires very substantial input costs because productivity is everything.

This year’s losses are unsustainable to them. The towns and small communities that rely on the farmers are also unsustainable because of these floods, especially the farm businesses that support them. They include the truckers, the agronomists, the contractors, the harvesters and the rural supply businesses that interface directly with farmers. Frequently these businesses provide the finance to get the crop in, so to speak. They are the local blokes who supply the seed and the fertiliser and who generally provide easier credit than the banks do because of the personal relationships between farmers and rural suppliers. I know the government needs no reminding that it has a responsibility to everybody in the affected areas. The pain is being shared by the whole community. I know that the member for Gwydir, Deputy Prime Minister John Anderson, whose electorate is almost entirely affected by the flood impact, has been at the forefront of making it very clear to the farming community and to communities throughout the north-west of New England and the northern tablelands that the government will be there to assist.

When I intended to speak tonight, I had expected that perhaps the main government compensation package would have been released. I am assured that it is coming very soon, but it is not available tonight.

The entire north-west and northern tablelands regions were last Monday declared natural disaster areas following rainfalls of up to 175 millimetres, which in the old terms is seven inches. In less than eight hours that caused every local river to break its banks. This was further extended to include the local government areas of Wellington, Narromine, Gilgandra, Lightning Ridge, Scone, Merriwa, Mudgee, Rylstone; on Wednesday of last week, Bogan and Carbonne; and Moree and Wakool shires on Thursday. I know my colleague Senator Tierney was at Dubbo last week, and he will report to the Senate later about his visit. In total, more than 600 people have been evacuated since the disaster struck last weekend. Over 65 rainfall recording points in towns, localities and regions recorded all-time November rainfall records. The north-west slopes and plains and upper western region were the state’s worst hit by rain over the three-week period, with most centres receiving between 200 and 300 millimetres this month. The total is a staggering 400 per cent increase on the region’s average rainfall for November, which is around 65 millimetres. The old hands always say, Madam Deputy President—and I am sure you would be aware, being somebody from Cowra—that rain in November does little good. Certainly, farmers and livestock producers have found that this flood rain in November has shown that to be true.

The flooded region covers an area that is bigger than the United Kingdom. Some farmers are facing the complete and absolute
loss of their winter cereal and summer crops, coming on top of the previous two very tough years. In 1998, the north-west suffered record flooding that severely damaged farm incomes dependent on wheat crops. In 1999, rain did significant damage to the crop as well. This run of damaging wet seasons is unprecedented. Many farmers are now facing a devastating financial position and simply will not have the resources to get another crop in the ground. They are struggling under high debt and depleted cash flows. Farmers have faced $1.16 billion in losses over the past three years, including at least $500 million in crops, livestock and infrastructure from these floods. Almost all affected farmers are looking at between $150,000 to $200,000 in cash losses alone in lost and downgraded crops. Many contract harvesters remain stranded and some in the north are without work as farmers declare their crops a write-off.

Presently it is difficult to estimate the total profit losses, with secondary damage such as plant disease, insect plagues and plant performance in surviving crops throughout the rest of the growing season yet to be determined. New South Wales agriculture cotton agronomists state that 100 per cent of the cotton crops in the upper Namoi area, one of the state’s largest cotton producing regions, were affected to some degree by the floodwaters. They cite 50 to 60 per cent of the crop, estimated to be worth $20 million, as being lost. The remaining crop is threatened by disease and insects. Most of the unharvested wheat crops are waterlogged and unharvestable. It is now too late and not viable to replant both dryland and irrigated cotton crops, and we are getting very close to the end of the possible time for the replanting of a summer crop. Expecting cotton yields of around six to seven bales a hectare—at $620 a bale—farmers are looking at losses of at least $3,700 a hectare. Those fortunate to have surviving crops are looking at a yield loss of at least two bales per hectare. Wheat yields were already down because of the previous dry conditions, but they were expected to have high protein levels and were expected to fetch in excess of $200 per tonne delivered to the silo. Most farmers will not receive such a payment. Most high value durum crops, used in pasta, have been damaged. Feed wheat is hardly worth harvesting at the best of times, and this year it will be so abundant that that will certainly be the case.

Not only are farmers unable to meet input costs; many are locked into forward contracts with marketers. Some cotton growers are forced to buy the bales of cotton they committed at market price to meet the terms of the contract. Some sympathetic marketers may decide to roll over their contracts to the following year but the farmers will, of course, be charged a fee. Rural agents offering farmers crop term finance, where planting costs are provided up-front and are repaid by farmers upon payment for their crop, also face serious losses. The real tragedy of these floods is that most of these farmers were depending on this year’s good winter crop to finance their summer crop. This year, they have lost both. To add to their financial woes, flood damaged crops are not normally covered by most insurance policies. I think it is fair to say that farmers already feel that they work pretty extensively for insurance companies, with hail and fire insurance being the most common. The reality is that many farmers have no cash flow to sow their next winter or summer crop, nor to repair or replace infrastructure, fences, soil erosion and irrigation channels, because of the flood. The irony of the situation is that only a month ago some farmers were releasing their stock on to their crops that were nearing the point of no return in terms of the dryness of the season.

I would like to make a comment about the community involvement that has answered the need. Seven hundred or more SES personnel and rural fire service volunteers and Department of Family and Community Services staff—a whole range of people—have been involved in meeting the expectations of, and helping, those affected by the floods. I would like to put on record the fact that Telstra, too, has done a particularly good job. In my valley, which probably has about 15 subscribers, we lost our main cable in the creek that runs down the valley. That was replaced in 48 hours, which has been well received. Time prevents me from saying much more, but the government is very conscious of the hurt and
Scions of the hurt and the need of the farm communities and will be doing all it can to fix that up. (Time expired)

Floods: New South Wales

Senator TIERNEY (New South Wales) (7.16 p.m.)—I rise to support the comments of my colleague Senator Sandy Macdonald in regard to the devastating floods in northern New South Wales. It is very difficult for us in Canberra, where it occasionally rains—which does not really have much effect on our lives—to realise that when you get prolonged rain in an area like the Macquarie Valley, and if you are a farmer out on the flood plain, this can mean absolute devastation, as it has meant to many farmers.

This is not their first flood. This is the third time in three years they have faced devastating loss. The 1998 flood brought disaster and then very heavy rains in 1999 ruined many of the crops. In the year 2000 we have had the worst flood in living memory. Last Friday I was invited up to the area north of Narromine and out towards Warren to inspect the flood damage and to talk to the farmers. It was a complete contrast to my visit to the same area only four months ago. Farmers had wanted to speak then about the problems they were having with a lack of water and the need for the Carr government to do something about water management. Returning this time and flying over the area, I saw an amazing contrast, with floodwater everywhere. But it is not until you get on the ground and actually see the faces of the farmers and their families that you realise the human dimension of this tragedy and the absolute devastation it has caused to the lives of so many farmers.

I spoke not only with the farmers but also with some of their children who were thinking of taking on farming. That was a poignant situation. They had seen their families work the land for over 100 years. They were the next generation. They were standing there in the floodwater, looking at what was to be their future but wondering if there was a future for them in farming in this area.

We went through the area on the back of a tractor which had a trailer behind it with a seat bolted on it. I thought we were going to be out there for about an hour. We were actually out there for four hours—ironically under a blazing sun and blue skies, with floodwater all around us. I got so absorbed by this I did not realise how sunburnt I was becoming and I certainly have evidence of that still. We heard many heartbreaking stories as we went from farm to farm. On the back of this tractor we were moving through floodwater that was about three feet deep. Occasionally there were isolated little islands where people had built their homes on what they thought was the higher land. Many of them were just out of the water.

These farmers had lost three consecutive crops. As we surveyed the area beside the road we could see the canola crops, just the tops of the plants, sticking out of the water. I asked one farmer: ‘What is the value of that loss?’ It was $150,000. Then he showed me the fields with his wheat crops—$400,000. The cruel irony for them was that it was looking like the best harvest ever, the best yields they had ever had, and they had actually started harvesting. A lot of them had got 10 per cent into the harvest and it had started raining. Then it just continued raining. After 12 days of rain all their crops and all their dreams had gone under water.

What they have surviving on many of the properties—the crops are totally lost—is cattle. These were stranded on little islands above the waterline. When I say ‘above the waterline’, I mean they were less than a metre above the waterline. What the farmers were then focusing on was getting enough food and, ironically, water to these animals to keep them alive. We only saw a few of these tragic situations and only spoke to a small number of farmers but the pattern was repeated right along the Macquarie River and, indeed, along many of the other rivers in northern New South Wales.

The losses across the region have been astronomical. In the Central West, which includes the towns of Nyngan, Warren and Wellington, up to 1.1 million hectares of wheat has been lost. That is almost 100 per cent, or the entire crop. In barley the loss has been around 130,000 hectares—that is 50 per cent of the crop. For the north-west region, which includes Coonabarabran, Moree and
Narrabri, the department estimates that 790,000 hectares of wheat have been lost—that is about 70 per cent of the crop. In barley 140,000 hectares has gone, about 25 per cent of the crop.

Unfortunately, these people are facing not only a natural disaster but also an element of disaster which is man made. Over many decades a practice has arisen of building levees to protect properties from flood. But the New South Wales state government is culpable in the fact that in building these levees there have not been sufficient planning controls. Sure, people have got the right to protect their property, but it must be done in such a way that it allows sufficient access for the water, once it has flooded the floodplain, to flow back into the river. I was shown maps of where all these levees are. You could see quite clearly that the watercourses have been changed dramatically and the floodways that have been left between the levy banks are not sufficient for the water to flow back to the river. This has meant that the backup of water has reached levels that no-one has ever seen previously. At one point, we were standing at the edge of the water and behind us was a lot of farm machinery, of which half was under water. The farmer had thought his property was safe at this point but, because of what has happened with these levy banks, it was not safe.

The Carr government has not brought in sufficient controls on the building of these banks. As a result of this flood situation, we would urge the Carr government to move very quickly to ensure that the devastation from this sort of flood is not repeated because of these man-made impediments. This sort of lack of duty of care by the Carr government in terms of flood has also been matched by what has happened with the supply and control of water in times of low rainfall. What should be acted upon under the COAG agreement is the proper distribution of compensation for the removal of water rights. With the competing needs of agriculture and the environment, and the issuing of water licences for crops such as cotton, there is a need to bring water rights back under control and into balance. That is accepted by everyone. What is not accepted is the fact that the Carr government, having been given $450 million in compensation for the new competition policy for water, has not spent this appropriately. The farmers in this area told me when I was up there in July that they have not seen one cent of that money. We call upon the Carr government, particularly during this time of extreme flood and extreme hardship, to loosen the purse strings in this area of its public responsibility for finance. These people are desperate for money. The Carr government still has not paid these farmers the money; it has just pocketed the $450 million that it had for this purpose. We call on the government to pay this money out to people who are in absolutely desperate situations. Farmers have gone under and they have really had enough. They want the government to introduce proper floodplain planning controls and to hand them the water reform money that has been provided by the federal government.

The DEPUTY PRESIDENT—Before I adjourn the Senate tonight, I would like to also make a few comments about the floods in the region because they have been somewhat significant. I hope that, when the federal government does make its announcement on aid and assistance, it takes into consideration the fact that many of the contract harvesters have their equipment currently stuck in these flood waters, and it is likely to stay there for some considerable time. This situation creates a potential problem for grain growers in the south of the state, who did not get the flooding and who are looking to good crops. If we do not find some way of getting that equipment out of that water and down south, there could be some real pressures placed on farmers from not having the equipment to undertake that harvest. So I hope that is taken into consideration, too, when the package is announced.

Senate adjourned at 7.27 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:


Tabling
The following documents were tabled:

- Customs Act—CEO Instruments of Approval Nos 55 and 56 of 2000.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Department of Education, Training and Youth Affairs: Salaries
(Question No. 2571)

Senator Faulkner asked the Minister representing the Minister for Education, Training and Youth Affairs, upon notice, on 6 July, 2000:

As a dollar amount and as a percentage of the department’s total outlay on salaries, what was the cost of: (a) staff training; (b) consultants; and (c) performance pay, in the 1999-2000 financial year.

