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

PETITIONS

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

**Australian Broadcasting Corporation: Independence and Funding**

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

The petition of the undersigned shows:

(1) our strong support for our independent national public broadcaster, the Australian Broadcasting Corporation;

(2) our concern at the sustained political and financial pressure that the Howard Government has placed on the Australian Broadcasting Corporation (ABC), including:

(a) the 1996 and 1997 Budget cuts which reduced funding to the ABC by $66 million per year; and

(b) its failure to fund the ABC’s transition to digital broadcasting;

(3) our concern about recent decisions made by the ABC Board and senior management, including the Managing Director Jonathan Shier, which we believe may undermine the independence and high standards of the ABC including:

(a) the cut to funding for News and Current Affairs;

(b) the reduction of the ABC’s in-house production capacity;

(c) the closure of the ABC TV Science Unit;

(d) the circumstances in which the decision was made not to renew the contract of Media Watch presenter Mr Paul Barry; and

(e) consideration of the Bales Report, which recommended the extension of the ABC’s commercial activities in ways that may be inconsistent with the ABC Act and the Charter;

Your petitioners ask that the Senate should:

(1) protect the independence of the ABC;

(2) ensure that the ABC receives adequate funding;

(3) call upon the Government to rule out its support for the privatisation of any part of the ABC, particularly JJJ, ABC On-line and the ABC Shops; and

(4) call upon the ABC Board and senior management to:

(a) fully consult with the people of Australia about the future of our ABC;

(b) address the crisis in confidence felt by both staff and the general community; and

(c) not approve any commercial activities inconsistent with the ABC Act and Charter.

by Senator Crossin (from 81 citizens).

**Woodside Petroleum: Proposed Takeover by Shell Australia**

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

The Petition of the undersigned shows:

That the proposed takeover of Woodside Australian Energy by Shell should be opposed in the interests of protecting Australian jobs and ensuring the nation’s natural resources are retained by Australian interests.

Your petitioners ask that the Senate should:

Pass a resolution calling on the Government to reject the proposed takeover of Woodside Australian Energy by Shell.

by Senator Eggleston (from 83 citizens).

Petitions received.

NOTICES

Presentation

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

That the Senate notes that:

(a) National Youth Week, which runs from 1 April to 8 April 2001, is a vital opportunity to celebrate young Australians’ ideas, contributions, talent and energy;

(b) young people’s contributions to society are often overlooked and undervalued;

(c) there remain persistent barriers to young people to participate in employment, education and training;

(d) 21.5 per cent of 15- to 19-year olds are unemployed;

(e) young people from rural and regional Australia, and those from low socio-economic backgrounds, are seriously under represented in Australia’s education system;
applications to universities in 2000 were 8,408 below 1996 levels and preliminary data shows applications in 2001 were 10,518 (or 5.3 per cent) further below that of the 2000 figures; and only 30 per cent of students can now access the youth allowance.

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

(i) notes:
(a) the National Day of Action by students on 5 April 2001,
(b) that students around the country are making the following demands:
(A) end the corporate control of universities,
(B) stop the attacks on staff,
(c) a liveable income for all,
(d) reverse the funding cuts, and
(e) free education now - no fees for degrees, and

(ii) the findings of the draft report from the Prime Minister’s Youth Pathways Action Plan Taskforce, that young people face high up-front and ongoing costs associated with study and that existing income support levels are not sufficient to cover these costs; and

(b) calls on the Government to substantially re-invest in education, especially in Australia’s public higher education institutions.

Withdrawal
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—At the request of the respective senators, I withdraw general business notices of motion as set out in the list circulated in the chamber.

The list read as follows—


BUSINESS

Government Business
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—I move:

That the following government business orders be considered from 12.45 p.m. till no later than 2.00 p.m. this day:

(1) Petroleum (Submerged Lands) Legislation Amendment Bill 2001; and the Petroleum (Submerged Lands) (Registration Fees) Amendment Bill 2000,
(2) Coal Industry Repeal Bill 2000,
(3) Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Bill 2000, and
(4) Social Security Legislation Amendment (Concession Cards) Bill 2000 [2001].

I indicate to the Senate that the consideration of four of these bills is subject to their exemption from the bills cut-off order. With those bills, it is proposed to introduce them and deal with all stages at lunchtime.

Question resolved in the affirmative.

General Business
Motion (by Senator Ian Campbell) agreed to:
That the order of general business for consideration today be as follows:

(1) general business order of the day no. 60 (Anti-Genocide Bill 1999); and
(2) consideration of government documents.

NOTICES
Postponement
Motion (by Senator O’Brien, at the request of Senator Conroy) agreed to:
That general business notice of motion no. 899 standing in the name of Senator Conroy for today, relating to the reference of matters to the Parliamentary Joint Committee on Corporations and Securities, be postponed till a later hour.

Items of business were postponed as follows:

General business notice of motion no. 881 standing in the name of Senator Greig for today, relating to shark finning and unsustainable shark fishing, postponed till 18 June 2001.

General business notice of motion no. 852 standing in the name of the Leader of the Opposition in the Senate (Senator Faulkner) for today, relating to the financial interests of the Minister for the Arts and the Centenary of Federation (Mr McGauran), postponed till the next day of sitting.
COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Reference

Motion (by Senator Allison) agreed to:

That the following matters be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 1 April 2002:

(a) the management of water in Australian cities, including:
   (i) a review of existing reports on the management of water, predominantly in urban areas, and
   (ii) an assessment of what constitutes ecologically sustainable water use and the environmental, health and economic implications and imperatives for achieving this, taking into account:
      (A) projected population growth and consumption rates,
      (B) water quality and adequacy,
      (C) urban planning, and
      (D) water management systems;

(b) the progress and adequacy of Australia’s policies to reduce urban water use and improve water quality;

(c) environmental performance in urban stormwater management, including:
   (i) the effects of accelerated run-off from sealed urban catchments on waterways,
   (ii) the impact of urban run-off on receiving waters,
   (iii) the best environmental practice in urban stormwater management, and
   (iv) clarification of roles, responsibilities and reporting requirements amongst public agencies at state and local government level; and

(d) the potential for Australia to improve water quality and environmental outcomes, including:
   (i) the opportunities, constraints and costs of:
      (A) waste water recycling, grey water use and urban stormwater utilisation, and
      (B) improved water use efficiency in household, garden, public open space and industrial contexts demand management,
   (ii) the effectiveness of applying financial, market and other mechanisms to achieve water efficiency,
   (iii) the effectiveness and relevance of environmental management systems, certification programs and best management practices, and
   (iv) the introduction of bulk water entitlements and water markets, and their implications for urban and industrial water consumption.

Foreign Affairs, Defence and Trade References Committee

Reference

Motion (by Senator Hogg) agreed to:

(1) That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 27 September 2001:

Whether the current recruitment and retention strategies of the Australian Defence Force (ADF) are effective in meeting the organisation’s personnel requirements (including reserves).

(2) That, in considering these terms of reference, the committee examine and report on the following issues:

(a) whether the current recruitment system is meeting, and will continue to meet, the needs of the ADF;

(b) the impact of the Defence Reform Program on retention levels and recruiting;

(c) the impact of changes to ADF conditions of service, pay and allowances on retention and recruitment of personnel;

(d) current levels and categories of specialist personnel in the ADF compared to the organisation’s requirements;

(e) the impact of current career management practices on the retention of personnel; and

(f) any other issues, reasonably relevant to the terms of reference but not referred to above, which arise in the course of the inquiry.
Community Affairs References Committee
Reference

Motion (by Senator O’Brien, at the request of Senator Crowley) agreed to:
(1) That the following matters be referred to the Community Affairs References Committee for inquiry and report by 25 October 2001:
(a) the shortage of nurses in Australia and the impact that this is having on the delivery of health and aged care services; and
(b) opportunities to improve current arrangements for the education and training of nurses, encompassing enrolled, registered and postgraduate nurses.
(2) That the committee specifically make recommendations on:
(i) nurse education and training to meet future labour force needs,
(ii) the interface between universities and the health system,
(iii) strategies to retain nurses in the workforce and to attract nurses back into the profession including the aged care sector and regional areas,
(iv) options to make a nursing career more family friendly, and
(v) strategies to improve occupational health and safety.

INTERACTIVE GAMBLING BILL 2001
First Reading

Motion (by Senator Ian Campbell) agreed to:
That the following bill be introduced: A Bill for an Act about interactive gambling, and for related purposes.

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) (9.36 a.m.)—I table the explanatory memorandum and move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

Through this Bill the Government is taking strong and decisive action to protect Australian families from the further spread of problem gambling and the social and economic hardship that it brings to hundreds of thousands of Australians.

The Bill responds to serious community concern about the availability and accessibility of gambling in Australia. The Productivity Commission has found that around 290,000 Australians are problem gamblers and account for over $3 billion in losses annually. It found that problem gamblers comprise 15% of regular gamblers and they account for one third of all gambling expenditure annually. As the Prime Minister indicated at the time of the Commission’s final report, this is disastrous not only for these problem gamblers, but also for the estimated 1.5 million people they directly affect as a result of bankruptcy, divorce, suicide and lost time at work.

The Commission also found that 70% of Australians believe that gambling does more harm than good.

The Government is concerned that the increased accessibility of gambling services via communications technologies such as the Internet has the potential to significantly exacerbate problem gambling among Australians.

The Productivity Commission found that new interactive technologies represent a quantum leap in accessibility to gambling. This is made more alarming by the associated finding that the prevalence of problem gambling is related to the degree of accessibility of gambling. The Government acknowledges these possibilities in very clear terms: we do not want a poker machine in every lounge room.

Australians do not want more gambling opportunities. There are already countless ways to lose your money in this country. There are pokies in almost every pub, TABs on many street corners, casinos and racetracks in every city, and you can pick up the phone to put a bet on a wide range of sports. We don’t need even more outlets to gamble. A recent survey by the Department of Family and Community Services found that more than two-thirds of Australians support a ban on Internet gambling and the Productivity Commission found that 92 per cent of Australians surveyed did not want to see any further expansion of poker machines.
The Government is particularly concerned that the alluring interactive nature of these services could attract a new and younger market of gamblers, particularly amongst the ‘Internet generation’. Recent reports from the United States suggest that online gambling revenue there will triple by 2004, to over $6 billion. Concerns have already been expressed by the American Psychiatric Association about young people with access to credit cards being targeted by Internet gambling operators, and 10 to 15 per cent of young people have reported significant gambling problems as a result of the Internet. Today’s young Australians are accustomed to spending significant amounts of time playing computer games and using the Internet and other new technologies and this makes them particularly susceptible to these new forms of gambling. Alarmingly, many online video and board game sites that target children and teenagers include links and banner advertisements for online gambling services.

Australians have every right to be concerned about these developments and the Government is simply not prepared to sit back and wait for Australia to inherit a whole new gambling problem brought about by new online and interactive gambling services.

The Interactive Gambling Bill 2001 will place restrictions on gambling services that are accessible to Australians through:

- telecommunications services such as the Internet; and
- broadcasting services or datacasting services.

In doing so, the Bill balances the protection of Australians with a sensible, enforceable approach.

It has two elements.

Firstly, it will be an offence for an operator with a link to Australia to provide an interactive gambling service to a person physically located in Australia. A fine of $1.1 million per day will apply to bodies corporate and $220,000 per day to natural persons if they continue to contravene the offence provisions after the legislation comes into effect.

Secondly, the Bill will establish a complaints scheme. The scheme will allow Australians to make complaints about interactive gambling services on the Internet. If the content is not hosted in Australia, regulatory authorities will notify the content to Internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or standard.

Any site that is subject to a complaint can also be referred by regulatory authorities to the police if it is thought to merit investigation in relation to the offence provisions, or for other reasons.

It is important to note that the legislation does not mandate an Internet content blocking technology to be used by Internet service providers. This would place too great a regulatory burden on the Internet services industry.

Because the interactive gambling industry is still in its infancy, it is practical and appropriate that the Commonwealth take action now. In another year or two, the industry may have grown too big and established for any government to take action. Research indicates that the number of interactive gambling sites on the Internet has doubled in the last year from about 700 to perhaps 1400.

This is exactly the situation that State and Territory colleagues have found themselves in with poker machines. I am sure that there are a number of State and Territory lawmakers who regret earlier decisions to allow poker machine numbers to expand so dramatically. The Commonwealth is determined not to repeat this mistake with interactive gambling.

An approach of “better regulation” of interactive gambling is not feasible. The regulatory approach provides, in effect, a stimulus to the growth of this form of gambling which is quite irresponsible. Efforts by States and Territories to reach agreement on new national standards for regulating Internet gambling have not succeeded despite the Prime Minister’s announcement of the Commonwealth’s concerns in December 1999.

There is no reason to think they can restrict the growth of new forms of gambling any more than they have been able to do with poker machines.

There have been suggestions that this Bill will protect offline gambling interests. This is quite incorrect. Nearly all gambling industry interests, comprising both online and offline gaming and wagering operators, have consistently opposed the Government’s initiatives in this area, including the current moratorium. Measures to deal with problem gambling in the offline world have been agreed by the Council of Australian Governments and are being monitored by the Ministerial Council on Gambling.

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

GREAT BARRIER REEF MARINE PARK AMENDMENT BILL 2001

First Reading

Motion (by Senator Ian Campbell) agreed to:
That the following bill be introduced: A Bill for an Act to amend the Great Barrier Reef Marine Park Act 1975, and for related purposes.

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) (9.43 a.m.)—I table the explanatory memorandum and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Great Barrier Reef is a national treasure. It includes over 1300 coral reefs, many beautiful islands and lagoons, thousands of species of fish, threatened marine mammals such as whales, dolphins and dugongs and six of the world’s seven species of sea turtle. In terms of biodiversity, its coral reefs are the rainforests of the ocean.

The Great Barrier Reef Marine Park is perhaps the most beautiful and important marine protected area on Earth. Its international significance is recognised by its listing under the World Heritage Convention. In fact, the Great Barrier Reef World Heritage Area is the largest world heritage property in the world.

The Great Barrier Reef also supports a thriving tourism industry and a fishing industry that is important to many regional communities along the Queensland coast.

The Howard government has a proud record of protecting the Great Barrier Reef. Over the last five years, we have taken a series of initiatives to enhance the conservation and management of the world heritage area. These initiatives include:

• We have extended the Great Barrier Reef Marine Park by more than 2400 square kilometres. Areas of important habitat for species such as dugong and turtles are now better protected. We are progressing inclusion of an additional 10 ‘excluded areas’.

• The Howard government has extended the prohibition of mining to the entire Great Barrier Reef region through regulations under the Great Barrier Reef Marine Park Act 1975.

• In 1997, we established the world’s first chain of dugong sanctuaries in the southern Great Barrier Reef.

• Surveillance and enforcement measures in the Great Barrier Reef Marine Park have been upgraded. Patrolling has increased substantially, focussing on dugong protected areas and ‘green zones’.

• Regulations have been introduced to deal with the discharge of waste from aquaculture operations. These regulations operate as a ‘safety net’ to protect the Great Barrier Reef from loopholes in Queensland legislation.

The Great Barrier Reef Marine Park Amendment Bill 2001 is further evidence of the Howard government’s commitment to the conservation of the Great Barrier Reef. The Bill provides increased protection for the Reef from the threat of negligent navigation and the risk of an oil spill or the discharge of other hazardous material. In addition, the Bill enhances protection for the Great Barrier Reef and the fishing industry by including strict provisions dealing with illegal fishing.

Last year, a Malaysian-registered vessel (the Bunga Teratai Satu) ran aground on the Great Barrier Reef. The accident was caused by negligence on the part of the operators of the vessel. Damage to the Reef – while significant – was fortunately restricted to an area of approximately 100 x 300 metres. Through a combination of good luck and an effective response from management agencies, an ecological disaster was averted.

The Bunga Teratai Satu incident highlighted the need for the Act to be strengthened. For example, the Great Barrier Reef Marine Park Act 1975 does not currently provide an offence for negligent navigation. In addition, the maximum penalty for the discharge of waste – including oil – is only $110,000 for a corporation.

The Great Barrier Reef Marine Park Amendment Bill 2001 represents a swift response to this incident by the Howard government.

The Bill creates a new offence dealing with negligent navigation. The offence applies if a vessel is operated in the Great Barrier Reef Marine Park in a manner that results in, or is likely to result in, damage to the Marine Park. The maximum penalty will be $1.1 million for a corporation. A strict liability offence is also included. The strict liability offence applies to the owner and the operator of a vessel where its operation results in damage to the Marine Park.
In addition, the Bill will increase the maximum penalty for the unauthorized discharge of waste into the Marine Park.

The existing maximum penalty under the *Great Barrier Reef Marine Park Act 1975* for the intentional or negligent discharge of oil and other hazardous material in the Marine Park is $22,000 for a person or $110,000 for a corporation. This penalty is manifestly inadequate given the significance of the Reef’s environmental values. It is also less than the existing penalty in similar State and Federal environment and maritime pollution legislation.

The Bill will increase the maximum penalty to $1.1 million for a corporation that negligently or intentionally discharges waste into the Marine Park. A strict liability offence is also introduced, with a maximum penalty of $275,000 for a corporation.

To complement the provisions dealing with the discharge of oil and other hazardous material, the Bill also introduces new offences covering the unlawful operation of ships – that is, the operation of ships in contravention of zoning plans, in the absence of relevant permits and in contravention of the conditions attached to a permit. Again, the maximum penalty is set at $1.1 million, and strict liability provisions are included.

Compulsory pilotage in the Great Barrier Reef was introduced in 1991. It is a vessel management tool that requires ships over 70 metres in length, or carrying cargoes of oil, chemicals or liquid gas to employ a licensed pilot to assist with the navigation of ships through areas of the Great Barrier Reef Marine Park. Compulsory pilotage areas have been declared for the inner shipping route north of Low Isles (which is north of Cairns) and Hydrographers Passage (offshore Mackay).

The *Great Barrier Reef Marine Park Act 1975* currently provides for compulsory pilotage areas to be defined in a Schedule to the Act. An amendment to the Act is therefore required whenever the pilotage areas are to be extended or altered. The Bill alters this position - to $220,000 for a person or $1.1 million for a corporation. The increase in fines is serious about protecting the Great Barrier Reef. I look forward to further measures to enhance the protection of the Reef as a result of that review. The Bill will ensure that any extensions to the compulsory pilotage area arising from that review can be immediately implemented.

The Bill also deals with the threat to the Great Barrier Reef from illegal fishing. The vast majority of fishermen conduct their activities honestly and in accordance with the rules. These fishermen and their families look after the environment of the Reef because it provides the basis for their livelihood. Illegal fishing damages the environment, threatening fish stocks and the reputation of the industry.

The Queensland government is responsible for the day-to-day management of fisheries in the Great Barrier Reef Marine Park. However, the Federal government has a responsibility to ensure that fishing is ecologically sustainable and is carried out in a manner that is consistent with the conservation of world heritage values. Accordingly, the *Great Barrier Reef Marine Park Act 1975* provides a framework within which activities such as fishing are regulated through zoning plans, regulations and so on.

A recent CSIRO investigation revealed that 40-50 fishermen regularly illegally trawl in the major ‘green zone’ in the Far Northern Section of the Marine Park. Trawling is not permitted in green zones. This evidence, and other evidence of unlawful fishing, demonstrates that the existing penalties for illegal fishing under the *Great Barrier Reef Marine Park Act 1975* are inadequate. It also provides further evidence that the Queensland government is failing to adequately discharge its responsibilities to manage fishing in the Great Barrier Reef Marine Park.

In response to the evidence of illegal fishing, the Howard government has provided funding to substantially boost compliance and enforcement measures on the Reef. This Bill represents another step to combat illegal fishing. The amendments to the *Great Barrier Reef Marine Park Act 1975* will increase the maximum penalty for illegal fishing – including fishing in contravention of a zoning plan - to $220,000 for a person or $1.1 million for a corporation. The increase in fines demonstrates that the Commonwealth Government is serious about protecting the Great Barrier Reef and preventing pirate fishermen putting at risk the livelihood of honest fishing families.

In practice, the maximum penalties are likely to be reserved for serious cases involving intentional breaches of the law.
The amendments do not alter the fact that day-to-day management of the fishing industry is the responsibility of the Queensland government.

Finally, the Bill contains some minor and technical amendments that deal with matters such as the relationship between regulations and zoning plans.

The Bill will significantly enhance the conservation and protection of the Great Barrier Reef. It will benefit not only the environment, but also the tourism and fishing industries that rely on the Great Barrier Reef. As such, it deserves the support of all parliamentarians.

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

BUSINESS

Consideration of Legislation

Motion (by Senator Ian Campbell) proposed:

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:

- Petroleum (Submerged Lands) Legislation Amendment Bill 2001
- Petroleum (Submerged Lands) (Registration Fees) Amendment Bill 2000
- Coal Industry Repeal Bill 2000

Senator BROWN (Tasmania) (9.37 a.m.)—by leave—We have here four bills being exempted from the cut-off order. This process has suddenly become a flood from the government. I ask senators to look back at the reason for the cut-off, the debate that took place and the Senate’s decision to have the cut-off there, which was to not just enable members to be able to adequately assess legislation before it was dealt with in the Senate but also allow referral to the community so that it could have input. This has been violated at an increasing rate. It concerns me greatly. I am very aware that the Greens—in particular, former Senator Christabel Chamarette—took a big role in getting this particular provision put into the standing orders in the mid-nineties.

Senator Faulkner—She did. I made some outstanding speeches on this matter.

Senator BROWN—Senator Faulkner was very much to the fore in ensuring that this good practice was instituted.

Senator Faulkner—No, I actually opposed it.

Senator BROWN—As he has just said, he was the best that could be brought against former Senator Chamarette at the time, and in doing so he aided the passage of the provision through the Senate.

Senator Ian Campbell—Actually, Wilson Tuckey gave Christabel the idea.

Senator BROWN—Wherever it came from, it was a good idea. All I want to say here is that it is being violated. I am not going to allow that to continue to happen as readily as it is now. I do not move to block formality easily—I do not know that I have ever done it. But I am being tempted sorely here. It is not good practice; it is bad parliamentary practice. It should not be used in the way it is. We saw yesterday a piece of legislation come in and go through the Senate on the same day. How on earth is the community going to be consulted in a process that is happening as rapidly as that? Provision 111 is to ensure that, if we are getting towards the end of sittings, the piece of legislation is held over until the next sitting—in this case it would be May-June—so that there can be adequate consideration. It is a very sensible provision, notwithstanding Senator Faulkner’s point of view on it.

Senator Faulkner—It’s ancient history.

Senator BROWN—It is contemporary history that I am talking about now, though. I draw the Senate’s attention to it, because there will be some action taken if this keeps going.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.41 a.m.)—by leave—The general proposition that Senator Brown has put forward in terms of the desirability of the cut-off order is right. In principle, it would certainly make life easier for the government not to have to have it, as the former manager, Senator Faulkner, would have agreed at the time when he was the manager.
in government. As a general principle, ensuring that the community has access to the legislation and is able to review it is clearly a very good thing and makes the Senate one of the world’s best houses of review. I believe one of these bills was introduced in June 2000, so it has been before the parliament for close to a year now. Another one was introduced in December. In fact, it was open to any senator to seek a referral of any of those bills to a committee from that time.

Senator Brown—They were not here.

Senator IAN CAMPBELL—No, but it is open to any senator to seek a referral, either through the selection of bills process or from the floor of the Senate, if they think that any bill requires greater scrutiny than it would receive through the normal processes without going into a Senate committee. These bills also, it should be noted, have all been listed for debate at the 12.45 timeslot, which has become colloquially known as the non-controversial timeslot. To make it into that timeslot you have to get all 76 senators, including Senator Brown—and I am not seeking to tempt you here—to agree that they will proceed without any divisions.

The general principle I can do nothing but support, Senator Brown. I think you are right in general principle, but these bills in particular are not good examples of ones where we are seeking to use the exemption from the cut-off order in a flagrant sort of way. We realise that to get the cut-off order we do need significant support, and to list bills for non-controversial consideration we need 100 per cent support. So the government is very careful in using this. The only reason we have had to seek the cut-off is that, although the bills were introduced many months ago to the parliament, they have arrived in the Senate relatively late in the sittings. It means that we can deal with these measures prior to the six-week adjournment. I thank Senator Brown and all honourable senators for their support for this motion.

Question resolved in the affirmative.

NOTICES

Presentation

Senator CALVERT (Tasmania) (9.37 a.m.)—by leave—On behalf of Senator Coonan, on behalf of 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—

2. Guidelines for Detention of, Dealing with, and Disposal of Drug like substances made under subsection 99ZS(1) of the National Health Act 1953.


Senator CALVERT—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 Management Amendment Regulations 2001 (No. 2), Statutory Rules 2001 No. 22

The Regulations provide new procedures for public notification of determinations regarding logbooks made by the Australian Fisheries Management Authority. New subregulation 32(6) gives AFMA the choice of either publishing in a newspaper a notice of the making of a determination (but not the entire determination itself), or sending a copy of the entire determination by post to each holder of a relevant fishing licence. The Committee has written to the Minister seeking clarification on the factors that determine when either of these procedures would be used.
Guidelines for Detention of, Dealing with, and Disposal of Drug like substances and Health Insurance Commission Export of Pharmaceutical Benefits Guidelines made under subsection 99ZS(2) of the National Health Act 1953

These Guidelines specify guidelines for the Australian Customs Service and the Health Insurance Commission concerning the export of Pharmaceutical Benefits Scheme Prescription Drugs.

These two sets of guidelines appear to be complementary, dealing with the procedures to be adopted by the Customs Office and the Health Insurance Commission (HIC), respectively. The Customs guidelines provide that where drugs are detained they will be placed in an approved Customs evidence bag and sealed. The guidelines then state that “Where HIC staff are immediately available to take control of the drugs, this will not be necessary”. The Customs guidelines do not indicate why an evidence bag is not necessary in the latter case. The answer may be supplied by item 3.3 of the HIC guidelines, which states that “the Commission officer shall ensure the security of the drug like substance once in their possession for conveyance to the Commission office”, and item 3.4 which states that prior to drugs being conveyed to the Commission, “the Commission officer will place the suspected drug like substance/s in a tamper proof bag” which is then sealed. The Committee has written to the Minister seeking clarification on the operation of these procedures and an assurance that drugs which are detained are secured from tampering at all stages before they are examined by the Commission.

Interstate Road Transport Amendment Regulations 2001 (No. 1), Statutory Rules 2001 No. 15

The Regulations make new provisions governing the suspension of registration of a motor vehicle or trailer registered under the Interstate Road Transport Act 1985. The Explanatory Statement notes that the amendment in item 7 to subregulation 52(1) is required, in part, because of a misdescription in regulation 12 of Statutory Rules 1996 No. 250. That misdescription concerned regulation 12ZAB. However, regulation 12 of the 1996 Statutory Rules also refers to regulation 12ZAB. Hence it is not clear what error it is that the present amendment seeks to rectify. The Committee has written to the Minister seeking clarification on this reason for this amendment.

Radiocommunications Licence Conditions (Broadcasting Licence) Amendment Determination 2001 (No. 1) made under paragraph 107(1)(f) of the Radiocommunications Act 1992

The Determination imposes a new ‘use it or lose it’ condition on low power open narrowcasting licences. Paragraph 4.11(1)(b) of the amended Determination requires a licensee to provide the low power narrowcasting service “with reasonable regularity” for the period specified in the licence. The Committee has written to the Minister seeking his advice on the meaning of “reasonable regularity” in this context.

States Grants (Primary and Secondary Education Assistance) (SES Scores Guidelines) Approval 2000 made under section 7 of the States Grants (Primary and Secondary Education Assistance) Act 2000

The instrument approves guidelines for the determination of an SES (socioeconomic status) score for a school. Clause 3 provides that each student residential address contained in the statement of addresses is to be geocoded unless it is not reasonably practicable to geocode that address. The Committee has written to the Minister seeking his advice on the circumstances where it would be impracticable to geocode addresses.

Senator CALVERT (Tasmania) (9.44 a.m.)—On behalf of Senator Coonan, on behalf of the Standing Committee on Regulations and Ordinances, I give notice that at the giving of notices on the next day of sitting I shall withdraw business of the Senate notice of motion No. 4 standing in her name for 12 sitting days after today for the disallowance of the Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 1) made under subsection 203AD(1) of the Native Title Act 1993. I seek leave to incorporate in Hansard the committee’s correspondence concerning this instrument.

Leave granted.

The document read as follows—

Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 1) made under subsection 203AD(1) of the Native Title Act 1993

1 March 2001

The Hon Philip Ruddock MP

Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs

Parliament House

CANBERRA ACT 2600

Dear Minister

I refer to the Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 1) made under subsection 203AD(1) of the Native
Title Act 1993, that recognises the Cape York Land Council as the representative Aboriginal/Torres Strait Islander body for the area of Cooktown.

This recognition was signed by the Minister on 16 January 2001, but is expressed to have taken effect on the previous day, 15 January 2001. The Committee seeks your advice on the reason for this retrospective commencement date.

The Committee would appreciate your advice as soon as possible but before 28 March 2001 to enable it to finalise its consideration of these determinations. Correspondence should be directed to the Chair, Senate Standing Committee on Regulations and Ordinances, Room SG 49, Parliament House, Canberra.

Yours sincerely
Helen Coonan
Chair

Senator Helen Coonan
Chair
Standing Committee On Regulations And Ordinances
Parliament House
CANBERRA ACT 2600
14 March 2001
Dear Senator Coonan

You wrote to me on 1 March 2001 about an instrument, Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 1), made by MY predecessor under subsection 203AD(1) of the Native Title Act 1993 (the Act). The instrument recognises the Cape York Land Council as the representative body for the Queensland Cooktown invitation area.

Your letter notes that the instrument was signed by my predecessor, Senator the Hon John Herron, on 16 January 2001 but is expressed to have taken effect on the previous day. The Committee has sought my advice on the reason for this retrospective commencement date.

I am advised by the Aboriginal and Torres Strait Islander Commission (ATSIC) 'that the use of the retrospective date of commencement specified in the instrument, 15 January 2001, was inadvertent and is a mistake.

ATSIC has sought the advice of the Australian Government Solicitor (AGS) about the implications of the instrument’s retrospective commencement date. The AGS has expressed the view that the power to recognise bodies as representative bodies under section 203AD of the Act cannot be exercised retrospectively. The AGS also advised that it does not, however, follow that the instrument is invalid. In AGS’s view, a number of provisions of the Acts Interpretation Act 1901 apply in this instance such that the date on which the instrument takes effect is not the date in the Instrument itself but rather the date of its Gazettal. That date was 14 February 2001.

As the Minister responsible for the relevant provisions in the Native Title Act which provide for the recognition of Native Title Representative Bodies, I see no reason not to accept the advice given by the Australian Government Solicitor. Accordingly, I do not propose to take any further action in this matter.

Yours sincerely
Philip, Ruddock

29 March 2001
The Hon Philip Ruddock MP
Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs
Parliament House
CANBERRA ACT 2600
Dear Minister

Thank you for your letter dated 14 March 2001 responding to the Committee’s concerns with the instrument Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 1).

The Committee notes your advice that the commencement date specified in the instrument was a mistake and that the Australian Government Solicitor (AGS) advised the Act did not allow for such recognition to be exercised retrospectively. The Committee notes further that the AGS advised that provisions of the Acts Interpretation Act 1901 applied in this instance and that the instrument was accordingly valid. The Committee would appreciate receiving a copy of this advice to enable it to inform itself properly about the circumstances of this instrument.

The Committee also seeks your advice on whether the Cape York Land Council incurred any liabilities or made any decisions prior to the date the instrument was notified in the gazette.

The Committee appreciates that it may be difficult to respond promptly to its further concerns before 2 April 2001 which is the last sitting day on which a notice of motion to disallow may be given. If this is the case, the Committee proposes to proceed with a notice of motion to disallow in order to preserve its options while it awaits your response on the above matters. Correspondence should be directed to the Chair, Senate Standing
Committee on Regulations and Ordinances, Room SG 49, Parliament House, Canberra.

Yours sincerely
Helen Coonan
Chair

Senator Helen Coonan
Chair
Standing Committee On Regulations And Ordinances
Parliament House
CANBERRA ACT 2600
2 April 2001
Dear Senator Coonan

You wrote to me on 29 March 2001 about an instrument, Recognition of Representative Aboriginal/Torres Strait (slander Body 2001 (No. 1), made by my predecessor under subsection 203AD(1) of the Native Title Act 1993 (the Act). The instrument recognises the Cape York Land Council as the representative body for the Queensland Cooktown invitation area.

You previously wrote to me about this matter on 1 March 2001 and I responded on 14 March. Your most recent letter requests a copy of the advice from the Australian Government Solicitor (AGS) about this matter to enable the Committee to inform itself properly about the circumstances of the instrument. I have attached a copy of that advice for the Committee’s information.

The Committee has also sought advice about whether the CYLC “Incurred any liabilities or made any decisions prior to the date the instrument was notified in the gazette”.

Section 203FE of the Native Title Act 1993 allows the Aboriginal and Torres Strait Islander Commission (ATSIC) to fund a person or body to perform, in respect of a specified area for which there is no representative body, all the functions of a representative body.

I am advised by ATSIC that the CYLC was funded under section 203FE of the Act to perform all the functions of a representative body from 1 July 2000 (when its previously determined status as a representative body expired) until the time that the instrument of recognition took effect on 14 February 2001. ATSIC, has also advised that previous advice from the AGS indicates that, prima facie, bodies funded under section 203FE of the Act are able to perform all of the functions of a representative body. An example of where this may not be the case is that a 203FE funded body probably cannot become a party to an alternative procedure Indigenous land use agreement. The CYLC has advised ATSIC that it is not a party to any such agreements nor is it aware of any other instances where it has incurred liabilities or made decisions that would be outside of the scope of its functions under section 203FE of the Act.

I trust that the above information satisfies any concerns the Committee may have in relation to the CYLC instrument of recognition. I consider that a disallowance motion is difficult to justify in the prevailing circumstances. It was the then Minister’s clear intention to recognise the CYLC as the representative body for the Cooktown area and the AGS advice indicates that the instrument of recognition is legally effective from the date of gazettal. It is also possible that significant detriment would flow to the CYLC and claimants should the instrument be disallowed. I consider that disallowance would be a punitive measure in response to what is in effect only a technical fault in relation to the making of the instrument. Accordingly, I urge the Committee to not proceed with a notice of motion to disallow the instrument.

Thank you for writing to me about this matter.
Yours sincerely
Philip Ruddock

Your ref: 00/2401
Our ref: 2001008502
8 March 2001
Mr Joe Kilby
Corporate Law Section
Aboriginal and Torres Strait Islander Commission
PO Box 17
WODEN ACT 2606
Dear Mr Kilby

Recognition of Representative Body – Section 203AD of the Native Title Act 1993

1. We refer to your letter of 2 March 2001.

Background

2. Section 203AD(1) and (2) of the Native Title Act 1993 (the NTA) provides as follows:

(1) The Commonwealth Minister may, by written instrument, recognise, as the representative body for an area, an eligible body that has applied under section 203AB to be the representative body for the area if the Commonwealth Minister is satisfied that:

(a) the body will satisfactorily represent persons who hold or may hold native title in the area; and
(b) the body will be able to consult effectively with Aboriginal peoples and Torres Strait Islanders living in the area; and

c) if the body is already a representative body—the body satisfactorily performs its existing functions; and

d) the body would be able to perform satisfactorily the functions of a representative body.

(2) The recognition of the body as a representative body takes effect on the day specified in the instrument of recognition. However, that day must not precede the day on which Division 3 commences.

Division 3 commenced on 1 July 2000.

3. An instrument under s.203AD is a disallowable instrument for the purposes of s.46A of the Acts Interpretation Act 1901 (the AI Act): s. 214(b) of the NTA.

4. On 16 January 2001 the former Minister for Aboriginal and Torres Strait Islander Affairs signed an instrument recognising the ‘Cape York Land Council’ as the representative body for the area described in Schedule 1 to the instrument. The instrument of recognition stated that:

This recognition takes effect on 15 January 2001.

5. We are advised that the instrument was notified in the Gazette on 14 February 2001.

6. The Senate Standing Committee on Regulations and Ordinances has sought advice on the reason for the retrospective commencement date.

7. The ‘Applicant’s Certificate and Statutory Declaration’ accompanying the application for recognition as a representative body for the area contain a number of references to the ‘Cape York Land Council’. However, the Common Seal that was affixed to the Applicant’s Certificate was of the ‘Cape York Land Council Aboriginal Corporation’. The Cape York Land Council is not registered as a business name.

Questions and Answers

8. Your questions and our summary answers to them are as follows:

1. Q. What are the legal implications of the retrospecity of the instrument of recognition?
A. The instrument is legally effective, but only from the date of its notification in the Gazette.

2. Q. Are there any other concerns regarding the instrument of recognition?
A. The instrument refers to a non-existent entity, but this does render it invalid. It would be possible for a corrected copy of the instrument to be issued in the name of the Cape York Land Council Aboriginal Corporation and there may be merit in doing so.

Reasons

Question 1

9. In our view, s. 203AD does not confer a power on the Commonwealth Minister to specify a date of effect that is before the day on which the instrument is signed. Were it to do so, the representative body would have imposed on it powers and functions that, at the relevant time, it did not know about and could not and did not perform (for example, certification functions in respect of native title determination applications and applications for the registration of indigenous land use agreements (s. 203BA)). Failure to satisfactorily perform its functions is a ground for withdrawing the recognition of a representative body (s. 203AH(2)(a)). Furthermore, directors and executive officers of the representative body would be subject to provisions of the Commonwealth Authorities and Companies Act 1997 from the earlier date (ss. 203EA and 203EB of the NTA).

10. Also, were it to do so, 3rd parties would have had imposed on them obligations which they did not know about and could not and did not perform, obligations which required the involvement or participation of a representative body; for example, the giving of notice to a representative body under s. 29(2)(b)(ii) in respect of acts attracting the ‘right to negotiate’. Failure to perform these obligations may have had significant implications.

11. These factors strongly suggest that the power in s.203AD cannot be exercised retrospectively.

12. In our view, the statement in s. 203AD(2) that recognition must not precede the date on which Division 3 of Part II commences reflects the fact that s.203AD, which is in Division 2, commenced operation before Division 3 (see ss. 2(2), (3) and (4) of the Native Title Amendment Act 1998). The reason for this staged commencement was to provide a period (called the ‘transition period’) during which preparations could be made for the commencement of the new regime for representative bodies and during which those bodies which would operate under the new regime could be recognised. This interpretation is supported by the clause notes for s. 203AD(2), contained in the Explanatory Memorandum for the Native Title Amendment Bill 1997:

When does recognition take effect?

33.58 The Minister may set the day on which recognition takes legal effect in the instrument of recognition, so long as that day does not precede
that (sic) end of the transition period [subsection 203A(9)(2)]. One of the purposes of this provision is to enable the Minister to make instruments recognising bodies as representative bodies in the course of the transition period, to take effect at the end of that period. This will enable the affected bodies to prepare in advance for the requirements of the new regime.

13. However, it does not follow that the instrument has no effective operation at all. In our view, a number of provisions of the AI Act apply to allow the instrument effect from the day of its Gazettal.

14. Section 46(1)(b) of the AI Act provides as follows:

46 (1) Where an Act confers upon an authority power to make, grant or issue any instrument (including rules, regulations or by-laws), then:

(b) any instrument so made, granted or issued shall be read and construed subject to the Act under which it was made, granted or issued, and so as not to exceed the power of that authority, to the extent to which it is not in excess of that power.

15. Applying s.46(1)(b), in our view the retrospective operation of the instrument should be read down, so that it did not come into operation before the day it was signed.

16. Further, because the instrument is a disallowable instrument, s.48 of the AI Act applies to it (s.46A(1)(a) of the AI Act). This means that the instrument must be notified in the Gazette (s.48(1)(a) of the AI Act) and that (relevantly) it ‘shall, subject to this section, take effect from … a specified date … [or] in any other case–the date of notification’ (s.48(1)(b)(i) and (iv) of the AI Act).

17. The qualification ‘subject to this section’ in s.48(1)(b) is important. Under s.48 (2) of the AI Act, the instrument will be:

of no effect if, apart from this subsection, it would take effect before the date of notification and as a result:

(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of notification would be affected so as to disadvantage that person; or
(b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification.

18. It is generally assumed that ‘rights’ in this context means acquired or accrued rights existing at the date of notification of the instrument, not simply any interest which, to however slight a degree or in whatever aspect, the law recognises and protects: The Commonwealth v Welsh (1946) 74 CLR 245, at 268. The meaning of ‘liability’ was discussed in Ogden Industries Pty Ltd v Lucas (1967) 116 CLR 537, at 548 where Windeyer J said:

It seems to me that without descending to too much refinement there are at least three main senses in which lawyers speak of a liability or liabilities. The first, a legal obligation or duty: the second the consequence of a breach of such obligation or duty: the third a situation in which a duty or obligation can arise as the result of the occurrence of some act or event.

(see also Tefonu Pty Ltd v ISC (1993) 44 FCR 361 (Tefonu), at 368-69 per Beazley J).

19. Having regard to the matters referred to in paragraphs 9 and 10 above, the instrument might have had an effect proscribed by s.48(2). If that is the case, in our view the instrument is only wholly invalid if the retrospective operation is an ‘essential part of the scheme embodied in’ the instrument: Broadcasting Co. of Australia Pty Ltd v The Commonwealth (1935) 52 CLR 52, at 60. Otherwise, the instrument can be read down so as to make it valid from the date of its notification: Toowoomba Foundry Pty Ltd v The Commonwealth (1945) 71 CLR 545, at 568, 574-75 and 586-87; Tefonu 44 FCR, at 386; see also Pearce and Argument, Delegated Legislation in Australia, 2nd Ed. at 358.

20. In our view, the retrospective operation of the instrument is not an essential part of the scheme. Therefore, the instrument does operate from the date of its notification, namely, 14 February 2001.

**Question 2**

21. On the assumption that there is no such body as the Cape York Land Council, we consider that established legal principle would allow the reference to the ‘Cape York Land Council’ to be read as a reference to the ‘Cape York Land Council Aboriginal Corporation’.

22. The ‘slip rule’ applies where an instrument contains a manifest error and the author’s intention is plain, and allows the instrument to be read so as to accord with that intention - see Lindner v Wright (1976) 14 ALR 105; Pearce and Geddes, Statutory Interpretation in Australia, 4th Ed. (1996) at p.36. The minimum requirements for
the application of the rule are that it is clear that
an error (rather than, eg., an unexpected decision)
has been made, and that the drafter’s intention is
clear by reference to objective facts. In the pres-
ent case, it is clear that an error has been made,
and it is also clear from the relevant extrinsic
circumstances what the correct reference should
have been.

23. The same result can be reached by the ap-
plication of the principle that a false description
does not vitiate a document: Wingadee Shire
Council v Willis (1910) 11 CLR 123, at 144 and
147-48; Re Brown and Acting Commissioner for
Superannuation (1981) 3 ALD 185 (Re Brown),
at 192-93). Under this principle, if part of a de-
scription in a document is true and part false, as
long as the true part describes the subject with
sufficient certainty, the untrue part will be re-
jected or ignored. In the present case, it appears
that the description in the instrument, although
inaccurate, describes the proper recognised body
with sufficient certainty to allow the body to be
correctly identified.

24. The instrument is valid and effective not-
withstanding the misdescription contained in it,
and there is no legal requirement to take action to
correct the error. However, this may be the prefer-
able course for presentational purposes. In our
view, it would not be possible to revoke and reis-
sue the instrument, or amend or vary it, to insert
the correct name, in reliance on s.33(3) of the AI
Act. Section 33(3) permits an instrument made
under a power conferred by an Act to be repealed,
rescinded, revoked, amended or varied but its
operation is subject to a contrary intention ap-
ppearing. The NTA probably evinces a contrary
intention: see ss. 203AE, 203AF, 203AG and
203AH.

25. In our view, however, the common law al-
loows the correction of the error (Re Brown 3
ALD, at 191). We do not see any objection to a
corrected and appropriately marked copy of the
original instrument being forwarded to the body
(Kershaw v Cox (1800) 3 Esp. 246 and Byrom v
Thompson (1839) 11 Ad & E 31).

26. Please contact us if you wish to further dis-
uss this advice.

Yours sincerely
Robert Orr QC Peter Jeffery
Deputy General Counsel Senior General Counsel
Australian Government Solicitor Australian
Government Solicitor
Tel: (02) 6253 7129 Tel: (02) 6253 7091
Fax: (02) 6253 7304 Fax: (02) 6253 7317

COMMITTEES
Community Affairs References Committee
Extension of Time
Motion (by Senator O’Brien, on behalf of
Senator Crowley) agreed to:
That the time for the presentation of the report
of the Community Affairs References Committee
on child migration be extended to 30 August

HIGHER EDUCATION: PROVIDERS
Motion (by Senator Carr) agreed to:
That the Senate—
(a) notes, with deep concern, the appearance
on 4 April 2001, in one of Australia’s
leading journals of higher education, the
Australian Higher Education
Supplement, of an advertisement seeking
Australian students for Washington
International University, a notorious
Pennsylvania-based degree mill, one of
many pseudo-universities touting for
students here and taking advantage of
Australia’s negligence in protecting Australia’s reputation as a
quality provider of education;
(b) notes that this advertisement provides
clear evidence of unaccredited
universities seeking to deliver degrees in
Australia via the Internet;
(c) calls on the Government to defend the
interests of Australian students, as well
as Australia’s reputation as a provider of
quality education, by strictly enforcing
the Australian qualifications framework
and the national protocols for higher
education approval processes; and
(d) notes the failure of the Minister for
Financial Services and Regulation
(Mr Hockey) to act since receiving
correspondence from the Department of
Education, dated 12 October 2000,
proposing further safeguards for
universities through improved levels of
protection for the word ‘university’, and
calls on the Minister to act decisively to
reinforce and reaffirm existing safe-
guards for Australia’s tertiary education
system.

RECONCILIATION BILL 2001
First Reading
Motion (by Senator Ridgeway) agreed to:
That the following bill be introduced: A Bill for an Act to further advance reconciliation between Aboriginal and Torres Strait Islander peoples and all other Australians, by establishing processes to identify, monitor, negotiate and resolve unresolved issues for reconciliation, and for related purposes.

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

Bill read a first time.

Second Reading
Senator RIDGEWAY (New South Wales) (9.47 a.m.)—I table the explanatory memorandum and move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—
I am very honoured to introduce the Reconciliation Bill 2001 in the Senate today on behalf of the Australian Democrats.

It is very much a product of the reconciliation process that came into its own a decade ago when the Australian Parliament unanimously agreed to establish the Council for Aboriginal Reconciliation.

That decade of work to advance the goal of reconciliation has produced many outcomes that all Australians can be proud of; I mention just two:
1. After years of public consultation, the Council for Reconciliation released the Australian Declaration Towards Reconciliation and the Roadmap for Reconciliation at Corroboree 2000 in the Sydney Opera House last year. The Roadmap sets out four national strategies identifying ways governments, community groups, organisation and individuals can implement the principles of the Declaration to help improve the lives of Aboriginal and Torres Strait Islander peoples and achieve reconciliation.
2. It is now widely acknowledged that the awareness-raising and consultative work that the Council performed over the decade has generated a genuine ‘people’s movement for reconciliation’, as was evidenced by the hundreds of thousands of Australians who walked across bridges in 2000 to very graphically show their support for the need for reconciliation.

However positive and inspiring these outcomes are, many issues remain that the Council for Reconciliation was not able to address or resolve, and these matters continue to stand in the way of the achievement of reconciliation. As the Council noted in its Final Report to the Prime Minister and the Commonwealth Parliament (2000:77),

“Australia will not become a reconciled nation while there are differences in social and economic outcomes between Aboriginal and Torres Strait Islander peoples and other Australians, and [while there is] a perception that Aboriginal and Torres Strait Islander peoples are denied their rights.”

In addition to determining whether reconciliation would be advanced by formal documents of reconciliation, such as the Declaration and the Roadmap, the Council for Reconciliation was also given a legislative requirement to recommend a ‘means of giving effect to’ its reconciliation documents. On the basis of its own deliberations, public consultations and expert advice, the Council decided that legislation would be an appropriate means of giving effect to its documents.

The Australian Democrats wholeheartedly supported the establishment of the Council for Reconciliation by the Commonwealth Parliament in 1991. Since that time, a Democrats Senator has always been a member of the Council and closely involved in the work it has conducted. We therefore feel very strongly about the need to maintain the momentum of the ‘people’s movement for reconciliation’ that the Council was instrumental in fostering, and to provide whatever political impetus we can to implement the recommendations and policy framework that Council has entrusted to all Australians.

It should therefore come as no surprise that following my membership of the Council for Reconciliation, I now table the reconciliation legislation that was drafted for the Council, and I call on the Australian Parliament to support this bill.

The Reconciliation Bill is designed to further advance reconciliation between Aboriginal and Torres Strait Islander peoples and all other Australians, by establishing processes to identify, monitor, negotiate and resolve unresolved issues for reconciliation.

The Preamble sets out the background to the Act and provides the context and principles that led to its enactment. It can be used as an aid to interpretation for other sections of the Act. The Council for Aboriginal Reconciliation identified the following matters for inclusion in a Preamble:
- the status of Aboriginal and Torres Strait Islander peoples as Australia’s first peoples
- that reconciliation is an on-going process and that there are issues that are unresolved
reference to the work of the Council for Aboriginal Reconciliation, including its strategies and final report to Parliament

- the importance of developing partnerships between Aboriginal and Torres Strait Islander peoples and the wider community

- the desirability of a whole-of-government approach to ongoing reconciliation.

The proposed Preamble integrates the Preamble of the Council for Aboriginal Reconciliation Act 1993 with these principles identified by the Council, and draws upon the proposed preamble to the Aboriginal and Torres Strait Islander Commission Bill and the preamble to the Native Title Act 1993.

The bill does not provide a definition of reconciliation and recognises that this is inherently difficult. Instead, the Council's vision for reconciliation provides the basis for a definition.

The definition for the unresolved issues for reconciliation was also difficult and for this reason it has been left deliberately general to avoid pre-empting the matters that will be identified by the processes contained in the Act. They may include, but are not limited to:

- the recognition of the right to equality;

- the protection of Aboriginal and Torres Strait Islander culture, heritage and intellectual property;

- the recognition of Aboriginal and Torres Strait Islander customary law;

- a comprehensive agreements process for the settlement of native title and other land claims;

- regional autonomy; and

- constitutional recognition.

**Part 2** of the bill seeks to recognise the unique status of Aboriginal and Torres Strait Islander peoples and incorporates the Australian Declaration Towards Reconciliation via Schedule 1. The Declaration provides a starting point for the recognition of the place of Aboriginal and Torres Strait Islander peoples in Australian society.

**Part 3** of the bill puts in place a process to identify and resolve issues for reconciliation. At the heart of this process are the National Reconciliation Conventions to identify and prioritise issues for discussion, and to debate and develop strategies to overcome those matters that constitute the unresolved issues for reconciliation.

The Conventions are the centrepiece of the legislation. They provide a forum for vigorous debate with a view to achieving outcomes in relation to unresolved issues. It is proposed that the Conventions take place every three years for a period of 12 years to allow sufficient time for a network of these events to be held in the lead up to each National Reconciliation Convention.

It is envisaged that these Conventions will provide a model for State, regional and even local conventions that will address issues at those levels. In this legislation, the National Conventions are established in a way that will allow other complementary mechanisms to feed into the cycle of consultation, preparation and follow-up. The functions that have been set down reflect the need for extensive consultation prior to the Conventions, the need to allocate responsibility and make recommendations, and to take follow up action and report back to the next Convention.

It is necessary that some body take responsibility for the organisation of the Conventions, whether it be ATSIC or another government department. However, it is imperative that the Conventions not be seen to be focused solely on one agenda. It is hoped that the Conventions would be attended by delegates from diverse backgrounds who contribute to a debate about reconciliation. They are an opportunity for debate with the aim of bringing together a variety of views in order to reach achievable plans for action that will be adopted and followed through.

The model put forward here places responsibility for the organisation of the National Reconciliation Conventions on ATSIC and ensures that there is input into the attendance and agenda by the government, representatives of the Aboriginal and Torres Strait Islander peoples, and representatives of the wider community. While it is not possible to provide for resourcing of the Conventions in this legislation, it is essential that sufficient funds be allocated to the organising body to ensure that the Conventions adequately fulfil their aims.

**Part 4** of the bill establishes a process that allows Aboriginal and Torres Strait Islander peoples and government to begin negotiations to develop an agreement or treaty that clearly sets out how the nation will address the unresolved issues for reconciliation. Although many of the ideas surrounding the negotiations at this national level are complex and may require further development and analysis before outcomes can be identified, it is intended that the negotiation process will help to unite all Australians.

It is timely to capture the sense of urgency and goodwill engendered by the reconciliation process to begin the process of negotiation. It is also imperative that there is a linkage in the legislation between these formal negotiations and the development of priorities and initiatives in the wider
community, including the National Reconciliation Conventions.

The legislation requires that the negotiations between the parties commence by 31 December, 2001 at the latest, and it apportions responsibility in this respect to both the Prime Minister and ATSIC. It should be noted that ATSIC has a responsibility to assist in facilitating the negotiations; the legislation does not require ATSIC to be a party to the negotiations.

Importantly, the legislation requires the parties to the negotiations to agree on a set of principles or protocols to guide the negotiations. It seeks to ensure that negotiations take place in the spirit of good faith, that Government and Aboriginal and Torres Strait Islander protocols are in place and that negotiations are adequately resourced to ensure equitable participation by the parties. The protocols in the proposed legislation are informed by the reports on the Social Justice package, in particular the report of the Aboriginal and Torres Strait Islander Commission, Rights Recognition and Reform, as well as the findings of the Canadian Royal Commission on Aboriginal peoples which directly addressed this issue. However, the provision also provides scope for the inclusion of other protocols, as agreed between the parties, to guide the negotiations. It is intended that this provision will be a model for negotiations at other levels.

**Part 5** of the legislation establishes a reporting procedure to monitor the progress towards reconciliation. It comprises three elements:

- A yearly report on the general progress towards reconciliation in the context of Aboriginal and Torres Strait Islander peoples’ enjoyment of human rights, which will be included in the annual report by the Aboriginal and Torres Strait Islander Social Justice Commissioner;
- a three yearly National Report on the Progress Toward Reconciliation prepared by an independent body or taskforce appointed by the Minister. This detailed report on progress will include an assessment of key indices, and will ensure there is an ongoing, regular monitoring process by the Commonwealth Parliament. In deciding on this model care has been taken not to overburden the process with reports. Where possible, existing reporting structures have been augmented rather than new reporting structures created; and
- the establishment of a Joint Parliamentary Committee on Reconciliation, consisting of five Members of the Lower House and five Senators. This measure ensures that the Commonwealth Parliament takes responsibility for, and has an appropriate mechanism to assess, the progress of reconciliation. The legislation provides that the powers and procedures of the Committee are to be determined by the resolution of both houses of parliament, ensuring consensus and agreement on those issues, and continuing the multi-party support for and involvement in reconciliation that has been crucial to the process to date. The legislation lists the duties of the Parliamentary Joint Committee, which include consultation with Aboriginal and Torres Strait Islander peoples and organisations, all levels of government, and other appropriate bodies, which may include the foundation ‘Reconciliation Australia’.

The Parliamentary Joint Committee will also, as part of its duties, review the reports on the progress towards reconciliation. To allay concerns of over-reporting, the Parliamentary Joint Committee has not been charged with a regular report, but may report from time to time.

In closing, I would like to refer back to the words of the Minister for Aboriginal and Torres Strait Islander Affairs, Mr Robert Tickner, in the second reading speech he delivered to introduce the Council for Aboriginal Reconciliation Bill 1991.

The then Minister’s words are equally relevant today, a decade after the conclusion of the Royal Commission into Aboriginal Deaths in Custody, and a decade after the establishment of the Council for Aboriginal Reconciliation:

“It was of considerable significance that Commissioner Elliott Johnston, QC, in the Royal Commission’s five-volume national report, described the reconciliation process, now reflected in this Bill, as ‘the fundamental backdrop to reform and change’, and commented that ‘reconciliation of the Aboriginal and non-Aboriginal communities must be an essential commitment of all sides if change is to be genuine and long term’.”

In that speech, the Minister went on to acknowledge that:

“Unless all levels of government cooperate to redress Aboriginal disadvantage, Aboriginal people will remain, on all relevant social indicators, the most disadvantaged Australians.”

It is to the credit of the Australian Parliament that the reconciliation process in this country has a history of strong multi-party support. In tabling this bill, the Australian Democrats are again calling on the Parliament to reaffirm its commitment to the concept of reconciliation, but also to the realisation of effective outcomes that deliver the
“genuine and long-term change” that reconciliation is contingent upon. We also call on the Government to be forthcoming with adequate funding to allow the full implementation of the legislation.

I would like to acknowledge that the concept of reconciliation has been well and truly embraced in Australia after a decade of work by the Council for Aboriginal Reconciliation. In 1991 when the Council was established, about 48% of Australians were in favour of reconciliation, but by 2000, support had risen to about 75% of the population.

However, as the social research undertaken by the Council last year so clearly indicated, non-Indigenous Australians are keen to embrace the rhetoric of reconciliation, so long as it doesn’t require them to take the effective action to share the country’s abundant resources and political power. There are persistent levels of apathy, misconception and fear about the position of Aboriginal and Torres Strait Islander peoples, which suggests that governments, business, educators and individual Australians still have a great deal of work to do to bring about meaningful and lasting reconciliation.

This legislation outlines what challenges remain, and how government and all Australians can work together to address and resolve those matters that stand in the way of reconciliation.

The development of a national commitment enshrined in legislation to further advance reconciliation and to build on the valuable foundations laid by the Council for Reconciliation, is the ‘next step’ that Australia needs to take as a nation.

As the elected representatives of the people and the political leaders of Australia, we have a responsibility to ensure this step is taken now, while the momentum for change and the good will of Australians is apparent.

I commend this bill to the Senate.

Debate (on motion by Senator Calvert) adjourned.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Meeting

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

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 5 April 2001, from 3.30 pm, to take evidence for the committee’s inquiry into the import risk assessment on New Zealand apples.

Publications Committee

Report

Senator CALVERT (Tasmania) (9.48 a.m.)—On behalf of Senator Lightfoot, I present the 24th report of the Publications Committee.

Ordered that the report be adopted.

BUDGET 2000-01

Consideration by Legislation Committees

Additional Information

Senator CALVERT (Tasmania) (9.48 a.m.)—On behalf of the chair of the Employment, Workplace Relations, Small Business and Education Legislation Committee, I present additional information received by the committee relating to hearings on the additional estimates for 2000-01. On behalf of the chair of the Rural and Regional Affairs and Transport Legislation Committee, I present additional information received by the committee relating to the hearings on the supplementary budget estimates for 2000-01.

AVIATION LEGISLATION AMENDMENT BILL (No. 1) 2001

Report of Rural and Regional Affairs and Transport Legislation Committee

Senator CALVERT (Tasmania) (9.49 a.m.)—On behalf of Senator Crane, I present the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Aviation Legislation Amendment Bill (No. 1) 2001, together with the Hansard record of the committee’s proceedings and documents presented to the committee.

Ordered that the report be printed.

FREEDOM OF INFORMATION AMENDMENT (OPEN GOVERNMENT) BILL 2000

Report of Legal and Constitutional Legislation Committee

Senator CALVERT (Tasmania) (9.49 a.m.)—On behalf of Senator Lightfoot, I present the report of the Legal and Constitutional Legislation Committee on the provisions of the Freedom of Information Amendment (Open Government) Bill 2000, together with the Hansard record of the
committee’s proceedings and submissions received by the committee.

Ordered that the report be printed.

COMMITTEES
Rural and Regional Affairs and Transport References Committee

Report

Senator WOODLEY (Queensland) (9.50 a.m.)—I present the report of the Rural and Regional Affairs and Transport References Committee on air safety, together with the Hansard record of the committee’s proceedings, minutes of the proceedings and submissions.

Ordered that the report be printed.

Senator WOODLEY— I move:

That the Senate take note of the report.

This report has had a very long gestation, and I am glad that we are now able to present a report which is comprehensive and contains some important recommendations. I might point out that some of the issues which generated this reference to my committee have been resolved, particularly the Airspace 2000 reforms, but there are a number of outstanding issues. I would point out that part of the reference was to do with fumes in a particular aircraft, the BAe 146, and an interim report on that part of the reference was presented some months ago.

Today I want to commend the Civil Aviation Safety Authority on the fact that some of the recommendations of the report on the BAe 146 have been responded to by the authority. I might add that has been at a fairly late date—just this week in fact. But it is good to see that they have taken up some of the recommendations in that report, and I commend them for that. We still await the government’s response to that very important report and it is critical that the government responds as soon as possible. I made a speech a few days ago on that matter.

This report completes the reporting on the reference. I draw to the attention of the Senate the various recommendations the committee made. They go to the issue of Airspace 2000. We recommend that there is still work to be done by Airservices Australia to ensure that there is a proper extensive and rigorous consultation process with all sectors of the aviation industry on the provisions of the lower level air space plan. It is critical that all sections of the industry do note these reforms because air safety is of critical interest to almost everyone in Australia. I note that we also recommend that there is still some work to be done on CAGRO air services and air traffic control services. We recommend that Airservices Australia seek formal legal advice on some of those services because there is a dispute between operators and Airservices Australia about the legal standing of CAGRO services. We really do press that it be responded to.

Recommendation 4 recommends that:...

... the Minister for Transport and Regional Services appoint an independent consultant to assess any impact that the application of competition policy may have had on the delivery of aviation services to rural and regional communities.

The reason for this is that we are concerned that there has been a lot of rhetoric from all sides of the political spectrum about competition policy and, also from all sides, a recognition that in the application of competition policy some of the community interest may not have been given sufficient attention. The rhetoric is there, but I am not sure yet that we are really taking seriously enough some of the problems which competition policy has thrown up.

One of those problems is whether or not, particularly in rural and regional communities, we put air safety at risk because of competition policy. The committee did not have enough evidence to make a finding one way or the other, but we were absolutely convinced that the Minister for Transport and Regional Services must address this issue. I thank all members for their contribution to this recommendation, particularly my colleague Senator Crane. This is an issue which I think really does exercise the minds of all sides of politics, particularly when there is a possible effect on air safety. I believe we must address whether or not what I call the ideology of competition policy is overriding commonsense application of air safety and air services in regional airports.

Following on from that, I note recommendations 5, 6 and 7, which the government
particularly does not agree with. Nevertheless, the opposition parties would press these particular recommendations. One of the problems of competition policy is that cross-subsidisation is frowned upon but, in this instance, the majority of the members of the committee could not see any other way to deliver cost-effective services to regional airports which enhance air safety unless you say that the community benefit overrides the ideology of competition policy at these points. I note that the main objection of the government is to do with the cost, and I recognise that it is a big problem. Nevertheless, because of the air safety implications, we believe that those recommendations should be pressed.

I am very pleased to present this report as finalising the committee’s consideration of this issue, but note that there are a number of issues that are not finalised. We have made appropriate recommendations about how they should be pursued by various bureaucracies in the future.

Senator CRANE (Western Australia) (9.58 p.m.)—I rise to speak briefly on this piece of legislation and raise a number of issues that come out of the Airspace 2000 and related issues report. I have to say to Senator Woodley that it is amazing how words can be interpreted to get the answer you want. He mentioned the word ‘cost’. I want to briefly comment on that. We say in our dissenting report that it is uncosted and that we do not know how much it will cost. We also raise the issue that we are concerned there will be a hidden tax that is not transparent and that cannot be identified—in terms of what that cost is—whereas under the present regime it is transparent. We do know what the costs are; we do know what the subsidy is that the government has to put in, which is in the budget papers. I think there is a fundamental flaw in the argument as presented by Senator Woodley. I am not quite certain that he really meant what he said.

There are some points I want to make about this. The current regime was introduced by former minister John Sharp. There are a number of features about that that are very important and very valuable. Firstly, as a response to community pressure and community concerns in rural, regional and remote areas, general aviation airport costs were capped at $7.42 per tonne. Everybody knows what the upper limit is when they use aircraft. Over the last two years the cost of subsidising that cap was $18 million, and this can be clearly identified in the portfolio budget statements. The expenditure is very transparent, which is something that the opposition has consistently called for, as has the government. The present system is open and honest. The subsidy is clear to all participants in the aviation industry. There are clear procedures that hold Airservices accountable for changes in the level of service and hours of coverage at subsidised locations.

There is one recommendation that we do support, and that is the recommendation on competition policy. We would like the issue to be looked into by an independent consultant because we can find no evidence that competition policy has had any impact whatsoever on air safety. It is important that we get this clear, because it is consistently put forward as a problem when in fact it is not a player.

The majority report would result in a charging regime that would be less accountable, less transparent and less honest than the present one. It is very important over the ensuing days that the opposition and the Democrats spell out the costs of their proposals, how they will be transparent, how they will identify whether there is—and there will be under their proposals—cross-subsidisation and whether or not they believe that cross-subsidisation is justified. Under the present regime there is no cross-subsidy, but there is a direct subsidy to consumers who require assistance. That is a far more effective way of dealing with Airservices’ role.

I will conclude by emphasising the point that the costs are currently capped at $7.42 regardless of where you live. People know that, and they can cost on that. You know that the cost of carrying your goods will be subsidised. The subsidy is transparent. This parliament and everybody in Australia knows how much that costs if they care to
look at the budget statements or to ask one of us in this place about it. I think that is a far better and more honest way. It gives the service required to the people who need the assistance.