Senator Ellison—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

For the Department of Education, Training and Youth Affairs in 1999-2000:

| Total outlay on salaries: 75,008,000 | (a) Total cost of staff training: 3,392,000 | percentage of salary outlay: 4.52% |
| (b) Total cost of consultants: $14,563,000 | percentage of salary outlay: 19.33% |
| (c) Total cost of performance pay: $722,000; | percentage of salary outlay: 0.96% |

Department of Industry, Science and Resources: Value of Corporate Services
(Question No. 2643)

Senator Faulkner asked the Minister for Industry, Science and Resources, upon notice, on 9 August 2000:

With reference to the department and each agency in the portfolio, what were the state and city or town location, number of employees and annual salary values of all corporate services as at 30 June 1996 and 30 June 2000, for the following functional areas:

(a) human resources;
(b) property and office services;
(c) financial and accounting services;
(d) fleet management;
(e) occupational health and safety;
(f) workplace and industrial relations;
(g) parliamentary communications;
(h) payroll;
(i) personnel services;
(j) printing and photocopying;
(k) auditing;
(l) executive services;
(m) legal and fraud; and
(n) any other corporate services (please specify).

Senator Minchin—The answer to the honourable senator’s question is as follows:

Department of Industry, Science and Resources
Corporate Services Location, Number of Employees and Annual Salary Values at 30 June 1996 and 30 June 2000

<table>
<thead>
<tr>
<th>1995/96</th>
<th>Location</th>
<th>ASL</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) (f) Human Resource Development (inc. Workplace and Industrial Relations), Organisational Improvement</td>
<td>ACT</td>
<td>11.80</td>
<td>583,000</td>
</tr>
<tr>
<td>(b) (c) (d) Resource Management &amp; Property (inc.</td>
<td>ACT</td>
<td>27.68</td>
<td>1,260,059</td>
</tr>
</tbody>
</table>
### 1995/96

<table>
<thead>
<tr>
<th>Location</th>
<th>ASL</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Management / Human and Financial Systems / Property / Security / Fleet Management</td>
<td>ACT</td>
<td>23.70</td>
</tr>
<tr>
<td>Personnel Management (inc. Personnel Services / Payroll / OH&amp;S)</td>
<td>ACT</td>
<td>29.53</td>
</tr>
<tr>
<td>Corporate Communications (inc. Printing and Photocopying), Ministerial Liaison (inc. Parliamentary Communications)</td>
<td>ACT</td>
<td>5.69</td>
</tr>
<tr>
<td>Management Review (inc. Audit)</td>
<td>ACT</td>
<td>21.02</td>
</tr>
<tr>
<td>People, Property and Information (inc. Personnel / Payroll / Property / Security / Library / Records Management / Fleet Management / OH&amp;S)</td>
<td>ACT</td>
<td>40.20</td>
</tr>
<tr>
<td>Business Accounts and Systems (inc. Accounting Services / Human and Financial Systems), Financial Policy and Reporting, Budget Coordination, Corporate Procurement</td>
<td>ACT</td>
<td>37.75</td>
</tr>
<tr>
<td>Corporate Communications (inc Printing / Photocopying / Portfolio Coordination), Ministerial Liaison (inc. Parliamentary Communications)</td>
<td>ACT</td>
<td>34.85</td>
</tr>
<tr>
<td>Corporate Performance Group (inc Audit)</td>
<td>ACT</td>
<td>4.80</td>
</tr>
<tr>
<td>Departmental Executive Support</td>
<td>ACT</td>
<td>8.00</td>
</tr>
<tr>
<td>Legal Services (inc. Legal and Fraud)</td>
<td>ACT</td>
<td>3.00</td>
</tr>
<tr>
<td>Information Technology and Systems, Information Management (inc Library / Records Management)</td>
<td>ACT</td>
<td>41.93</td>
</tr>
<tr>
<td>Total</td>
<td>166.75</td>
<td>8,222,303</td>
</tr>
</tbody>
</table>

### 1999/2000

<table>
<thead>
<tr>
<th>Location</th>
<th>ASL</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Resource Development (inc. Workplace and Industrial Relations)</td>
<td>ACT</td>
<td>17.40</td>
</tr>
<tr>
<td>People, Property and Information (inc. Personnel / Payroll / Property / Security / Library / Records Management / Fleet Management / OH&amp;S)</td>
<td>ACT</td>
<td>40.20</td>
</tr>
<tr>
<td>Business Accounts and Systems (inc. Accounting Services / Human and Financial Systems), Financial Policy and Reporting, Budget Coordination, Corporate Procurement</td>
<td>ACT</td>
<td>37.75</td>
</tr>
<tr>
<td>Corporate Communications (inc Printing / Photocopying / Portfolio Coordination), Ministerial Liaison (inc. Parliamentary Communications)</td>
<td>ACT</td>
<td>34.85</td>
</tr>
<tr>
<td>Corporate Performance Group (inc Audit)</td>
<td>ACT</td>
<td>4.80</td>
</tr>
<tr>
<td>Departmental Executive Support</td>
<td>ACT</td>
<td>8.00</td>
</tr>
<tr>
<td>Legal Services (inc. Legal and Fraud)</td>
<td>ACT</td>
<td>3.00</td>
</tr>
<tr>
<td>Total</td>
<td>160.15</td>
<td>8,682,747</td>
</tr>
</tbody>
</table>

[Note: 1995/96 chargings reflect only salary, higher duties and overtime. 1999/2000 reflects salary, higher duties, overtime, long service leave, and other taxable allowances. Long service leave and other taxable allowances were held corporately in 1995/96 and were not allocated to particular areas.

1995-96 salaries, is actual salaries paid for the year, and staff numbers are the average staffing level (ASL) for the year (average of the total staff over the 26 pays, and the most common term for how many staff for the year).

For 1999-2000, salaries is actual salaries paid for the year, and staff numbers are the actual number of people as at the last pay (because of the internal restructure in 1999-2000.)

**IP Australia**

Corporate Services Location, Number of Employees and Annual Salary Values at 30 June 1996 and 30 June 2000
### 1995/96

<table>
<thead>
<tr>
<th>Location</th>
<th>ASL</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Service (inc. Library/Records management)</td>
<td>ACT</td>
<td>11.03</td>
</tr>
<tr>
<td>Personnel Management (inc. industrial relations/Occ Health &amp; Safety/payroll)</td>
<td>ACT</td>
<td>24.46</td>
</tr>
<tr>
<td>Corporate Learning and Skills Development (inc. human resource development/continuous improvement)</td>
<td>ACT</td>
<td>9.76</td>
</tr>
<tr>
<td>Finance (inc. financial systems/accounting/policy/audit and evaluation)</td>
<td>ACT</td>
<td>22.3</td>
</tr>
<tr>
<td>Property and Services (inc. accommodation/purchasing/building services)</td>
<td>ACT</td>
<td>16.03</td>
</tr>
<tr>
<td>Strategy and Projects (inc. parliamentary communications)</td>
<td>ACT</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>85.58</strong></td>
</tr>
</tbody>
</table>

### 1999/2000

<table>
<thead>
<tr>
<th>Location</th>
<th>ASL</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Services (inc.Library)</td>
<td>ACT</td>
<td>8.9</td>
</tr>
<tr>
<td>Personnel Management (inc. occ health &amp; safety/workplace relations/payroll)</td>
<td>ACT</td>
<td>13.4</td>
</tr>
<tr>
<td>Corporate Learning and Skills Development (inc. human resource development)</td>
<td>ACT</td>
<td>6.1</td>
</tr>
<tr>
<td>Finance (inc. financial systems/accounting/policy and planning/business development)</td>
<td>ACT</td>
<td>20.6</td>
</tr>
<tr>
<td>Property and Services (inc. Records management, fleet management/printing/photocopying)</td>
<td>ACT</td>
<td>15.5</td>
</tr>
<tr>
<td>Strategy and Projects (inc. parliamentary communications)</td>
<td>ACT</td>
<td>2</td>
</tr>
<tr>
<td>Corporate Planning and Performance (inc. planning/performance reporting/Business Improvement/Service Charter/Executive Support)</td>
<td>ACT</td>
<td>1.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>67.9</strong></td>
</tr>
</tbody>
</table>


### Australian Tourist Commission

Set out below is the best available information in response to the Senator’s question. It should be noted that the functions specified by the Senator do not in all cases reflect the Commission’s function and structure. Further, in comparing data for the two years specified, it should also be noted that the Commission’s functional structure has changed over the years.

### 1995/96

<table>
<thead>
<tr>
<th>Location</th>
<th>ASL</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Departmental/Executive Support</td>
<td>Sydney</td>
<td>3</td>
</tr>
<tr>
<td>Business Services</td>
<td>Sydney</td>
<td>2</td>
</tr>
<tr>
<td>Finance</td>
<td>Sydney</td>
<td>4</td>
</tr>
<tr>
<td>Administration</td>
<td>Sydney</td>
<td>4</td>
</tr>
<tr>
<td>Human Resources</td>
<td>Sydney</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>15</td>
<td><strong>781,414</strong></td>
</tr>
</tbody>
</table>

### 1999/00

<table>
<thead>
<tr>
<th>Location</th>
<th>ASL</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Departmental/Executive Support</td>
<td>Sydney</td>
<td>2</td>
</tr>
<tr>
<td>Business Services</td>
<td>Sydney</td>
<td>2</td>
</tr>
<tr>
<td>Risk Management</td>
<td>Sydney</td>
<td>1</td>
</tr>
</tbody>
</table>
### National Standards Commission

Corporate Services Location, Number of Employees and annual Salary Values at 30 June 1996 and 30 June 2000

The National Standards Commission has one office at North Ryde NSW

<table>
<thead>
<tr>
<th>1995/96</th>
<th>1999/00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human resources (including workplace &amp; industrial relations)</td>
<td>0.5</td>
</tr>
<tr>
<td>Property and office services (includes Property, Library, Records, Reception/Switchboard and IT)</td>
<td>4.7</td>
</tr>
<tr>
<td>Financial and accounting services</td>
<td>2.3</td>
</tr>
<tr>
<td>Fleet management</td>
<td>0.0</td>
</tr>
<tr>
<td>Parliamentary communications</td>
<td>0.2</td>
</tr>
<tr>
<td>Personnel, payroll services and OH&amp;S</td>
<td>0.9</td>
</tr>
<tr>
<td>Communications (inc. printing and photocopying)</td>
<td>0.2</td>
</tr>
<tr>
<td>Auditing</td>
<td>0.0</td>
</tr>
<tr>
<td>Executive support</td>
<td>1.0</td>
</tr>
<tr>
<td>Legal and fraud</td>
<td>0.2</td>
</tr>
<tr>
<td>Other corporate services</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>10.0</td>
</tr>
</tbody>
</table>

### Australian Institute of Marine Science

Location: Cape Ferguson, QLD.