Senator O'BRIEN (Tasmania) (10.03 a.m.)—I suspect some Senate committees might find themselves looking around from time to time for references, but a lack of issues for this committee to investigate has never been a problem. The explanation is simple: the members of the committee have a genuine interest in advancing good policy. We are committed to ensuring that the programs for which we have responsibility are properly administered. This report is one of the few from this committee that does not have the unanimous support of committee members. The committee is generally driven by issues of policy, not politics.

Secondly, and perhaps more importantly, the minister responsible for aviation has managed to combine incompetence with indifference. The effect is that many things that should have been done have not been done, and many things have been done badly. The report that has been tabled today follows an investigation into the impact of the Airspace 2000 plan on users, the application of competition policy to services provided by Airservices Australia and the impact of location specific pricing. Senators would recall the disaster that flowed from the trial of what was called class G airspace, which was the subject of a separate investigation by this committee and also by the Australian Transport Safety Bureau.

The Australian Transport Safety Bureau report was both comprehensive and damning of the management of the trial by the Civil Aviation Safety Authority. This committee rightly formed the view that the matter had been addressed. The report addresses in addition the overall management of airspace in Australia, but more importantly it addresses the application of competition policy to the supply of aviation services in regional Australia. This government has been pushing the application of competition policy in its purest form to regional airports since it won office in 1996. Its argument is built around the fact that the direct cost recovery from the users of the services will enable the government to slash taxes on the industry. The government has been progressively implementing such an approach across a range of services and the consequences are now being reflected in declining regional services.

Despite the failure in general of the Deputy Prime Minister to properly administer his portfolio, and the aviation aspect in particular, the majority recommendations contained in this report are both reasonable and sensible. In contrast, the dissenting report from Senators Crane and Ferris is confusing and suggests a lack of understanding about the substance of the issues. The first majority recommendation asks Airservices Australia to properly consult with interested parties on the lower level airspace plan. One would have thought that Airservices would undertake such consultation as a matter of course, but that has not always been the case. It does not have to be costed as has been suggested by government senators.

The second recommendation is that Airservices set out clear guidelines as to the relationship between certified air-ground radio operators, or CAGRO services, and surrounding air traffic service sectors. It is important that this system fits properly within the national airways system. That seems sensible to me. One would have thought that it is not a matter that has to be costed, as has been suggested by Senators Crane and Ferris.

The third recommendation seeks to have the legality of the CAGRO system checked because there is some doubt as to whether or not it is an air traffic control service within the provisions of the Civil Aviation Act. I cannot understand why the government would have a problem with that recommendation, but Senators Crane and Ferris reject it. It seems fairly fundamental. It is part of the ordinary operation of government to have a matter checked if there is a question about its legality. There are a great many Senate committee recommendations that ask that there be investigations into the legality of something, without a detailed costing. I do not understand where Senators Crane and Ferris are coming from, other than they do not want to be seen to be criticising their minister.
The fourth recommendation asks the minister to have an independent assessment done on the impact of competition policy on aviation services in rural and regional communities. That recommendation was rejected by government senators. The views of Senators Ferris and Crane appear to contrast with those expressed by Mr Anderson on 26 March on ABC radio when he said:

I don’t think we’ve worked hard enough sometimes to define what the public interest is. Sometimes you have to balance lower prices for consumers, for example, against the impact on a group of people in the community who may be going to wear all the cost. You have to weigh very carefully whether competition policy is something you proceed with and, if you do proceed, how you proceed or whether you ought to simply scrap it altogether.

On the basis of that view expressed by Mr Anderson on national radio, he would be an enthusiastic supporter of recommendation 4. I will be interested to hear from Senators Crane and Ferris as to their view about Mr Anderson’s call for a reassessment of competition policy. On the basis of their opposition to recommendation 4, I assume they do not agree with him.

The terms of recommendations 5, 6 and 7 also fit perfectly with Mr Anderson’s call for a rethink on the application of competition policy in regional and rural Australia. Recommendation 5 asks the government to consider introducing some cross-subsidisation in relation to the provision of fire services at some regional airports where there is a demonstrable community benefit. That fits perfectly with Mr Anderson’s view that:

... you have to balance lower prices for consumers, for example, against the impact of a group of people in the community who may be going to wear all the cost.

We are saying that you need to look at that alleged lower price to consumers of forcing full cost recovery for fire services at airports against the impact that that will have on people living in that local community who may be going to wear all the cost. We are saying the same thing in relation to terminal navigation costs and other costs as well—a view supported, at least in principle, by Mr Anderson but not by Senators Crane and Ferris. The committee did not cost recommendations 5, 6 and 7 because they are not required to. The government is being asked to look at the impact of the competition policy on services provided at regional airports, weigh that against the community interest and get the balance between the two competition pressures correct. That is exactly what Mr Anderson told ABC radio that he wants to do.

I want to make two other comments about the dissenting report from Senators Crane and Ferris. The subsidisation of services to regional airports which they refer to is, according to the government, only transitional—that is, there is no guarantee that it will continue—and full cost recovery against particular airports is one of the options available to government in the future. It is my view that there should be a return to a network pricing system. It is my view that that will be the way that cost recoveries are pursued in the future. The cost structure applied by Airservices Australia is already transparent. We can see what the costs are on a location basis from the costs that are applied now. So I do not understand why there is the concern expressed by Senators Crane and Ferris about an approach to costing. If they look at the figures they can see what costs are now and they can look back historically at what the effects of network pricing were on the costs across the network.

I endorse the majority report on this matter. Senator Mackay and I make an additional comment on the report—that is, ultimately, it is the minister who has to bear the responsibility for implementing these sorts of changes and be scrutinised and accountable for such implementation. It would have been gathered from my contribution that we think, to date, the minister has performed particularly badly in that regard. We will be watching his performance in the future. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMUNICATIONS AND THE ARTS LEGISLATION AMENDMENT BILL 2000

First Reading

Bill received from the House of Representatives.
Motion (by Senator Ian Campbell) agreed to:

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

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.13 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Communications and the Arts Legislation Amendment Bill 2000 will make a series of minor amendments to four pieces of legislation which relate to aspects of the communications and the arts portfolio.

The bill makes amendments to the Public Lending Right Act 1985 that provides the legislative framework for the Public Lending Right scheme. The Public Lending Right scheme is a cultural program that makes payments to eligible Australian creators and publishers in recognition that income is lost from the free multiple use of their books in public lending libraries. The PLR scheme also has a broader cultural objective whereby the existence of the scheme encourages the creation of books by Australians and the publication of books in Australia.

A recent evaluation of the Public Lending Right scheme found the scheme to be efficient and effective however it recommended strengthening the objectives of the scheme and streamlining and updating some operational procedures of the programme. This bill puts these recommendations into effect by incorporating a statement of objectives into the Public Lending Right Act 1985 and making small minor changes to the processes for making final payments following the death of a creator. It also clarifies that a category of prescribed persons defined in the Act is intended to apply to those who made an intellectual contribution to the creation of a book.

The amendments to the Telecommunications Act 1997 in this bill will provide immunity to carriers and carriage service providers in situations where they comply with a senior police officer’s request to suspend the supply of a carriage service in an emergency situation, or where they are complying with a designated disaster plan. It is important that carriers and carriage service providers are not subject to litigation as a direct result of compliance in either situation. There is some concern that the absence of immunity might result in them choosing not to co-operate with law enforcement agencies in emergency situations.

This bill, through amendments to the Trade Practices Act 1974, will increase the effectiveness and efficiency of the Australian Competition and Consumer Commission (ACCC) both in tackling cases of anti-competitive behaviour by telecommunications companies and in resolving access disputes through the arbitration process.

The amendments to the Trade Practices Act 1974 enable the ACCC to more immediately provide advice to telecommunications companies on remedial action they could take to cease any anti-competitive behaviour. The bill also introduces measures to allow a nominated member to exercise the procedural powers in an access arbitration rather than the whole commission. Procedural powers do not include the ability to make, vary or revoke determinations or give draft determinations. It thereby improves the efficiency of the arbitration process.

There are a number of other minor consequential amendments included in the bill which update various sections which refer to the Telecommunications Act 1997 to reference to the Telecommunications (Consumer Protection and Service Standards) Act 1999. The bill also updates a reference to the Australian Company Number to the new Australian Business Number in the Telecommunications (Consumer Protection and Service Standards) Act 1999.

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

TRADE PRACTICES AMENDMENT BILL (No. 1) 2000

Consideration of House of Representatives Message

Message received from the House of Representatives acquainting the Senate that the House has disagreed to the amendments made by the Senate and requesting reconsideration of the bill in respect of those amendments.

Ordered that consideration of the message in committee of the whole be made an order of the day for the next day of sitting.
Thursday, 5 April 2001

SENATE

23771

EXCISE TARIFF AMENDMENT BILL (No. 1) 2001
CUSTOMS TARIFF AMENDMENT BILL (No. 2) 2001

In Committee

Consideration resumed from 4 April.

EXCISE TARIFF AMENDMENT BILL (No. 1) 2001

The CHAIRMAN—Order! The committee is considering the Excise Tariff Amendment Bill (No. 1) 2001 and the requests made on behalf of the government by Senator Ian Campbell. The question is that the requests be agreed to.

Senator LUDWIG (Queensland) (10.15 a.m.)—I rise to ask a number of questions of the Democrats, and perhaps the government, about the excise, particularly how the process will be dealt with and adopted—that is, the independence of the proposed fund and how it will be set up. Perhaps they can shed some light on how the mechanism will be proceeded with. In other words, I want to ensure that it is an independent body and that it provides the benefits that have been set out. The only information we seem to have on it is in the Prime Minister's press statement. Going to that matter particularly, the debate would be assisted if Senator Cook were in the chamber to assist in the matter. Hopefully he is not too far away.

The matter of the beer excise is of course a difficult matter for the government—I can well understand. It is the matter on which the government had to do a policy backflip, take a policy initiative on the run, and provide what could only be described as a difficult response which has ongoing effects. But, in the end, it is a matter that they should have looked at more clearly when it was first introduced, when they were playing with the mechanisms that they were going to introduce in respect of the GST and the beer excise.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.17 a.m.)—I have a few questions of the government. Last night, before we recommitted the amendment to the second reading and defeated it—before we reported progress last night—the Parliamentary Secretary to the Minister for the Minister for Communications, Information Technology and the Arts moved for the government amendment EP265, as I understand it; that is, the 15-page document containing, by my count, 113 amendments to this bill. It is the substantive amendment which changes the direction of this bill, the Excise Tariff Amendment Bill (No. 1) 2001, 180 degrees. The bill before us is a bill which imposes an excise on beer, and the amendment moved by the government removes that excise on beer. The point that I made in my speech on the second reading was: what explanation does the government give this chamber as to why it has changed its position? I will not be disingenuous about this; we read the paper and we listen to the news. But there is an obligation on the government to explain to the chamber its motivation for what has occurred, how it arrives at the changes and what has taken it so long to bring this legislation before us.

Let me recount briefly. This time last week we were all dressed up and ready for the dance: we were in the chamber prepared to debate this legislation and the government withdrew it. Now—since this is the last sitting day for another six weeks and there is urgency—we are on the last day being asked, ‘Please pass this legislation. It is urgent.’ And it is urgent, there is no question about that, and we are committed to passing it this day. But we are not going to be put in a situation where, when we ought to have debated it this day last week and the government has been offstage talking to the Democrats for seven days, the government comes back and says, ‘Quick, suddenly it’s urgent. We’re not going to provide you with any explanation as to what has happened. We’ve just moved a 15-page amendment which is a 180-degree change in position. There are 113 amendments—just do it!’ That is not my understanding of proper parliamentary democracy. Whatever the newspapers say, whatever the television reports, whatever information we hear on radio, this is the legislative chamber and a proper explanation ought to be given. So I invite the government to make some explanation on behalf of its amendment.
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.20 a.m.)—I am very happy to do that, and it is entirely appropriate. I guess some people would like to attach a number of epithets to the decisions made over recent days in relation to this bill, the Excise Tariff Amendment Bill (No. 1) 2001, but the reality of it is that this bill and the customs bill include a range of measures. They do not just relate to beer excise, as Senator Cook would know; they relate to some provisions in relation to avgas, to petrol and to the drop in the petrol excise. They deal with excise measures in relation to recycled oil and they relate to some adjustments to excises as they apply to customable things. So there are range of very important measures. I think there is general agreement—

Senator Cook interjecting—

Senator IAN CAMPBELL—I am going to answer the question in full. I just want to give a detailed response.

Senator Cook—Yes, I just thought it might expedite proceedings—I think we are under time pressure and we do want to be constructive here—and it would be useful if we could go to the nub of what our—

Senator IAN CAMPBELL—I want to put it in context of the whole bill and to answer very directly and frankly Senator Cook’s question about the urgency of it. It is entirely appropriate to ask the government: if it has become so urgent now, why has it taken this long to get here? I think that was a part of the question. The honest answer is that there is a whole range of measures in this bill. Clearly, the whole public focus has been on the effect of excise on a beer over the bar. That is an issue that a lot of Aussies have a genuine interest in. If you are an editor of a tabloid paper doing analysis of the effect of excise on a middy of beer in a range of pubs around the country, it is something that will attract a lot of people’s attention. There is something rather nice about being an Australian and living in Australia that you can get the focus of public attention on these high public policy issues. I rather like that.

The reality is that you can call it a policy backflip, if you want to; you can paint it however you want. But the government—and I think the previous government had similar problems with the Senate, although in a way they were able to rely on the Democrats and the Greens on many occasions to get stuff through—have had on a number of measures firm policy commitments to things like the full privatisation of Telstra, which we have not been able to get through the Senate. We have had to adjust our policies because we have not been able to get a majority in this place. We wanted to sell the whole of Telstra, but we were forced to sell only 49 and a bit per cent of Telstra. We wanted to adjust the unfair dismissal laws to help small businesses, but we did not have a majority here, so we had to adjust our policy. We had a whole range of workplace relations measures that we wanted to introduce to make it easier for people to employ people and for the country to expand, but a majority of senators did not agree with our policies, so we had to change our policy to get through the largest chunk of the policy intact.

Clearly, the tax package is another very good example of that. Our tax policy is the most sweeping reform to the tax system in Australian history. We believe fervently that it will be a reform that will significantly improve Australia’s international competitiveness, exports and employment, but we do not underrate the fact that for businesses, particularly small businesses, the move from one tax system to another tax system, with a whole range of changes in compliance, will
be an added burden, particularly during what can only be properly called a ‘transition period’—when you are moving from one system to another. Small businesses had to go through similar transitions when the previous government brought in things like the capital gains tax, the fringe benefits tax and a range of other taxation measures. If we want to be frank about that, all of those new measures that were brought in by the previous government did put a compliance burden on small business, which they screamed about at the time. I remember being in small business, and the anger over fringe benefits taxation went on for years.

Senator Murray—It’s still going on.

Senator IAN CAMPBELL—It still is. I have some letters, Senator Murray, from my old friends in the restaurant business, which was a business that my family was involved in for many years, saying that we should get rid of the FBT on the business lunch. It was something that I felt very strongly about at the time when I used to enjoy the odd business lunch. I understand where restaurateurs are coming from. It would be interesting to do an analysis of just what Labor’s fringe benefits tax would do to the cost of a beer at a pub. If you, as a businessperson, went to the Steve’s Nedlands Park Hotel, for example, and took a few businesspeople out to lunch and bought a steak and chips, a salad and a few beers, and looked at the impact of the fringe benefits taxation on the beer that is included in that lunch, it would show a very interesting comparison, which might stand in stark contrast to Labor’s published views in relation to this excise. In fact, it is an exercise that I am asking the Treasury to do on my behalf, just so we can contrast Labor’s taxation regime on the business lunch, particularly at a pub—and I recommend to people the lunch at Steve’s Nedlands Park Hotel; it is a very nice place to have lunch—

The CHAIRMAN—This is going out on ABC radio. You cannot advertise on the ABC, can you?

Senator IAN CAMPBELL—It is a bit sad, isn’t it! Murray McHenry might have bought me a free lunch! Back to the topic, the point I am making is that the government has had to compromise to get its measures through. Ultimately, you have to decide whether you allow the whole bill go down or whether you seek to find a majority for as many measures in it as you can. The government has had to negotiate in this circumstance with the Democrats. In other circumstances, when the Democrats would not support us, we have had to negotiate with the Australian Labor Party. We have indicated that we will support the new excise rates on beer that is sold in containers over 48 litres. As I understand it—I was not involved in the negotiation itself—the Democrats got Econtech to do some modelling for them and to present some figures. The figures derived from Econtech were for below three per cent, three per cent to 3.5 per cent and above 3.5 per cent. I think Senator Murray may have confirmed that last evening, but he is open to do it again. That modelling, I understand, from Econtech shows that that will have the desired result.

There seems to be a slight difference between the figures that the Labor Party have presented of what the excise would be but, to be frank, it is a very minor difference that we would probably not argue too much over. That is the process that has ensued. It has taken longer than any of us wanted it to, but the reality is that to bring this measure into the Senate prior to making an agreement would have been unprofessional. It is entirely appropriate that the Senate investigates these amendments and seeks to clarify the basis of them. That is the fullest explanation I can make. I am happy to add to that, if I have not been as thorough as Senator Cook or others would like.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.29 a.m.)—We have a significant bill and the government have changed their direction. They have given us a 15-page amendment containing 113 changes without explanation. My question was really based on the belief that this is the place where an explanation should be given and, out of respect for this chamber, the government should not really just drop these changes; they should say why they are doing so. My invitation to the parliamentary secretary was to do that and he has made, with the greatest respect to him, a speech which went from the point, in my judgment. But if that is the
judgment. But if that is the explanation that the government give and they are happy to rest on the explanation as being the reason they have changed, I can certainly pursue it and highlight what I believe to be the inconsistencies in it but, if they are happy to say that is the reason, I am happy to leave that on record as the reason. I do not think it is a very satisfactory reason but, if that is their reason, that is their reason.

It does raise a number of questions, some of which have been touched on in the explanation. Let me just address a couple of these. Firstly, it is my understanding that four computer modellings were conducted to arrive at a conclusion as to what the true amount of the excise is: one by Treasury, one financed by the brewers—and I am not sure who did those calculations—and two by Mr Chris Murphy of Econtech, the government’s preferred modeller. One of those models was paid for by the AHA, and I am not sure how the second model was paid for but it may be the model about which the parliamentary secretary said ‘we did some modelling for them’—the Australian Democrats. Did the government pay Econtech to do some modelling for the Australian Democrats?

Senator Murray—The answer is no.

Senator COOK—Who financed it and where did the money come from? That is the question, and I will yield to Senator Murray.

Senator MURRAY (Western Australia) (10.32 a.m.)—It was not paid for. There was no money involved.

Senator COOK (Western Australia)—Deputy Leader of the Opposition in the Senate) (10.32 a.m.)—Econtech is a private institution run for a profit. Are you suggesting that it did the modelling gratis as a contribution to the public debate and that it was not paid for? Someone must have paid for it.

Senator MURRAY (Western Australia) (10.32 a.m.)—Let me give you the answer. I rang them up. I said that I needed some assistance and I did not have the means to model this myself. Was it a quick and easy job or would it take much time? Had they the means to do it? They said that they had because of past work that they had done for others, which I did not ask about. They did have the means to do it. I said that we did not have money to pay them but would they be able to assist me in this matter? As you would know, political parties often ask other organisations about particular issues—the Labor Party does, we do, everybody does. I told them not to be embarrassed to say no but if they could help me out and check the numbers for me—and that was check the numbers, not do original numbers—I would be grateful. So they did. I am not going to go into the intimacies of the arrangement but it is a typical thing we do with accounting organisations, tax organisations, business organisations and community organisations when we have an issue that we want figures checked on. So that is what we did. But there was no money in my pocket and no money in their pockets.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.34 a.m.)—Thank you for that explanation, Senator Murray. So it was a sort of pro bono freebie by Econtech to the Australian Democrats?

Senator MURRAY (Western Australia) (10.34 a.m.)—It is the first one I have ever asked them to do on excise.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.34 a.m.)—Thank you for that further explanation. I want to mark the record at this point: I do not know whether a service in kind that has a commercial value to it is something that a political party ought to declare.

Senator Murray—I have.

Senator COOK—You have declared it but we do not know what the value of the donation of time and effort is. I am not resting on this point; I am just marking in passing—something to come back and give some thought to—whether that ought to be disclosed in any form of public disclosure.

Senator Murray—I stand—and, I understand, the Australian
Democrats stand—for all of that to be out in the open. And there are forms for how you declare these things. All I am saying, Senator Murray, in passing, is that I am marking the spot now and it is something that I will come back to you about later. But thank you for that explanation.

The second part of this question is: if there are four models and it is a checking of calculations, what do we know about computer modelling? Well, RIRO—rubbish in, rubbish out. What we know about computer modelling is that what you put in determines what you get out.

Senator Ian Campbell—Like the Labor Party preselection process.

Senator COOK—In which case, it is quality in and quality out—QIQO.

Senator Ian Campbell—That is not what Michael reckons.

Senator COOK—Let us not be diverted, parliamentary secretary. You want this bill and we want to deliver it and if you divert me it will just take longer. What were the programmatic differences between the Treasury model and the Econtech model? Were they actually processing the same material or were they processing it from a different premise? That is the question. Can you tell me the answer to that?

Senator MURRAY (Western Australia) (10.37 a.m.)—I think we might be getting into a ‘you show me yours and I’ll show you mine’ sort of discussion. The Labor Party put up amendments to the excise bill. While everybody is disclosing what they can, I think it would be good for the Labor Party to indicate on the record: were those amendments provided to them by the brewers? If they were provided by the brewers, how was the modelling arrived at? If they were provided by the brewers, what was the commercial value of them? Did you have the figures checked by the brewers? What involvement did the brewers have in the amendments that you tabled in this parliament?

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.37 a.m.)—I was distracted for part of that question. I am not sure I caught all of it. On the part I caught, I affirm this point: from my point of view we are not into ‘if you show me yours I’ll show you mine’. I am not entirely certain what that phrase refers to but, to take it on its face, I am not into that process.

What I do know is that the Australian Treasury is funded by Australian taxpayers’ dollars, and it is a legitimate line of inquiry to ask: what were its calculations of the correct amount of excise? In view of the figures shown in these 113 different amendments in 15 pages that were dropped on us out of the blue yesterday, it is legitimate to ask: do those figures represent Treasury’s calculations—and there were four models, one of which was Treasury’s—or do they represent the calculations of another model? That is my question. Can someone tell me the answer to it?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.39 a.m.)—I answered that question in my long and rambling intervention earlier. My answer was that I understand they were Econtech figures that have been presented to us by the Democrats. For the reasons I explained at some length, they are the figures that have been accepted. I have to say that, in terms of public policy, I support the Treasurer’s remarks, which I think were made at a doorstop yesterday, that this is not a particularly sound way to make policy. I do not know what Econtech put into their model, but I have seen a press release put out by the AHA which basically picks up the Econtech figures. I am not sure whether the AHA did work with Econtech. I really do not know and I do not cast any aspersions on either of them. It does not really matter. You have the brewers’ figures, which I understand were modelled by someone for the brewers—I am not sure who it was. They seem to have been picked up by the Australian Labor Party in their House amendments. The Labor Party has sort of said, ‘Well, let’s let the brewers set their own excise rates.’ I would fully support the remarks of Mr Costello, the Treasurer, in I think his doorstop yesterday when he said, ‘I don’t regard that as good policy.’
As he said, you could get the tobacco companies to set their excise rates; you could get the petrol companies to set their excise rates—and why have a parliament? Why have a government? I do not think it is particularly good public policy.

But the great thing is that this is all transparent. I have told the Senate that we have been presented figures by the Democrats. They are figures that we know we can get a majority for. I have not seen the figures from all the different models, but I know there is only a very small difference between them. I suspect the debate cannot be taken a lot further forward. But it is important to make the point that in general terms it is not a good idea to allow the industry to set its own excise rates.

I have been very frank with the Senate. We want to get these measures through the parliament. We have been very frank about where we stand in relation to excises. We believe that we were up-front in terms of the policy. We did publish a very significant policy document that was very clear about how excise would apply. The Prime Minister has been very up-front about the fact. In his interview on 30 March of this year with a Mr Faine, on a radio station I am not familiar with, he said that the brewers had taken advantage of an ambiguous answer that he had given in a radio interview but they knew what was in all of the documentation. They know that, but they have seized on it and they have driven a very strong campaign.

The Prime Minister has admitted that he made an ambiguous remark. The Labor Party have seized on the interpretations about ordinary beer. The Prime Minister has admitted that he made an ambiguous remark. The Labor Party have seized on the interpretations about ordinary beer. The Prime Minister has laid the government open to those attacks, which ultimately has led to the situation we are in now where we need the support of the Democrats for a new excise figure that applies to beer in containers of over 48 litres. Regardless of how many pages it takes to do it, that is the effect of the compromise that the government seeks to strike here in the Senate today. We know we can do that with the support of the Australian Democrats and we know that we can only do that on the figures that they have provided to us. We know, because Senator Murray has confirmed it on the record, that they are Econtech figures.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.43 a.m.)—Thank you for the explanation. The parliamentary secretary has made a couple of political observations which I should directly counter, then I will come back to the nub of this question. Firstly, on ‘ambiguous’ statements by the Prime Minister: they were not ambiguous at all. He made them on the Alan Jones program and the John Laws program before the election, and according to a remark on 6PR radio station by Eoin Cameron, the former Liberal member for Stirling, he also made them to the party room. He said that beer would not go up more than 1.9 per cent under the GST package. Since that was said before the election, it may well be that people voted in the belief that what the Prime Minister was saying would happen was true. We know it was not true. There is nothing ambiguous about that and this is the reason why the government is in this situation. The government has turned around and attacked the brewing industry and beer drinkers of Australia for conducting an unfair, improper campaign. This is remarkable. If he had told the truth, then there would be no campaign. To attack the people that raised the question, when you have raised it and you have campaigned on it, is blame shifting and should be exposed as such.

On the issue ‘you don’t let industry groups set their own level of tax’: what did John Ralph do? He set the level of tax for this government following his inquiry. You said—and this is the most unremarkable point, with due respect—that you find yourself in agreement with the Treasurer in his doorstop interview. Well, if you did not find yourself in agreement with the Treasurer, you would have your face on every television screen tonight and on the front page of every newspaper tomorrow. It is your duty to be in agreement with the Treasurer.

Senator Murray—That is a very truthful remark.

Senator COOK—Yes. It is your duty to be in agreement with the Treasurer.
Senator Ian Campbell—It is not a duty all my colleagues share.

Senator COOK—Yes. But let me come back to the public policy question here. We now know for the first time—and I note that we have had to prise this out of the parties, when they should have volunteered it up-front, in my view—that the figures are not the Treasury figures. They are figures of a private modeller, maybe commissioned by the AHA or maybe running the figures that the Australian Democrats presented to his model—I do not know which of the two that we are now talking about or whether they are in fact the same. I want to come back to the figures and how they were arrived at by the private modeller. I now have a specific question, though: what is the difference in calculation between the Treasury figures and the Murphy figures?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.46 a.m.)—Firstly, in relation to Senator Cook’s prising of this information out of us, Senator Meg Lees issued a press release on 3 April in which she said:

... the rates generated used the same Econtech economic model utilised by the ACCC ...

That is on the public record, so I congratulate Senator Cook for his incisive prising out of this information using the floor of the committee!

Senator Cook—It is not on the Senate record.

Senator IAN CAMPBELL—Senator Murray and I have been very open about where the modelling came from and how it was paid for.

Senator Murray—We do not know about the brewers’ model.

Senator IAN CAMPBELL—Exactly. Senator Cook can perhaps tell us the basis of the brewers’ modelling. We do not know about the assumptions or the inputs that were put into the Econtech model. I do not know what assumptions and figures were put into the brewers’ model which the Australian Labor Party picked up and took into the other place.

In terms of the Treasury modelling, quite frankly, I do not think it is relevant. We do not normally release Treasury modelling—it is very unusual to do so. When the previous Labor government had Treasury modelling done they—in my memory, and that is not always perfect—did not release it. We will not be releasing modelling. The fact of the matter is that it does not affect this amendment. The government have accepted the practical, pragmatic reality that if we are to get this bill through the Senate we will only do so with the support of the Democrats. We negotiated in good faith with the Democrats and accepted their figures. There is nothing more I can add to that.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.49 a.m.)—We are on an exercise here of public accountability, openness and transparency in government activity. You challenged me: what is the basis of the brewers’ figures? I suggest you go and talk to them, because you have been dealing with them. You are the government and you have put these recommendations forward.

Senator IAN CAMPBELL—But you are the ones who have put it into the amendments.

Senator COOK—You have put these recommendations forward. We are debating actual figures in a piece of legislation dealing with tax. I have asked how you calculated that and you have told us. You have accepted a pragmatic outcome based on figures calculated by Econtech, a private sector consultancy. I did not ask you to show us the Treasury model, as you have said. I asked you what the difference is between the Treasury calculations and the Econtech calculations. I ask it again: what is the difference? If you are not in a position right now to tell me—and you may not be: I acknowledge that and that we are under a deadline here of some urgency—will the government undertake to table in this chamber the Treasury calculations?

There is one footnote to the question: it may well be that the government have decided ‘pragmatically’—to use the parliamentary secretary’s word—to accept the Econtech calculations. I have not yet gone to the discussion about which one of the Econ-
tech calculations was accepted, whether all of the Econtech calculations agree and whether Econtech has run through their model various calculations based on different premises. That is a discussion I will come to in a moment: I am happy to foreshadow it now so that your advisers can think about the advice they might offer in terms of your answer. Since we are dealing with taxation, any difference is surely a matter of public interest that ought to be on the record. If the government are not accepting the calculations of the Department of the Treasury—and they are the calculations the government act on almost universally—but accepting other calculations, is there a difference and how much is the difference? That is the question. This is the place in which you are called to account; this is the place in which you have to say. All I am asking is that you please tell us.

Senator MURRAY (Western Australia) (10.51 a.m.)—I am not going to add too much to what I have already said, but I will repeat that the Democrats developed figures in our own offices on our own understanding of these issues and we checked those figures with a modeller that we knew had professional capability to do so. Then, having discussed these and checked them, we went to the government and put a proposition to them. The proposition ultimately was based on attempting to reduce the price of beer in pubs, hotels, restaurants and clubs to the 1.9 per cent approach. There are more than 7,000 pubs and hotels. The difficulty is in attempting to arrive at an amount of money which would deliver the promise. That is very difficult to do; the ABS find it very difficult to do it. So we had to make some assumptions and we had them checked. That is the professional thing to do if you do not have your own model and your own computer. I am sure that the Labor Party do the same thing because they would be delinquent not to.

Senator Cook—I am not arguing any of this.

Senator MURRAY—Well, all I wish you to understand is that then we went to the Treasury with figures we had had checked and said, ‘We believe this will produce the outcome which we are aiming for.’ That is the process.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.53 a.m.)—Mr Temporary Chairman, through you to the Australian Democrats: I understand the defensive nature of those remarks. It may be—in anticipation—that at some point I will editorialise about all of this, and I might; but at the moment I am just trying to tie down facts. I understand that explanation perfectly. All I am wanting to know, since you spent seven days working on this and you want us to carry this amendment in five minutes, is if you can give us some more facts. What is the difference between the calculations in the amendment and the Treasury calculations?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.54 a.m.)—I cannot answer that because I do not know the basis of the Econtech modelling. It is as simple as that. You have asked: will we table the Treasury modelling? The answer, as I said before, is that we do not as a rule do that and I will not be doing that today; I do not have it here to table, and I will not be. The most pertinent fact is that the Australian Labor Party— as I understand it—picked up, lock, stock and barrel, the figures produced by the brewers in their modelling. If you want to have a debate about the assumptions in the models, it is just as pertinent for the Australian Labor Party to explain the basis of the brewers’ figures, because it was obviously open to the members of the House of Representatives to accept them. You asked the members of the House of Representatives to vote on those excise rates. I understand they came out at $14.75 per litre for below three per cent alcohol volume; $16.15 per litre of alcohol exceeding the first 1.15, in the three to 3½ mid-strength level, for beer in containers bigger than 48 litres; and $19.10 for the higher alcohol beer.

It is fair that you can have an argument about what the models were. I am sure the kids in the gallery, who are absolutely riveted by this debate about excise rates on beer, will be interested to know that when they do get to drinking age it will be very cheap to buy a keg. I make a little prediction
here: at backyard parties all around Australia you will see the re-emergence of the keg as a result of this measure. There will be far fewer stubbies hanging around backyard shows, dos and parties as a result of this, because kegs are going to be incredibly cheap. I am not sure whether that is a good thing or a bad thing in terms of health.