<table>
<thead>
<tr>
<th>Corporate Function</th>
<th>1996</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Human resources (including workplace and industrial relations, and personnel services)</td>
<td>4.00</td>
<td>3.67</td>
</tr>
<tr>
<td>(b) Property and office services</td>
<td>5.88</td>
<td>6.00</td>
</tr>
<tr>
<td>(c) Financial and accounting services</td>
<td>6.36</td>
<td>7.67</td>
</tr>
<tr>
<td>(d) Fleet management</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>(e) Occupational Health and Safety</td>
<td>-</td>
<td>1.00</td>
</tr>
<tr>
<td>(f) See (a)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(g) Parliamentary communications</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>(h) Payroll</td>
<td>0.33</td>
<td>0.33</td>
</tr>
<tr>
<td>(i) See (a)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(j) Printing and photocopying</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(k) Auditing - external</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(l) Executive services (inc Business Unit)</td>
<td>7.00</td>
<td>5.89</td>
</tr>
</tbody>
</table>
### Australian Nuclear Science and Technology Organisation

**Location:** Lucas Height Science and Technology Centre (LHSTC), Sydney, NSW

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Resources</td>
<td>6</td>
<td>$247,163</td>
<td>5</td>
<td>$268,218</td>
</tr>
<tr>
<td>Workplace and industrial relations</td>
<td>1</td>
<td>$48,438</td>
<td>1</td>
<td>$60,047</td>
</tr>
<tr>
<td>Payroll</td>
<td>12</td>
<td>$394,117</td>
<td>7</td>
<td>$279,190</td>
</tr>
<tr>
<td>Payroll</td>
<td>0</td>
<td>$0</td>
<td>2</td>
<td>$72,494</td>
</tr>
<tr>
<td>Property and Office Services</td>
<td>7</td>
<td>$239,535</td>
<td>3</td>
<td>$107,319</td>
</tr>
<tr>
<td>Financial and accounting Services</td>
<td>14</td>
<td>$556,025</td>
<td>14</td>
<td>$532,186</td>
</tr>
<tr>
<td>Fleet Management (b)</td>
<td>12</td>
<td>$348,159</td>
<td>2</td>
<td>$93,012</td>
</tr>
<tr>
<td>Printing and Photocopying Services</td>
<td>0</td>
<td>$0</td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Auditing (c)</td>
<td>0</td>
<td>$0</td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Legal and Fraud</td>
<td>1</td>
<td>$24,925</td>
<td>1</td>
<td>$60,047</td>
</tr>
<tr>
<td>Occupational Health and Safety (d)</td>
<td>0</td>
<td>$0</td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Parliamentary communications (e)</td>
<td>0</td>
<td>$0</td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Executive Services</td>
<td>3</td>
<td>$225,653</td>
<td>3</td>
<td>$259,725</td>
</tr>
<tr>
<td>- Security</td>
<td>3</td>
<td>$134,326</td>
<td>2</td>
<td>$95,544</td>
</tr>
<tr>
<td>- Corporate Procedures</td>
<td>2</td>
<td>$93,488</td>
<td>1</td>
<td>$58,321</td>
</tr>
<tr>
<td>- Cleaners (f)</td>
<td>31</td>
<td>$417,986</td>
<td>0</td>
<td>$0</td>
</tr>
<tr>
<td>- Contract and Supply</td>
<td>14</td>
<td>$489,712</td>
<td>8</td>
<td>$318,612</td>
</tr>
<tr>
<td>TOTALS</td>
<td>106</td>
<td>$3,219,527</td>
<td>49</td>
<td>$2,175,261</td>
</tr>
</tbody>
</table>

(a) Payroll incorporated into these numbers for 1996.
(b) Transport function streamlined in 1996; part function 4 drivers relocated out of Corporate Services
(c) Auditing outsourced prior to 1996.
(d) ANSTO maintains a separate specialist Safety Division outside the Corporate Services function. The numerical strength has not changed in recent years.
(e) This function is performed by a specialist unit outside Corporate Services. The numerical strength has not changed in recent years.
(f) The cleaning function was reviewed and outsourced in 1997.
**Commonwealth Scientific and Industrial Research Organisation**

CSIRO Corporate Functions as at 30 June 1996

<table>
<thead>
<tr>
<th>Corporate Function</th>
<th>Locations</th>
<th>Employees</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Corporate Human Resources</td>
<td>Canberra ACT</td>
<td>11</td>
<td>659,169</td>
</tr>
<tr>
<td>(b) Corporate Property</td>
<td>Canberra ACT, Sydney NSW</td>
<td>15</td>
<td>803,615</td>
</tr>
<tr>
<td>(c) Corporate Finance</td>
<td>Canberra ACT</td>
<td>19.5</td>
<td>998,174</td>
</tr>
<tr>
<td>(d) Fleet management — no corporate service</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(e) Occupational Health, Safety &amp; Environment</td>
<td>Sydney NSW, Brisbane QLD, Perth WA Adelaide SA, Melbourne VIC, Hobart TAS Canberra ACT</td>
<td>11</td>
<td>616,516</td>
</tr>
<tr>
<td>(f) Workplace &amp; Industrial Relations – included in (a)</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(g) Ministerial &amp; Parliamentary Liaison – included in (p)</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(h) HR systems, Payroll and Superannuation Services</td>
<td>Canberra ACT</td>
<td>10</td>
<td>431,843</td>
</tr>
<tr>
<td>(i) Personnel - no corporate service</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(j) Printing &amp; Photocopying – no corporate service</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(k) Risk Assessment and Audit</td>
<td>Canberra ACT, Melbourne VIC</td>
<td>5</td>
<td>223,810</td>
</tr>
<tr>
<td>(l) Executive Services</td>
<td>Canberra ACT</td>
<td>13</td>
<td>812,243</td>
</tr>
<tr>
<td>(m) Corporate Legal</td>
<td>Canberra ACT, Melbourne VIC</td>
<td>5.2</td>
<td>333,661</td>
</tr>
<tr>
<td>(n) IT Services (includes Corporate Records, Archives and Library Services)</td>
<td>Canberra ACT, Melbourne VIC, Sydney NSW, Brisbane QLD</td>
<td>92.9</td>
<td>4,292,258</td>
</tr>
<tr>
<td>(o) Strategic Planning and Evaluation</td>
<td>Canberra ACT</td>
<td>5.64</td>
<td>347,993</td>
</tr>
<tr>
<td>(p) Government Business and International Public Affairs</td>
<td>Canberra ACT</td>
<td>10</td>
<td>566,901</td>
</tr>
<tr>
<td>(r) Leadership and Team Development</td>
<td>Canberra ACT</td>
<td>5</td>
<td>346,014</td>
</tr>
<tr>
<td>(s) Marketing and Commercialisation</td>
<td>Melbourne VIC</td>
<td>4</td>
<td>317,196</td>
</tr>
</tbody>
</table>

**TOTAL** 263.99 13,267,286

[Note: The number of staff (effective full time EFT) is as on the 30 June 1996. The annual salary value is the gross salary value on this date and then annualised]

Corporate Functions as at 30 June 2000

<table>
<thead>
<tr>
<th>Corporate Function</th>
<th>Locations</th>
<th>Employees</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Corporate Human Resources</td>
<td>Canberra ACT</td>
<td>11.71</td>
<td>795,084</td>
</tr>
<tr>
<td>(b) Corporate Property</td>
<td>Canberra ACT, Sydney NSW</td>
<td>18.17</td>
<td>1,142,410</td>
</tr>
<tr>
<td>(c) Corporate Finance</td>
<td>Canberra ACT</td>
<td>22.82</td>
<td>1,345,438</td>
</tr>
<tr>
<td>Corporate Function</td>
<td>Locations</td>
<td>Employees</td>
<td>Annual Salary</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>------------------------------------------------</td>
<td>-----------</td>
<td>-----------------</td>
</tr>
<tr>
<td>(d) Fleet management – no corporate service</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(e) Occupational Health, Safety &amp; Environment</td>
<td>Perth WA, Sydney NSW, Melbourne VIC, Geelong VIC, Hobart TAS, Canberra ACT, Adelaide SA, Brisbane QLD</td>
<td>9</td>
<td>602,264</td>
</tr>
<tr>
<td>(f) Workplace &amp; Industrial Relations – included in (a)</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(g) Ministerial &amp; Parliamentary Liaison – included in (p)</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(h) HR systems, Payroll and Superannuation Services</td>
<td>Canberra ACT</td>
<td>12</td>
<td>589,225</td>
</tr>
<tr>
<td>(i) Personnel - no corporate service</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(j) Printing &amp; Photocopying – no corporate service</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(k) Risk Assessment and Audit</td>
<td></td>
<td>1</td>
<td>44,892</td>
</tr>
<tr>
<td>(l) Executive Services</td>
<td>Melbourne VIC, Canberra ACT</td>
<td>7</td>
<td>442,097</td>
</tr>
<tr>
<td>(m) Corporate Legal</td>
<td>Canberra ACT</td>
<td>6</td>
<td>320,972</td>
</tr>
<tr>
<td>(n) IT Services (includes Corporate Records, Archives and Library Services)</td>
<td>Canberra ACT, Melbourne VIC, Perth WA</td>
<td>56.04</td>
<td>3,305,011</td>
</tr>
<tr>
<td>(o) Strategic Planning and Evaluation</td>
<td>Canberra ACT</td>
<td>3</td>
<td>242,190</td>
</tr>
<tr>
<td>(p) Government Business and International</td>
<td>Canberra ACT</td>
<td>9.68</td>
<td>687,904</td>
</tr>
<tr>
<td>(q) National Awareness (formerly Public Affairs in 1996)</td>
<td>Canberra ACT</td>
<td>9.5</td>
<td>450,857</td>
</tr>
<tr>
<td>(r) Publishing (Books, Scientific Journals, Magazines, Multimedia)</td>
<td>Melbourne VIC</td>
<td>49.41</td>
<td>2,542,329</td>
</tr>
<tr>
<td>(s) Leadership and Team Development</td>
<td>Canberra ACT</td>
<td>5</td>
<td>397,383</td>
</tr>
<tr>
<td>(t) Marketing and Commercialisation</td>
<td>Melbourne VIC, Sydney NSW</td>
<td>9.6</td>
<td>842,740</td>
</tr>
</tbody>
</table>

| TOTAL                                                  |                                                | 229.23    | 13,750,796      |

[Note: The number of staff (effective full time EFT) is as on the 30 June 2000. The annual salary value is the gross salary value on this date and then annualised]

**Australian Geological Survey Organisation**

AGSO became a prescribed agency under the Financial Management and Accountability Act 1997 on 1 July 1999. Accordingly, figures are not available as at 30 June 1996. Set out below is the best available information as at 30 June 2000.

<table>
<thead>
<tr>
<th>Function</th>
<th>Location</th>
<th>Employees</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human resources</td>
<td>Canberra</td>
<td>2</td>
<td>93,924</td>
</tr>
<tr>
<td>Property</td>
<td>Canberra</td>
<td>2</td>
<td>96,705</td>
</tr>
<tr>
<td>Office services</td>
<td>Canberra</td>
<td>5</td>
<td>182,018</td>
</tr>
<tr>
<td>Contracts management</td>
<td>Canberra</td>
<td>2</td>
<td>114,915</td>
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<tr>
<td>Financial and accounting services</td>
<td>Canberra</td>
<td>13</td>
<td>467,632</td>
</tr>
<tr>
<td>Fleet management</td>
<td>Canberra</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Occupational health and safety</td>
<td>Canberra</td>
<td>3</td>
<td>118,131</td>
</tr>
<tr>
<td>Workplace and industrial relations</td>
<td>Canberra</td>
<td>1</td>
<td>59,286</td>
</tr>
</tbody>
</table>
Function | Location | Employees | Annual salary
---|---|---|---
Parliamentary communications | Canberra | 0.25 | 15,817
Payroll | Canberra | 1 | 36,861
Personnel services | Canberra | 3 | 134,963
Printing and photocopying | Canberra | 0 | 0
Auditing | Canberra | 0 | 0
Executive services* | Canberra | 4.35 | 236,084
Legal and fraud | Canberra | 0 | 0
IT & Telecommunications services | Canberra | 9.4 | 473,980
Total | | 46 | 2,030,316

*incl. corporate planning & reporting, monitoring & evaluation, IT outsourcing preparation & coordination, Information Management Committee advice & other miscellaneous executive services

Australian Sports Commission

The Australian Sports Commission has supplied the following information, in slightly different categories as indicated:

<table>
<thead>
<tr>
<th>Functional Area</th>
<th>30/06/96 ASL</th>
<th>1995/96 Salary Costs</th>
<th>30/06/00 ASL</th>
<th>1999/2000 Salary Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Resources¹</td>
<td>9.8</td>
<td>$529,261</td>
<td>9.0</td>
<td>$536,508</td>
</tr>
<tr>
<td>Planning and Financial Services²</td>
<td>13.9</td>
<td>$615,633</td>
<td>13.7</td>
<td>$806,742</td>
</tr>
<tr>
<td>Assets and Property³</td>
<td>22.0</td>
<td>$817,588</td>
<td>22.0</td>
<td>$994,755</td>
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<tr>
<td>General Services</td>
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<td>$175,747</td>
<td>4.0</td>
<td>$202,897</td>
</tr>
<tr>
<td>Policy and Co-ordination⁴</td>
<td>7.4</td>
<td>$357,440</td>
<td>5.5</td>
<td>$292,168</td>
</tr>
<tr>
<td>Board Secretariat</td>
<td>1.4</td>
<td>$72,627</td>
<td>1.5</td>
<td>$76,615</td>
</tr>
<tr>
<td>Executive Services⁵</td>
<td>7.0</td>
<td>$290,400</td>
<td>7.0</td>
<td>$312,052</td>
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<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Records Management</td>
<td>3.0</td>
<td>$95,709</td>
<td>3.0</td>
<td>$116,182</td>
</tr>
<tr>
<td>Information Technology</td>
<td>10.0</td>
<td>$462,982</td>
<td>9.0</td>
<td>$455,247</td>
</tr>
<tr>
<td>TOTAL</td>
<td>79.5</td>
<td>$3,417,387</td>
<td>74.7</td>
<td>$3,793,166</td>
</tr>
</tbody>
</table>

(1) Includes: occupational health and safety; workplace and industrial relations; payroll; and personnel services.