But the nub of the issue is that the ALP is saying it should be $14.75 for low strength beer in kegs and the government-Democrat agreement and the amendment before us shows $15.96. The ALP figure is as at 1 July 2000, so if you indexed it—and I have not done this work—you would find very little difference; and almost no difference when it came to the price of a middy across the bar—maybe 1c or 2c. The same applies at the mid-strength level: $16.15 under the ALP-brewers model amendment versus $17.33 under the Econtech model which has flowed into this amendment; and for full strength beer, $19.10 under the ALP-brewers amendment, and $22.68. I stress again that the ALP-brewers figures were to apply as at 1 July 2000, and we are looking at figures that apply from midnight on 3 April 2001, so you would have to look at the indexation on the ALP figure to be comparing apples with apples.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.57 a.m.)—That is not a satisfactory explanation, with respect. Leave aside the frolic about what the price of kegs might be and what the beer drinking habits of the nation might be in the future—maybe 1c or 2c. The same applies at the mid-strength level: $16.15 under the ALP-brewers model amendment versus $17.33 under the Econtech model which has flowed into this amendment; and for full strength beer, $19.10 under the ALP-brewers amendment, and $22.68. I stress again that the ALP-brewers figures were to apply as at 1 July 2000, and we are looking at figures that apply from midnight on 3 April 2001, so you would have to look at the indexation on the ALP figure to be comparing apples with apples.

Senator COOK—It is a very serious issue. And the issue I am pursuing is quite serious. You have the numbers in this chamber to change the law on the level of taxation. I am simply asking how you calculate those figures. I think taxpayers are entitled to know how you calculate them. Taxpayers are entitled to know why they are paying the taxes they pay, and the government has an obligation to the community to tell them. That is why I am pursuing these questions. You see, in this issue there is a missing $25 million. It is one thing to say—and I took this down as you said it—that it might be only one or two cents a middy across the bar; but with every middy across every bar in every pub in Australia, that is quite a lot of money. On tax revenue, we are all entitled to know these things. You have thus far evaded answering them directly. The missing $25 million and how you account for it is also something it is important for taxpayers to know about. And, God help me, on the sordid question of the government’s credibility over the GST, what it promised, what it delivered, what it is saying now about its calculations and what it proposes to deliver, this is an important question.

In a doorstop interview, the Treasurer said—and it would be hard to imagine he was not accurately reported, because every news source reported him as saying this and he has never gainsaid any of it—that the cost to the revenue of these measures is $185 million. But, by the calculations in the government amendments, the cost to the revenue is $160 million. Where is the missing $25 million? Or is near enough good enough? This is slapdash—you can be in a tolerance zone of $25 million one way or another. I am frustrated by, and I object to, the fact that the government did not come into this chamber after doing a deal and set out what it had done in a way in which—in this place, where the government is accountable—the people of Australia could know what happened, why it happened and so forth.

Comments like: ‘A press release went out,’ or ‘The Prime Minister talked to Jon Faine on some radio station’—and we are not sure what its call sign is—are interesting, but you are accountable here. You have to put it on the record here. This is the official record of this debate, and it is not good enough to say, ‘You should have read this press release.’ You have an obligation to say it here and to be on the record here. When we voice a yea or nay or cross the floor in a division, we ought to know why we are doing it. That is fundamental to the process of democracy. So do I understand your answer to be that you will not answer the question of what is the difference between the Treasury calculation and the calculation that you have set out in the amendment?
Senator MURRAY (Western Australia) (11.01 a.m.)—Before you answer, Parliamentary Secretary Ian Campbell, could you clarify something? This is the first time I have heard the figure of $160 million. I do not know where it comes from. Your own supplementary explanatory memorandum says—and perhaps Senator Cook has not had a chance to look at this page—on page 2:


Perhaps you can clarify where this $160 million comes from.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.02 a.m.)—It is not a figure that the government has put out there, as far as I know. It was Senator Cook’s figure. He will have to tell us how he got the figure of $160 million. We cannot quite work it out. In relation to the financial impact and the Treasury’s figures, I tabled yesterday on behalf of the government the supplementary explanatory memorandum and, on page 2 of that, we go into great detail on the financial impact. There is no mention of $160 million there. I will quote from it, although it is already on the parliamentary record and has been since I tabled it yesterday afternoon:


That is the cost of this measure.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.03 a.m.)—I have been directed to pay attention, which is, with the greatest respect, quite appropriate, Senator Murray.

Senator Murray—I didn’t put it so rudely.

Senator COOK—I am not in the slightest bit offended. God help me, I am a politician: how could I be offended by criticism? It seems to be all we ever get.

Senator Ian Campbell—We’re fair game.

Senator COOK—We are. We do not complain about that and I am not complaining now. I have been referred to the explanatory memorandum. Senator Murray quoted, from page 2 of the explanatory memorandum, under the heading ‘Financial impact’, the estimated costs of the out years. From the figure for this year, I calculate that this excise will cost $155 million. The Treasurer claimed that it was $185 million, so I have to amend my earlier statement—there is not a missing $25 million; there is a missing $30 million. There might be some perfectly logical explanation for this or there might not be. I just want to know: what is the explanation? If we can clear this up, we can move on and we can present the bills.

Senator Murray—How do you arrive at your figure of $155 million?

Senator COOK—Starting from the top, under the heading ‘Financial impact’, page 2 of the explanatory memorandum reads:

The reduction in rates of duty for draught beer is estimated to cost $35 million in 2000-2001. The amount of $120 million, equivalent to the difference between collections on draught beer since 1 July 2000 and the amount that would have been collected using the new rates ...

I arrive at my figure of $155 million by adding $35 million to $120 million.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.06 a.m.)—I cannot add anything to the figures we have. Treasury have stated the financial impact there. It is clearly set out. The government are allocating the $120 million to the foundation—that is an amount that would be appropriated as a result of this legislation passing—and Treasury have made an estimation of a cost of $35 million, which is for an interim period. That is from midnight of 3 April to midnight of 30 June. That is an estimate for the cost of the measure for that period. I guess you could work back—but I do not think it is necessary for this exercise—to work out what the pro rata of $35 million from 3 April to 30 June would be over a full year. The estimates that are pertinent are the estimates for the coming financial year, as $175 million. I have quoted those other figures and I will not repeat them.
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.08 a.m.)—There will be an appropriation bill introduced in the autumn sittings to appropriate the money and establish the Alcohol Education and Rehabilitation Foundation.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.09 a.m.)—Thank you, that answers the second part of it. Do you have an answer for the first question?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.09 a.m.)—The figures in the financial impact statement in the supplementary explanatory memorandum were derived by Treasury from the excise rates which were created, we are assured, by the Econtech model.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.09 a.m.)—Does that mean that there is no difference between what Treasury’s model said and what the Econtech model said—that they are both in agreement?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.09 a.m.)—No, it does not. I have answered that question a couple of times before, and I know that the honourable senator is not happy with the answer. It is impossible for the government to analyse the difference in the two models or the importance of the outcomes, because we do not know what the assumptions for the Econtech model were.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.10 a.m.)—If I could engage in some unorthodox behaviour, can the Australian Democrats tell us what the assumptions in the Econtech model were? Were the figures that Econtech used the figures that the Democrats had Econtech, in their freebie, check or were they figures that the AHA commissioning of Econtech produced?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.10 a.m.)—The record should be corrected, because I did potentially confuse the debate in relation to doing a pro rata adjustment of the estimated cost of $35 million between April and June. I am assured—and this makes sense, being an Australian who enjoys a beer—that the excise collections cannot be pro rataed over the whole year, because we as a race drink more beer during the summer months. So it is not an appropriate calculation to do, I am assured.

Senator MURRAY (Western Australia) (11.11 a.m.)—Ice-cream and beer share the same profile, apparently, in that respect. I would be really interested—and it is probably not something he wants to respond to—to know how you, Senator Cook, worked out your figures for the amendments. I want to know what assessment you came to as a party in arriving at those amendments—whether you simply accepted the brewers’ proposition and turned it into amendments or whether you took your own approach. Let me outline our approach. I will not give you our working papers or our modelling, as I would not expect those from you either. I will tell you how, essentially, we did it.

We knew that we had to try and achieve an outcome which met the 1.9 per cent promise. We therefore had to look at the means by which you did that. A starting point is the great difficulty in assessing pre-
ciscely what the price of beer is on average as a result of the new tax system changes. That is extremely difficult. You get low priced hotels and pubs; you get high priced hotels and pubs. They take different margins and the numbers of establishments are vast, so ultimately you have to rely on those people who have the greatest understanding of those issues. Frankly, in the government’s service, it is not the Treasury; it is actually the Australian Bureau of Statistics. The Treasury has no means to go out and test 7,000-plus hotels, pubs, clubs or restaurants. ABS figures are a fundamental starting point.

The other two sets of authoritative bodies available to us who have contact with those establishments are the brewers—through their sales representatives and their structure—and the Australian Hotels Association, through their structure. That pretty well exhausts the opportunities to try and establish an estimate of what price effects there are. As a consequence, you come to a differing view. There are those who maintain that the average on-premise price increase resulting from the new tax system is as low as 6 per cent to 7 per cent, and there are others who say it is 10 per cent to 11 per cent. It is a difficult exercise, which I am sure the Labor Party and the government had to experience when they went through that.

The next stage of the exercise, before you get into the actual excise rates, is to attempt to establish what the cost savings were to the brewers as a result of the new tax system. You have short- and long-term effects and estimates there. Since the brewers are going to be reluctant to indicate exactly what their financial position is—all I know is that it is extremely healthy, based on their published reports—the estimations of cost savings one way or another are inevitably touched, not tainted but touched, by self-interest. That might be said of the Australian Hotels Association, although they are a little more distant, obviously, from the thousands of establishments which make up their situation.

Once you have gone through all that as a policy person doing a technical exercise, you then have to try to slate that into excise rates, which is a difficult job. I find excise like social security calculations—a very complex business to try to get through. Once we had arrived at our outline figures, we wanted them checked. It is one thing for three of us to beaver away at this issue, but it is quite another to be certain of it. So that is what I did. We then come to a position with the government where we say that the outcome we are desirous of will be achieved by these means. As any good government should—and I am certain the Labor Party would behave in the same way if they were in that circumstance—the government should try and minimise the impact on their budget. That is what the argument is about. That is what the negotiations are about.

We have finally come to an agreement with them as to the rates. It is based on what I would call informed and professional assumptions and analysis, but we all know that modelling is, at best, a guide. It cannot be an exact science. You know that as well as I do. You understand the professionalism of it. So that is where we came to. Will we get exactly the result we thought we would? I do not know whether a pub in Darwin will produce a different outcome from one in Coober Pedy. I cannot answer that question. I can just say we have come to the best and most informed decision to produce an outcome which both the Labor Party and the Democrats have argued for, and that promise has been kept. But whether it ends up being 1.7 per cent or two per cent is not something that anyone can exactly outline.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.17 a.m.)—Wouldn’t it have been nice if we had had all this at the beginning so we could have responded to it? The clear understanding I have is that, for pragmatic reasons, words to that effect were given to us by the government. The figures that have been put in this legislation are the Democrats’ figures checked by Econtech. I note the affirmative nod of the Democrats’ spokesman, Senator Murray. The figures have been derived from those figures, not from figures calculated by the Department of the Treasury, and we are not going to see what the difference was. I think that is an honest statement of circumstance.
I have one final question which I will come to. It is not a complicated one; it is just a matter of fact. If that can be answered, I think we will have arrived at a point where I will fold and you can put the question. But the second observation I make is on the comment by the parliamentary secretary that people drink more beer in the summer than they do in the winter, that there is a seasonal variation in consumption levels and that, in the calculation of revenue gains, revenue from excise on beer is greater if you just take the summer months than it would be if you just took the winter months. I think the parliamentary secretary made that observation.

The figures that I have been looking at—and this is where I get my $160 million, which is what I was being asked to account for—have been calculated for the nine months since 1 July.

What is the distinctive feature of these nine months? One of the big distinctive features is that we had the Olympics and the Paralympics in that period and a huge influx of foreign tourists. One would expect that the normal seasonal behaviour during that time was not conformed with and that more beer was drunk during that time than would normally be the case. Of course, we also have the summer months in that. The government has looked at that revenue, divided it by three to get the quarterly average and then multiplied it by four for a year. That is what it has done. It has calculated $160 million and said that that is it.

Senator Ian Campbell—$160 million?

Senator COOK—Sorry, it is $155 million. I am still left wondering where the Treasurer’s $185 million comes from and where the missing $30 million is in this debate, but I guess I can keep asking this question until I am blue in the face and I am not going to get an answer. In that case, I leave the record, as unsatisfactory and as frustrating as it is, at that point. Let me come to my final question. If there can be a direct answer to this, I think we can wrap it up at this point.

It is on the appropriation issue. Is the appropriation that the parliamentary secretary informed us of to be a special bill dealing only with the charity or will it be a broader appropriation bill?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.21 a.m.)—I cannot answer definitively. You are really asking whether it will be a special, one-off bill just for that appropriation or whether it will be included in another appropriation bill. I cannot answer that at the moment. We will obviously do what is sound practice. I presume the honourable senator has a copy of the detailed memorandum of understanding between the government and the Democrats. It says that a bill will be introduced in the autumn sittings. This is a public document, but I am happy to have it incorporated for the sake of the record if you want me to.

The bill will ensure that the full equivalent of the increase in excise collected on draft beer since 1 July 2000, less the $5 million allocated to the Historic Hotels Initiative, is appropriate and is allocated to a foundation to be called the Alcohol Education and Rehabilitation Foundation. The memorandum goes into detail about the foundation, but it does not go into any more detail about the actual appropriation. As soon as we have a decision in relation to the appropriations, I will communicate it to Senator Cook.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.23 a.m.)—Thank you. This is a tidying-up question.

Senator Ian Campbell—Will I table it or incorporate it?

Senator COOK—I am happy to have it incorporated.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.23 a.m.)—I seek leave to incorporate the memorandum of understanding between the government and the Australian Democrats.

Leave granted.
ATTACHMENT

ALCOHOL EDUCATION AND REHABILITATION FOUNDATION

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT AND THE DEMOCRATS

An appropriation bill will be introduced in the autumn sittings 2001. This bill will ensure that the full equivalent of the increase in excise collected on draught beer since 1 July 2000, less $5 million allocated to the Historic Hotels initiative, is appropriated and allocated to a Foundation, to be called the Alcohol Education and Rehabilitation Foundation.

The Foundation will be established as an incorporated charitable trust with a constitution, to be agreed between the Government and the Democrats by letter, by mid-April 2001.

A board of approximately ten directors will be appointed for the Foundation, by agreement between the Government and the Democrats, with board members appointed in the following expert and representative capacities:

Chairman (1)
Community-based treatment and education (3)
Medical (1)
Research (1)
Churches (1)
Aboriginal and Torres Strait Islander (1)
Sporting (1)
Youth (1)

The objectives of the Foundation will be to:
- Prevent alcohol and other licit substance abuse, including petrol sniffing, particularly among vulnerable population groups such as indigenous Australians and youth;
- Support evidence-based alcohol and other licit substance abuse treatment, rehabilitation, research and prevention programmes;
- Promote community education encouraging responsible consumption of alcohol and highlighting the dangers of licit substance abuse;
- Provide funding grants to organisations with appropriate community linkages to deliver the abovementioned services on behalf of the Foundation;
- Promote public awareness of the work of the Foundation and raise funds from the private sector for the ongoing work of the Foundation.

The Foundation will submit by August 2001 a detailed business plan for approval by the Government and the Democrats, encompassing:

A Budget for the first four years of operation. The budget will be designed to expend 80% of the initial endowment within four years and adhere to the following prescribed percentages of total expenditure in the first year:
- Administration and promotion at most 10%
- Treatment and rehabilitation at least 30%
- Public education at least 10%
- Prevention at least 20%

Particular priority, with at least 20% of total expenditure, will be given to projects targeting indigenous Australians.

An operational plan detailing procedures for the disbursement of funds, encompassing:
- Procedures for enabling professional and community organisations to apply for grants.
- Procedures for avoiding cost shifting from existing or intended alcohol and related funding at the Commonwealth, state and territory level.

The constitution of the proposed trust will include:
- A requirement that at least 85% of all Foundation expenditure is outsourced to professional and community organisations;
- Procedures for seeking approval of the annual budget by the board;
- Procedures for seeking approval of professional and community grants by the board;
- Procedures for reporting annually to Parliament on grant allocation decisions and overall operations;
- Procedures for independent auditing of the accounts and performance of the Foundation;
- Procedures for monitoring and reporting on the cost effectiveness and social impact of funded programs.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.23 a.m.)—Thank you. Senator Campbell, I want to tie down this point so that I am clear. In your answer to the question, on which further details are to be provided as soon as you are in a position to do so, on whether it will be a separate bill or part of a general appropriations bill, I think you also said, ‘Whatever it will be, it will be sound practice.’

Senator Ian Campbell—Normal practice.
Senator COOK—Okay, I accept that interjection. This is not a light point; it is quite an important point. An appropriation will be made to a charity; if the form of the appropriation is not set out clearly when it comes to this chamber, if it is included in a global amount along with a number of other appropriations, we will not be able to establish what is going to the charity. Will the appropriation for the charity be set out in such a way that it will be clearly established and differentiated from other appropriations?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.24 a.m.)—I do not have that information to hand. We have made a commitment to appropriate the $155 million plus the $5 million. We have made a commitment to bring in an appropriation bill. I have not been able to say whether that will include other appropriations. I have said that I will communicate that decision to Senator Cook when it is made. We take on board his point about ensuring it is obvious how that appropriation is going and where it is going. I also presume that there will be a bill to establish the foundation which will set out its aims and so forth. Clearly the government will communicate that as early as possible.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (11.25 a.m.)—I seek affirmation from the Australian Democrats that it is their view this matter should be transparent and accountable in the way in which I have described.

Senator MURRAY (Western Australia) (11.25 a.m.)—I think Senator Cook makes a very sound point that is obviously in everybody’s interest. The way in which the appropriation is devised has obviously not been worked out, but I would expect at least an explanatory memorandum that spells out in detail how it is to be done so that everything is known and transparent.

Requests agreed to.

Bill agreed to, subject to requests.

CUSTOMS TARIFF AMENDMENT BILL (No. 2) 2001

The bill.

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

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

(1) Clause 2, page 2 (after line 6), at the end of the clause, add:

(5) The amendments of the Customs Tariff Act 1995 made by items 23, 24 and 25 of Schedule 1 to this Act are taken to have commenced on 4 April 2001.

(2) Page 30 (after line 10), at the end of Schedule 1, add:

Table 4—Amendments having effect from 4 April 2001

23 Subsection 19(1) (table)

Repeal the table, substitute:

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#### 24 Subheadings 2203.00.8 to 2203.00.89 of Schedule 3

Repeal the subheadings, substitute:

2203.00.6 Other, packaged in an individual container not exceeding 48 L:

2203.00.61 Having an alcoholic strength by volume exceeding 1.15% vol but not exceeding 3.0% vol

44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

NZ:44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

PNG:44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

FI:44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

DC:44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
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<td>2203.00.62</td>
<td>Having an alcoholic strength by volume exceeding 3.0% vol but not exceeding 3.5% vol</td>
<td>$37.42/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>NZ:$37.42/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>PNG:$37.42/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>FI:$37.42/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>DC:$37.42/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<tr>
<td>2203.00.69</td>
<td>Other</td>
<td>$32.22/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>NZ:$32.22/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>PNG:$32.22/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>FI:$32.22/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>DC:$32.22/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<tr>
<td>2203.00.7</td>
<td>Other, packaged in an individual container exceeding 48 L:</td>
<td>$15.96/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<tr>
<td>2203.00.71</td>
<td>Having an alcoholic strength by volume exceeding 1.15% vol but not exceeding 3.0% vol</td>
<td>$15.96/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>NZ:$15.96/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>PNG:$15.96/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>FI:$15.96/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>DC:$15.96/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<tr>
<td>2203.00.72</td>
<td>Having an alcoholic strength by volume exceeding 3.0% vol but not exceeding 3.5% vol</td>
<td>$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>NZ:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>PNG:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>FI:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>DC:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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alcohol of the goods exceeds 1.15
PNG:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
FI:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
DC:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

2203.00.79 Other $22.68/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
PNG:$22.68/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
FI:$22.68/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
DC:$22.68/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

25 Subheadings 2206.00.7 to 2206.00.79 of Schedule 3
Repeal the subheadings, substitute:

2206.00.7 Beer, other than that of 2203, containing hops, packaged in an individual container not exceeding 48 L, NSA:

2206.00.71 Having an alcoholic strength by volume not exceeding 1.15% vol Free

2206.00.74 Having an alcoholic strength by volume exceeding 1.15% vol but not exceeding 3.0% vol

$44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
PNG:$44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
FI:$44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
DC:$44.08/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
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<td>2206.00.75</td>
<td>Having an alcoholic strength by volume exceeding 3.0% vol but not exceeding 3.5% vol</td>
<td>$37.42/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>$37.42/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<tr>
<td>2206.00.78</td>
<td>Other</td>
<td>$32.22/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>$32.22/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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<td>2206.00.8</td>
<td>Beer, other than that of 2203, containing hops, packaged in an individual container exceeding 48 L, NSA:</td>
<td>Free</td>
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<tr>
<td>2206.00.81</td>
<td>Having an alcoholic strength by volume not exceeding 1.15% vol</td>
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<tr>
<td>2206.00.82</td>
<td>Having an alcoholic strength by volume exceeding 1.15% vol but not exceeding 3.0% vol</td>
<td>$15.96/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15</td>
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Having an alcoholic strength by volume exceeding 3.0% vol but not exceeding 3.5% vol

$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

NZ:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

PNG:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

FI:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

DC:$17.33/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

Other

$22.68/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

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FI:$22.68/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

DC:$22.68/L of alcohol, calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

Bill agreed to, subject to requests.

Bills reported with requests; report adopted.

ADMINISTRATIVE DECISIONS (EFFECT OF INTERNATIONAL INSTRUMENTS) BILL 1999

Second Reading

Debate resumed from 4 April, on motion by Senator Ellison:

That this bill be now read a second time.

(Quorum formed)

Senator BOURNE (New South Wales) (11.31 a.m.)—I rise to speak on the Administrative Decisions (Effect of International Instruments) Bill 1999. When thinking about what to say on this bill the word ‘iniquitous’ came to mind. It seemed to me to be the best word to describe this bill. I was not exactly sure what it meant, so I looked it up in the dictionary. ‘Iniquitous’ means great injustice and wickedness. From there, I looked up ‘wickedness’, which means morally bad, offending against what is right, formidable, severe and mischievous. I think ‘mischievous’ is the least of those. Those words are perfectly reasonable descriptions of this bill.

This bill had its beginnings when the Teoh decision was handed down in April 1995. Very soon after that the then Labor government responded with a very interesting statement to the effect that the government did not believe that there should be an expectation within the Australian community that, if an Australian government ratified a treaty or convention, that treaty or convention ought to be considered in any administrative decisions. The then minister for foreign affairs, Mr Gareth Evans, and the then Attorney-General, Mr Lavarch, said:

... entering into an international treaty is not reason for raising any expectation that Government
decision-makers will act in accordance with the treaty if the relevant provisions of that treaty have not been enacted into domestic Australian law.

In that same year, the first Teoh bill arrived with great iniquity—I will use that word again; it is a rather good word. There was an outcry amongst human rights groups in Australia and around the world. There was general thought that it was an absolute disaster of a bill for anybody to even contemplate putting up. People wondered what on earth the government was thinking of, because that government had a good reputation on human rights around the world—except for East Timor, which we will not go into. Unfortunately the Teoh bill blurred that reputation quite considerably.

The bill lapsed in 1996 because of the federal election. We then had a new government. Lo and behold, the new government brought up almost the same bill in almost the same terms—although I think it did mention the Labor Party in the preamble, which was a bit cheeky. That bill lapsed again in 1998 when we had another election. Lo and behold, when we looked at the list of bills that the current government wanted, there it was: still on the list. The human rights groups and most of the groups around the world who had an interest in this could not believe that this government would bring it up again. I still cannot believe that this government has brought it up again, and I am not alone in that. I am sure that, like me, everybody in this chamber has had many letters, emails and phone calls about the bill since it appeared again on the Senate red at the beginning of last week.

The Australian desk person from Amnesty International in London was on AM speaking about it. He was as outraged as I am. I have a copy of a press release from Human Rights Watch in New York, and they are also outraged. So Amnesty International’s headquarters in London and Human Rights Watch in New York are outraged that this bill is being debated again—that anyone could even think of passing this bill. They have to be two of the most pre-eminent human rights groups around the world—and they are both pretty outraged that this bill is even being considered. The 28 March 2001 press release from Human Rights Watch, entitled ‘Australia on the verge of weakening human rights protection’, said:

Human Rights Watch warned that a bill before the Australian parliament today, if passed, would undermine Australia’s commitment to the human rights treaties it has ratified.

The Administrative Decisions (Effect of International Instruments) Bill 1999 would prevent a person from challenging an administrative decision on the basis that the decision-maker failed to take into account rights granted by international treaties to which Australia is a party. ‘This bill is an overreaction by the government—and, of course, the last government—to the decision in the Teoh case and is a step backwards—not just for Australia but for human rights protection more generally,’ said Sidney Jones, director of Human Rights Watch’s Asia division.

The High Court said in the Teoh case that ratification of an international convention should not be dismissed as a ‘merely platitudeous’ act but as a ‘positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention.’

Other courts, including in the UK and New Zealand—this is particularly interesting—have followed the Teoh decision. The superior courts of these countries—the UK and New Zealand—which share the same legal system as Australia, clearly believe that this procedural right is consistent with the recognized roles of the courts, the Parliament and the executive in implementing international law in domestic law.

The right to challenge a decision on the basis that it was made without reference to the many human rights treaties Australia has ratified is important for at least two reasons. The first is that Australia has failed to fully incorporate its treaty obligations into Australian law, and the second is that Australia has no bill of rights.

That is something the Democrats are particularly fond of. The press release continues:

The Teoh decision thus gave important additional protection to those living under Australian jurisdiction.
The point about the bill of rights is a very moot one. If we had a bill of rights in this country it would probably cover at least the basic human rights instruments. It would probably cover the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. So, if nothing else, it would at least cover those. If it were better than that, it would cover the basis human rights legislation which is enacted in the Human Rights and Equal Opportunity Commission Act.

But I have had other comments. One comment that I think we should particularly have a look at is the comment of the Human Rights Committee of the United Nations. On 28 July 2000 in Geneva, the Human Rights Committee in its sixty-ninth session considered reports submitted under article 40 of the ICCPR, including observations of the Human Rights Committee on Australia. In general they found that things were not too bad, but in paragraph 15 of their report they say:

The Committee is concerned by the government bill in which it would be stated, contrary to a judicial decision, that ratification of human rights treaties does not create legitimate expectations that government officials will use their discretion in a manner that is consistent with those treaties. The Committee considers that enactment of such a bill would be incompatible with the State party’s obligations—

that is, Australia’s obligations— under article 2 of the Covenant—

the ICCPR—

and urges the government to withdraw the bill.

That is as strong as that committee gets in its language. So the Human Rights Committee of the United Nations sitting in Geneva considering Australia’s obligations under the International Covenant on Civil and Political Rights—which the entire world considers to be one of the three absolutely major human rights covenants and treaties—considered that this bill was contrary to article 2, which is one of the most fundamental articles of the ICCPR. I could read it but it is pretty long and a bit boring. So I will not do that to the Senate.

Senator Woodley— I’d like to hear it.

Senator BOURNE— Thank you, Senator Woodley. It is very kind of you to want to hear it. I will read paragraph 3: It says:

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 2 also says that everything has to be absolutely basic—you cannot discriminate against people because of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This is the article which gives the absolute basic civil and political rights.

We have been urging China to ratify the ICCPR, but they have not done that yet. I assume Australia has been urging them to do it because we want to see them carry out the provisions of the ICCPR, because they are so basic. They are the absolute basic civil and political rights that everyone in the world should have. If it is the case that Australia has been urging China to ratify the ICCPR, why are we even considering a bill that would say, ‘But, by the way, any administrative decision taken by anybody in Australia does not have to consider the ICCPR’? Why on earth do we want China to ratify when, even though we have ratified, we do not want to take the ICCPR into consideration? It is just extraordinary. How can we even consider doing this? Dr Evatt would be turning in his grave. Dr Evatt was intimately involved in setting up not only the United Nations but also the ICCPR—in particular, those terribly important rights that we want the whole world to have. That anybody in this parliament could consider that we should order administrative bodies in this country
not to take into account the international treaties that we have ratified is just extraordinary.

I will go to a couple of the other points I want to make. One eminent professor of law in Australia—I had better not say who it is, because I have not asked him if I can use this—has emailed me about this. I am sure he has emailed everybody; I am sure I am not the only one he has emailed. I would like to read some of what he said. In saying that he adds his voice to those urging the defeat of this bill currently being debated, he says:

The effect of the High Court decision has been seriously overstated—particularly by those who represent it as a threat to Australian sovereignty, in the sense that it might enable the international community to make laws for Australia independently of Australia’s legal and constitutional processes. As to that, the leading judgment of Sir Anthony Mason and Sir William Deane in the Teoh case emphatically reaffirmed the true position:

The professor quotes that judgment. It reads:

“It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. This principle has its foundation in the proposition that in our constitutional system the making and ratification of treaties fall within the province of the Executive in the exercise of its prerogative power whereas the making and the alteration of the law fall within the province of Parliament, not the Executive. So, a treaty which has not been incorporated into our municipal law cannot operate as a direct source of individual rights and obligations under that law.”

That is the end of the quote from the High Court judges. The professor continues:

That principle has never been in doubt. But it is, of course, consistent with that principle that, in an appropriate case, the Parliament should decide that the requirements or effects of a treaty should be implemented in Australian law by the enactment of legislation. Such legislation is an exercise of Australian sovereignty, not an abdication of it.

It is also consistent with the above principles that the courts, within the areas permitted to them for shaping of the law (for instance, in the development of the common law, or in the interpretation of ambiguous statutory provisions) should be guided by the principles and expectations of international law, to the extent (as Justice Gaudron emphasised in the Teoh case) that the relevant international principles correspond with the fundamental values of the Australian community. (For Justice Gaudron, in the Teoh case, the significance of the relevant international Convention was “that it gives expression to a fundamental human rights which is taken for granted by Australian society, in the sense that it is valued and respected here as in other civilised countries” ... “that the Convention gives expression to an important right valued by the Australian community”.

And it does.

Senator Woodley—It’s very important.

Senator BOURNE—It is very important. Senator Woodley. You are absolutely right. The professor goes on to say:

The actual decision in Teoh case fell well within the legitimate area of judicial development of the common law. It was that there is a “legitimate expectation” that the Australian government will abide by its treaty obligations. This did NOT have the effect of imposing on the government any legally enforceable duty to do so; the effect of the “legitimate expectation” was only that, if a government decision-maker intends to proceed in a way which does NOT comply with Australia’s international obligations, the persons affected should be notified of that intention so that they have an opportunity to argue against it.

The anti-Teoh reaction, including the proposed legislation now before the Senate, necessarily entails a proclamation to the world that Australia has no intention of taking its international obligation seriously.

Senator Woodley—Except for the World Trade Organisation.

Senator BOURNE—Except for the World Trade Organisation, as Senator Woodley quite rightly says. The professor continues:

To those of us who do not wish to see Australia become an international pariah, any intimation of that kind is a source of deep embarrassment. The fact that there have been other such intimations of late serves only to make the issue more sensitive. I earnestly hope that the Bill will be defeated, and that you will help to ensure its defeat.

Yours sincerely.

I could not agree more; I particularly could not agree more with the second last paragraph. It does make us internationally very
noticeable—very sadly noticeable. That this is even on the red, that this is even on the Notice Paper! International human rights bodies, the most significant ones I can think of, cannot believe we are doing this. They cannot believe we are debating, let alone considering passing, a bill such as this. This is, as I said, an iniquitous bill. This is a wicked bill. This is a dreadful bill. This is something which says, ‘You cannot take the word of the Australian government. The Australian government, even though it signs treaties, does not intend to abide by them—and in fact wants everybody else not to as well.’

I know that before we sign treaties we do several things: the treaties are considered by the Joint Standing Committee on Treaties, and that is very good; they are checked and agreed to by all the states, and that is very good; and, in general, the law is changed in order that we abide by that treaty, if such a law does not already exist. But that does not cover everything. The point is that if we agree with a treaty then we should tell the entire world. I thought we were doing that before this happened. I was quite proud of it. I used to boast of it when I went overseas: when I went to China on human rights delegations and when I went to Vietnam on a human rights delegation. I cannot anymore. I may be able to again—I certainly hope so—when this bill goes down. I used to boast that Australia had such a good international reputation. I also used to boast, ‘If you want to come to Australia and see exactly how we treat everybody, then feel free to do so.’ Of course, that has been taken away by the Minister for Immigration and Multicultural Affairs, but that is another story.