(2) Incorporates financial and accounting services.

(3) Includes: property and office services; fleet management; horticulture; and building maintenance.

(4) Includes: parliamentary communications; government services; and policy development.

(5) Includes executive support.

All positions are located in the Australian Capital Territory. The services of auditing and legal and fraud are outsourced. The Commission has no dedicated printing and photocopying staff.

Australian Sports Drug Agency

Location: Canberra, ACT.

<table>
<thead>
<tr>
<th>Functional Area</th>
<th>30/06/96 ASL</th>
<th>1995/96 Salary Costs</th>
<th>30/06/00 ASL</th>
<th>1999/2000 Salary Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Services</td>
<td>10.2</td>
<td>$505,225</td>
<td>11.54</td>
<td>$528,800</td>
</tr>
</tbody>
</table>

Department of Veterans’ Affairs: Public Opinion Research

(Question No. 2666)

Senator Faulkner asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 9 August 2000:

(1) Since 1 July 1999, has the department, or any agency in the portfolio, commissioned or participated in any way in public opinion research in non-metropolitan areas; if so, which agency, or which functional area of the department.
What was the purpose of this research and what were the objectives as set out for the research company or body when commissioned.

Was any of this research designed to test the reaction of rural and regional constituents to Federal Government decisions, policies or potential policies, in any way similar to the research described in the Sunday Telegraph, 23 July 2000, page 81.

(a) Which company or other body carried out the research; (b) what were the research methods to be used; and (c) what was the expected timetable for this research.

Was any of the work sub-contracted to any other company or body; if so, why, and to which company or body.

What were the results of this research.

Who made the request that this research be undertaken, and who authorised the expenditure.

What was the estimated cost of this research, and what was the total cost.

How will the results of this research be used.

Senator Newman—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

(1) Yes. Commemorations Branch.

(2) The research was Stage 4 of research commissioned in 1998 under the Their Service - Our Heritage commemorative program to identify the level of interest and understanding among the general community in Australia in commemorating our military history. The research would also define the information required to facilitate community involvement in local programs and establish benchmarks to track and evaluate progress towards 2001.

The objective of Stage 4 was to monitor awareness and attitudes among a cross-section of the Australian community and compare them with benchmark data to identify changes.

(3) No.

(b) McGregor Tan Research, Frewville, SA 5063

The survey included respondents from capital cities, major regional centres and other rural/regional areas. Quotas for each were based on the population distribution recorded by the Australian Bureau of Statistics in the 1996 Census.

(c) Stage 4 interviews were conducted during August and September 1999.

(5) No.

(6) The Department was provided with a report outlining the findings of the survey.

(7) The contract was signed for and on behalf of the Commonwealth of Australia by Kerry Blackburn, Branch Head, Commemorations.

The expenditure for Stage 4 was authorised by James Rogers, Director, Commemorative Activities.

(8) The estimated cost and total cost of Stage 4 was $28,000.

(9) The research results are being used to assess community interest in and behaviour towards Australia’s wartime history and associated commemorations; to develop appropriate commemorative programs; and to assist in the development and implementation of communication strategies for Australia’s wartime heritage and the Their Service - Our Heritage commemorative program.

Education: Wesley Institute of Language and Commerce

Senator Carr asked the Minister representing the Minister for Education, Training and Youth Affairs, upon notice, on 30 August 2000:

With reference to the Wesley Institute of Language and Commerce: On 29 August 2000, Minister Ellison made a statement with regard to the collapse of the arrangement between the Uniting Church in
Australia Property Trust (NSW) for Wesley Mission and Wesley Institute of Language and Commerce (WILC), claiming that media reports that students would not receive their refunds were incorrect. The Minister said that the Wesley Mission had guaranteed that it would refund all monies owed to students of WILC. The Minister referred to a Notified Trust Account (NTA) established by Wesley Mission:

1. Who administered the NTA referred to.
2. When was this NTA established.
3. Who is responsible for student refunds, Wesley Institute or Wesley Mission.
4. Of the students enrolled on 18 August 2000: (a) what was the duration of the course(s) in which the students were enrolled; and (b) what proportion of the course(s) had been undertaken.
5. (a) How many students have received full refunds of fees paid; (b) how many students have received partial refunds; and (c) on what basis were the partial amounts calculated.
6. (a) Were students told by WILC that only a small proportion of the balance of their tuition fees would be refunded; (b) on what basis was such a claim made; and (c) is this consistent with the legislative requirements.
7. (a) Will students transferring to another college be required to pay an additional Change of Provider fee to the Department of Immigration and Multicultural Affairs (DIMA); and (b) how many have done so.
8. (a) For how long has DIMA been charging a Change of Provider fee for students transferring from one Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered college to another; and (b) what is the legislative basis for the charging of this fee.
9. Can DIMA or the Department of Education, Training and Youth Affairs (DETYA) confirm that students have up until 30 September 2000 to transfer from WILC to another CRICOS-registered college.
10. When did Wesley Mission lease its CRICOS registration to the entity known as Wesley Institute.
11. Was the Wesley Mission Registered Training Organisation (RTO) registration also leased to the Wesley Institute; if so, on what date did that occur.
12. Was there a Parent Organisation Guarantee in place; if so, under what section of, or regulation made under the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 was it made.
13. What parent organisation held the guarantee.
14. What was the name of the provider named under sub-regulation 9(2)(a) made under the Act and what was the reason given for the provider being unable or unwilling to become a member of a Tuition Assurance Scheme.
15. Under regulation 9(2) of the Regulations, who exercised the power of approval for the exemption from the Tuition Assurance Scheme.
16. What assurance was given by those seeking the Parent Organisation Guarantee that the student indemnity was equivalent to that provided by an insurance policy that complied with regulation 15 made under the Act.
17. Did the existence of such a guarantee override any legislative obligation to be a member of an NTA.
18. How many students were covered by the Parent Organisation Guarantee.
19. (a) What arrangements have been made for fee refunds for Australian students enrolled at the Wesley Institute or Mission; (b) what percentage of fees have been refunded to those students; and (c) how many students are involved.
20. For students enrolled at these colleges who are in Australia on student visas: (a) how many students were enrolled at the WILC as at Friday, 18 August 2000; and (b) on what date or dates did these students commence their studies.
(21) (a) On what date did the Wesley Mission notify WILC of the termination of their agreement; (b) how many students were enrolled on that date; and (c) how many students from WILC have been reported to DIMA for non-attendance over the past 3 months.

(22) How many students from WILC have been removed for breaches of visa conditions over the past 3 months.

(23) How many students from WILC have been reported to DIMA for non-attendance over the past 12 months.

(24) How many students from WILC have been removed for breaches of visa conditions over the past 12 months.

(25) Did Wesley Mission have a copy of all student records on Friday, 18 August, and what records did they hold.

(26) When were audits undertaken by any education or immigration authority of WILC.

(27) What audits were undertaken by any immigration or education authorities of Vision College.

(28) What incidence of non-compliance was identified in any of these audits.


(30) What commissions or other payments were made by Vision College or Wesley Institute to the Wesley Mission for use of CRICOS registration and/or RTO registration.

(31) What percentage of student fees was paid to education or immigration agents by Vision College for students enrolled at the Wesley Institute.

(32) What association did, or does, Rachael Srinurjani Ong have with an entity known as the Sydney International College of Business.

(33) (a) On what date did the Wesley Institute move from 28 Margaret Street, Sydney, to the Sussex Centre in Sussex Street, Sydney; (b) was there a site inspection undertaken by DIMA or DETYA or any other education authority; and (c) what were the findings of any such site visits.

(34) Under what provisions of the current Act is a registered CRICOS provider allowed to lease or sub-contract its registration to a non-CRICOS registered entity for the purposes of the provision of educational services.

(35) Will the proposed amendments to the Act address the issue of CRICOS-registered institutions leasing their CRICOS registration to a non-CRICOS registered entity which would provide education services to overseas students.

(36) (a) How many CRICOS-registered providers currently operate with a Parent Organisation Guarantee under regulation 9(2) made under the Act; (b) what are the names of these providers; and (c) in the last five years, how many CRICOS providers have sought to utilise section 9(2) of the Regulations, and have been on these grounds granted an exemption from requirements relating to a Tuition Assurance Scheme.

Senator Ellison—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

(1) The notified trust account (NTA) was administered by Uniting Church in Australia Property Trust (NSW) for Wesley Mission, trading as Wesley Institute for Ministry and the Arts (WIMA).

(2) Wesley Mission has advised that the notified trust account was established 8 August 1999.

(3) Wesley Mission is responsible for student refunds. Wesley Mission is a Parish of the Uniting Church in Australia and in accordance with the provisions of the Uniting Church in Australia Act 1997 is required to vest all properties and interests in properties in the Uniting Church in Australia Property Trust (NSW). Wesley Mission administers Wesley Institute for Ministry and the Arts and is therefore responsible for paying refunds to overseas students in accordance with the provisions of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act).
(4)(a) Wesley Mission has advised that the duration of the courses for students enrolled on 18 August 2000 ranged from four weeks to two years.

(b) Wesley Mission has advised that commencement dates for courses were staggered with courses commencing every couple of weeks. Students enrolled on 18 August 2000 had undertaken anywhere between none of their course or up to 13 months of it.

(5)(a) Wesley Mission has advised that 85 students have received full refunds.

(b) Wesley Mission has advised that 421 students have received partial refunds.

(c) In accordance with the provisions of section 6B of the ESOS Act, in the event that a provider defaults, and the student has not withdrawn before the default date, then the provider must refund to an overseas student, within two weeks of the provider defaulting, all pre-paid course money that was required to be paid into the notified trust account, less the amount entitled to be withdrawn under the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations (ESOS Regulations). The student is entitled to the interest earned on the amount to be refunded. The amount arrived at is the minimum refund payable. If a student is entitled to a greater refund, for example by virtue of other legislation or by the terms of an agreement between the student and the provider, then Section 6B does not operate to reduce that greater entitlement.

(6)(a) The Department does not know everything which Wesley Institute for Language and Commerce (WILC) may have told its students about the refund of their tuition fees. However, the Department received a copy of an undated circular addressed to “valued local agents” which contains the following statement: “Only a small portion of the balance of tuition fees will be refunded, which Wesley Mission currently is holding in the trust account.” The circular was issued under Ms Rachel Ong’s name on WILC letterhead and is believed to have been issued on 21 August 2000.

(b) The basis on which such a claim was made is not known.

(c) Such a claim is not consistent with the requirements of the ESOS Act.

(7)(a) DIMA has advised that in accordance with visa condition 8206, student visa holders changing their enrolment from one education provider to another are required to apply for a new student visa and pay the visa application charge if:

(a) the original course is for 12 months or more - within the first 12 months of that course; and

(b) the original course is for less than 12 months - before the end of that course.

However, a visa application charge is not payable if the applicant seeks a visa that is not subject to condition 8206 only because the education provider for the course to which the visa held by the applicant relates is unable to provide, or continue to provide, the course. On this basis none of the WILC students have been required to pay the charge.

(b) None.