The point about this bill is that it is a bad bill. It is bad legislation. It is something that none of us should even be considering or thinking about. We should take the advice of Amnesty International in London, we should take the advice of Human Rights Watch, we should take the advice of those hundreds of people who have emailed and phoned us and we should take the advice of the Human Rights Committee of the United Nations, sitting in Geneva, saying, ‘Get rid of this bill.’

**Senator McGauran**—The United Nations does not run this parliament!

**Senator WOODLEY** (Queensland) (11.51 a.m.)—I suggest to Senator McGauran that if he has not listened to the rest of the speech where the very issue he is raising was dealt with he should not really interject. However, I am sure that, if he feels he must, he probably will.

I rise to speak on the Administrative Decisions (Effect of International Instruments) Bill 1999. Along with Senator Bourne, I have to say I am outraged that today we have to debate this legislation. It ought not to be considered. It ought not to be before us. It ought not to be in this chamber. It is an outrage that any government should even consider passing into law this kind of legislation to fix something which really is a very small issue. To deny the human rights of Australians of whatever colour or creed or situation; to put at risk that whole legislative and legal system which, over the hundred years of this federal parliament and because we have never had a bill of rights, has gradually dealt with issues bit by bit in law—supported by the High Court, I might add—because of one small decision by the High Court which seems to have offended somebody in the government; to put at risk the progress that we have made in this country in human rights! Irrespective of the fact that we do not have a bill of rights, we have been able to achieve a lot in human rights in 100 years, not because of the High Court decision but because of small legislative changes in this place which have supported those decisions.

I want to go to an issue which Senator Bourne raised—that is, international treaties. What amazes me is that this government is prepared to slavishly bow before international treaties if they have anything to do with trade. For the sake of what we believe to be global free trade in the World Trade Organisation, we will put a whole series of our own domestic rural industries at risk, because we slavishly bow to that particular international treaty. But when it comes to human rights, when it comes to protecting the rights of ordinary Australians, then all of those international treaties can be torn up, disregarded and put in the rubbish bin. I am
amazed that, again, in such a blatant way this government has brought this kind of legislation into this place to reduce the human rights of ordinary Australians. I just cannot believe that we would even consider doing this.

I am not alone in my outrage over this issue. I am going to read into the record a number of letters which I have received. It is significant where they have come from. First of all, a letter from the Sisters of Mercy in Mackay said:

I write to you to express concerns over the current Administrative Decisions bill being debated in the Senate. It is my view that this Bill will seriously impede human rights within Australia and cause breaches with International treaties that Australia has signed.

If the Bill is successful, government departments will no longer be required to take international treaties that are currently enacted into consideration.

I implore you to take any action that is possible to prevent this Bill from eventually becoming legislation. It is important that Australia protects its people from abuses of human rights.

There are a number of letters from the order of the Sisters of Mercy from a whole host of different addresses and officially from their community as well, which plead with the parliament not to proceed with this legislation. But it is not only the Sisters of Mercy who have written; I have a letter here from the Darwin Community Legal Service. They make a number of very significant points. I will read into the record some of the points they make. They say:

We write as the local general community legal centre in Darwin in the Northern Territory. Every day we work with people who are missing out, on the edge, or not getting a fair deal in our society today. We write to express our concern about the effect and intent of the so-called ‘Anti-Teoh’ Bill.

Tenh’s case was important in sending a message to all government decision-makers that international human rights count, and that some basic standards of decision-making apply. We have been involved in many local community legal education events where we have talked about Teoh, and its implications for ordinary people out the back of beyond. It is an important message.

It certainly is. They go on to say:

As has been proven, Teoh was not about creating a litigious society. It was about giving disadvantaged people a voice when it comes to the exercise of government power against them. The Anti-Teoh Bill seeks to silence that voice. It begs the question: Why?

As you know, Teoh fell far short of creating a Bill of Rights for Australia. It did provide some basic principles about our right to be heard by government, and the way government should reach its decisions when a person’s human rights are to be affected. It is surely the least that our people can expect that the principles of Teoh should be adhered to and respected by our government bodies.

Yours sincerely
Cassandra Goldie
Coordinator/Principal Solicitor

The next letter I want to refer to is from the Mercy Disability Services in Brisbane, under the signature of Sister Margaret Evans, Executive Director. She makes the point that, if we passed this legislation, the legal avenues of appeal under international human rights covenants for disabled people, like those people that the sisters deal with every day, would be weakened. Again, the Sisters of Mercy are at the forefront of protest against that legislation.

Also, I have received quite a number of letters from different people and, although there is some variation in what they have said, they are all in a similar vein: they are writing to express their concern about this bill, to express the view that the bill would seriously impede human rights within Australia and to beg the parliament to defeat this legislation. One sample of such a letter is from Pamela Grassick. I have a letter here from the Catholic Commission for Justice, Development and Peace in Melbourne. It is signed by Judge John Hassett, the Chairman of the Catholic Commission for Justice, Development and Peace.

Senator McGauran—That is unrepresentative.

Senator WOODLEY—By the time I am finished, Senator McGauran, I hope that I will be able show that the concern expressed by these individual letters is fairly widespread. I do take your point. It is important that we are able to demonstrate that this is a wide concern and not just one of individuals.
I believe the Catholic Commission for Justice and Peace, with whom I have had a relationship for many years, is a very important body. It certainly does not represent the opinion of the whole Catholic Church, which I think is the point Senator McGauran is making. Nevertheless, it is a very important body within that wide church which is the Catholic Church today in Australia. Judge John Hassett, the Chairman, says about the administrative decisions bill:

The Commission is concerned about the passage of this Bill; bureaucrats should take into account the human rights considerations when making their decisions.

That is a pretty clear message; it is very direct and very important.

I have another letter from the Anglicare Refugee and Migrant Ministry body. This is from the Anglican Church of Australia Diocese of Brisbane. They make the same point. I am not going to read their letter because I do not want to simply repeat the same words that are repeated in these letters, but they make the same point. Of course, the significance of the bodies which are writing is that they are those bodies who are directly involved in a face to face way every day with people who are disadvantaged, particularly in this case refugees and migrants. They know the incredible problems that these people face because of other legislative decisions of this government. After all, surely we are prepared to take the word of people who, day by day, have to support those who are disadvantaged and living on the edge and at the bottom of the pile. Surely their voice is significant as they seek to speak on behalf of those who have no voice. So the Anglicare Refugee and Migrant Ministry in the Diocese of Brisbane also adds its voice to those who are concerned about the possibility that this legislation might actually get up.

I have another letter, from a Rosaleen Carroll, in the same vein. I will not read it because it makes a similar point. I have another letter, from a Sister Carmel Dwan from The Gap in Queensland. Again, she is begging the parliament not to pass this legislation. She is another Sister of Mercy. I have a letter from Father John Worthington from Tarragindi in Queensland. He also makes the same point and asks the parliament not to pass the legislation. I have a letter from the Sisters of Mercy Brisbane congregation, the state body for the Sisters of Mercy. This letter comes from Deirdre Gardiner. She makes a similar point. I will not read all of the letter but I think the last paragraph is one that surely senators in this place would really respond to, because she says:

I implore you to take any action that is possible to prevent the Bill from eventually becoming legislation. It is important that Australia protects its people from abuses of human rights.

I do agree with her.

Then there is a letter from the Unemployed Persons Advocacy in Brisbane, again asking that this legislation should fail. They make a point not made in other letters. They say their organisation:

... is particularly concerned that if passed, this bill will reduce or remove the international labour rights of Australia workers. If the bill is passed into legislation, the Australian Government will have abandoned its obligations to international treaties and compromised its ability to speak out on human rights issues in the international arena.

We implore you to do all in your power to oppose the passage of the Administrative Decisions Bill.

I could go on. I have another letter, this time from Rockhampton. Sister Maree Frances Wood of the Sisters of Mercy of Rockhampton uses exactly the same language.

I even have a letter from the Brisbane City Council, a council which has probably one of the best Labor administrations in this country. I am an admirer and a very long term supporter of the Lord Mayor, Jim Soorley, because he has been prepared at times—even against perhaps some other elements of the Labor Party in the Queensland—to go out on a limb, particularly on issues of human rights. This letter from the Community Development Team East of the Brisbane City Council from Carindale is written in exactly the same language.

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stinks and ought not to be allowed to pass this chamber.

I have quoted from various bits of correspondence which I have received that appeal to international treaties and say they should be upheld and taken into consideration and, particularly where Australia has ratified those treaties, they should not be ignored. It is not only those treaties which support the position I am taking. In my opinion—and this will be debated by others, I know—this bill flies in the face of one of the most fundamental points of Judaico-Christian ethics, which is that in supporting those who live at the edges of society we are doing the will and fulfilling the purpose of God. I am not going to quote the Scripture on this, but from beginning to end the Judaico-Christian ethic says over and over again: you must care for the fatherless, the widow and the stranger in your midst. For the Jews, the classic statement is: you were strangers in Egypt so you must care for the stranger in your own land. It is an obligation which has been repeated constantly for 3,000 years. We do not just need to appeal to the United Nations, which was set up in 1948; in fact we have 3,000 years of support for this position. The Judaico-Christian ethic—whether we read the historical books, whether we read the prophets, whether we go to the gospels, whether we read the parables—constantly repeats the fact that you must care for the hungry, the sick, the fatherless, the widow, the stranger and those in prison, and you must care for them whether or not you assess them to be guilty. The only obligation is that you will care for them. Constantly, in every aspect of the Judaico-Christian ethic there is an obligation laid upon us. It is out of that, in terms of Western civilisation anyway, that much of our understanding of human rights obligations has at least one of its roots.

In the few minutes that I have left, let me point out to the Senate that if this legislation had been in place some years ago many of the High Court decisions which we now applaud would not have been achieved. Look at the case of John Koowarta, which finally went to the High Court. In his case the state government of Queensland were prepared to challenge the validity of the Racial Discrimination Act. The High Court upheld that particular decision. Because of international covenants which support the Racial Discrimination Act of 1975, after a very long struggle Johnny Koowarta was able to obtain his rights and to have his right to a cattle property in Cape York upheld. The tragedy was that by the time the High Court made its decision Johnny Koowarta had passed on. Nevertheless, the judgment was established. The Racial Discrimination Act, one of the best pieces of legislation passed by the Whitlam government, was upheld by the High Court because of its basis in the international covenant. (Time expired)

Senator RIDGEWAY (New South Wales) (12.11 p.m.)—I also rise to speak on this Administrative Decisions (Effect of International Instruments) Bill 1999 because it deals with such a fundamental question of right and wrong. It goes to the very heart of the beliefs and values of Australian citizenship and the responsibility we have, as the elected representatives of the Australian people, to respect and further those values. It is also about giving value to our understanding of the need for human rights in our nation and our role in protecting the basic rights of Australian people themselves. Following on from the Teoh case, this bill is an attempt by the government to overrule the principle established by the High Court that when the executive enters into an international agreement a legitimate expectation arises that the executive will behave in a manner consistent with the agreement. In this debate we have heard the bill described in very colourful terms by some of the most respected legal institutions of Australia as well as some of our most eminent jurists, a group of people not renowned for their tendency to exaggeration or hyperbole. Some of the words that spring to mind are: repugnant, fundamentally flawed, an overreaction, and a disgrace.

The facts of the Teoh case have been clearly stated by other speakers in this debate so I will not repeat those here. What is worth revisiting is the principles of this case, which were decided in 1995. The economic, political and social ramifications of these principles have prompted the government and the
ALP to seek to reverse the decision of the courts through legislation. The High Court came to the finding in the Teoh case that when the executive ratifies an international agreement, provided there are no statutory or executive indications to the contrary, a legitimate expectation is created that administrative decisions will be made in accordance with the provisions of the agreement. It went on to say that, should decision makers not act in accordance with the international agreement, procedural fairness requires that the person affected should be given an opportunity to persuade them otherwise. This bill aims to override each of these findings of the High Court of Australia. Whilst the ALP’s amendments soften the language and the effect of the bill, they do not in any way seek to uphold the findings of the High Court. The question that needs to come to the forefront is: what is the role of the parliament in the implementation of Australia’s obligations under international law?

Both the government and the ALP have stated on numerous occasions that this notion of international agreement creating a legitimate expectation in the administrative decision making process is not consistent with the proper role of parliament implementing treaties in Australian law, as was shown by a press release in 1997 by Mr Downer and Mr Williams from the other house. This is a conclusion which the Australian Democrats totally refute. In concurrence with Sir Ronald Wilson, then president of the Human Rights and Equal Opportunity Commission, we are of the view that the legitimate expectation created by these treaties or provisions can only be reversed by legislation. He said at that time that it is unthinkable that the parliament should even be asked to consider such a reversal.

The federal parliament does have a crucial role to play in defining and protecting the basic rights of Australian people, and the Teoh case has presented an opportunity for it to do so. I think it also is an opportunity to find a workable balance between the role of the courts and the role of parliament itself when it comes to fostering Australian rights. Clearly, the parliament has already acted appropriately by enacting the Racial Discrimination Act back in 1975.

It is also perhaps an occasion to remind this chamber that we have a committee system to scrutinise and determine whether bills trespass unduly on personal rights and liberties, recognising that there are no statutes that list the core rights attached to Australian citizenship. Neither does the Australian Constitution protect the basic rights of Australian people. It does not contain a Bill of Rights but there are a few scattered provisions, such as the right to engage in the free exercise of any religion and the freedom of interstate trade. In the absence of a constitutional or statutory Bill of Rights, it is therefore highly appropriate that the fundamental principles and norms of international law do inform the Australian parliament in the legislative process.

One prime example of the importance of human rights principles in guiding the legislative process is the parliamentary committee process itself. I want to refer to one of those committees—the Senate Standing Committee for the Scrutiny of Bills. We all know what it does in terms of examining bills that come before the parliament. But I think it is also important to remember that, in carrying out its function, the committee is required to report whether bills:

... trespass unduly on personal rights and liberties; make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers; make rights, liberties or obligations unduly dependent upon non-reviewable decisions; inappropriately delegate legislative powers; or insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Not surprisingly, the committee does look to international legal instruments that Australia has ratified to determine whether proposed legislation furthers the fundamental principles of human rights or whether it breaches them. Similarly, it is also highly appropriate that our courts are entitled to use international law to assist in the development of the common law. As Justice Brennan noted in the now famous Mabo decision, ‘international law is a legitimate and important influence’. It assists the courts to interpret ambiguous statutes.
The Teoh decision itself does not violate the principle that treaties are not automatically incorporated into domestic law. What it simply does is suggest that treaties have a procedural effect. They should be taken into consideration by our parliament, the courts and our administrative decision makers to inform them in their duties. Regardless of whether or not this bill is passed into law, it is only the parliament that can make or alter domestic law in order to implement treaties entered into by the executive. While the Commonwealth may enter into treaties on Australia’s behalf without parliamentary approval, the provisions of a treaty do not become part of Australian law unless incorporated in legislation by the parliament itself. In other words, neither the government nor the ALP can provide a convincing argument that justifies the need for the parliament to take the retrograde step of supporting this bill.

We need to think about the broader implications of the bill: not just the question of what came about as a result of the Teoh case, but its implications in relation to the broader question of how we deal with decisions in government and in government departments in relation to all Australians in this country. Many legal commentators have rightly labelled the bill as the latest in a series of steps by the Australian government which effectively undermine our country’s commitment to human rights. We are quite clearly telling the world that we are not bound by the treaties we have ratified and, in some cases, have helped to develop.

The bill to me seems to be another example of the schizophrenic approach by this government when it comes to upholding basic human rights in Australia and particularly in Australian law. On the one hand, our government so desperately wants to wear the badge of a human rights defender and promoter. But only last month—when I travelled to Geneva at the invitation of the High Commissioner on Human Rights to address the commission—I was labelled by the Prime Minister as ‘un-Australian’ for talking about the disadvantage that indigenous Australians continue to experience. This is the same government that is drafting technical laws that flagrantly disregard its international human rights commitments when making administrative decisions that affect the lives of all Australian citizens. The government may well talk about a fair go for all but the sole purpose of this bill is to remove a basic tenet of procedural fairness injected by the High Court into our administrative decision making processes.

The question that needs to be asked is this: isn’t it true that this bill seeks to ensure that no government department would need to refer to any human rights treaties or other instruments signed by the Australian government in making their administrative decisions? Quite frankly, what is the point of the government signing international human rights treaties—or for that matter any other treaties—if at the same time it seeks to legislate so that such human rights safeguards are disregarded and ignored domestically? Perhaps the government and the opposition might like to explain that under the proposed new laws the courts will continue to see themselves as obliged to have regard to treaties when applying the common law in this country. Why on this occasion is the parliament being asked to legislate that the government and its administration be exempt from their effect?

Senator Greig has previously made the point that, in the case of human rights, we are talking about window-dressing here by the government that is designed to create favourable and positive international recognition while at the same time it is prepared to breach the spirit and intent of those human rights treaties at the local level. It really does not matter how you want to dress up the defences and protestations of the government and the ALP: the Administrative Decisions (Effect of International Instruments) Bill 1999 is bad law.

I want to remind people that the role of the parliament here is crucial to protecting the basic rights of all Australian people. In the absence of an Australian Bill of Rights that reflects the views of all Australians about those things that we see as being fair and decent about this country and about the recognition and protection of basic freedoms, I think that one of the things that flows from
this case is that we have to rely upon the common law in this country and the courts to show innovation in terms of how to protect those rights. I think that the parliament has an obligation to do more than that: it is about the doctrine of responsible government and how you ensure that a workable balance is created between what the parliament does and what the courts do in terms of dealing with issues like this, and particularly the issue of our obligations under international treaties.

It is another example of a record of failed reform in the area—of, on the one hand, being able to sign up to international treaties and, on the other, still being ambivalent about how we express that in domestic law. We have tried time and time again to deal with the issue of reform when it comes to recognising our social and legal obligations in this country to all citizens, but the protection of human rights in this country has frequently been neglected. This is an opportune time to remind people that, on many occasions and at every step when we have tried to reform in this area, what we have always aspired to has not been able to be achieved. In 1944 there was the referendum trying to ensure that under our Constitution there would be some guarantees of freedoms recognised and enshrined as part of Australian society. However, we were unable to come out of that with the freedom of speech and expression about religion, and freedom from want and freedom from fear. In 1967, there was the referendum relating to Aborigines. There was the human rights bill that came in in 1973, and the attempts by both Evans and Bowen in their bills relating to human rights. The ALP ought to take note that they have a tradition of following these things and that the Teoh bill is inconsistent with their early attempts about recognising, protecting and ensuring that human rights are dealt with appropriately by governments and government departments.

The Constitutional Commission and the 1988 referendum is another example. There is a whole list of things that have been attempted to deal with these particular questions. The 1998 Constitutional Convention was about trying to bring about some change to recognise rights in our Constitution. Given that this bill seeks to thwart any attempts to recognise and protect the basic rights of all Australians, it is not just about reacting to the Teoh case alone. Rather, it is a question about the potential effects of interfering with the rights of all Australians in this country. The government and the ALP need to explain how it is that, in this case, we can seek to exempt government departments and the government from being able to acknowledge, recognise and take into account those standards set out under international treaties when, at the same time, we understand and acknowledge that the courts will continue to be obliged to deal with these instruments in interpreting laws in this country. It is not enough to turn around and say that the workable balance between the role of the parliament and of the courts is one that needs to be left to the courts alone, that if people feel they have some grievance they can take it to the courts. People rely upon and expect that the parliament will behave appropriately.

This is an opportunity not to go backwards and look to all of the things that have failed in the past, but to move forward. It may well be an amendment bill that deals with what is regarded as just one court case, but it is much more than that. It is about the basic rights of all Australian people, about their rights being protected and recognised, and about the potential implications for how government and departments will behave in procedural fairness. We need to be constantly reminded that, whilst Australia as a country might be geographically removed from the rest of the world, it is hypocrisy of the highest order to suggest that we can ratify those treaties that deal with economic gain without recognising that there are also social obligations that must be dealt with in this country. The government and the ALP have a lot to answer for in this case, because this bill seeks to interfere with people’s rights and turn the clock back. I want to know why we give attention and more priority to one form of treaty and not another and why a balance is not created to bring about recognition in this country of human rights treaties and the rights of all people.
At the end of the day, whatever way you dress it up, the bill is bad law. In the future we may need to revisit this as a result of another court case. But I would hate to think that the benchmark or standard we set is the Teoh bill and that we end up comparing bad to bad and then trying to prioritise what bad is in order to come up with a bad outcome. This is essentially an opportunity to put forward something good. The bill that is being put forward is bad law, it ought not to be supported, and the ALP ought to be encouraged to change their mind about the implications for all Australians in other respects beyond the question of migration and refugees.

Senator ALLISON  (Victoria)  (12.27 p.m.)—I am pleased to join my colleagues in condemning the Administrative Decisions (Effect of International Instruments) Bill 1999. It is astounding that we are again facing debate on this issue. It has come up again and again in this place, and I can only conclude that the reason it is back on the agenda is that the ALP may be considering supporting it, which will be a sad day for this country. Fundamentally, the bill forces us to face the question of what status we are going to allow international obligations to have in this country.

Time and time again the government has clearly expressed a preference for international obligations that have no bearing on the manner in which it treats people. Whether we are talking about deportation—as in the case of Teoh—the disabled, indigenous people, refugees or juvenile offenders, this government apparently does not accept that it should have to make good on its promises to the international community. This bill is about our commitment to international conventions and how fair dinkum we might seem to the international community and about the decisions of the High Court. We are looking at whether, as administrators, the government should have regard to international instruments which give rise to legitimate expectations of consideration of a person’s rights.

An example of such an instrument is the United Nations Declaration on the Rights of Disabled Persons, and I will touch on this subject as the Democrat spokesperson for disability services. This declaration states that disabled persons shall enjoy the respect of human dignity; civil and political rights; medical, psychological and functional treatment; and the right to economic and social security, to name just a few. In the case of Teoh, a court decision held that, even where the terms of the treaty had not been incorporated into Australian law, a legitimate expectation arises that agencies of government will not act contrary to the terms of the treaty. By passing the bill before us, we are paving the way for our legislated laws to not have regard to those rights. By passing this bill, we are withdrawing from a commitment to the rights of disabled people.

This bill sees Australia running scared from its commitment to treaties. It is clear that Teoh did give treaties an impact in Australian law that they did not have previously, but it did not run roughshod over Australian law; indeed, it makes the distinction between a substantive rule of law and the doctrine of legitimate expectation to a procedural right only. Teoh’s case is the authority for the proposition that a legitimate expectation arises whenever Australia signs an international agreement, protocol or convention, such that the government of Australia will act in accordance with the provisions of that agreement. Legitimate expectations are an administrative right which attaches to an administrative process.

The government would have us believe that, during an administrative process in Australia, a person’s rights are preserved so that they may with confidence deal with the Australian government in the knowledge that the process will be applied probatively, uniformly and with disinterest in the outcome. They would also have us believe that the doctrine of procedural fairness adopted in Australian administrative law already incorporates the concept of legitimate expectations. This doctrine is fundamental to the good operation of the rule of law. This doctrine is founded on the positive law of natural justice and constitutes one of the very cornerstones of our Westminster democratic system.

The reality is that the fundamental value of procedural fairness is not a cornerstone of
this government and, perhaps, this opposition. It was only a few weeks ago that the government introduced the Administrative Appeals Tribunal bill, which sought to reduce the rights of administrative review to Australians. It sought to take away from ordinary, disadvantaged Australians the automatic right to legal representation; it sought to deny them the automatic right to interpreter services. It was targeted specifically at disadvantaged Australians, who could not reasonably or fairly be expected to navigate the myriad legal complexities which make up social security legislation, and sought to deny them procedural fairness. The Democrats strongly opposed the Administrative Appeals Tribunal bill because it denied natural justice in administrative procedures to Australians. What is around the corner? Procedural fairness is clearly not high on this government’s agenda, and we should be wary of legislation such as is before us.

To deny procedural fairness, including the rule of law and legitimate expectations, is tantamount to the capricious, arbitrary and tyrannical approach to decision making that is witnessed in so many other countries around the world—countries that we criticise and that have no cultural understanding of the rule of law. Legitimate expectations, therefore, are a right that flows from some process. The government will argue that the abundant use of the relevant international instruments with impunity will result in an apparent disregard for the existing statutory and common law position of that jurisdiction. In the field of signing international instruments, the ongoing future signing of treaties, conventions and protocols requires the flexibility to accommodate Australia’s obligations. To do so does not compromise our sovereignty or make Australia a slave to international community expectations; it makes us have regard to them. We want to let the world know that adopting a convention, far from undermining our status as an independent nation, actually assures the rest of the world that we are a fully mature participant in the affairs of the world.

If we were to pass this legislation, we would put ourselves in the same category as a number of other countries who sign treaties to gain some world trade or other financial advantage and then systematically ignore their obligations to ratify those treaties in their domestic law or otherwise simply ignore them. This practice is particularly the case in countries which have poor human rights records. They sign and then they simply ignore, violate or otherwise detach themselves from any responsibilities. They do as they like when they like. They are immune to repeated international outrages. They hold international law in contempt either because they hold a culturally relativist perspective—that is, rules for some but not for others—or because, for religious or ideological reasons, they refuse to recognise public international law at all.

There are those who express the view that Teoh was a bizarre attempt by the judiciary, or one aspect of it, to legal creep. It could be described in that sense, but I disagree with that. Rather, it is simply a reasonable chain of logic in that a government signs a treaty and there is a further obligation under the Vienna convention, which says that, once a party has signed a treaty, and even before ratification, it is obliged not to act in a way contrary to the objectives of that treaty—and, therefore, the agencies of government should act in a way that is not contrary to the terms of the treaty.

I can remember when Australia was moving to ratify the Convention on the Rights of the Child. Many would recall that there was a major outcry, along the lines that parents would no longer have control of their children. These fears have not been realised, gladly. Most of the arguments at that time distinguished between international law and Australian or domestic law, and focused on whether Australian laws fully complied with the obligations attached to the convention. Most of those in that debate had common agreement with the general objectives in the convention, which are directed against the exploitation of children and towards their adequate representation in legal proceedings.

The Teoh case has not caused major upheavals in administrative law either. A much greater upheaval in administrative laws, the administrative tribunal bill, reflects the government’s recent attempts to diminish indi-
individual rights. As I said earlier, I am glad to join my Democrat colleagues in condemning this legislation and to indicate that I, too, will be voting against it. I want to today, while I have a few more minutes, draw upon some of the correspondence that I have received in my office—and no doubt other senators have as well. Just in case they have not read some of these letters, I thought I would put them on the record today.

Senator Stott Despoja—Read them into the record.

Senator ALLISON—I will read them into the record, thank you. One letter says:

I write to you to express my concerns over the current Administrative Decisions Bill being debated in the Senate. This bill will seriously impede human rights within Australia, and cause breaches with International treaties that Australia has signed. If the bill is successful, government departments will no longer be required to take international treaties into consideration that are currently enacted.

I implore you to take any action that is possible to prevent this Bill from eventually becoming legislation. It is important that Australia protects its people from abuses of human rights.

That is a typical letter that has come into my office. I do not know what the government’s objectives are with this legislation. I imagine it thinks that this is a populist move: that Australia can say, ‘The rest of the world won’t tell us what to do. We’ll make our own decisions.’ These sorts of things have been expressed by ordinary people who have come into my offices—and no doubt messages on the email and the fax and through the post to other senators in this place say the same thing. Ordinary people are expressing real outrage and real concern about what this legislation has the capacity to do.

It seems to me that it would be quite easy to tap into such people who care about human rights and who want to see Australia as part of a world environment and not simply as an isolated country. There are so many of these letters, it is hard to know where to start. Another one says:

I write to you to express concerns over the current Administrative Decisions Bill being debated in the Senate. It is my view this bill will seriously impede human rights within Australia, and cause breaches with International treaties that Australia has signed. If the bill is successful, government departments will no longer be required to take international treaties into consideration that are currently enacted.

I implore you to take any action that is possible to prevent this Bill from eventually becoming legislation. It is important that Australia protects its people from abuses of human rights.

That one is from a constituent in East Kew. Another letter says:

The effect of the Bill is to remove broader measures of accountability. It is significant that within Australia there are no comparable broad assertions of the universal value allotted to every human life and how that value is to be manifested in daily life.

If the UDHR—the Universal Declaration of Human Rights—were adopted as part of our Constitution, and related treaties and conventions implemented in local law, I would have far fewer concerns (though of course the question then arises of how and to whom the Federal Government is to be held accountable if it ignores the will of the majority of its voters between elections, and frames laws to suit itself). But that has not been done. Instead, for the sake of the convenience of the executive arm of government, we are to have even the vague protection of the UDHR interpreted through the Teoh decision removed from us. Government should not be convenient for the governing bodies; it should be convenient for the governed. Lose sight of that simple fact and democracy begins to die.

I think that is a very important point. It is not lost on the vast majority of people around this country who are interested in human rights and who want to see Australia able to hold up its head in the international arena and show that it is willing to take on board the treaties that it signs and that it is taking them seriously. It is critical that we give people such as these a voice in the parliament.

Quite a number of people have signed joint letters, and I have one here from Queensland, which Senator Woodley has passed to me. It says:

I write to you to express concerns over the current Administrative Decisions Bill being debated in the Senate. It is my view this bill will seriously impede human rights within Australia, and cause breaches with International treaties that Australia has signed. If the bill is successful, government
departments will no longer be required to take international treaties that are currently enacted into consideration.

I implore you to take any action that is possible to prevent this Bill from eventually becoming legislation. It is important that Australia protects its people from abuses of human rights.

Again, there are many people who are interested in this issue who do want to see the Senate take action and who do not want to see this legislation come to pass. It would be not only very embarrassing but also very serious in terms of our ability to work within the international framework of treaties.

I will personally be doing what I can to make sure that we fulfil the wishes of all those people who have written to us and, no doubt, to others in the chamber. Again, I urge the government to change its mind over this legislation. I urge Labor to not assist with the passage of the bill. I hope that we will take a different view of international treaties.

The speeches read as follows—

PETROLEUM (SUBMERGED LANDS) LEGISLATION AMENDMENT BILL 2001

This bill proposes a mixture of policy and technical amendments to the Petroleum (Submerged Lands) Act 1967 and two other Acts that are incorporated with it.

The policy amendments consist first of a partial revision of the Commonwealth-State-Northern Territory relationship in managing offshore petroleum resources.

Under the Act, administration of offshore petroleum resources is shared between the Commonwealth, the States and Northern Territory. Major decisions are made by Joint Authorities consisting of the Commonwealth Minister for Industry, Science and Resources and the respective State or Northern Territory Minister responsible for petroleum. On the other hand, day-to-day administration is carried out by the Designated Authority (in other words, the State or Northern Territory Minister) on behalf of the Commonwealth.

An evaluation of the role of the Commonwealth Government in offshore petroleum exploration and development was completed in 1998. On the basis of recommendations from this evaluation, the then Minister for Resources and Energy subsequently announced a number of reforms to improve the administration of offshore petroleum exploration and development in Australia.

The proposed reforms include changes to the administrative arrangements between the Commonwealth, the States and the Northern Territory to clarify roles, minimise duplication, and progressively shift administrative responsibility to the States and the Northern Territory while retaining Commonwealth involvement in issues that have national implications.

The administrative aspects of the reforms include development of a Memorandum of Understanding, at Ministerial level, between Commonwealth, State and Northern Territory Governments. This Memorandum will be underpinned by intergovernmental protocols and regular compliance audits to ensure that all jurisdictions are adhering to the protocols.

The reforms also have a legislative aspect. This is addressed in this bill and partly also in the Petroleum (Submerged Lands) Legislation Amendment Bill 2001 and move:

That these bills be now read a second time.

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

Leave granted.
The transfer of these selected powers will help streamline the administration of offshore petroleum resources to the benefit of the petroleum industry, and free Commonwealth resources for more strategic policy issues of importance to the industry and the broader community.

The powers recommended for transfer (such as nominating a discovery block or registering a dealing in the petroleum title) are relatively routine in nature. The Commonwealth will monitor compliance with protocols over the next three years and then conduct another review of the allocation of powers between the Joint Authority and the Designated Authority. Further powers may be able to be transferred at the end of that process.

The second major policy reform contained in the bill involves changes to the datum provisions of the Act.

Adoption of the Geocentric Datum of Australia in Commonwealth legislation forms part of the Government’s Australian Spatial Data Infrastructure program. The Geocentric Datum of Australia is essentially a response to increased use of the Global Positioning System, or satellite navigation, for surveying, navigation and similar purposes.

Offshore petroleum title areas under the Petroleum (Submerged Lands) Act are defined by coordinates and the Australian Geodetic Datum, but this is not directly compatible with the Global Positioning System. The solution which this bill delivers is to bring petroleum title administration under the Geocentric Datum of Australia.

After consultation with the States, Northern Territory and the petroleum industry, a plan has been agreed for adopting the Geocentric Datum of Australia in the Act. The amendments in this bill provide the framework for this to occur. It is important to note that there will be no shift in the position of any petroleum title area over the seabed as a result of the changes. Various elements of the implementation, as specified in this bill, will be provided for in the regulations to be made after the passage of the amendments. The Government will progress the implementation at a pace that does not place undue pressure on Commonwealth, State or Northern Territory resources.

The relabelling of adjacent area descriptions in Schedule 2 is expected to be addressed in future legislation.

The bill also makes a change to the provisions in the Act that deal with the liability of officials. It proposes that the liability of officials be made consistent with the right and responsibility that objective-based regulations now give to petroleum companies to pursue best practice under their own management systems.

All the other amendments in the bill are minor technical corrections to the Act, the Petroleum (Submerged Lands) Fees Act 1994 and the Primary Industries and Energy Legislation Amendment Act (No. 1) 1998.

In conclusion, Madam President, the amendments in this bill are one element of a more extensive process to streamline and modernise Australia’s administrative arrangements for managing its offshore petroleum resources. As such, the content of the bill will help ensure that Australia remains an attractive location in the world for petroleum exploration and development. This in turn will deliver benefits, in terms of more jobs, an improved fiscal and external position as well as increased energy self sufficiency, to all Australians.

I commend the bill to honourable Senators.

Senator SCHACHT (South Australia)

(12.46 p.m.)—I rise to speak on the Petroleum (Submerged Lands) (Registration Fees) Amendment Bill 2000

This bill is complementary to the Petroleum (Submerged Lands) Legislation Amendment Bill (No.3) 2000, which transfers a number of powers under the Petroleum (Submerged Lands) Act 1967 from the Joint Authorities to the Designated Authorities.

A small number of powers or functions of the Joint Authority that relate to the registration of titles and dealings under that Act appear in the Petroleum (Submerged Lands) (Registration Fees) Act 1967. These functions involve the Joint Authority in determining the rate of fee payable in a number of different situations.

Under the same policy decision as applies to the transfer of powers in Petroleum (Submerged Lands) Legislation Amendment Bill (No.3) 2000, this bill seeks to transfer these functions to the Designated Authority.

I commend the bill to honourable Senators.
Amendment Bill 2000 and the Petroleum (Submerged Lands) Legislation Amendment Bill 2001. Mr Martyn Evans, the shadow minister in the other place, outlined that, although we support the bills, we make a qualification in that we do not agree that it is automatically advantageous to give to the states and territories some of the administrative functions that this bill is referring back to them, particularly the Northern Territory. We believe that, for an industry that has a national and international perspective, it would be better to keep a strongly maintained national outlook with those arrangements, particularly the broader issues of research and information.

We know that this government has an ideological bent to refer and give back to the states as much as it can. We think that in many cases that is the wrong way to go and that it is better to keep a national perspective, particularly on petroleum. In view of the mess the government has got itself into on petrol recently, one is not surprised that it is making these decisions. With those qualifications, we agree to support the bill. The shadow minister has indicated that we reserve the right to revisit these matters of administration when we are back in government in the near future.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.48 p.m.)—in reply—I thank honourable senators for their contributions to the debate. This bill proposes a mixture of policy and technical amendments to the Petroleum (Submerged Lands) Act 1967 and two other acts that are incorporated with it. The proposed reforms include changes to the administrative arrangements between the Commonwealth, the states and the Northern Territory to clarify the roles, minimise duplication and progressively shift administrative responsibility to the states and the Northern Territory.

While retaining Commonwealth involvement in issues that have national implications, the administrative aspects of the reforms include the development of a memorandum of understanding at a ministerial level between Commonwealth, state and Northern Territory governments, and this memorandum will be underpinned by intergovernmental protocols and regular compliance audits to ensure that all jurisdictions are adhering to the protocols. The transfer of these selected powers will help streamline the administration of offshore petroleum resources to the benefit of the petroleum industry and free Commonwealth resources for more strategic policy issues of importance to the industry and the broader community.

In conclusion, the amendments in this bill are one element of a more extensive process to streamline and modernise Australia’s administrative arrangements for managing its petroleum resources. As such, the content of the bill will help ensure that Australia remains an attractive location in the world for petroleum exploration and development. This in turn will deliver benefits in terms of more jobs and an improved fiscal and external position as well as increased energy self-sufficiency to all Australians. The bill is complementary to the Petroleum (Submerged Lands) Legislation Amendment Bill 2001, which transfers a number of powers under the Petroleum (Submerged Lands) Act 1967 from the joint authorities to these designated authorities. Under the same policy decision as applies to the transfer of powers in the Petroleum (Submerged Lands) Legislation Amendment Bill 2001, this bill seeks to transfer these functions to the designated authority. I commend the bills to the Senate.

Question resolved in the affirmative.

Bills read a second time, and passed through their remaining stages without amendment or debate.

COAL INDUSTRY REPEAL BILL 2000

First Reading

Bill received from the House of Representatives.

Motion (by Senator Patterson) agreed to:

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

Bill read a first time.

Second Reading

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Im-
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 dissolve the Joint Coal Board under the Coal Industry Act 1946 and transfer all the assets and liabilities to NSW. This follows a long standing Commonwealth Government policy to place the NSW coal industry on an equal footing with other coal producing states who each adequately service their coal industry without this level of Commonwealth oversight or involvement.

The Joint Coal Board was established in 1946 by mirror Commonwealth and NSW State legislation. The board had the task of addressing the parlous state of the NSW coal industry at the end of the war. Most of eastern Australia’s industry was dependent of coal at that time.

Consequently, the inaugural legislation provided the Joint Coal Board with sweeping powers over virtually every aspect of the NSW coal industry. These included control over mining methods, opening and closing of coal mines, distribution of coal including its purchase and sale, regulation of prices, employment in and recruitment to the coal industry, and power to acquire and operate any mine or to manage any mine.

The Board has been instrumental, amongst other things, in:

1. introducing mechanisation to the NSW coal industry, and hence the Australian coal industry, because at the time the NSW coal industry was the major coal producer;
2. eliminating pneumoconiosis (black lung) from the NSW and Australian coal industry through its industrial hygiene and occupational health services;
3. improving the general standard of pit amenities by issuing formal directions to some mine owners. For example, when the Board was first established, only 3 mines had bath and change houses of a satisfactory standard while more than half the mines did not have a satisfactory supply of drinking water at the surface; and
4. improving the welfare of coal miners. For example, in 1990 The Retired Miners’ Superannuation Scheme was unfunded. The Board agreed to pick up the pension liability for the pre-1978 pensioners. The cost of this liability was $64 million. Also, many of the older, traditional coal mining areas have relied on the Board to provide them with facilities that city people take for granted, for example, water and sewerage schemes, recreational facilities, libraries, parks and gardens.

The Joint Coal Board has overseen the NSW coal industry moving from a domestic oriented industry to a premier coal exporter. Like all successful organisations, the Board has needed to adapt to the changing operational environment. In 1992, the Coal Industry Act 1946 was amended to remove its regulatory functions, and focus its activities on health and welfare issues.

Today the mission of the Joint Coal Board is to deliver quality service to protect, support and advance health and welfare in the NSW coal industry. Its four core functions are workers’ compensation insurance, occupational health and rehabilitation, information services, and training. The Joint Coal Board is self funded and derives its income from workers’ compensation premiums, income from investments and fees for services.

The Commonwealth Government recognises that the Joint Coal Board undertakes these important functions for the NSW coal industry and that they need to be continued by either the NSW Government or industry.

Following negotiations with the NSW Government, it was jointly decided to transfer the full responsibility of the Joint Coal Board to the NSW Government. This includes the transfer of all the assets, liabilities and rights of the Joint Coal Board to NSW. This is to ensure that the new corporation or entity established under NSW legislation to replace the Joint Coal Board has a financially sound base and continues to have the resources needed to maintain these important functions. The NSW Government has also provided a written assurance that all the resources currently attributable to the Joint Coal Board will be quarantined and used solely in the exercise of functions previously undertaken by the Joint Coal Board in the new corporation or entity.

We have also been assured that it is the intention of NSW that all staff of the Joint Coal Board will be transferred to the new NSW corporation or entity.

The date of proclamation will be coordinated between the Commonwealth and NSW to ensure that the new arrangements are in place and that the new NSW corporation or entity is ready to take over once the Joint Coal Board is dissolved.
For the first time in over fifty years, NSW will be given the flexibility to determine what administrative arrangements would best suit its requirements in managing these functions. This is a major reform for the NSW coal industry. It provides opportunities for NSW to streamline and reduce the cost of services it provides to its coal industry. But even more importantly, it provides additional flexibility that will allow the NSW Government and industry to respond more effectively to the many dynamic challenges facing coal.

Senator SCHACHT (South Australia) (12.54 p.m.)—The opposition supports the Coal Industry Repeal Bill 2000. I will refer to some comments made by my colleague Mr Martyn Evans in the other place on this bill. It should be acknowledged that this bill brings about the winding up of the Joint Coal Board, established in 1946 by the Commonwealth and the New South Wales government. It was established to deal with the restructuring of the coal industry at the end of the Second World War. By all accounts, it was extremely successful in, amongst other things, introducing mechanisation into the New South Wales coal industry, eliminating black lung from the coal industry through industrial hygiene and occupational health services, improving the general standard of pit amenities by issuing formal directions to some mine owners and improving the welfare of coal miners. For example, in 1990 the Retired Miners Superannuation Scheme was unfunded. The board agreed to pick up the pension liability for the pre-1978 pensioners. In all, it has had a very positive impact on a very important industry in Australia.

Today the mission of the Joint Coal Board is to deliver quality services to protect, support and advance health and welfare in the New South Wales coal industry. Its four core functions are workers compensation insurance, occupational health and rehabilitation, information services and training. It is self-funded and derives its income from workers compensation premiums, from investment and from fees for services. The Commonwealth government has recognised that the Joint Coal Board undertakes these important functions for the New South Wales coal industry and that they need to be continued by either the New South Wales government or industry.

Following negotiations with the New South Wales government, it was jointly decided to transfer the full responsibility of the Joint Coal Board to the New South Wales government. This includes the transfer of all assets, liabilities and the rights of the Joint Coal Board to New South Wales. Most importantly, the New South Wales government has provided a written assurance that all the resources currently attributable to the Joint Coal Board will be quarantined and used solely in the exercise of functions previously undertaken by the Joint Coal Board in the new corporation or entity. With those remarks, I can say we support the bill.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.56 p.m.)—in reply—I thank Senator Schacht for his contribution. The Coal Industry Repeal Bill 2001 is an important step towards the removal of unnecessary regulatory intervention in the Australian coal industry. The bill supports the Commonwealth withdrawal from the Joint Coal Board, the JCB, and facilitates the smooth transition of its remaining functions to government and industry within New South Wales. The second reading speech has really highlighted the particulars of the bill and what it sets out to achieve. It also provides for the transfer of all assets and liabilities of the JCB to the New South Wales government to use as it determines to manage the functions currently carried out by the JCB.

Further to the discussions in the House of Representatives and a commitment made by the minister, I give senators an assurance that the government will not be proclaiming this legislation until the New South Wales legislation is in place. I would like to conclude by recognising the important contribution of the JCB over the past 55 years to the development of the New South Wales coal industry. This government is fully appreciative of the role played by the JCB and thanks all its former and current staff and board members for their valuable contribution. I commend the bill to the Senate.

Question resolved in the affirmative.
Bill read a second time, and passed through its remaining stages without amendment or debate.

FOREIGN AFFAIRS AND TRADE LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2000

First Reading

Bill received from the House of Representatives.

Motion (by Senator Patterson) agreed to:

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

Bill read a first time.

Second Reading

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.58 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

In 1993 the Commonwealth, State and Territory governments agreed to develop a National Uniform Criminal Code by 2001. As part of this development, the Commonwealth enacted the Criminal Code Act 1995.

The Schedule to that Act, simply called the Criminal Code, enables the most serious offences against Commonwealth law to be codified and also establishes a cohesive set of general principles of criminal responsibility. When this codification is finalised, it will represent a significant improvement on the existing Commonwealth criminal law, where serious criminal offence provisions are currently scattered throughout the broad range of legislation. It is noteworthy that these provisions have not been created or interpreted in a consistent manner.

The Government’s Criminal Code project is, therefore, a vital step towards the goal of ensuring greater clarity and consistency in the criminal law across Australia.

An important step in the process of finalising the Criminal Code is to ensure that all offence-creating and related provisions throughout Commonwealth legislation are drafted in a manner that is compatible with the general principles established by the Criminal Code.

While a majority of offences will operate as they always have without amendment, there are some that will require adjustment. It is important that all such amendments are made prior to the application, on 15 December 2001, of the Criminal Code’s general principles of criminal responsibility to all offences against Commonwealth legislation. This will ensure that there is a seamless transition for what is now widely recognised as one of the more worthwhile contemporary law reform projects.

The purpose of this Bill, the Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Bill 2000, is to apply the Criminal Code to offence-creating and related provisions in legislation administered by the Foreign Affairs and Trade portfolio, and to make all necessary amendments to these provisions to ensure compliance and consistency with the Criminal Code’s general principles. This Bill is one in a series designed to apply the Criminal Code on a portfolio-by-portfolio basis.

A number of amendments are necessary to offence-creating and related provisions within legislation administered by the Foreign Affairs and Trade portfolio. These amendments, made in the Schedule to the Bill, are all technical in nature. In general, the purpose of these amendments is merely to ensure that these offence-creating provisions will, after the commencement of the Criminal Code, be interpreted in that same manner as they are currently.

This Bill will encourage the fair and efficient prosecution of offences, by clarifying the physical elements of offences - that is, the precise conduct which is proscribed by an offence - and by amending inappropriate fault elements - that is, the particular ‘mental state’ of a defendant required for him or her to be found criminally liable. I anticipate that this measure alone will save many hundreds of hours of court time otherwise spent in complicated, and sometimes inconsistent, interpretation of offence-creating provisions. It follows that courts will enjoy significant savings in time, costs and resources as a result of the amendments.

The amendments made by the Bill apply to such significant portfolio legislation as the Chemical Weapons (Prohibition) Act 1994, the Comprehensive Nuclear Test Ban Treaty Act 1998 and the Nuclear Non-Proliferation (Safeguards) Act 1987, among others. As such, the amendments will ensure the proper and efficient implementation of Australia’s international obligations with respect
to the multilateral arms control and disarmament regimes.

The amendments to the offence provisions of the Passports Act 1938 will help ensure the continued integrity of Australian passports as highly reliable documents of identity.

Amongst the most significant amendments are those expressly applying strict liability to some offence-creating provisions. Under the Criminal Code, where it is intended that a 'strict liability' standard apply to a particular offence, this must be expressly stated in the Act. In all other cases, the prosecution will be required to prove fault in relation to each element of the offence. These amendments are necessary to ensure that the strict liability nature of some provisions is not lost in the transition to application of the Criminal Code's general principles.

Without these amendments, offences that would have been interpreted as offences of strict liability, prior to the introduction of the Criminal Code, would have become more difficult for the prosecution to prove. This unintended consequence of the transition process would reduce the protection that was originally intended by the Parliament to be provided by these offences.

We can confidently expect that these improvements will save valuable court time and bring greater consistency and cohesion to Commonwealth criminal law.

This Bill is one of the steps in a process that will give Australians greater certainty, protection and confidence under the criminal law.

I commend the Bill to the Senate.

Senator O'BRIEN (Tasmania) (12.59 p.m.)—The opposition is pleased to give bipartisan support to the Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Bill 2000. This legislation is part of a broad project of developing and implementing a national uniform criminal code. This is occurring across all portfolios, with the intention of ensuring that all Commonwealth criminal offences have standard formulations of the elements of intention, fault, burden of proof and penalty. As the foreign minister noted in introducing the bill in the other place, the Commonwealth and state and territory governments agreed to develop a national criminal code by 2001. A key element of that development was the enactment by the Keating Labor government of the Criminal Code Act 1995. The schedule to that act, the Criminal Code, enables the most serious offences against Commonwealth law to be codified and also establishes a cohesive set of principles of criminal responsibility.

An important step in the process of finalising the Criminal Code is to ensure that all offence creating and related provisions throughout Commonwealth legislation are drafted in a manner that is compatible with the principles established by the Criminal Code. The purpose of this legislation—one of a series of bills being introduced into this parliament on a portfolio by portfolio basis—is to apply the Criminal Code to offence creating and related provisions within 11 Foreign Affairs and Trade portfolio statutes. These laws include, amongst others, the Chemical Weapons (Prohibition) Act 1994, the Comprehensive Nuclear Test-Ban Treaty Act 1998, the Nuclear Non-Proliferation (Safeguards) Act 1987, the Diplomatic and Consular Missions Act 1978, the Export Finance and Insurance Corporation Act 1991 and the Passports Act 1938. These are important statutes which underpin the proper and efficient implementation of a range of Australia's international obligations and, in respect of the Passports Act, ensure the integrity of Australian passports as highly reliable documents of identity.

The explanatory memorandum to this bill observes that the application of the Criminal Code to all offences will improve Commonwealth criminal law by clarifying important elements of offences, in particular the fault elements. At present, many hours of court time are wasted in litigation about the meaning of particular fault elements or the extent to which the prosecution should have the burden of proving these fault elements.

The major forms of amendment affected by this bill are: application of the Criminal Code to all offence creating and related provisions; deletion of references to some Crimes Act 1914 general offence provisions, which duplicate provisions of the Criminal Code, and replacement of these with references to equivalent Criminal Code provisions; application of strict liability to individual offences or specified physical elements of offences; reconstruction of provisions in order to clarify physical elements of
conduct, circumstances and result; removal or replacement of inappropriate fault elements; and repeal of some offence creating provisions which duplicate general offence provisions in the Criminal Code.

The foreign minister said in his second reading speech that he anticipates that the clarification of the law affected by this bill will save many hundreds of hours of court time. It remains to be seen whether the benefits will be quite as dramatic as this. Given the technical nature of the amendments in this and other portfolios, it will only be over some period of time that any glitches or complications will become apparent. We will need to monitor the application of the amendments across portfolios and move to redress any anomalies or problems which arise. That said, the opposition is pleased to support this legislation, which is part of a broad bipartisan project to give Australians greater certainty, protection and confidence under the criminal law.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.02 p.m.)—I thank Senator O’Brien for his contribution. As he said, the bill amends 11 Foreign Affairs and Trade portfolio statutes by inserting new provisions and amending existing provisions to harmonise various offences within those statutes with chapter 2 of the Criminal Code. The amendments are to ensure that the relevant offences continue to have the same meaning and operate in the same manner as they do at present. It will improve Commonwealth law by clarifying important elements of offences, in particular the fault elements. As has been said, many hours of practitioners’ and court time are wasted in litigation about the meaning of particular fault elements or the extent to which the prosecution should have the burden of proving those fault elements. The effect of the bill is to harmonise offence creating and related provisions within the Foreign Affairs and Trade portfolio with the general principles of criminal responsibility as codified in chapter 2 of the Criminal Code. I commend the bill to the Senate.

Question resolved in the affirmative.

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

SOCIAL SECURITY LEGISLATION AMENDMENT (CONCESSION CARDS) BILL 2000 [2001]

Second Reading

Debate resumed from 7 December 2000, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator BARTLETT (Queensland) (1.04 p.m.)—The Social Security Legislation Amendment (Concession Cards) Bill 2000 [2001] relates to health care cards and concession cards and is one that the Democrats support. It is basically an administrative bill that does something that the Democrats call for frequently in that it seeks to simplify and clarify a very complex area of social security law; it deals specifically with the area of health care cards and concession cards. Currently, these cards are covered by a range of different provisions under a number of different laws, including the Health Insurance Act and the National Health Act and, of course, the Social Security Act. Each of those acts has different provisions and entitlements attached to them. The purpose of this bill is to bring those different provisions together in a more efficient and clear-cut way, and hopefully it will help to reduce some of the confusion in this area.

The Democrats understand that anybody currently entitled to a concession card will not lose that entitlement as a result of this process. Ensuring that nobody is disadvantaged as a result of a change that is simply meant to make things more clear and more efficient is welcome. I have had an amendment circulated in the chamber for about a month now in relation to qualification for health care cards, specifically for foster children. I will speak about that issue during the committee stage of the debate rather than expounding it now. It is a small but I think important issue for foster parents and foster care. In itself the amendment highlights the important role that concession cards and health care cards play in providing assistance to people in an area that can be of great ex-
pense to them. People are well aware of the cost of health care and health budgets and, if you are a person on a low income, access to adequate and affordable health care is a particularly important entitlement. It is worth emphasising again that it is important this bill is constructed in such a way that anybody currently entitled to a health care card or other concession card will not lose their entitlement. The Democrats support the legislation, and I will speak to my amendment in more detail during the committee stage.

Senator LUDWIG (Queensland) (1.08 p.m.)—I rise to indicate that the opposition supports the Social Security Legislation Amendment (Concession Cards) Bill 2000 [2001]. We have had an opportunity of looking at the amendment circulated by Senator Bartlett and we are also in agreement with that.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.08 p.m.)—Thank you very much, Senator Ludwig, for your very succinct speech. I thank honourable senators for their contributions. The government is committed to supporting and encouraging foster carers. Although financial assistance for foster children is primarily a state responsibility, the Commonwealth has introduced more flexible health care card rules for foster children and has simplified eligibility rules for foster carers claiming parenting payment in 1999. The Social Security Legislation Amendment (Concession Cards) Bill 2000 [2001] has created an opportunity to further assist foster children and those who have caring responsibility for them.

In response to recent representations on this issue, the Commonwealth asked state and territory governments to provide more detailed information about foster carers and foster children, including state and territory government assistance available for foster carers. This information was intended to assist with a more comprehensive consideration of how best to assist foster carers and children. The proposed amendment circulated by the Democrats has pre-empted the government’s response to the issues raised. Providing all foster children with a health care card will provide them with access to medicines under the Pharmaceutical Benefits Scheme at a discounted rate, generally $3.50 per script. This proposal should therefore help to improve health outcomes for foster children and provide some financial relief for foster carers. I indicate that the government will be supporting the Democrat amendment. I am including that now to save me doing so during the committee stage of the bill. I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator BARTLETT (Queensland) (1.10 p.m.)—I move Democrats amendment No. 1: (1) Schedule 1, item 6, page 17 (lines 1 to 13), omit subsection (5), substitute:

(5) This section applies to a child on a day if:

(a) on that day, the child is in foster care; and

(b) the child is living in Australia with an Australian resident.

This amendment specifically relates to foster children, and I am pleased to hear the statements that have already been made by other senators in relation to this issue. It is one that got some very important and valuable coverage in the Australian newspaper a week or so back. That coverage highlighted the really important and positive role that foster parents play and described the variety of circumstances that foster children come from and are in. Not all foster children come from families on low incomes, and abuse or neglect is not always correlated to socioeconomic status; so they are not always coming from poor families. Currently, for a foster child to be eligible for a health care card, two provisos must be met: the foster family of the child must qualify for family tax benefit and the child’s family of origin must be eligible for a health care card. So, in terms of requirements from two separate families, there is a double hurdle for foster children to be eligible for a health care card.

The income of foster families should not be relevant, as the health care cards are not
in the name of the carers but only in the child’s name. They can only be used for the foster child who is placed with a foster family under government child protection policies. Some foster children, therefore, have been excluded from having health care cards because of these two provisos, and this can leave some of the most needy children without assistance. I think all of us would agree that, almost by definition, those children are in a circumstance of some need. The problem is further compounded for these children as many have ongoing medical and/or emotional needs as a result of the abuse or neglect suffered. Without the health care cards, it is also difficult for these children to obtain certain other assistance such as the state education maintenance allowance and preschool fee relief. Thus, their access to a range of services that could ameliorate some of their disadvantage is being limited by these provisos. The Democrats want to change these requirements so that all foster children have access to health care cards, irrespective of their past or current financial status.

There is a current crisis in foster care. I realise that this is a state responsibility in most respects, but again I think we need, as the national parliament, to assist where we can with social needs. There are 16,000 children from babies to teenagers scattered across Australia. While many are in foster homes, others are in refuges, with relatives, in motel rooms or on the streets. At the same time, the number of people qualified and prepared to take care of them is falling dramatically, while the children themselves are more damaged and more difficult than ever before. The crisis is that there is a sharp and unexpected increase in the number of children needing care, together with a shortage in the number of people who are willing to become foster carers—agencies in regional areas have been forced to recruit through doorknocking. Children coming into the system have suffered increasingly severe abuse and neglect and are so damaged that many foster families are unable to cope with them. It is universally accepted that institutions are bad for children and, for many children, foster families are their best opportunity and sometimes their only opportunity for a reasonable life. Traditionally, foster care was built on the back of women remaining at home and taking in disadvantaged children. Today, however, the shortage of foster families means that families of two working parents are called upon to care for these children. The family tax benefit income limits can be reached with two working parents. We understand that there are fewer than 400 families who are prevented from accessing health care cards for the foster children in their care.

This amendment should not require a huge financial commitment, and more than likely it will encourage more families to undertake fostering. I think that would be an important outcome. It is a small amendment. I note the comments that Senator Patterson has already made on the issue and commend the government for the work they have done in this area in trying to assist in addressing what is clearly a social need in the area of foster care. Hopefully, this amendment will go some way to also assist in addressing this important social need.

Senator LUDWIG (Queensland) (1.15 p.m.)—I confirm that the opposition views this amendment as worthwhile and deserving and that it attracts our support.

Amendment agreed to.

Bill, as amended, agreed to.

Bill reported with an amendment; report adopted.

Third Reading

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

Sitting suspended from 1.16 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Defence: Recruitment

Senator HOGG (2.00 p.m.)—My question is to Senator Minchin, the Minister representing the Minister for Defence. Can the minister confirm that the government spent $33 million on Defence recruitment advertising in the 1999-2000 financial year—an increase of $20.5 million, or 164 per cent, over the previous year? Can the minister also confirm that 5,600 recruits entered the Defence Force in 1999-2000, an increase of 300 over the previous year? Is the government
satisfied with the spending of an extra $20.5 million on advertising to recruit just 300 extra Defence personnel, which is $683,000 of taxpayers’ money for each and every extra recruit?

Senator MINCHIN—On the information available to me, I can confirm that the advertising for recruits by the Defence Force in 1998-99 was $14.1 million, with a recruitment achievement of 5,361.

Senator Faulkner—No, he asked you about 1999-2000 actually.

Senator MINCHIN—Senator Faulkner, just let me go through the facts.

Senator Faulkner interjecting—

Senator MINCHIN—Will you let me answer the question, or do you want to answer it? In 1999-2000 the advertising spend was $32 ½ million, recruiting 5,742. In the current financial year, as at the end of February, it was $26.7 million for recruitment of 5,232, up to 1 April. The brief available to me cites issues related to recruitment. I think we are all aware that recruitment is a constant challenge for whomever in government and that recruiting personnel for Australia’s Defence Force is a primary obligation that has become increasingly difficult.

I have been advised of the reasons why people leave the forces, why there is this need for constant recruitment and why the forces need to advertise heavily to recruit. Those who leave cite the following reasons: to make a career change while still young enough, lack of job satisfaction, little reward for what would be considered overtime in the civilian community, desire to stay in one place, better career prospects in civilian life, desire for less separation from family, insufficient opportunities for career development, lack of recognition or credit for work done and a desire to live in their own homes.

There are a whole lot of reasons, as we would all acknowledge, why it is more and more difficult to recruit people to a force where they are required to spend long periods away from home. It is increasingly difficult for the Defence Force to recruit from families where both partners are in employment. That, increasingly, is a problem. The fact is that the Defence Force has to advertise heavily to ensure the recruitment of the right personnel. Its standards are extremely high, and the cost of recruiting the people the Defence Force needs is clearly increasing. It is critical the Defence Force maintains that effort in a difficult recruiting environment to ensure we have the highest quality Defence Force.

Senator HOGG—Madam President, I ask a supplementary question. The minister did not address part of my question. I asked: is the government satisfied with the spending of an extra $20.5 million on advertising to recruit just 300 extra Defence personnel? Given the fact that it cost in the order of $683,000 for every extra recruit in the 1999-2000 financial year, will the Howard government now undertake an urgent and comprehensive assessment of the effectiveness of Defence recruitment advertising campaigns?

Senator MINCHIN—I gave Senator Hogg the figures in relation to the advertising spend on recruitment. I am happy to ask the Minister for Defence to supply any additional information that might answer Senator Hogg’s questions.

Families: Interest Rates

Senator GIBSON (2.04 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister inform the Senate of the benefits of the recent cut to interest rates to low income earners and large families? What other benefits have there been for low income earners and large families under the Howard government?

Senator VANSTONE—I thank Senator Gibson for the question. With his background, he would understand the real value of interest rate cuts to Australians. This government is absolutely committed to delivering—and it is delivering—a real benefit to low income earners and large families under the Howard government.

Sound economic management and low interest rates together benefit low income earners purchasing their homes. An example of the monthly repayments on a home with a typical mortgage of $100,000, according to the Herald Sun, was $1,438 when home loan rates reached their highest—17 per cent—under Labor. When the people opposite were
der Labor. When the people opposite were in government, interest rates were 17 per cent and the monthly payments on a mortgage of $100,000 were $1,438. With some sound economic management, and with interest rates down to 6.8 per cent, that monthly payment has gone down to $695. It has just about halved. Where has that other money gone? It is in the pockets of normal Australians. Those people over there could never manage the economy well, and when the economy is not managed well, people start to hurt. I saw today Mr Beazley in dreamland, deluding himself. He said, ‘We were good economic managers.’ Those ‘good economic managers’ made Australians pay $1,438 a month on their home mortgages. This government has been able to bring it down to $695 a month.

But there is more to this story. Under this government, real wages for low paid workers have, in fact, increased. Real wages for low paid workers have increased by 8.8 per cent. That is in stark contrast to Labor. I am told that nearly 70 per cent of Labor senators come from the union movement, representing, they say, the workers. Well, good on you! Bad luck you did not do a good job at it. When you were in power the real wages of low income workers fell. While you were all giving yourselves jobs in parliament—

The PRESIDENT—Minister, your remarks should be addressed to the chair.

Senator VANSTONE—Sorry, Madam President. While you were giving yourselves jobs in parliament and looking after yourselves, you were in fact driving down the wages of low income workers. So do not let anyone over there say, ‘What about the workers?’ I will tell you about the workers: they are better off under us. You left them behind.

Senator Jacinta Collins interjecting—

Senator VANSTONE—Senator Collins, you can interject all you like, but I will never work for a Prime Minister who boasts about putting down the wages of low income earners. We have done a great job. We have been tough on welfare cheats. While the Labor Party were being vicious to the needy, they were being indulgent of the greedy. That is what you were: viscous to the needy and indulgent of the greedy. We had to clean up the welfare system. We had to get stuck into the tax cheats.

Senator Chris Evans—You’d better practise those lines.

The PRESIDENT—Order! There is far too much shouting in the chamber. The chamber will come to order. Conversations across the chamber are disorderly.

Senator VANSTONE—Madam President, Senator Evans, out of embarrassment of being in the party he is in, asks whether I have to practise these lines. Senator, you do not have to practise when you are delivering real income increases to low paid workers.

Senator Chris Evans—You ought to practise them more. You haven’t practised them enough. The delivery is awful.

Senator VANSTONE—Senator Evans, you ought to practise better management of the economy if you ever get a chance. You were hopeless at it—absolutely hopeless. What did the Labor Party say to low paid workers? They said, ‘You can have the social wage.’ There was Senator Crowley—whoever she was—saying, ‘Let ’em eat cake. Let ’em have the social wage.’

Senator Crowley interjecting—

Senator VANSTONE—That is what you were saying.

(Time expired)

Senator Gibson—Madam President, I ask a supplementary question. Minister, what additional benefits have the Howard government provided for low income earners and large families?

Senator VANSTONE—Thank you for reminding me, Senator. While Labor said, ‘They can have the social wage,’ and pushed their real wages down, we have been pushing the real wages of low paid workers up and, furthermore, increasing the social wage—and increasing it dramatically. Families are getting a lot more under this government. A family with an income of $33,000 with seven children under 11 is significantly better off under this government. The bottom line is that the changes this government has made since 1995 leave a family with seven children and a single income of $33,000—get
ready for it—$5,746 better off than they ever were under you. So keep taking those pills— keep living in fairyland. The problem for you is that you were not able to deliver. (Time expired)

Goods and Services Tax: Small Business

Senator GEORGE CAMPBELL (2.11 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. I ask whether the minister is aware that, in Mark Day’s column in yesterday’s Sydney Daily Telegraph, a pharmacist was quoted as saying:

I can’t get my GST back from the Government. They’ve got $60 grand of mine and won’t give it back. The Tax Office is in disarray. They don’t know what they’re doing, and we’re all suffering.

Minister, just how many small businesses are still waiting for their GST refunds from the first two quarters of the GST’s operations?