(8) DIMA has advised that:

(a) the charge for an application to change provider was introduced on 1 December 1998, and

(b) Migration Amendment Regulations 1998 (No.10) amended the Regulations. The charge is prescribed in Migration Regulations – Schedule 1, item 1222(2)(a)(iii)(C).

(9) DIMA has advised that students from WILC had until 30 September 2000 to transfer to another provider registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

(10) Wesley Mission did not lease its CRICOS registration to any other entity. On 6 July 1999, WIMA signed an agreement with Vision College Pty Ltd to establish a joint business venture under the registered business name of Wesley Institute of Language and Commerce. WIMA was the registered provider on CRICOS under this arrangement.

(11) Wesley Mission did not lease its Registered Training Organisation (RTO) registration to any other entity. On 6 July 1999, WIMA signed an agreement with Vision College Pty Ltd to establish a
joint business venture under the registered business name of Wesley Institute of Language and Commerce. WIMA was the registered RTO under this arrangement.

(12) Yes. The Parent Organisation Guarantee was obtained pursuant to subregulation 9(2)(b)(ii) of the ESOS Regulations.

(13) The Uniting Church in Australia Property Trust (NSW) holds the Parent Organisation Guarantee.

(14) Wesley Institute for Ministry and the Arts is the provider named in the Parent Organisation Guarantee (POG) which, pursuant to subregulation 9(2)(a)(ii) stated that it was unable or unwilling to become a member of a Tuition Assurance Scheme “because it is unreasonable in the circumstances relating to both the Provider and the Parent Organisation to expect the Provider to become a member of a tuition assurance scheme”.

(15) The officer exercising responsibilities, on behalf of the Minister, under sub-regulation 9(2) was a Senior Executive Officer delegated the Minister’s powers pursuant to section 17 of the ESOS Act.

(16) The Department was satisfied that the wording of the POG ensured that each student had an indemnity equivalent to that provided by an insurance policy that complies with regulation 15 of the ESOS Regulations.

(17) No.

(18) Wesley Mission has advised that 660 overseas students were covered by the POG – 610 for WILC, and 50 for WIMA.

(19) Wesley Mission has advised that:

(a) Australian students enrolled at WILC have been asked to make application for their refund and each case is being heard and determined accordingly;

(b) all fees that the students are entitled to be refunded either have been paid or are being paid to the students; and

(c) there were 14 students.

(20) Wesley Mission has advised that:

(a) there were 610 students enrolled including those who had not yet commenced their course; and

(b) these students commenced their studies on various course commencement dates over the past 13 months.

(21) (a) Wesley Mission has advised that they notified Vision College Pty Ltd of the termination of the agreement on 10 August 2000.

(b) Wesley Mission has advised that there were 695 students enrolled including those who had not yet commenced their course.

(c) DIMA has advised that 117 WILC students were reported for non-attendance between 1 June 2000 and 31 August 2000.

(22) DIMA has advised that two WILC students were removed under a monitored departure arrangement for a breach of visa conditions between 1 June 2000 and 31 August 2000.

(23) DIMA has advised that 170 WILC students were reported for non-attendance in the period 1 September 1999 to 31 August 2000.

(24) DIMA has advised that 4 WILC students were removed under monitored departure arrangements for breaches of visa conditions in the period 1 September 1999 to 31 August 2000.

(25) Wesley Mission has advised that on 18 August 2000 they held records of student enrolments, accounts and each student’s personal file but did not have total access to a computer data base maintained under licence by Vision College.

(26) No audit was undertaken by the Department as under the ESOS Act, there is no provision to do so. The NSW Vocational Education and Training Accreditation Board has advised that a Registered Training Organisation audit was conducted on the Uniting Church in Australia Property Trust (NSW),
trading as Wesley Institute for Ministry and the Arts on 12 January 2000. DIMA has advised that DIMA does not audit educational institutions.

(27) No audit was undertaken by the Department as under the ESOS Act there is no power to do so. The NSW Vocational Education and Training Accreditation Board (VETAB) has advised that Australian Recognition Framework compliance assessments were conducted on Vision College on 19 April 2000 and 4 July 2000. DIMA has advised that DIMA does not audit educational institutions.

(28) VETAB has advised that following the RTO audit conducted on 12 January 2000, the Uniting Church in Australia Property Trust (NSW), trading as Wesley Institute for Ministry and the Arts was registered as an RTO for three years. VETAB has also advised that the Australian Recognition Framework compliance assessments conducted on Vision College on 19 April 2000 and 4 July 2000 identified that Vision College did not satisfy all the principles, standards and protocols of the Australian Recognition Framework. The primary incidences of non-compliance were the maintenance of student records, student rolls and attendance, maintenance of business records and inadequate learning resources.

(29) The Department is conducting inquiries as a consequence of information received by it which relates to compliance with the financial requirements of the ESOS Act. The enquiries are not yet finalised.

(30) Under the joint venture agreement, Wesley Mission was entitled to receive 20% of the profits of WILC. But there was no direct link between this entitlement and the use of CRICOS or RTO registrations, and no payments were in fact made under this entitlement.

(31) Wesley Mission has advised that the exact percentage of student fees paid in the form of commission to education or migration agents is not known, but is believed to be between 20 and 40 percent.

(32) Sydney International College of Business Pty Ltd was registered on CRICOS on 9 October 1995, trading as Sydney International College of Business. Rachel Ong was recorded as the Principal Executive Officer of the Sydney International College of Business Pty Ltd on CRICOS.

(33) (a) Wesley Mission has advised that Vision College moved to Sussex Street on 27 March 1999 and became known as WILC on 6 July 1999 following the joint venture agreement with Wesley Mission.

(b) The Department did not conduct a site inspection of the premises as under the provisions of the ESOS Act, there is no provision to do so. VETAB has advised that two site inspections were conducted. DIMA has advised that there is no legislative power enabling DIMA to undertake site inspections for the purpose of determining the suitability or otherwise of a provider’s premises for the provision of educational services. Investigations by DIMA into the activities of a provider are limited to circumstances where there are allegations relating to possible offences under the Migration Act.

(c) VETAB has advised that premises and accommodation were assessed as satisfactory.

(34) There is no provision under the current Act whereby a registered CRICOS provider is allowed to lease or sub-contract its registration to a non-CRICOS registered entity for the purposes of the provision of educational services. A registered provider may contract out the provision of a course, but cannot contract out its statutory obligations under the ESOS Act.

(35) The Education Services for Overseas Students Bill 2000 holds the CRICOS-registered provider responsible, whatever the nature of its contractual or other arrangements with another provider.

(36) (a) As at 6 October 2000, there are 21 providers holding a Parent Organisation Guarantee (POG) under subregulation 9(2)(b)(ii) of the ESOS Regulations.

(b) The names of these providers are:
- Adelaide College of Ministries, 01126M
- Anutech Pty Ltd, 01129G
- Assembly of God Paradise Inc, 01027C
- BAE Flight Training (Australia) Pty Ltd, 01596C
- Christian Heritage College, 01016F
- Insearch Limited, 00859D
- International Education Services Ltd, 01697J
- Luther Seminary, 00707J
- Macquarie Research Ltd, 01388M
- Monash International Pty Ltd, 01857J
- New Tribes Bible Mission (Australia) Ltd, 00998D
- Perth Theological Hall, 00700E
- Presbyterian Theological Centre, 00684M
- Queensland Baptist College of Ministries, 00663E
- Rhema College of Christian Ministries Ltd, 01593A
- Southern Cross College of the Assemblies of God in Australia, 00958A
- Strikeforce Ministry Training Institute, 01239B
- The Pines Training Centre, 01986M
- The University of Notre Dame Australia, 01032F
- Uniting Church in Australia Property Trust (NSW) for Wesley Mission, 00858E
- University of Canberra College Pty Ltd, 01893E

(c) Since 1995, 114 providers have been granted exemption from membership of a Tuition Assurance Scheme under subregulation 9(2) of the ESOS Regulations – 93 providers obtained an insurance policy in accordance with subregulation 9(2)(b) and 21 providers obtained a parent organisation guarantee in accordance with subregulation 9(2)(b)(ii).

Education: Commonwealth Register of Institutions and Courses for Overseas Students
(Question No. 2892)

Senator Carr asked the Minister representing the Minister for Education, Training and Youth Affairs, upon notice, on 4 September 2000:

1) Can the Minister confirm that Wesley Mission, Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) No.00858E, is a defaulting provider under the terms of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991; if so, is this provider liable to repay full student fee refunds for the balance of the courses remaining at the point of ceasing of training.

2) Is the Minister aware that Ms Rachael Srinurjani Ong, Director of Vision College, has: (a) announced to students that Wesley Institute of Language and Commerce (WILC) has entered a new partnership with the Australian Institute of Commerce and Language; and (b) offered students who stay with this new entity the same premises and the same staff, and, without charge, assistance to arrange ‘Change of Provider’ application processes.

3) Has this new partnership been approved by the New South Wales Vocational Education and Training Accreditation Board (VETAB), the Department of Education, Training and Youth Affairs or the Department of Immigration and Multicultural Affairs (DIMA).

4) Has Vision College or WILC had its VETAB or National ELICOS Accreditation Scheme registration suspended or cancelled; if so, on what basis does Ms Rachael Ong offer continuing educational services for overseas students.

5) Does Vision College now have, or did it in the past have, a CRICOS registration; if not, on what basis does Ms Rachael Ong offer educational services to overseas students.

6) Does the company known as Vision College or any of its principals now have, or did they in the past have, registration with the Migration Agents Registration Authority; if not, on what basis does it offer migration advice to overseas students.
(7) (a) What is the status of the Mr Jommer Education Centre (ASIC) registration no. NSW V4961707; (b) is this organisation continuing to trade offering either education or immigration services to overseas students; (c) has this organisation been offering educational services to overseas students; (d) has this organisation been offering migration services to overseas students; and (e) if this company has ceased trading, what liabilities remain outstanding to other education providers.

(8) Has DIMA received any complaints about the operations of this provider/agency.

**Senator Ellison**—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

(1) As the Department’s enquiries have not been finalised, it is not possible to confirm the registered provider is a defaulting provider under the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act).

(2)(a) On 23 August 2000, the Department received a copy of an undated circular addressed to “valued local agents” issued under Ms Rachel Ong’s name on Wesley Institute of Language and Commerce (WILC) letterhead which, inter alia, announced a partnership between WILC and the Australian Institute for Commerce and Language (AiCL).

(b) The circular contained the following advice: “For current students who decided to stay with us there are some advantages for them which are: 1. They can continue to study with the same teachers, at the same building, with the same services from the same staff. 2. WILC will arrange for the students ‘change of provider’ process without charging the fee, which is $120 for each application.”

(3) The proposed partnership was not approved by the NSW Vocational Education and Training Accreditation Board, the Department of Education, Training and Youth Affairs or the Department of Immigration and Multicultural Affairs.

(4) The National ELT Accreditation Scheme (NEAS) is a delegated authority of the NSW Vocational Education Accreditation Board (VETAB) under the Vocational Education and Training Accreditation (Amendment) Act 1993 (VETA (Amendment) Act) to accredit providers as ELICOS institutions. NEAS has advised the following:

Vision College Pty Ltd has never made application to NEAS for accreditation as an ELICOS institution. Wesley Mission made application to NEAS for provisional accreditation for the institution Wesley Institute for Ministry and the Arts under the provider name Uniting Church in Australia Property Trust (NSW) for Wesley Mission, which was granted on 11 October 1996. Under its authority delegated by VETAB under the VETA (Amendment) Act, NEAS concurrently approved Wesley Mission’s ELICOS courses for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

In July 1999, application was made for a change of trading name of the institution to Wesley Institute for Language and Commerce (WILC). Documentation provided on 3 March 2000 indicated that the trading name was owned by The Uniting Church in Australia Property Trust (NSW) for Wesley Mission. The change in trading name was confirmed by NEAS as part of the conditions of accreditation on 19 June 2000.

NEAS was advised on 17 August 2000 that WILC was no longer offering ELICOS courses. Its NEAS accreditation was revoked on 22 August 2000. VETAB was advised of this.