Senator KEMP—How good it is to hear Senator George Campbell pretending to be concerned about small business! Let us look at the history of Senator George Campbell. Senator George Campbell was accused by a Labor Party icon, Mr Paul Keating, of having 100,000 dead men around his neck. That was because of his behaviour in the early eighties. It is not me saying that; a Labor Party icon said that: Mr Paul Keating. The point I am making is that if you turn to the first speech of Senator George Campbell in this parliament this again shows his concern for small business in his great experience. This is what Senator George Campbell said:

I also come here after spending virtually the whole of my working life as a full-time official of the trade union official.

Senator Faulkner—Madam President, I rise on a point of order. Perhaps it is the case that Senator Kemp did not hear the question that Senator George Campbell asked him but, if he did, I wonder if you would care to draw it to his attention and ask him to answer it instead of raving on with this irrelevant nonsense.

Senator Hill—Madam President, on the point of order: it is within the standing orders—

Senator Cook—To attack the questioner?

Senator Hill—To refer to the hypocrisy of the questioner.

Senator Cook—That is also a breach of standing orders. That reference is out of order.

Senator Faulkner—It is not within the standing orders, and you know it.

Senator Hill—if the questioner lacks credit, then the answer should refer to that.

Senator Faulkner—He does not lack credit.

Senator Hill—The public can then judge the answer in light of the merit of the questioner. In this instance, Senator Kemp is pointing out that this questioner lacks merit on the question that is being asked. That is perfectly within the standing orders and is a very valid way to respond.

Senator Faulkner—You know that is not in the standing orders.

The PRESIDENT—Order! There should be less personal comment, I think, on all issues across the chamber. But, in this event, it is for Senator Kemp to establish that what he has said initially is substantiated by the answer he gives to the question.

Senator KEMP—Thank you, Madam President. The point I was making is that Senator George Campbell almost single-handedly was responsible for many companies going out of business—single-handedly because of his behaviour in the early eighties. It is not me saying that; a Labor Party icon said that: Mr Paul Keating. The point I am making is that if you turn to the first speech of Senator George Campbell in this parliament this again shows his concern for small business in his great experience. This is what Senator George Campbell said:

I also come here after spending virtually the whole of my working life as a full-time official of the trade union movement.

Senator Campbell, you have never once worried about small business.

I turn now to some of the specifics in the question. The fact of the matter is that the Taxation Office has set standards on refunds and, by and large, those standards are being met. I do not deny that there are some who are waiting, but I think they are a very small proportion and there may well be some problems with the particular BAS statements that they have filed. But I say to Senator George Campbell: if there is a particular case that he knows of and he wishes to have a genuine inquiry into this matter, he can come and see me after question time. I will wait for him.

Opposition senators—Ooh!
Senator KEMP—I will be waiting for you, George. If this is a genuine question, I shall be waiting for Senator George Campbell to give me the name of the contact person so that we can fully investigate this particular matter, because the government and the Taxation Office are very much aware that people are waiting for refunds and it is important that the Taxation Office fully meets its standards. There may, as I said, be some particular problem with the case you have raised.

I have a minute to go—so if I do not complete my comments, perhaps Senator George Campbell could ask me a supplementary question. The implication in Senator George Campbell’s comments is that somehow there is something inherently wrong with the goods and services tax. The question I ask Senator George Campbell is: if that is the case, why is the goods and services tax going to form a central part of Labor Party policy at the next election? I have said this time and time again, but I say it again: I have never seen more hypocrisy from a political party than from the Labor Party on the GST. If you do not like it, Senator George Campbell, why do you have it as part of your policy?

Senator GEORGE CAMPBELL—Madam President, I ask a supplementary question. Will the minister seek the advice of the Taxation Office as to the nature and extent of this reported problem for small business?

Senator KEMP—There is always a problem when you provide a detailed answer to a senator. When you indicate to the senator that if he has a particular case you are prepared to put your mind to it—and the senator asks a question like that! Madam President, I regret to say that I do not think Senator George Campbell listened to the answer I gave. But I do make this offer again—

 Senator George Campbell—Madam President, I rise on a point of order. The supplementary question that I asked related to the report that was in the *Daily Telegraph* yesterday about small business returns being delayed. The minister did not at any stage in his answer address that issue, nor did he indicate that he knew the extent of the problem, nor did he indicate if he would find out the extent of the problem. I am asking him to do that and report to the Senate.

The PRESIDENT—There is no point of order.

Senator KEMP—Of course there is not a point of order; it was just wasting time on behalf of Senator George Campbell. I have said to Senator George Campbell—and the Hansard record will show this—that if there is a particular problem of a particular pharmacy—

Senator George Campbell—What is the answer?

Senator KEMP—Senator Campbell, you have asked me a question. Why don’t you listen to the answer? It is very rude, Senator George Campbell. Of course I will look at the particular case that Senator George Campbell has raised, and I will be waiting for him after question time so that—

Senator George Campbell—Where?

Senator KEMP—Just outside that door.

(Time expired)

Internet: Gambling

Senator FERRIS (2.19 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Has the minister’s attention being drawn to an article in the *Age* newspaper yesterday about the government’s plan to ban Internet gambling? Do the views in this article reflect concerns about the proliferation of problem gambling in the Australian community through the potential explosion of Internet gambling?

Senator ALSTON—I am glad Senator Ferris read that article, because I read it very carefully. I noted that in particular it gave us a huge serve. It described our efforts as a ‘puerile attempt to stop access to overseas sites’. It said:

... this pathetic attempt to protect problem gamblers will do more harm than good.

And it even said:

This useless bill must rate among the most illogical ever introduced into an Australian parliament.

This is pretty strong stuff, isn’t it?

Senator Hill—Who said it?
Senator Abetz—Who said this?

Senator ALSTON—It is written by someone called Rob Wootton, Spokesman for the Victorian Council on Problem Gambling and Immediate Past President of the National Association for Gambling Studies. So, naturally enough, when I saw the extent of the hyperbole and the total lack of compassion for problem gamblers and any attempt to provide alternative solutions, I smelled a rat—a very big rat. So we made some inquiries. We found out that this Victorian Council on Problem Gambling has no phone listing, has no web site, has never made any submissions to the government on gambling, has never made any submissions to the Productivity Commission and never came near any Senate committee. So we asked ourselves: ‘What’s going on here?’ It turns out that this outfit has been moribund for some years. So this is not a spontaneous outburst of community concern; this comes from someone who has been running around the gambling industry boasting that he is the architect of the Labor Party’s opposition to our position—and quite understandably, because he is employed as the chief of staff of Mr Kelvin Thomson.

Government senators interjecting—

The PRESIDENT—Order! There is far too much noise. Senator Alston, order!

Senator ALSTON—I have to say that it does get a lot worse. Mr Kelvin Thomson in the House of Representatives yesterday asked the question—believe it or not—if there was any obligation on members of parliament who are taking points of order which may be to the advantage of companies or organisations which have made donations to them to disclose such? In other words: if you have a vested interest, should you disclose it? I would have thought that he might have been able to answer his own question. But do you know what he has been doing? He has been in the parliament arguing that this moribund and defunct organisation should actually have government funding. He has been complaining very bitterly that it had been defunded some years ago, and that was basically when it went to sleep. But not only that, he has been in there arguing that a rival organisation should be defunded. He has even asked: ‘In the public interest and in our genuine concern for gambling, could we please know a bit more about this organisation?’ Can you imagine greater hypocrisy.

What really puts the cap on all this is that this Mr Wootton was an antigambling campaigner in the Mitcham by-election. Do remember that, Senator Ray, back in December 1997? He ran as the 100 per cent independent candidate and he was opposed to gambling. So what did he do? He was not so independent that he did not give his preferences to Labor. He gave his preferences to Labor all right, and what did he do then? After the election and after the Labor Party candidate had been duly elected, he went to work for Mr Kelvin Thomson. And who had previously been employed by Kelvin Thomson up until the time of the Mitcham by-election? The Labor candidate and now the member for Mitcham, Mr Tony Robinson. This is an orchestrated campaign by Mr Kelvin Thomson to mislead and deceive. This is a very big opportunity for the big ticker man to tell us what he thinks about ethics in the Labor Party, to start cleaning up his own nest, to discipline Mr Thomson and to make it clear that this is totally unacceptable conduct. It is an absolute disgrace. It is not the first time that this has happened. They have priors. I can well remember all those community organisations—

The PRESIDENT—Order! Senator Alston!

Senator ALSTON—that spring up close to an election that turn out to be fronts for the Labor Party.

The PRESIDENT—Senator Alston! Senator Alston, come to order when I call you to order at the end of a question.

Goods and Services Tax: Small Business

Senator MARK BISHOP (2.24 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Can the minister confirm that the retail grocers’ survey found that the average GST set-up costs for a small retailer were $18,622, or in percentage terms nearly 10 times as much as that for a large retailer? How can the government continue to argue that the GST is good for small business when they have spent thousands of dollars on GST
set-up and thousands of dollars on compliance, and the only assistance the government offered them was a $200 voucher?

Senator KEMP—The Labor Party is surely running short of questions. I know it is the end of a long session, and we are all getting tired and some us are getting emotional, Senator Cook. If I recall correctly—I may be wrong, Senator Bishop—we had this question earlier in the week. My first response is that I would naturally refer you to the response I gave to that earlier question. My second response is that I would certainly speak to the questions committee and Senator Cook and make sure that you have at least got some new questions to put at question time.

However, let me make a couple of helpful comments in response to the question from Senator Bishop. Senator Bishop is a member of the Shop Distributive and Allied Employees Union. There is nothing surprising in that—in being a former union boss and a Labor senator. In fact, to be a Labor senator, as my colleague Senator Alston has said, it is absolutely essential that you are a former union boss. Senator Hutchins is nodding his head vigorously there; I am very pleased, Senator, that you confirm that.

Senator Mackay—Just name us all!

Senator KEMP—Senator Mackay, who was a member of the Public Sector Union. There is nothing wrong with that, Senator Mackay.

The PRESIDENT—Senator Kemp, do not speak across the chamber.

Senator KEMP—The only point I am making is: does every person over there have to be a former union boss? In relation to the implementation of the GST, we have provided a great deal of help. It is not correct, as Senator Bishop said, that the only help was a voucher. In fact, expenses which are associated with the GST, such as start-up costs, as Senator Bishop would know, are tax deductible. That is a very important aspect of the assistance that we are giving to business, which was in fact missed in his question. Equally, the government has never denied that there would be start-up costs associated with the goods and services tax.

It is quite clear that, over time, compliance costs will certainly fall. Compliance costs have varied substantially from business to business. For those which were well advanced with their computer and accounting systems, the costs were not large; for others that may have had to start from scratch, the costs would have been larger. Senator Bishop, as you would be aware, we are very conscious of doing everything we can to cut the costs to business. Let me contrast the problems that small business had, as my colleague Senator Amanda Vanstone said in her remarks, when the interest rates were 17 per cent, 18 per cent and 20 per cent for small business. That was a huge cost, Senator Bishop, and that was a cost that occurred under your government. I know that you were not in this chamber then; you were running a trade union—

Senator Hill—They were all running trade unions.

Senator KEMP—Yes. They were all running trade unions, but the point I making is that those interest rates had a very heavy cost.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left, your colleague is seeking to ask a question.

Senator MARK BISHOP—I have a supplementary question to Senator Kemp. Has the Assistant Treasurer been briefed on the dinner last Saturday at the home of Mr Ron Walker in Albany Road in Toorak and, in particular, the concerns the big business participants expressed directly to the Prime Minister regarding the effect of the GST on business liquidity?

Senator KEMP—I would have to say that was a very average supplementary question. It was not the worst I have heard but it was pretty average. I have not been briefed on this function, but I did read a comment, as you did, Madam President, on the front page of the Australian today. I think the comment that stands out in my mind is that the business leaders were actually speaking about economic policy. They made a very unkind comment, which I could not repeat in this chamber, about the Leader of the Opposition,
Mr Kim Beazley. I do not know whether this may be my last question today. Hopefully, it is. If it is, could I just mention that this will be the last question time Mr Jody Fassina will be in this chamber. Can I say to him that I am particularly pleased to see him going!

Senator Faulkner interjecting—

The PRESIDENT—Order! Senator Faulkner, you are out of order shouting in that fashion.

Refugees: Ambon

Senator BARTLETT (2.31 p.m.)—My question is to the Minister representing the Minister for Immigration and Multicultural Affairs, Senator Ellison. Can the minister detail how many people from Ambon are currently in Australia on safe haven visas; how long these people have been in Australia; what is the duration of their current safe haven visas; and have they been reviewed? Have there been any requests from the Ambonese for Minister Ruddock to use his discretion to allow them to apply for permanent refugee status? If so, why has the minister refused these requests?

Senator ELLISON—I understand there are some Ambonese who do have safe haven visas. Senator Bartlett has asked some detailed questions. He has just forwarded to me a written note about that. I will seek advice on that, take that on notice, and get back to Senator Bartlett as soon as I can.

Senator BARTLETT—I thank the minister. Whilst he is grabbing that detail, could he also ascertain how many Indonesians are currently in detention within Australia and, specifically, how many of those are from Ambon?

Senator ELLISON—Likewise, I will take that on notice and get back to Senator Bartlett as soon as I can.

Governor-General: Appointment

Senator FAULKNER (2.33 p.m.)—My question is directed to Senator Hill, representing the Prime Minister. Can the minister confirm that the term of the present Governor-General, Sir William Deane, expires on 30 June, leaving less than three months until the expiry of his term and with no replacement yet named? Is the minister aware that this is an unprecedented delay in the announcement of the next Governor-General, given that each of the last three governors-general were named six months before the commencement of their terms? Has the government decided not to announce the name of the Governor-General until after the parliament rises or does the government plan to announce a further extension of Sir William’s term?

Senator HILL—I do recall that the period of Sir William Deane was extended so that he would be in office during the Centenary of Federation celebration in May. Therefore, I assume that the expiry date referred to by Senator Faulkner is correct. As Senator Faulkner said, a replacement has not yet been announced. When the Prime Minister determines that it is appropriate to do so, that is exactly what he will do.

Senator FAULKNER—Given that I raised some substantive issues in my question to Minister Hill, I would ask the minister as a supplementary question if he would take those matters on notice and report back, if he can, before the parliament rises this evening.

Senator HILL—I regret to say that I did not hear any substantive issues in the question.

Senator Faulkner—You do not think it is substantive as to when you announce the next Governor-General? I think that is interesting.

The PRESIDENT—Order, Senator Faulkner!

Senator HILL—I did not hear any substantive issues in the question. I will ask for a transcript and refresh my memory. If there is anything substantial within it, I will reply as soon as appropriate.

Aged Care: Nursing Staff

Senator ALLISON (2.35 p.m.)—My question is directed to the Minister representing the Minister for Aged Care. Is the minister aware that the current age disparity between nurses in aged care and those in acute care—

Honourable senators interjecting—

The PRESIDENT—Order! Senator Allison, there is a conversation going on near to
me across the chamber which is disorderly. I cannot hear you and I am sure the minister cannot hear the question that is being addressed to her. Would you start again?

Senator ALLISON—Yes, Madam President. Is the minister aware that the current age disparity between nurses in aged care and those in acute care is now up to 20 per cent in some states? Is the minister aware that this is now causing enormous problems in attracting nursing staff into nursing homes and hostels? What ideas does the government have to solve the problem?

Senator VANSTONE—Thank you for the question, Senator. The question of qualified staff available in any residential aged care facility is important. As you know, Senator, the government’s Aged Care Act, the quality of care principles and the accreditation standards require that residential aged care homes provide quality care. They have to ensure they have adequate staffing and other resources to be able to deliver on those requirements. The act requires facilities to have in place a skills mix appropriate to the care needs of the residents they have and the arrangements for ongoing development of staff skills to ensure that the quality care continues to be delivered.

There is a national shortage of nurses generally, and aged care has particular issues in attracting nurses to the industry. The causes are quite varied. A number of the issues are not within the jurisdiction of the Commonwealth to address. In particular, the wage issues require attention at the industry management level, as many providers are managing their operations effectively. The industry itself needs to attend to issues such as work loads and career opportunities, which impact on the attractiveness of aged care work as a career. The department, at Mrs Bishop’s request, discussed these issues with the Victorian Association of Health and Extended Care, the Australian Nursing Federation and the Australian Nursing Homes Extended Care Association.

The Commonwealth is assisting in providing leadership in a number of ways. The government has committed $1 million for initiatives to help promote the aged care nursing work force, to lift its profile and professionalism, and to assist with the retention of the existing work force as well as attract new entrants into it. The aged care work force committee has been established to address work force issues. Reference groups of industry, consumer and work force representatives are being established to support the development of projects under that initiative, in recognition of the need to work with industry as a whole to make it a success. A nurse returners consultancy is being undertaken by La Trobe University, which will seek to identify the number of nurses who have left nursing and why qualified nurses are working in professions other than nursing, and to develop strategies to encourage them to return to the aged care sector. The inaugural excellence awards recognised and rewarded the pursuit of a culture of professional excellence in the industry. The search for the best of the best will be welcome. It will be an ongoing feature in aged care to try and maintain a drive for excellence. Under the aged care accreditation forum, the working group on aged care worker qualifications is exploring options to enhance the role of aged care workers, especially around safer medication administration practices.

The government has put into place a system of accreditation to ensure the industry is meeting the required standard. Particular attention is being paid by the Aged Care Standards and Accreditation Agency to staffing levels in homes. The department is working with industry to avoid unnecessary paperwork demands on staff in meeting the requirements of the resident classification scale, so as to ensure that documentation contributes to the standards of care without being unnecessarily complicated. The legislative requirements will also be underpinned by a voluntary code of conduct and ethical practice for the industry which is being developed as an initiative of Mrs Bishop. We hope that that will raise community confidence in the industry.

Senator, as I heard your question there were some questions more specific than that in relation to aged care. If I recall your question correctly and that is the case, I will refer
that portion that is not answered by this to Mrs Bishop, and get you further information.

Senator ALLISON—I thank the minister for her answer. Unfortunately, as I understand it, none of those schemes will make a difference to providing nurses in aged care with a fair wage. I ask as well: the minister announced that there would be another 9,000 aged care places. Is it not the case that there is no guarantee that that last round will be taken up, and part of the reason is that investment in new beds just does not stack up, particularly if the nurses are to get a fair wage as they are getting in the public sector? Can the minister answer that question? How are we going to make up that gap between nurses in aged care and those in acute care?

Senator VANSTONE—Sometimes you feel you just can’t win. I give you a whole list of things the government is doing and you just stand up and say, ‘None of that is going to work,’ as if you had some magical insight into what ought to be done. With respect, Senator, I know it is the end of this session, but I thought it was a little bit ungracious. But, Senator, I did indicate to you at the end of my answer that there was one aspect of your question, at least, that had not been addressed, and I indicated to you that I would refer it to Mrs Bishop—and I will.

DISTINGUISHED VISITORS
The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of members of parliament from the Commonwealth Parliamentary Association Pacific Region, specifically from the parliaments of Cook Islands, Kiribati and Papua New Guinea, who are here on the annual CPA study tour. On behalf of honourable senators, I welcome you here and trust that your visit will be informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE
Waterfront Reform: Productivity
Senator O’BRIEN (2.41 p.m.)—My question is to the Minister representing the Minister for Transport and Regional Services, Senator Macdonald. What action does the government propose to take, given the recent statement by the executive director of the Peak Shippers Association, Mr Frank Beaufort, in which he said:

We have not got a cent from waterfront reform … We would not have got involved if we had known that we would get nothing out of it. Peter Reith said that waterfront reform would save 1 billion dollars and provide 4000 new jobs. Neither of those are true.

Senator IAN MACDONALD—I suppose I should start by congratulating Mr Reith and Mr Anderson on the work they have done with shipping and waterfront reform. The productivity on the waterfront these days is considerably better than it has been under the term of the Labor government, but that is understandable because the Labor government—and Labor senators will well know this—is absolutely controlled by the union movement. The union movement, who are not interested in productivity gains and who are not interested in what happens on our waterfront, have over the period told the Labor Party and their union officials who now end up in this place just what should be done.

I am very pleased to note that the practice and productivity across the wharves in Australia is now up with world best practice. That is as a result of the very considerable work done by Mr Reith previously and Mr Anderson more recently in achieving that. Whether people receive money or not is something that I can refer to Mr Anderson and see if he wishes to more closely respond to those particular issues. It is very significant, I think, that this government is the first government for a long time that has seriously looked at these issues and made serious and real improvements to productivity on the waterfront.

Senator O’BRIEN—Madam President, I ask a supplementary question. Given that the peak shippers, who, I remind the minister, are the actual clients on the waterfront, make a statement, doesn’t this statement from their executive director—that is, the executive director of the Peak Shippers Association—expose the Howard government’s long-term failure on the wharves? After the lock-outs, the deception, the security guards in balaclavas with dogs, and the taxpayers’ money spent to solve the dispute, this nation’s ex-
porters have still not saved a cent in their shipping costs.

Senator IAN MACDONALD—With respect to Senator O’Brien, I could never comment on something that any Labor senator—and I regret to have to say this—quotes as being the words of someone else, because so many times we on this side have been misled by words allegedly spoken by someone else. With the deepest of respect to you, and with some sadness, Senator O’Brien, I do not respond to those particular things. What I will say, though, is that exporters in Australia know how considerably easier it is now to get goods across the wharves at a reasonable price. For that, the Howard government, Mr Reith and Mr Anderson deserve great credit.

Lucas Heights: Proposed New Nuclear Reactor

Senator LIGHTFOOT (2.45 p.m.)—My question is addressed to the Minister for Industry, Science and Resources, Senator Minchin. Will the minister advise the Senate what benefits Australians and industry derive from the research reactor at Lucas Heights and the important benefits industry will get from a modern replacement reactor with enhanced capabilities? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Lightfoot for this question and I acknowledge his strong support for nuclear science and the benefits of nuclear science for the great minerals industry, of which Senator Lightfoot is also a great supporter. In relation to the benefits of the Lucas Heights reactor, the Senate ought to know that the minerals industry alone derives benefits of over $100 million a year from the nuclear science delivered by the Lucas Heights reactor. It also supplies radiopharmaceuticals to 350,000 Australians every year for life saving medical treatments in cancer and heart disease. On average, every single Australian will benefit at some stage in their life from the radiopharmaceuticals sourced from the HIFAR reactor at Lucas Heights.

That reactor, after 40-odd years, is reaching the end of its operating life and this government had the courage and determination to make a sensible decision to replace that reactor. We have entered into a contract with a consortium to build a new world-class research reactor at Lucas Heights. This investment will be the biggest single investment in science and technology ever by any Australian government. Without such a modern new reactor, all the health, economic, industrial and environmental benefits that we derive from that reactor would be gone forever. This reactor will be a key asset for our emerging biotechnology industry. No nation that is serious about science and innovation in the future can operate without a research reactor and that is why 59 countries around the world have research reactors.

In that context, I welcome warmly the decision this week by a French court to overturn the injunction obtained by Greenpeace to stop our fuel rods being delivered to Cogema for reprocessing, which is an integral part of our management of our spent fuel—something that Labor never had. They had no plan for managing our spent fuel. For 13 years, they allowed spent fuel rods simply to be stored at Lucas Heights. We are doing something about it.

I was asked by Senator Lightfoot about alternative policies. We know the Luddites in the Democrats totally oppose a new reactor, but what about the ALP? In most cases, they have absolutely no policies on anything but in this case they seem to have a whole lot of policies that are all over the place. This is one of the reasons why the Labor Party avoid settling on policies, because when they try to work out a policy it ends up being one great big brawl inside the Labor Party.

This is a classic case. On the Left, we have Senator Bolkus running around the country saying that the Labor Party is not going to build a replacement reactor at all. We also have the new industry spokesperson—the person who is meant to be standing up for industry and science—Carmen Lawrence—

The PRESIDENT—Dr Lawrence.

Senator MINCHIN—She is running around saying that the contract is going to be scrapped and they are not going to have a new reactor. On the other hand, we have one
of the more sensible people in the Labor Party—the science spokesperson, Martyn Evans, who we know wants to build a new reactor—saying that the Labor Party might not necessarily cancel the contract. We also have the Labor Premier of Tasmania, Jim Bacon, saying to us that his government supports the need for a new reactor. We also have one of the few sensible things that Labor Senator Cook has said. He said:

I think we do need a research reactor in Australia ... If we are not in this game, we are out of it, and if we are out of this game we are out of a large part of the science of the next century.

I suggest that Senator Cook has a word to Senator Bolkus and Dr Lawrence about his views and that they sort it out. The Labor members of the Public Works Committee also support a new reactor, as we know.

But the real question is: where on earth is the leader of this mob over there? Where on earth is Mr Beazley in all this? As usual, he is hiding and is showing no leadership whatsoever. He cannot say where he is: Australians have no idea what a Labor government would do in relation to the most important scientific investment that we have ever made. (Time expired)

Indigenous Australians: Heritage Protection

Senator BOLKUS (2.50 p.m.)—My question is to the Minister for the Environment and Heritage. Can the minister confirm that yesterday he concluded an agreement with representatives of indigenous communities regarding indigenous heritage protection proposals after some 18 months of detailed negotiations? Can the minister confirm that he assured the indigenous representatives that the matter was satisfactorily concluded? Why then did the Prime Minister personally intervene and overturn this agreement this morning?

Senator HILL—What Senator Bolkus said is not the case. It is true that I—as I undertook to the Senate a very long time ago that I would—engaged in detailed consultations with the indigenous negotiating group to seek to reach an accommodation of their concerns in relation to the bill that we earlier brought to the Senate: the indigenous heritage protection legislation. Those negotiations have been taking place during the course of the last year or so—in great detail, I have to say, and on a number of occasions.

We got to the stage yesterday when the indigenous representatives were generally happy with a proposed set of amendments. Those amendments are now being considered by other stakeholders and it is the government’s wish to reach a situation where it can bring back a message to this house that will be in accordance with the wishes of the indigenous people—because it is obviously for the protection of their heritage—but in a form also that other major stakeholder interests can accept as reasonable. The government makes no apology, in such a sensitive area as this, for taking a little extra time and making a little extra effort to achieve an accommodation of all significant interests.

Senator BOLKUS—I ask a supplementary question. How does the minister explain how the debate that the indigenous representatives were led to believe would happen today has been deferred? Can the minister assure the Senate that the proposals that he agreed with indigenous leaders yesterday will be the same package that the government will ultimately proceed with?

Senator HILL—I have answered the question. The indigenous leaders I met with yesterday understood there were further approval processes to be completed and they understood consultation was taking place with other stakeholders. That has not led to a conclusion of the matter as yet. I hope it will soon be concluded in a way that is satisfactory to all interest holders.

Trade: Free Trade Agreement

Senator BARTLETT (2.53 p.m.)—My question is to the Minister representing the Minister for Trade, Senator Hill. I refer to Minister Vaile’s current negotiations aimed at establishing a free trade agreement with the USA and Mr Vaile’s statements that the US is pushing for changes to Australia’s local content rules, quarantine arrangements and intellectual property. Can the minister guarantee that the Australian government will not agree to any changes that will weaken our local content rules or our quarantine arrangements?
The PRESIDENT—Senator Alston.

Senator HILL—Madam President, I think it is me.

Senator Faulkner—You think it is you! Well, it is you actually.

Senator HILL—The question was asked of me; the President called Senator Alston. I am seeking to clarify the matter, which does not seem to be unreasonable. Senator Alston is happy to take it, but I will take it.

The answer to the question is yes, you can be satisfied that Australia would not be interested in a deal that meant in any way our quarantine or other protections of that type are watered down. We believe the quarantine requirements are absolutely necessary to protect Australia’s national interest. The purpose of the free trade agreement is obviously to provide a basis for expansion of trade opportunities and the creation of wealth, but in a way that is consistent with our environmental and health necessities.

Senator BARTLETT—The minister gave a guarantee about quarantine arrangements. He did not address the part of my question that asked about local content rules, so I ask a supplementary question. Could he also give a similar guarantee that the government will not agree to any changes that will weaken our local content rules?

Senator HILL—I answered the first part but not the second part, when I was distracted. In relation to the second part, I would like to get specific advice on that and I will come back on an early occasion.

Centrelink: Client Privacy

Senator COONEY (2.55 p.m.)—My question is directed to Senator Vanstone, the Minister for Family and Community Services. Can the minister confirm that Centrelink recently provided copies of video footage of fraud investigations to commercial television? Did the television program broadcast images of this operation with the target individuals’ faces protected by pixelation, but with no other persons on the footage given such privacy protection? Can the minister confirm that Centrelink’s provision of this material is in breach of the Privacy Commissioner’s guidelines regarding disclosure of information collected by government agencies? Is the minister concerned about this breach of the privacy of non-target individuals by Centrelink and also, I would have thought because of the context, of the target individuals’ rights to privacy?

Senator VANSTONE—I think I am aware of the program to which you refer. There have been some questions raised about this. As to who provided whom with the coverage, I am not entirely confident that what you say is correct. I certainly do not mean to impugn you, Senator Cooney; as you know, I would not do that. I did see a brief on this some time ago—I think this program was six weeks ago, if that is the one we are talking about.

Senator Cooney—It was something like that.

Senator VANSTONE—I did see a brief on that, which I do not have with me at this time. I am just not confident that everything you allege is correct, so I will take the opportunity to go back to the brief, confirm the particular points that you raise and, if there is any breach, I will come back to you with the answer about that.

Senator COONEY—I ask a supplementary question. Minister, I think it is a matter that ought to be investigated; indeed, the matters I put to you ought to be tested. You have said that you would do that. While you are doing that, could you see whether or not it is likely that section 204 of the Social Security Administration Act has been breached? And could you investigate it thoroughly—as you will, I have no doubt—to see just what has happened here and whether people have been badly treated by the process?

Senator VANSTONE—I will be happy to do that. At the same time, I remind you that it is my view that when your party were in government they were soft on welfare cheats. We really put an enormous effort into this. Senator Newman, who is sitting behind me, put a fabulous effort into cracking down on welfare cheats. The reason was that Australians are pretty generous spirited people, they expect their government to put money into welfare to help the needy—they are not just happy for it to happen, they demand that the
needy are looked after—but what makes them really angry is when people rip off the system, when the greedy are self-indulged by not being cracked down on. So I am very supportive of the efforts made by Centrelink and the people they employ to crack down on those who are ripping money off other taxpayers that should be going to the needy and giving the ones who are needy a bad name. (Time expired)

Rural and Regional Australia: Initiatives

Senator CAL VERT (2.59 p.m.)—My question is to the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald. Will the minister advise the Senate of progress with the government's initiatives for people in regional and remote areas of Australia?

Senator IAN MACDONALD—I particularly want to thank Senator Calvert for that question. It is interesting that I never get any questions about rural and regional matters from the opposition spokesperson. The Labor Party have no interest in rural and regional Australia. Question time is often a time for new ideas to come forward, for debate and for the government to be questioned. Regrettably, no-one in the Labor Party, particularly not the spokesperson, is interested in this area. I am delighted, Senator Calvert, that, as a regional person, you have asked this question, as there are such a lot of good news stories coming from the Howard government in relation to rural and regional Australia.

I am delighted that, next week, my colleague Senator Abetz will open yet another rural transaction centre in Tasmania. I do hope that Senator Mackay, the opposition spokesperson, will accept the invitation to go along and see what those rural transaction centres are all about. I do not expect Senator Mackay will be there; she will be doing some union work or something else in the capital city in which she lives. But I do implore you, Senator Mackay, to go along and have a look at this rural transaction centre. See what it is like and you will understand what they are all about.

The PRESIDENT—Minister, you should not be directing your remarks across the chamber.

Senator IAN MACDONALD—In addition to that rural transaction centre, another four or five will be opened in the next few weeks. Every couple of weeks now, more centres around rural Australia are receiving funding for rural transaction centres. About 75 have received funding, 21 are already operating and more are to be opened next week.

I am also happy to tell Senator Calvert that today another $7 million is being paid out to councils across Australia from the Roads to Recovery program. That is a fantastic program. It is the program looking after local roads in rural and regional Australia. It is the program Mr Beazley criticised as boondoggling or pork-barrelling. It is the program the Labor Party said would not be starting until 1 July, and already $44 million has gone out to local councils for those roads, most of it in rural and regional Australia. The Regional Solutions program is receiving enormous numbers of approaches from people in country Australia, and Mr Anderson and I are continually announcing good projects to help those in rural and regional Australia.

A report that I released earlier this week shows that basic services are available to about 98 per cent of Australians. That is a very pleasing result. We understand that much more has to be done, and this work that we commission will enable us to target that better. I am unhappy that, in their 13 years in government, the Labor Party did not do any of this sort of research. They were never interested in rural and regional Australia and never bothered to get the data scientifically researched. The data is now available and will enable the Howard government to continue its very good work of targeting programs and services to disadvantaged areas of rural and regional Australia.