WILC has never been registered by VETAB. Ms Ong may offer education services to overseas students only under an arrangement made by a registered provider.

(5) Vision College has never been registered on CRICOS. Ms Ong may offer education services to overseas students only under an arrangement made by a registered provider.

(6) DIMA has advised that the Migration Agents Registration Authority (MARA) has no record of Vision College or any of its principals having been registered as migration agents. Section 280 of the Migration Act 1958 applies restrictions on giving immigration assistance and states that a person who is not a registered agent must not give immigration assistance, with some limited exemptions. DIMA investigators have received anecdotal information that marketing personnel at Wesley Institute of Language and Commerce (Vision College) known as “Client Service Managers” were providing immigra-
DIMA investigators have interviewed former teachers and a former student in relation to the operation of WILC. These interviews have been conducted to obtain evidence of any offences including the provision of unregistered migration assistance. Further interviews with former teachers and students are scheduled.

Investigations will be approaching the owner of the college, Ms Rachel Ong and her associates when sufficient evidence has been obtained. A referral to MARA is not considered appropriate given that the allegations relate to unregistered practice, not breaches of MARA’s code of conduct.

(7)(a) An extract from the Australian Securities and Investments Commission database shows that the business status of Mr Jommer Education Centre, V4961707 is recorded as “ceased” effective from 9 June 2000.

(b) DETYA has no knowledge of the Mr Jommer Education Centre, NSW V4961707 or whether it has offered services to overseas students. DIMA has advised that DIMA investigators have been informed by a former employee of Mr Sommer (Jommer) Enterprises Pty Ltd that the agency ceased trading on 7 August 2000.

(c) DETYA has no knowledge of the Mr Jommer Education Centre (NSW 4961707) or of the services it might offer to overseas students. DIMA has advised that the former employee advised that Mr Sommer (Jommer) Enterprises Pty Ltd was operating as an education consultant dealing mainly with Korean students. There is also information that two Chinese females were using the same premises to provide an education consultancy to Chinese students.

(d) DIMA has advised that there is no substantive evidence that Mr Sommer (Jommer) Enterprises Pty Ltd (MSE) was providing unregistered migration assistance. Six former clients of MSE have been contacted by DIMA investigators to date. All have stated that MSE only charged them the DIMA student lodgement fee of $290, (which they passed onto DIMA). Other monies paid were in relation to locating suitable colleges and payment of tuition fees. The matter is in the hands of the New South Wales Police Service (NSWPS) Fraud Unit with whom DIMA investigators have been liaising. DIMA investigators have obtained information referred to the NSWPS and placed it on file in case DIMA action is warranted in the future. The principals of MSE have departed Australia and are therefore not available to be interviewed by DIMA investigators. This matter has not been reported to MARA by DIMA as MSE were not registered migration agents.

(e) The Department does not have access to information relating to any outstanding liabilities to education providers.

(8) On 15 August 2000 DIMA received a complaint from a Korean student who had paid her college tuition fees to Mr Sommer (Jommer) Enterprises Pty Ltd (MSE) and later found that MSE had ceased business without transferring her fees to her college. On 18 August 2000 DIMA investigators attended MSE and found the office deserted. That same day investigators spoke to a former employee of MSE who informed them that many students had been defrauded; the principal of MSE, KIM Yong Suk, had fled Australia with the students’ money and that the NSWPS Fraud Unit had been informed. DIMA investigators liaised with NSWPS officers and established that many students appeared to have been defrauded. NSWPS officers have spoken to several informants but are awaiting detailed information from a student representative or an accountant prior to launching a full investigation. DIMA investigators have obtained copies of documents forwarded to NSWPS by affected students. DIMA investigators are not making any pro-active enquires which may compromise the NSWPS investigation. As this complaint was in relation to the alleged criminal activities of an education consultant, NSWPS Fraud Unit is the most appropriate body to take action in the first instance. VETAB have not been briefed as there is no evidence of any college’s collusion in the fraud. Student Compliance and Student Investigations are monitoring any trends relating to affected students.

**Education: Wesley Institute of Language and Commerce**

*(Question No. 2895)*

Senator Carr asked the Minister representing the Minister for Education, Training and Youth Affairs, upon notice, on 6 September 2000:
(1) On what grounds has the department deemed Wesley Institute of Language and Commerce’s parent organisation guarantee to be sufficient to warrant exemptions from some requirements of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (the ESOS Act).

(2) What monies or other assistance has the parent organisation, Wesley Mission, provided to students displaced by the closure of Wesley Institute of Language and Commerce.

(3) (a) What other providers have been granted exemptions from some requirements of the ESOS Act, on the basis of parent organisation guarantees, in the past 5 years; and (b) in each case, what were the reasons for such exemptions.

(4) What criteria (for example equity levels, equity:debt ratios etc.) apply to parent organisations providing such guarantees.

(5) What other grounds, other than parent organisation guarantees, enable providers to gain exemptions from the ESOS requirements relating to tuition assurance funds, or any other ESOS Act requirement.

(6) Do the grounds for exemption provide guarantees that students will receive ‘equivalent tuition’, as guaranteed by the Tuition Assurance Schemes currently in place.

Senator Ellison—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

(1) Wesley Institute of Language and Commerce (WILC) is the registered business name of the joint venture business established pursuant to an agreement made on 6 July 1999 between the Uniting Church in Australia Property Trust (NSW) for Wesley Mission, trading as Wesley Institute for Ministry and the Arts, Drummoyne (WIMA) and Vision College Pty Ltd (Vision College). WILC did not hold a Parent Organisation Guarantee (POG). WIMA obtained a POG from the Uniting Church in Australia Property Trust (NSW) for Wesley Mission which offers each student for which it is responsible under the ESOS Act, an indemnity equivalent to that provided by an insurance policy that complies with regulation 15 of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations (ESOS Regulations). Overseas students enrolled at WILC were covered by this indemnity.

(2) Wesley Mission has advised that on 22 August 2000 former WILC students were formally advised that WILC had ceased operations. Wesley Mission arranged a meeting on 25 August 2000 at the Southern Cross Hotel in Sydney where the students met with officials from the Department, Department of Immigration and Multicultural Affairs, the NSW Vocational Education and Training Accreditation Board and peak industry bodies to discuss procedures for transfer to other colleges. The students were able to obtain details of the refunds they were entitled to receive, details of other providers offering comparable courses, and advice on their obligations under the Migration Act 1958 to continue to satisfy their visa conditions. Wesley Mission also established a telephone hotline for students to contact during and outside business hours where they could make enquiries or leave messages for advice on refunds, transfer arrangements to other colleges and how and where to obtain academic transcripts. Wesley Mission has paid out $536,934.00 in refunds to 506 former WILC students.

(3)(a) Over the past five years, the following providers have been granted exemption from the requirements of section 7A of the ESOS Act pursuant to subregulation 9(2)(b)(ii) of the ESOS Regulations:

- Adelaide College of Ministries, 01126M
- Anutech Pty Ltd, 01129G
- Assembly of God Paradise Inc, 01027C
- BAE Flight Training (Australia) Pty Ltd, 01596C
- Christian Heritage College, 01016F
- Insearch Limited, 00859D
- International Education Services Ltd, 01697J
- Luther Seminary, 00707J
- Macquarie Research Ltd, 01388M
- Monash International Pty Ltd, 01857J
- New Tribes Bible Mission (Australia) Ltd, 00998D
- Perth Theological Hall, 00700E
- The Pines Training Centre, 01986M
- The University of Notre Dame Australia, 01032F
- Presbyterian Theological Centre, 00684M
- Queensland Baptist College of Ministries, 00663E
- Rhema College of Christian Ministries Ltd, 01593A
- Southern Cross College of the Assemblies of God in Australia, 00958A
- Strikeforce Ministry Training Institute, 01239B
- Uniting Church in Australia Property Trust (NSW) for Wesley Mission, 00858E
- University of Canberra College Pty Ltd, 01893E

- b) The following providers have been granted exemption from the requirements of section 7A of the ESOS Act because of the special nature of their courses [subregulation 9(2)(a)(i)] and the POG offers each student indemnity equivalent to that provided by an insurance policy that complies with regulation 15 of the ESOS Regulations, [subregulation 9(2)(b)(ii)]:
  - Adelaide College of Ministries, 01126M
  - Christian Heritage College, 01016F
  - Insearch Limited, 00859D
  - International Education Services Ltd, 01697J
  - Luther Seminary, 00707J
  - Macquarie Research Ltd, 01388M
  - Southern Cross College of the Assemblies of God in Australia, 00958A
  - The Pines Training Centre, 01986M

  The following providers have been granted exemption from the requirements of section 7A of the ESOS Act because they could not reasonably be expected to become a member of a Tuition Assurance Scheme (TAS) [subregulation 9(2)(a)(ii)] and the POG offers each student indemnity equivalent to that provided by an insurance policy that complies with regulation 15 of the ESOS Regulations, [subregulation 9(2)(b)(ii)]:
  - Perth Theological Hall, 00700E
  - Strikeforce Ministry Training Institute, 01239B
  - The University of Notre Dame Australia, 01032F

  The following providers have been granted exemption from the requirements of section 7A of the ESOS Act because they did not wish to become a member of a TAS [subregulation 9(2)(a)(iii)] and the POG offers each student indemnity equivalent to that provided by an insurance policy that complies with regulation 15 of the ESOS Regulations, [subregulation 9(2)(b)(ii)]:
  - Anutech Pty Ltd, 01129G
  - Assembly of God Paradise Inc, 01027C
  - BAE Flight Training (Australia) Pty Ltd, 01596C
  - Monash International Pty Ltd, 01857J
  - New Tribes Bible Mission (Australia) Ltd, 00998D
  - Presbyterian Theological Centre, 00684M
(4) Providers claiming exemption from the requirements of section 7A of the ESOS Act in accordance with subregulation 9(2)(b)(ii) of the ESOS Regulations are required to:

- supply evidence that the claimed parent organisation is a separate body, and that it is the holding company of or otherwise controls the provider. The “parent organisation” should be generally equivalent to a “parent entity” in Corporations Law;

- supply evidence that reveals the parent organisation’s financial position, including the parent organisation’s accounts and a balance sheet showing that its net tangible assets are such that there are sufficient financial resources to meet a demand made under the guarantee should it be called upon.

(5) Providers that are administered by a State or Territory education authority, and providers that are entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training are exempt, under regulation 8 of the ESOS Regulations, from the following:

- section 6A of the ESOS Act – the requirement to pay course money into a notified trust account;

- section 7A of the ESOS Act – the requirement to be a member of a tuition assurance scheme; and

- section 8 of the ESOS Act – the requirement to report annually on transactions in respect of a notified trust account.

Providers that receive an amount of course money after the date the agreed goods and services have been provided and have a written agreement with each student stating that payment will be accepted after the date are exempt, under regulation 6 of the ESOS Regulations, from:

- section 6A of the ESOS Act – the requirement to pay course money into a notified trust account.

Providers that receive an amount of course money for tuition fees as defined in regulation 2 are exempt, under regulation 6A of the ESOS Regulations, from:

- subsection 6A(1)(b) of the ESOS Act – the requirement to pay all course money into a notified trust account; in relation to so much of the amount as does not exceed 20% of the amount.

Providers that receive an amount of course money for course enrolment fees as defined in subregulation 6A(3) of the ESOS Act are exempt, under regulation 6A of the ESOS Regulations, from:

- subsection 6A(1)(b) – the requirement to pay all course money into a notified trust account; in relation to the amount.

Providers that have students who do not pay directly or indirectly for the course are exempt, under subregulation 9(1)(a) of the ESOS Regulations, from:

- section 7A of the ESOS Act – the requirement to be a member of a tuition assurance scheme in relation to that course.

Providers that have a written agreement with each student which specifies that course money is payable only on completion of:

- the full course and that payment for all other goods and services is required only after their provision, or

- a part of the course for which another provider registered on CRICOS will give the student credit and that payment for all other goods and services is required only after their provision;

are exempt, under subregulation 9(1)(b) of the ESOS Regulations, from:

- section 7A of the ESOS Act – the requirement to be a member of a tuition assurance scheme in relation to that course.

Providers that provide a course in a State or Territory where the requirement to belong to a TAS has been suspended by virtue of section 9 of the ESOS Act are exempt, under sub-regulation 9(1)(c) of the ESOS Regulations, from:
section 7A of the ESOS Act – the requirement to be a member of a tuition assurance scheme in relation to that course.

Providers that are unable to become a member of a TAS because of the special nature of the course offered; or that cannot reasonably be expected to become a member of a TAS; or that are unwilling to join a TAS and have obtained an insurance policy or a bank guarantee that satisfies regulation 15 are exempt, under subregulation 9(2) of the ESOS Regulations, from:

section 7A of the ESOS Act – the requirement to be a member of a tuition assurance scheme.

(6) No. A TAS established for the purposes of subsection 7A(1)(a) of the ESOS Act requires that an overseas student who has paid course money to a provider that is a member of a TAS, is:

provided with education or training equivalent to that which he or she has paid for, if the member provider does not provide a course on the agreed starting date or ceases to provide a course to the student if he or she has not withdrawn from the course; and

not required to pay any additional tuition fees for the portion of the course for which tuition fees have been paid. therefore:

a provider that is (in relation to a course) exempt from TAS membership under subregulation 9(1)(a) of the ESOS Regulations, is not required to provide equivalent education or training because the student has not paid tuition fees for the course; and

a provider that is (in relation to a course) exempt from TAS membership under subregulation 9(1)(b) of ESOS Regulations, is not required to provide equivalent education or training because the student is only required to pay tuition fees after the education or training has been provided.

Under subregulation 9(2) of the ESOS Regulations, an insurance policy, bank guarantee or parent organisation guarantee that complies with regulation 15:

indemnifies students, who has paid course money in advance and who is entitled to a refund in accordance with section 6B or section 6C of the ESOS Act, against the unauthorised use of, or dealing with, course money by the provider or an employee of the provider;

enables indemnified students to make a claim directly to the insurance provider or guarantor;

provides for payment to a student who is entitled to a refund under section 6B or section 6C, of at least an amount being the difference, if any, between the amount refunded under section 6B or section 6C and the amount the student is entitled to be refunded where an equivalent course is made available; and

provides for payment of the total liability for each student who is entitled to a refund under section 6B if an equivalent course is not made available or the student elects to return to his or her home country.

Attorney-General: Staff Removal and Transfer Expenses

(Question No. 2915)

Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:

Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Attorney-General’s staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.

Senator Ellison—The answer to the honourable senator’s question is as follows:

$28,519.00
Prime Minister: Staff Removal and Transfer Expenses  
(Question No. 2916)  
Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:  
Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Prime Minister’s staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.  
Senator Ellison—The answer to the honourable senator’s question is as follows:  
$28,756.09

Treasurer: Staff Removal and Transfer Expenses  
(Question No. 2917)  
Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:  
Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Treasurer’s staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.  
Senator Ellison—The answer to the honourable senator’s question is as follows:  
$8,610.54

Minister for Employment, Workplace Relations and Small Business: Staff Removal and Transfer Expenses  
(Question No. 2918)  
Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:  
Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Minister for Employment, Workplace Relations and Small Business’ staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.  
Senator Ellison—The answer to the honourable senator’s question is as follows:  
$40,413.15

Minister for Veterans’ Affairs: Staff Removal and Transfer Expenses  
(Question No. 2919)  
Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:  
Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Minister for Veterans’ Affairs staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.  
Senator Ellison—The answer to the honourable senator’s question is as follows:  
$14,124.13
Minister for Immigration and Ethnic Affairs: Staff Removal and Transfer Expenses
(Question No. 2920)

Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:

Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Minister for Immigration and Multicultural Affairs staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.

Senator Ellison—The answer to the honourable senator’s question is as follows:
$21,059.03

Member for Dawson: Staff Removal and Transfer Expenses
(Question No. 2921)

Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:

Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of Mrs D Kelly’s staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.

Senator Ellison—The answer to the honourable senator’s question is as follows:
$6,553.77

Member for Leichhardt: Staff Removal and Travel Expenses
(Question No. 2922)

Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:

Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Hon W Entsch’s staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.

Senator Ellison—The answer to the honourable senator’s question is as follows:
$32,993.29.

Member for Fadden: Staff Removal and Travel Expenses
(Question No. 2923)

Senator Robert Ray asked the Special Minister of State, upon notice, on 12 September 2000:

Further to the answers to question on notice No. 1126 (Hansard, 3 April 2000, page 13198; amended answer provided on 4 September 2000) and a question taken on notice at a Budget estimates hearing on 23 May 2000: What was the total cost of the Hon D Jull’s staff removal and transfer expenses, including removal, travel costs (including travel costs of dependants where applicable) and temporary accommodation.

Senator Ellison—The answer to the honourable senator’s question is as follows:
$8,903.90.
Lower Great Southern Family Day Care  
(Question No. 2926)

Senator Mark Bishop asked the Minister for Family and Community Services, upon notice, on 14 September 2000:

(1) Who made this decision.
(2) What were the specific reasons for the decision.
(3) On which section of what Act was the decision based.
(4) Does the Minister have the authority to stay the proceedings pending an investigation into the process that lead to the decision; if so, will she consider taking this action.

Senator Newman—The answer to the honourable senator’s question is as follows:

(1) The Assistant Secretary of the Child Care Services Branch of the Department of Family and Community Services made the decision to terminate funding to the Lower Great Southern Association.

(2) The decision was made because the service breached its funding agreement in several areas. These included:
- Failure to resolve complaints from parents
- Failure to put in place an effective complaints resolution process
- Failure to arrange for suitable participation of staff in management decisions
- Failure to ensure compliance with Paragraph 4.2(l) of the funding agreement and Family Day Care Handbook Chapter 3.9 (which is now Chapter 3.6 of the new Handbook), which requires service-providers to provide quality care and the monitoring of quality.

(3) The funding is made as a grant and is not covered by an Act of Parliament. The decision to terminate funding was in accordance with the funding agreement between the Commonwealth and the Association.

(4) The process followed by the Department was in accordance with the terms of the funding agreement with the Association. Minister Anthony’s Office has been fully informed throughout the process. There is no need to investigate the process.

Lower Great Southern Family Day Care  
(Question No. 2927)

Senator Mark Bishop asked the Minister for Family and Community Services, upon notice, on 14 September 2000:

(1) Can details be provided of the cases of mismanagement to which Mr Silins referred.
(2) Can details be provided to show what evidence Mr Silins has to substantiate these claims.
(3) If he has no evidence, what action will the Minister take to ensure that Mr Silins either produces evidence or apologises to the Association for discrediting its name.

Senator Newman—The answer to the honourable senator’s question is as follows:

(1) Mr Silins was misquoted in the newspaper. He did not refer to mismanagement.

(2) I refer to my previous answer.

(3) Again, I refer to my previous answer.

Lower Great Southern Family Day Care  
(Question No. 2928)

Senator Mark Bishop asked the Minister for Family an Community Services, upon notice, on 14 September 2000:

(1) Was Mr Silins misquoted when he stated ‘Our primary concern is the families and children, and making sure they continue to have the sort of quality child care that is available to them now’.

(2) Does the department hold any current complaints against carers.
(3) Does the department hold any outstanding complaints against carers.
(4) If yes to (2) or (3): have those complaints been referred to the Child Care Services Board and how many were referred to the Board; if not, why not.

Senator Newman—The answer to the honourable senator’s question is as follows:

(1) Yes.

(2) Complaints have been made to the Department by parents, carers and staff. These complaints were referred to the Association in the first instance and also to the Child Care Services Board (the State licensing authority). Complaints were also considered by the Tribunal. The Department does not handle individual complaints.

(3) I refer to my previous answer.

(4) I refer to my earlier answer.

**Lower Great Southern Family Day Care**
(Question No. 2929)

Senator Mark Bishop asked the Minister for Family and Community Services, upon notice, on 14 September 2000:

(1) What are the exact accusations levelled at the Association.

(2) If one was a specific incident regarding one carer, why was the whole scheme affected.

(3) Why have the Association and local Members of Parliament not been advised of the exact nature and specific details of the complaints.

Senator Newman—The answer to the honourable senator’s question is as follows:

(1) I have outlined in an earlier response the reasons for the decision. (See answer to Question 2926 (2))

(2) The action taken to remove operational funding from the Association was not based on an incident involving one carer.

(3) The Association was provided with a copy of the Independent Tribunal’s report which outlined a range of concerns. The Association was also advised by the Department of the particular aspects of the service that were unsatisfactory. However specific information about families and child care services obtained by the Commonwealth Child Care Program through the administration of the program is subject to confidentiality provisions and will not normally be released.

**Lower Great Southern Family Day Care**
(Question No. 2930)

Senator Mark Bishop asked the Minister for Family and Community Services, upon notice, on 14 September 2000:

(1) Can the Minister guarantee places for the existing children, carers and staff of the Lower Great Southern Family Day Care Association; if not, why not.

(2) What guarantee will the Minister and new sponsor give that there will be no disruptions to carers, parents and children.

Senator Newman—The answer to the honourable senator’s question is as follows:

(1) No family day care places have been removed from the Lower Great Southern Family Day Care Association.

(2) The Scheme does not have a new sponsor, rather there is a new sponsor of an entirely new scheme. The existing sponsor may continue to operate family day care. The new scheme has already advertised for carers and has held meetings with parents and prospective carers to outline how the new scheme will operate. The new sponsor commenced operations on 1 October 2000.

The Department is aware of parents’ concerns about the situation and has been endeavouring to communicate with all carers and parents to ensure that everyone involved receives accurate and current
information. The Department has participated in recent meetings attended by Association members, parents, carers and other interested parties in order to provide accurate information and respond to questions.

The Department has also requested on two occasions, a list of current parents and carers with the Lower Great Southern Family Day Care Scheme, in order to provide information. Provision of these details to the Commonwealth is allowed within the terms of the funding agreement but the Association has refused to supply this information. Nevertheless, the Department is doing what it can to fully inform the public about the new arrangements.

Lower Great Southern Family Day Care
(Question No. 2931)

Senator Mark Bishop asked the Minister for Family and Community Services, upon notice, on 14 September 2000:

(1) What does the department define as ‘quality child care’.
(2) What will the new sponsor do differently to provide quality day care from day one, if the scheme is not already providing quality day care.
(3) What guarantee will the Minister and the new sponsor give that businesses can continue to operate as they currently do; that is, to maintain the same days, hours and numbers of children.
(4) What bargaining and negotiating role will the current: (i) Association, (ii) Scheme, (iii) parents, (iv) carers and (v) community members have in determining the new sponsor’s policies, fees and procedures.

Senator Newman—The answer to the honourable senator’s question is as follows:

(1) The Association’s funding agreement and the Family Day Care Handbook outline the requirements for services to meet in order to provide quality care. This includes a requirement that schemes select appropriately qualified staff and caregivers and operate in a way which will best meet the developmental, social, intellectual, physical and emotional needs of children.

The National Standards for Family Day Care describe standards necessary to ensure the provision of home based care that is safe, nurturing and developmentally appropriate.

(2) I repeat that this is not a new sponsor of the existing scheme, but an entirely new scheme. The sponsor will be required to comply with the terms and conditions of the funding agreement and Family Day Care Handbook and has demonstrated this capacity for the past 14 years in the running of another Family Day Care Scheme in Western Australia.

(3) If by “businesses” the Senator means carers, then I can advise him that carers must operate according to the requirements of the Department and the organisation they belong to. Those carers who choose to remain with the present scheme must abide by the requirements of that scheme. Those who operate under the new scheme will need to operate in accordance with that scheme’s requirements.

(4)(i) The Association has no role in the new scheme.
(ii) The existing Scheme will have no role with the new Scheme;
(iii) to (v) In relation to parents, carers and community members, the new scheme is required to have a locally-based reference group which will provide input into scheme operation. Indeed, the Family Day Care Handbook requires that schemes provide opportunities for involvement of parents using the scheme and for carers and staff. Policies, fees and procedures will be guided by the local reference group. Furthermore, I am advised that the elected chair of that reference group will also sit on the Board of the new sponsor.

Australia Post: Corangamite Electorate
(Question No. 2932)

Senator Mackay asked the Minister for Communications, Information Technology and the Arts, upon notice, on 14 September 2000:

With reference to Australia Post:
(1) (a) How many corporate post offices are located in the electorate of Corangamite, Victoria; (b) where are they located; and (c) how many corporate post offices were located in Corangamite at the end of each financial year between 1990-91 and 1999-2000.

(2) How many licensed post offices (LPOs) are located in the electorate of Corangamite; (b) where are they located; and (c) how many LPOs were located in Corangamite at the end of each financial year between 1990-91 and 1999-2000.

(3) (a) How many Australia Post contractors are currently employed in Corangamite; and (b) what activities/services are they providing.

(4) (a) How many corporate post offices and/or LPOs receive income support and/or top up payments in the electorate of Corangamite; (b) which postal outlets receive such support; what is the amount of this support; and (c) where are they located.

Senator Alston—The answer to the honourable senator’s question is as follows:

Based on advice received from Australia Post:

(1)(a) and (b) There are currently four corporate post offices in the electorate of Corangamite. They are located in Belmont, Colac, Ocean Grove and Torquay. (c) Unfortunately, Australia Post’s retail information systems are unable to produce reliable historical information in relation to individual electorates.

(2)(a) and (b) There are currently 34 Licensed Post Offices (LPOs) in the electorate of Corangamite. They are located in Aireys Inlet, Anglesea, Apollo Bay, Bannockburn, Barwon Heads, Beeac, Birregurra, Breamlea, Colac West, Cororooke, Deans Marsh, Forrest, Gellibrand River, Grovedale East, Grovedale, Highton, Highton South, Indented Head, Inverleigh, Lavers Hill, Lorne, Meredith, Moriac, Point Lonsdale, Portarlington, Princetown, Queenscliff, Rokewood, Shelford, St Leonards, Swan Marsh, Teesdale, Winchelsea and Wye River. (c) Unfortunately, Australia Post’s retail information systems are unable to produce reliable historical information in relation to individual electorates.

(3) (a) and (b) There are 63 contractors employed in the electorate of Corangamite. The following table details the numbers and services they provide:

<table>
<thead>
<tr>
<th>Number of Contractors</th>
<th>Services Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>38</td>
<td>Roadside mail deliveries</td>
</tr>
<tr>
<td>5</td>
<td>Intrastate transport of mail</td>
</tr>
<tr>
<td>9</td>
<td>Street mail deliveries</td>
</tr>
<tr>
<td>6</td>
<td>Parcel deliveries</td>
</tr>
<tr>
<td>3</td>
<td>Street posting box clearance</td>
</tr>
<tr>
<td>2</td>
<td>Depot bag delivery</td>
</tr>
</tbody>
</table>

(4) (a), (b) and (c) There are six LPOs that receive top up payments in the electorate of Corangamite. They are located in Anglesea, Barwon Heads, Beeac, Birregurra, Deans Marsh and Shelford. The top up payments to these LPOs total $61,447.20 annually.

Australia Post: Post Office Locations

(Question No. 2988)

Senator Mackay asked the Minister for Communications, Information Technology and the Arts, upon notice, on 4 October 2000:

With reference to Australia Post:

(1) (a) Nationally, how many corporate post offices are there; and (b) where are they located and in what federal electorates.

(2) How many corporate post offices were there at the end of each financial year between 1990-91 and 1999-2000.

(3) (a) Nationally, how many licensed post offices (LPOs) are there; and (b) where are they located and in what federal electorates.
(4) How many LPOs were there at the end of each financial year between 1990-91 and 1999-2000.

(5) (a) How many corporate post offices and/or LPOs receive income support and/or top up payments; and (b) where are they located and in which federal electorates.

(6) What has been the quantum of this income support and/or top up payment at the end of each financial year between 1990-91 and 1999-2000.

Senator Alston—The answer to the honourable senator’s question is as follows:

Based on advice received from Australia Post

(1) (a) and (b) There are currently 904 corporate post offices nationally. Attachment 1 details their locations and federal electorates. (A copy has been provided separately to the Hon Senator)

(2) The following table details the number of corporate post offices at the end of each financial year between 1990/1991 and 1999/2000:

<table>
<thead>
<tr>
<th>Year Ending</th>
<th>No. of offices</th>
<th>Year Ending</th>
<th>No. of offices</th>
</tr>
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<tbody>
<tr>
<td>30.06.91</td>
<td>1352</td>
<td>30.06.96</td>
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<td>1348</td>
<td>30.06.97</td>
<td>1009</td>
</tr>
<tr>
<td>30.06.93</td>
<td>1301</td>
<td>30.06.98</td>
<td>957</td>
</tr>
<tr>
<td>30.06.94</td>
<td>1203</td>
<td>30.06.99</td>
<td>905</td>
</tr>
<tr>
<td>30.06.95</td>
<td>1132</td>
<td>30.06.00</td>
<td>902</td>
</tr>
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</table>

(3) (a) and (b) There are currently 2986 Licensed Post Offices (LPOs) nationally. Attachment 2 details their locations and federal electorates. (A copy has been provided separately to the Hon Senator)

(4) The following table details the total number of LPOs at the end of each financial year between 1990/1991 and 1999/2000:

<table>
<thead>
<tr>
<th>Year Ending</th>
<th>No. of LPOs</th>
<th>Year Ending</th>
<th>No. of LPOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.06.91</td>
<td>3009</td>
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<td>2873</td>
</tr>
<tr>
<td>30.06.92</td>
<td>2977</td>
<td>30.06.97</td>
<td>2925</td>
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<td>30.06.93</td>
<td>2932</td>
<td>30.06.98</td>
<td>2965</td>
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<tr>
<td>30.06.94</td>
<td>2789</td>
<td>30.06.99</td>
<td>2998</td>
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<tr>
<td>30.06.95</td>
<td>2822</td>
<td>30.06.00</td>
<td>2985</td>
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</tbody>
</table>

(5) There were 502 LPOs receiving top up payments at 30 June 2000. Attachment 3 details their locations and federal electorates. (A copy has been provided separately to the Hon Senator)

(6) Total top up payments to LPOs at the end of each financial year between 1992/1993* and 1999/2000 was as follows:

<table>
<thead>
<tr>
<th>Year Ending</th>
<th>Top up payment</th>
<th>Year Ending</th>
<th>Top up payment</th>
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<tr>
<td>30.06.93</td>
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<td>30.06.97</td>
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<td>30.06.94</td>
<td>$6.4m</td>
<td>30.06.98</td>
<td>$4.2m</td>
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<td>30.06.95</td>
<td>$11.1m</td>
<td>30.06.99</td>
<td>$4.1m</td>
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<td>30.06.96</td>
<td>$10.7m</td>
<td>30.06.00</td>
<td>$3.8m</td>
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</table>

[* Under the Licensed Post Office Agreement negotiated with the Post Office Agents Association Ltd, a system of top up payments was introduced in 1992/1993 for those Post Office Agents who experienced a drop in net income on conversion to LPO method of operation. Top up payments cease on assignment of the license to another operator. In the case of metropolitan LPOs, top up payments were of fixed duration and ceased on 30 June 1996.]

Political Donations
(Answer No. 3102)

Senator Brown asked the Special Minister of State, upon notice, on 11 October 2000:

(1) For each year since 1995 and for each party or independent, how much money has been allocated from: (a) public funding; and (b) private donations.
(2) If private donations can be segregated into those from corporations or similar entities as against those from individuals, what are those figures.

Senator Ellison—The answer to the honourable senator’s question is as follows:

Details of payments of public funding entitlements to political parties and independents are summarised at attachment A (chronological order and by electoral event) and attachment B (by party or independent). Since the beginning of 1995, $64 686 415 in public funding entitlements has been paid to political parties and independents.

In relation to private donations, the current legislation requires annual returns from political parties, associated entities and donors to disclose total amounts received plus particulars of the person or organisation, if amounts received are $1 500 or more. Annual returns including donor returns are available for public perusal on an annual basis.

Current Australian Electoral Commission databases and records do not report all private donations received by parties and independents on an annual and cumulative basis, from 1995. Furthermore details of donor returns have not been segregated or reported for either corporations or individuals for the requested period.

Extracting such details from five years of donor returns (estimated in excess of 3 000 returns) would be extremely resource and time expensive (estimated at 250 person hours) for the formats requested. I do not consider this expenditure of the considerable resources that would be necessary to collect and assemble the information to be appropriate.

SUMMARY OF PUBLIC FUNDING 1995-2000 BY EVENT

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>142565</td>
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Canberra by-election
- Australian Labor Party: 26968
- Liberal Party of Australia: 40964
- Australians Against Further Immigration: 3690
- Australian Greens: 11375

Wentworth By-election
- Liberal Party of Australia: 32205
- Australian Greens: 15873
- William Wentworth: 11490

1996

General/Half-Senate Election
- Australian Labor Party: 12011159
- Liberal Party of Australia: 11815690
- National Party of Australia: 2727643
- Northern Territory Country Liberal Party: 123478
- Australian Democrats: 2742277
- Australian Greens: 281247
- The Greens (WA): 164649
- Australians Against Further Immigration: 27568
- No Aircraft Noise: 23809
- Peter James Andren: 34211
- Irene Margaret Bolger: 6266
- Ben Buckley: 5647
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<th>Event</th>
<th>Australian Labor Party</th>
<th>Australians Against Further Immigration</th>
<th>Reclaim Australia: Reduce Immigration</th>
<th>The Australian Greens</th>
<th>Call to Australia (Fred Nile) Group</th>
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**Summary of Public Funding 1995-2000 by Event**

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<th>Reclaim Australia: Reduce Immigration</th>
<th>The Australian Greens</th>
<th>Call to Australia (Fred Nile) Group</th>
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**Summary of Public Funding 1995-2000 by Event**

<table>
<thead>
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<th>Reclaim Australia: Reduce Immigration</th>
<th>The Australian Greens</th>
<th>Call to Australia (Fred Nile) Group</th>
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<td>Party/Group</td>
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Newcastle Supplementary Election
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<th>Party/Group</th>
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2000
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<table>
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<th>Party/Group</th>
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TOTAL FUNDING PAYMENTS 1995-2000 | 64686415 | 64686415
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<th>Blaxland By-Election</th>
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<th>Fraser By-Election 1997</th>
<th>General Election 1998</th>
<th>Newcastle Supplementary Election</th>
<th>Holt By-Election 1999</th>
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<td>TOTAL GREENS</td>
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SUMMARY OF PUBLIC FUNDING 1995-2000 BY PARTY
Attachment B

Douglas Treasure
General Election 1998 6612

Robert Wilson
General Election 1998 14043

Paul Zammit
General Election 1998 18979

Ivan Welsh
Newcastle Supplementary Election 1998 7134

Henry Criticos
Newcastle Supplementary Election 1998 4409

Democratic Labor Party
Holt By-Election 1999 8871

Carl Van Wesley
Isaacs By-Election 2000 8995

TOTAL FUNDING PAYMENTS 1995-2000 64686415

Australian Broadcasting Corporation : Managing Director
(Question No. 3110)

Senator Brown asked the Minister for Communications, Information Technology and the Arts, upon notice, on 13 October 2000:

With reference to the answer to question on notice 2629: what, in clear dollar terms, is the income of the Australian Broadcasting Corporation’s chief executive officer and what other benefits does his employment package include.

Senator Alston—The answer to the honourable senator’s questions is as follows:

In clear dollar terms, the Managing Director currently receives the following contractual remuneration package:

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<td>Personal Loading (15%)</td>
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<td>Living Allowance</td>
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<td>(as determined by Australian Broadcasting Corporation Board under provision of the Australian Broadcasting Corporation Act)</td>
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In addition, the contract also includes provisions for a motor vehicle, superannuation contributions, contribution towards health insurance, annual subscriptions, telephones and media monitoring equipment. The Managing Director may also receive performance remuneration, if so assessed by the Board, up to a maximum level of $20,000 p.a. set by the Remuneration Tribunal.