Senator Hill—Madam President, I ask that further questions be placed on the Notice Paper.
ANSWERS TO QUESTIONS WITHOUT NOTICE

Economy

Senator KEMP (Victoria—Assistant Treasurer) (3.04 p.m.)—On Monday, Senator Faulkner asked me a question on government advertising, and I now seek leave to incorporate the answer in the Hansard.

Leave granted.

The answer read as follows—

On Monday 2 April 2001, (Hansard page: 23286) Senator Faulkner asked me:

Minister, how much is the government spending on the current advertising campaign to sell the changes to the business activity statement, which have flowed from the government’s backflip on BAS, including advertising placement, consultants’ fees, and polling and research?

What is the duration of the campaign?

In seeking an answer from the Australian Taxation Office, could the Assistant Treasurer clarify whether the cost of this campaign includes the $27 million left unspent from funds already appropriated for the GST advertising campaign?

I now seek leave to have this incorporated into Hansard.

The campaign is expected to run from 28 March 2001 to 26 April 2001. It is still in development, so final figures are not available at this stage. The cost of the campaign is included in the $27 million referred to.

Immigration: Refugee Status Applications

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.04 p.m.)—Yesterday, in an answer to a question asked by Senator Harradine, I indicated that global processing times for spouses under the family stream of the migration program was 26 months. This was incorrect advice that I received from the department. That should actually be 26 weeks—a much shorter period.

Aged Care: Northern Territory

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.04 p.m.)—Last week, Senator Crossin asked me a question about the allocation of aged care beds to the Moran Health Care group, and I seek leave to incorporate an answer into Hansard.

Leave granted.

The answer read as follows—

SENATOR CROSSIN - 29 March 2001

AGED CARE: ALLOCATION OF AGED CARE BEDS TO THE MORAN HEALTH CARE GROUP

Senator CROSSIN - My question is to Senator Vanstone, representing the Minister for Aged Care. Can the Minister confirm, that the Howard government recently allocated 50 aged care beds to the Moran Health Care group in Darwin, which represented 75 percent of all aged care beds allocated to the Northern Territory in 2000? Is the Minister aware of recent comments by Mr Shane Moran that the Moran group will be handling all of these places back to the federal government because they do not consider them to be viable under the current arrangements? Doesn’t this follow the Government allocating the entire aged care bed allocation for the Northern Territory in 1999 to the Moran group, beds which are yet to be put in place?

Senator VANSTONE - The Minister for Aged Care has provided the following answers to the honourable Senator’s questions in accordance with the information provided to her:

The Department of Health and Aged Care allocated 50 residential care places (beds) to the Moran Health Care Group (Victoria) Pty Ltd.

On 5 March 2001, the Moran Health Care Group (Victoria) Pty Ltd, wrote to the Department of Health and Aged Care relinquishing the 50 residential care places allocated in the 2000 Round for the Northern Territory, complaining it did not receive two million dollars in capital in addition to places. The Department allocates capital to organisations with the least capacity to self-fund their projects. $1 million in capital was granted to the Uniting Church in Australia Frontier Services together with 16 residential aged care beds, $100,000 to the Darwin Pensioners and Senior Citizens Association and $41,000 to the Kalano Community Association. An additional half a million in grants were made to 8 Aboriginal community groups and two further providers to establish Community Aged Care Packages.

Environment: Climate Change

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.05 p.m.)—I seek leave to have incorporated into Hansard further information on a question directed to me by Senator Woodley yesterday regarding the
impacts of climate change on Australia and, in particular, on the Murray-Darling Basin.

Leave granted.

The information read as follows—

On 4 April, Senator Woodley asked Senator Alston, representing the Minister for Agriculture Fisheries and Forestry, a question relating to the impacts of climate change on Australia and in particular on the Murray Darling basin.

Senator Alston agreed to obtain any further response from the Minister and communicate it to Senator Woodley.

- The government is concerned about the impacts of climate change on Australia and in particular on our agricultural and rural sectors.
- The Intergovernmental Panel on Climate Change recently issued its report on Climate Change Impacts, Adaptation and Vulnerability, including potential impacts on Australian systems. The report noted that water resources are a key concern due to both reduced rainfall overall and changes in El Nino related droughts and floods.
- Impacts from climate change will vary across Australia and it is too difficult at this stage to predict with any certainty specific impacts on specific regions.
- This government’s response has been to implement a wide range of programs to help abate greenhouse gas emissions and to address land and water quality. The National Action Plan on Salinity and Water Quality is a prime example.
- The Murray Darling Basin Commission is also examining a range of options dealing with the issues of climate change, salinity and water quality. The government will continue to work with the Commission and other proponents to deliver creative solutions that provide a range of benefits at least cost to industry and to all Australians.

**Waterfront Reform: Productivity**

Senator O’BRIEN (Tasmania) (3.05 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Regional Services, Territories and Local Government (Senator Ian Macdonald) to a question without notice asked by Senator O’Brien today relating to waterfront reform.

Isn’t it interesting that, when the minister obviously has not read his brief or, alternatively, when the government are oblivious to the view of one of the peak employer organisations in an important policy area, they accuse the opposition of concocting quotes. I can assure the minister that, if he contacts Mr Beaufort directly, he will get the same quote—that is, that this government’s much trumpeted waterfront reform activity has delivered not one cent to the users of the waterfront area, the people who pay the bills, the shippers.

In April 1998, the then minister for workplace relations, Mr Peter Reith, announced a series of benchmarks for waterfront reform. One was a five-port average of 25 crane movements an hour. The target date for achieving that benchmark was April 1999. Mr Reith said at the time:

... the Government expects that significant progress will be made towards achieving the key benchmarks ... within six months.

While the government has reached that crane rate some two years after the promised time of delivery, it has clearly failed to achieve what is probably the key outcome—and, in fact, one that Mr Reith chose to ignore—and that is that there should be a direct benefit to port users.

The need to drive down charges was not even put on the table by the government when it handed the major stevedores hundreds of millions of dollars. This is not my view; this is what Mr Corrigan told me and other members of the Senate transport references committee. Mr Chris Corrigan, head of Patrick Stevedores, said:

... I would point out to you that it—

he was referring to stevedoring charges—is not one of the benchmark objectives. This expectation is not something that we entered into a commitment to do.

The government in 1998 did not bother to get any commitment from the stevedores to drive down their rates, even though its waterfront strategy handed Mr Corrigan alone well over $100 million. According to the shippers and the farmers, who were to be the big winners—and the National Farmers Federation have also said that they are yet to get a benefit from waterfront reform—none of them have seen any benefit from the government’s waterfront reform policy.
The Reith waterfront plan cost Australian taxpayers millions of dollars. The port users also had to pay costs of tens of millions of dollars. The Australian economy suffered during that period of disruption—and that is without counting the cost of the bitter social dislocation that flowed from Mr Reith’s policy and actions. The only real winner to date is Mr Corrigan. I draw to the attention of the Senate that the Lang Corporation share price has gone from $1.25 during the dispute to $10.71 at yesterday’s close. There is no doubt where the benefits of waterfront reform have gone: to the Lang Corporation and its key shareholder, Mr Corrigan. The farmers have not got the benefits—they have not seen it in lower costs from the shippers, because the shippers have not got the benefits to pass on. In fact, they say in some cases they are paying more.

Frankly, this championed and trumpeted reform of crane rates could have been achieved a lot quicker at a saving of hundreds of millions of dollars if the government had approached the reform process with a bit of goodwill and a commitment to maximise the benefits for all parties, not just for Mr Corrigan. After all, Mr Corrigan admitted to the Senate committee that he basically had an agreement with the New South Wales branch of the Waterside Workers Federation, but he did not have any money to implement it. If the government and Mr Corrigan had approached the matter at that time, we could have achieved the same results—possibly better results—without the disruption and the costs to shippers and to exporters that were incurred by the drastic action that the minister took. (Time expired)

**Senator FERRIS** (South Australia) (3.10 p.m.)—Senator O’Brien has been travelling through the dark corners of his memory to recall some of the details of the waterfront reform process, but Senator O’Brien perhaps does not have a memory that goes back quite as far as mine does on waterfront reform. I can remember the waterfront reform process that was set up when Mr John Kerin was the minister. I believe it was called WIRA. You might wonder what WIRA did. WIRA spent millions and millions of dollars on redundancy payments for waterside workers in an attempt to implement waterfront reform. What they got at the end was absolutely no reform at all. In fact, they finished up hiring more waterside workers than they had started with. The WIRA process was a shameful attempt at waterfront reform and a total failure.

The government were elected as a reforming government, and waterfront reform was unashamedly one of the priorities of the government when we came into office in 1996. I shall never forget the 60 Minutes program when we saw the waterfront MUA boss on his farm, wandering around his chardonnay grape plantings, talking about how his MUA workers were very special. We thought they were special too. We wanted to get to a position where they could be paid more to deliver more—and we did. But when it came time for some of the farmers to go and assist that process, we found that the waterfront MUA bosses were not willing to allow farmers to work on the waterfront.

I posed a question at the time—and I never really had a satisfactory answer to it—which was: if it was possible for a wharfie to become a farmer, why was it not possible for a farmer to become a wharfie? It was a question that we were never able to get the answer to. This government has reformed the waterfront. Our box rates are among the best in the world—25 lifts an hour, one of the best crane rates in the world. We are a reforming government—we reformed the waterfront.

We now want to reform the gambling industry. We want to move on to ensure that Australians do not continue to lose more and more money on gambling through the introduction of Internet gambling. Internet gambling is without doubt a new form of gambling which has the potential to turn everybody’s computer—or perhaps even their television set—into an opportunity for gambling. Once again, we have seen the absolute hypocrisy of those opposite. It has been completely exposed on this issue.

**The DEPUTY PRESIDENT**—My recollection is that Senator O’Brien moved to take note of the answer given by Senator Macdonald in relation to waterfront reform. I am having a little bit of difficulty. Whilst it
can be a wide-ranging debate, I would like you to draw your comments back to waterfront reform a little bit, please.

**Senator Calvert**—I rise on a point of order, Madam Deputy President. I would not have expected your ruling on that. In taking note of answers, it has always been accepted that it is a rather wide-ranging debate. I have been listening intently to Senator Ferris talk about waterfront reform, and now she is wanting to talk about reform in general. I do not think that is departing from the question whatsoever.

**The DEPUTY PRESIDENT**—I am just asking Senator Ferris to be mindful that the taking note is on waterfront reform. I am sure that she will be able to tie her answer in to that. It is quite a wide-ranging debate, but I do not think it is quite that wide ranging.

**Senator FERRIS**—Thank you for your guidance on that, Madam Deputy President. I was simply making the point that the government have been a reforming government. We have reformed the waterfront. We have reformed industrial relations in general. We actually tried to reform some of the unfair dismissal laws, but unfortunately on that occasion the Labor Party and the Democrats disagreed. I believe the point I was making about reform extends to other dimensions of reform that the government have undertaken and plan to further undertake. We are looking at the next stage of reform, having moved from waterfront reform to reform of the gambling industry. On this occasion, I find it extraordinary that the Labor Party continue to support the extension of gambling in this country, where $12 billion is gambled every year, and will allow the extension of another dimension of gambling. On that issue, I believe we are seeing the hypocrisy of the Labor Party in their opposing the legislation.

Mr Rob Wootton, a spokesman for the Victorian Council on Problem Gambling, has been one of the major opposition spokesmen when in fact Mr Wootton is a member of staff of a senior shadow minister in the other place. (Time expired)

**Senator COONEY** (Victoria) (3.16 p.m.)—It is useful to turn our minds to what this debate is directed to: the proposition that there has been an increase in the amount of cargo handled on the wharves. I was going to talk in terms of number of containers, but let us turn it around the other way and say that there has been an increase in the amount of cargo put on ships. This is due to the work done by waterside workers. That obviously follows. It has been put that the benefits arising from the increase in productivity has not gone to the sorts of people that we as a nation would hope it would go to—that is, to the people who want to send their material overseas. The profit from all this has gone to Lang Corporation. That is the proposition that has been put. It has been said—and said very seriously—that, when there are increases in the rates at which containers are turned around and increases in the amount of material sent overseas per hour, that benefit should go to those who produce it: the farmers and the exporters. A great attack has been made on the union involved in this matter, the MUA, and there have been a lot of attacks—

**Senator McGauran**—Corrupt!

**Senator COONEY**—Senator McGauran is saying that it is corrupt. The one group that stood by the law throughout these proceedings was the MUA. The court found in favour of the MUA. Mr Julian Burnside advocated on behalf of the MUA, and that was the body that the court found was correct on this issue. The matter was run by Mr Josh Bornstein from Maurice Blackburn’s, who arranged things so that the union went ahead in accordance with the law. If there was anyone who did not work in accordance with the law, it was those who opposed the union. Senator McGauran is—

**Senator McGauran**—That is not what Justice Beach said.

**Senator COONEY**—Mr Justice Beach, I might say, was looking at the common law in this matter, but the central courts on this issue were the Federal Court and the High Court, and both went with the union. To call the union corrupt as Senator McGauran does is just a breach of the sort of conduct that we should expect in this chamber. I think Senator McGauran should be ashamed of himself on this occasion. Mr Mick Cottrell, now the secretary of the Victorian branch of the union, has continued to work in accordance
with the law and the union has continued to work in accordance with the law.

I think we ought to pay tribute today to people like Mr Mick Cottrell, the secretary of the Victorian branch of the union. We ought to pay tribute to Mr John Higgins, who is the president of the federal branch and also works in Victoria, and to Mr Paddy Crumlin, the federal secretary. I am of course not forgetting Mr Coombs and all those who kept this matter legal, who kept this matter in the courts and who were supported by a great mass of Victorian people because of that. As everybody knows, this was not confined to the Maritime Union of Australia. This was supported by the population of Victoria and by the great city of Melbourne. In large and solid mass, they supported the people I have mentioned on the wharves down there, because they knew where the right lay and they knew that this union was working in accordance with the law.

Senator BRANDIS (Queensland) (3.21 p.m.)—It bothers me to hear Senator Cooney misrepresent the effect of what the High Court and the Federal Court did in the MUA dispute. I speak with confidence on this matter. I advised the ACCC as counsel at the bar on the MUA dispute. I was one of several barristers in the country who did. All the High Court and the Federal Court did was to determine an application for an interlocutory injunction by the union. Senator Cooney, I understand, is a barrister so he should not need to have pointed out to him that that means that a court, on a preliminary view of a matter, decides that a claimant has an arguable case—not that it has won its case. The whole point is that the determination of the High Court and the Federal Court was not on the merits of the dispute. There never was such a determination; there was not then and there has not been since. To characterise an adjudication on an application for an interlocutory injunction in that dispute as being a victory on the merits for one side or the other is really quite wrong, Senator Cooney, with respect.

The DEPUTY PRESIDENT—Senator Brandis, address the chair, please.

Senator BRANDIS—Let me turn then, Madam Deputy President, to the effect of the Reith reforms to the waterfront. We knew that for many years the acceptable benchmark rate of crane lifts was 25 lifts per hour. We also knew—and anyone involved in the stevedoring industry knew—that the rate of lifts prior to the 1998 reforms was 18.5 lifts per hour, woefully below the acceptable international benchmark. In particular, one needs to consider that the Australian ports were competing against the Singaporean ports, some of the Indonesian ports, and other major East Asian ports, which were among the most competitive ports in the world. Prior to the Reith reforms, Australia not only could not come close to the international benchmark but also was embarrassed as a trading nation in this region by falling woefully below the regional standard.

And what is the result now? Let me inform the Senate. After the introduction of the Reith reforms and after the Patrick Stevedores MUA dispute, the hourly level of cargo movements inexorably crept up. The five ports which are used in establishing the national average are the ports of Brisbane, Sydney, Melbourne, Adelaide and Fremantle—as Senator Cooney would know. In June 1998 the average number of hourly lifts was 18.7. A year later, in the June quarter of 1999, the average number of hourly lifts had risen to 20.3—still only about 80 per cent of the acceptable international benchmark standard but a notable improvement. By June 2000 it was 23.1; by the September quarter of 2000, the quarter that has just been reported, the average number of hourly lifts reached 25.5. We have just reached, over a period of only 2½ years, the international benchmark for the first time in this country. And that is plainly a direct result of the Reith waterfront reforms. Labor senators who stand in the face of the facts that this has been immensely beneficial to Australia as a great trading nation set their faces against history and against those facts. (Time expired)

Senator GEORGE CAMPBELL (New South Wales) (3.26 p.m.)—The point that Senator Brandis finished on is really the key issue that has been raised by Mr Beaufort. Setting aside whether you argue that we are
now lifting 18, 20, 25 or 30 boxes per hour, the fundamental issue here is that Australian exporters are not benefiting one red cent from the process. That clearly demonstrates that all of the rhetoric this government went to the Australian community with a couple of years ago about waterfront reform and the benefits for farmers and exporters was nothing more than that: rhetoric. It was simply there to disguise Mr Reith's real agenda, and that was to smash the unions.

Everybody in this country knows that it was not just the wharfies that were a target and it was not just about increasing the crane rate. Mr Reith had an agenda to go after the wharfies first, then the building industry workers, then the metalworkers, and then the miners. The four unions had been named; there was an agenda put together, and his department was targeting the waterside workers first. Their view was that, if they could beat the waterside workers, they could beat the rest. What was clearly demonstrated was that they could not, and they did not.

Let us get back to the real issue here: what has come out of this process? There really has been waterfront reform in this country. When I first came to this country in 1965 there were over 27,000 wharfies in this country employed on the waterfront. There are fewer than 2,000 today. If that is not a massive productivity achievement and reform over that period of time, I do not know what is. We might argue about some of the elements of that reform and whether it is going at a pace that is appropriate but, nevertheless, you have to say that there has been a massive productivity gain over that period of time. That was done all through that period by negotiations between the stevedoring companies and the waterside unions, without any disruption and without any of the balaclavas or the Dubai warriors; there was none of that. It was all done through a process of negotiation, and change was achieved.

Mr Reith was not interested in reform. Anybody who knows anything about the waterfront in this country knows that it is not the stevedoring companies that determine freight rates. It is not the exporters, and it is not the productivity arrangements on the waterfront. It is the shipping conference. There is collusion between the shippers. Everyone knows the shippers get together and set the rates. They have always been artificially high in this country because they are controlled by two or three multinational companies in the shipping industry. Other small independent operators are forced to comply with those rates. People like Chris Corrigan and P&O Services are their customers, not the exporters and not the farmers.

I happened to be on the Australian Manufacturing Council when a report was made to that council by the then head of the Waterfront Industry Reform Authority on waterfront industry reform. I clearly recall John Prescott, who was then the head of BHP, saying to that meeting of the Australian Manufacturing Council that he would not bring a BHP ship into the port of Melbourne because the stevedoring companies were not passing on the gains they had made. He said he knew that because he operated a stevedoring company. BHP did its own stevedoring. He knew what the reforms were. He knew what savings were being made on the waterfront. He knew where the collusion was and who was ripping the cream off the top. Mr Corrigan has benefited from waterfront reform. Mr McGauchie has benefited from waterfront reform—he is now on the boards of the Reserve Bank and Telstra. Mr Houlanhan has benefited from waterfront reform. But have the farmers benefited? No. Have the exporters benefited? No, they have not got one red cent out of this process. If you get up here and argue anything different, you will deliberately mislead people about the real circumstances. (Time expired)

Senator McGauran (Victoria) (3.32 p.m.)—I would also like to join this debate because there is nothing that we on this side of the chamber are more proud of than the waterfront reforms, under the umbrella of our industrial relations reforms.

Senator Conroy interjecting—

Senator McGauran—Those on the other side would like nothing more than to prove there were no waterfront reforms so they can go back to their union masters unashamedly and have their dues paid. Senator Cooney’s interpretation of the law was totally floored by Senator Brandis. He is ut-
terly deluding himself. Senator Cooney is leaving the chamber now. Justice Beach ruled that the picket line was illegal and should be removed. When you delude yourself, Senator Cooney—

The DEPUTY PRESIDENT—Senator McGauran, please be careful not to reflect. You are going close to reflecting on an honourable senator in this place.

Senator McGauran—This whole debate from the opposition has been an utter delusion. It is an attempt to rewrite the history of what happened on the waterfront. One of Senator Cooney’s comments was that the Victorian people were behind the labour movement and the MUA at that picket line. I will tell you who was behind that picket line, besides Senator Carr over there who had his picture on the front page of the Age.

Senator Carr—I was proud to be there!

Senator McGauran—He is very proud of it. No doubt it is framed on the wall of your office. Arm in arm you were, down there at the illegal picket line that was duly ruled as illegal, Senator Carr. It was one of your finest moments, but one of your finest defeats on top of all that. It was the Victorian police who would not remove that illegal picket line, not the Victorian people. That is another story. It was the Victorian police who would not remove that illegal picket line for what ever good or bad reason. It had nothing to do with some sort of populist movement at the illegal picket line where Senator Carr camped out for days, unwashed and happy.

There is nothing more that the opposition would like to prove than that the reforms did not work. But nothing could be further from the truth. Senator George Campbell finished by asking about the farmers and the NFF. They began this very movement, and they had good reason. I will tell you about the farmers. Has anyone noticed that there have been no strikes on the waterfront since those reforms? Has anyone heard of the waterfront going out on strike since 1998? The fact that the farmers can now get their exports off the waterfront is a damn big help to the farmers, and there is a cascading benefit right down to the farm gate. Nothing could be further from the truth.

Has anyone heard of a big national strike lately? When the waterfront went out on strike in the old days—when Labor had its hands on the tiller—the whole nation walked out with them, the Transport Workers Union in particular. Therefore, the whole nation ground to a halt.

Senator Brandis—They can’t do that now.

Senator McGauran—You cannot do that now with the industrial relations reforms. The secondary boycott reforms prevent that. Has anyone noticed there has not been a national strike in this country since the introduction of our industrial relations reforms—since the reforms on the waterfront? It is because the MUA have no friends.

Senator George Campbell accused Peter Reith of wanting to smash the MUA. I will tell you something about the MUA. They were blackmailers and they were rorters. In many respects, they were traffickers in the whole damn lot of it. They were the problem on the waterfront. The government did not go in there to smash them; we went in there to improve the productivity of this country. So long as they stood in our way and in the way of the law of this land and the exports of this country, we would tackle them head on. There is no other way to take on the MUA, Senator Carr, as you stood arm in arm—

The DEPUTY PRESIDENT—Address the chair please, Senator McGauran.

Senator McGauran—As the previous speakers said, the container rates have improved, the ship turnaround rates have improved, the truck queues have improved and the international reputation of our wharves has improved. To come in here and say otherwise, we will debate you from here to the election, Senator O’Brien, because you have put up a false argument.

Question resolved in the affirmative.

COMMITTEES

Corporations and Securities Committee
Reference

Motion (by Senator Conroy)—as amended, by leave—agreed to:
That the following matters be referred to the Parliamentary Joint Committee on Corporations and Securities for inquiry and report by 18 May 2001:

The provisions of:

(a) the Corporations (Commonwealth Powers) Act 2001 (NSW); and

(b) the Corporations Bill 2001 and the Australian Securities and Investments Commission Bill 2001.

EXCISE TARIFF AMENDMENT BILL (No. 1) 2001
CUSTOMS TARIFF AMENDMENT BILL (No. 2) 2001

Consideration of House of Representatives Message

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

Third Reading

Motion (by Senator Ian Campbell) proposed:

That the bills be now read a third time.

Senator O'BRIEN (Tasmania) (3.38 p.m.)—Madam Deputy President, I am not certain that we are prepared to let this matter go through. I draw your attention to the state of the chamber. (Quorum formed)

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.40 p.m.)—I rise to speak to the motion on the third reading of the Excise Tariff Amendment Bill (No. 1) 2001 and the Customs Tariff Amendment Bill (No. 2) 2001. This legislation has been a long time in gestation, although it has been before parliament for a comparatively short time. The gestation of this legislation commenced when the Labor Party moved in this chamber that there be an inquiry into petrol prices in Australia. That motion was defeated in this chamber by a combined vote of the coalition and the Democrats. The Labor Party conducted its own inquiry and, as a consequence of that inquiry, introduced in this chamber and through the Leader of the Opposition, the Hon. Kim Beazley, a private member's bill to knock out the 1 February indexation of petrol excise.

We believed that Australian consumers were paying too much for petrol. We believed that the reasons for that were obviously, and most importantly, the increase in oil prices forced onto Australia by OPEC nations in pushing up the price per barrel of oil and the plummeting Australian exchange rate as our dollar went down against the US currency, meaning that the price of oil purchased on the international market was much higher—and suddenly much higher—than anticipated. Our exchange rate is a continuing problem, as the dollar remains at record lows, pushing the price of imported commodity prices higher. We also believed that, in those circumstances, a government should express understanding and compassion to the community. We felt that was best expressed by not imposing further taxes on petrol. The 1 February price adjustment would have imposed a further tax increase on already high petrol prices, and we sought to remove that tax increase.

We defend and remain intransigent in our position that a government should recognise the pressure on Australian families and Australian household and domestic budgets, especially when petrol is such an important element of a domestic budget. High petrol prices affect all families in Australia but, most of all, families in country and regional Australia, where families do not have access to public transport, where they need a car, where they travel further distances and where the prices are always higher. In those circumstances, governments should restrain the revenue harvest that it would get from petrol and hand back to families a price adjustment. In this case, nothing would have been handed back; it would just have been the case that nothing extra would have been imposed. But, following the electoral outcomes in Western Australia, where Labor needed 12 seats to win and now has a seven-seat majority, and the Beattie slide in Queensland, where the Labor Party has a 40-seat majority, the Prime Minister finally capitulated and made a statement that he would not impose this excise increase and that he would abolish future adjustment. I believe we were instrumental in imposing that political pressure that has brought about this
change, and that is one of the elements of this legislation.

The second element of this bill is petrol excise. It is, I think, important to note that the government have not dealt with this very professionally, nor have they dealt with this very sensitively. The continual jibe that we hear in the electorate—that the government are out of touch and do not understand the needs of ordinary Australians—is exemplified by what they did. What did they do? They put the petrol excise adjustment, which is a notional price cut, in the same bill as the beer excise adjustment, which is a price increase, and said, ‘Vote for the package.’ This led to a public outcry. The front page of the *Daily Telegraph* best exemplified the mood; the mood was one of horror and abhorrence about what was being tried on. It was seen for what it was: a tactic that was regarded by most Australians as being below the belt and unfair; a tactic where, if you wanted to save yourself from having to pay higher prices for petrol, you had to cop higher prices for beer. In those circumstances we indicated publicly that, when the legislation arrived in this chamber, we would seek to divide the legislation. It is not our practice to do that. In fact, I think in opposition we have not done it before. But when a question of a tax increase was put together with a question of a tax reduction and we were told, ‘You have no option but to vote for the package,’ we thought it was reasonable to divide the question so we could vote separately for each one of those things, and vote for the reduction, then move an amendment against the increase and vote for that as well.

Faced with that situation, the government, as we saw in the GST debate, commenced discussions with the Australian Democrats. At 9.35 a.m. last Thursday I appeared at my place in this chamber, instructed by the Notice Paper that these bills were to be debated, and I was informed as I took my seat that the government were moving to change the order of business in this chamber and withdraw that bill from consideration. And they did so. My point? We were ready to debate the issue then and propose, at an opportune moment when the second reading question was put, that the legislation be divided. The government withdrew the legislation and rearranged the order of business for that day. Since that time—for the last seven days, offstage, out of parliament—there have been discussions between the coalition and the Australian Democrats over what they might do on this issue. I have to say of the Australian Democrats that they were committed to dividing the question as well.

As a consequence of all those changes, at a late hour yesterday, and without an explanation in the form of amendment to the second reading speech or an oral explanation to this chamber which would have meant that the government’s reasons would have been put on the public record in *Hansard*, the government brought this legislation back on, we delivered our speeches on the second reading and they tabled a 15-page amendment to their own legislation—containing, by my count, 113 amendments to particular elements of the legislation—which changed the direction of the legislation 180 degrees. At one moment we were facing south; the next moment we were facing north. At one moment we were going to impose a tax; the next moment we were not.

The government have since provided an explanation, one that I think any fair observer of the process would say is an explanation that was adduced or clawed out of them in the committee stage. I mention for the record now that I think it appropriate, if a similar situation were recreated—and if we were in government in the future I believe it would be the practice that a Labor government would follow—that acknowledgment of and courtesy to this chamber would be properly observed: you would come back into this chamber, you would take an opportunity to brief the parties, offstage if necessary, and you would explain to the chamber why you changed your position. You would also provide the necessary documentation for the public record so that respect for this chamber as a legislative forum could properly be maintained. I think that would have been the proper procedure. And I would expect, if the circumstances were re-created some time in the future and our positions had changed, that would be the procedure we would follow in those circumstances.
When a government changes direction so dramatically, it is reasonable for the public record to have explained to it what has happened and why. It is not, in my submission, reasonable to say, ‘It’s been covered by a press release,’ or, ‘A leading spokesperson of the government said in an interview or in a radio discussion’—the call sign of which is unknown. There is a fundamental question here about proper procedure and respect for the legislative body. We are, after all, voting changes into law; in this case, tax changes that seek to alter the revenue base. They are fundamental issues of legislative responsibility and ought, I would suggest, to be approached with some degree of respect for the proceedings.

I have to acknowledge in this that the parliamentary secretary has since provided considerable explanation. That is welcomed and appreciated and I acknowledge it. I have to say as well that Senator Murray, on behalf of the Australian Democrats, has done the same, and I appreciate and acknowledge that. All I am saying is that we had to ask for it, we had to fight for it, and then it came. It would have saved us all a lot of energy and effort had it been done at the beginning.

In the calculation of the excise changes there is a problem. In the committee stage I tried to come to grips with that problem. The problem simply put is this: we know that the Department of Treasury, as the official organ of government that calculates things, advised what the appropriate setting would be for the excise amount—the figure that was put in the legislation. We now know that, as a consequence of the explanations that have been provided, that is not the figure that is before us in these returned messages. The government has used to amend its legislation is a figure calculated by Econtech, a private consultancy, headed by Mr Chris Murphy, whom we on our side refer to as the ‘government’s favourite modeller’—the modeller of choice. The figure arises from figures that the Democrats calculated, which they had, on a pro bono basis, run through the computer model of Mr Murphy for checking. It is those figures that the government has used to adjust the excise rate, not the Treasury figures.

We know that the government says that this was a pragmatic decision. We do not know what the difference between the Treasury figure and the new figure is, nor do we have an explanation as to the input analysis that went into setting up the computer model that produced the figure that we have in the legislation. We have voted for that, and we have done so with our position recorded in Hansard, because there is, indeed, an urgency to get this legislation through and to get this legislation determined. It would be unconscionable, in my view, for the parliament to rise later today and not to have done so. We have been committed to expediting that, but I make that reservation.

Also, I now have in my possession a note from a microbrewery—this is one of the small boutique breweries. As a boutique producer, they, too, like the majors—the Carlton & Uniteds and the Lion Nathans—have their product taxed in the form of excise. The note I have before me, which I will shortly go to, complains that, because the negotiations occurred secretly off stage and away from the public view, and because the outcome of those negotiations was put down abruptly without explanation, the industry, essentially, has had difficulty following and/or understanding and/or indeed, as the submission of this microbrewer indicates, being consulted with properly. This microbrewer, Mr David Edney, says:

I am a brewer in a small micro brewery starting up for training purposes at Edith Cowan University in Perth.

……..

Our brewery has just irreversibly ordered 30, 30 litre kegs at a cost to us of around $5,000. Some smaller breweries use a variety of kegs, some smaller than the standard 50 litre kegs down to as low as 10 litre. If the amendment goes through as is presently worded breweries such as ours could be unfairly taxed just for using a smaller keg than the considered standard.

I am happy to make this communication available to the government. He is making a point about the technical calculation and, in the rush to conclusion, how maybe an unintended consequence has arisen. Because of the keg size that is referred to in this debate and the needs of a boutique brewery, he is
now put into a higher tax bracket by mistake, it would seem—not by intention. It is an indication that, when legislation is rushed, proper public transparency is not provided and proper explanation and consideration by this chamber of review is not afforded. Legislation is then open to the type of mistake that is being referred to.

In the time available to me, I have not had an opportunity to check whether what he says is true, but I take him on good faith and I assume it is true. I offer it in the debate on the third reading—in the knowledge that we are going to vote for the passage of these bills—as an example of what can occur when things are rushed through, against a deadline, without proper consideration. I offer it on the basis that, I assume, in good faith, the government will take on board this comment and, if necessary, commit to examine the rules to see the efficacy of this complaint. If it is an unintended consequence, then correct the legislation to take account of his position—that is, the position of microbreweries.

It is not usual to speak on third readings, but these have been unusual bills. I have traced the gestation of them, the sudden heady rush to climax that has occurred in the last day or so after a long wait, while secret negotiations were going on, and the problems that creates for the process. However, I wish to conclude my remarks by saying that I wish we had not seen these bills because I wish they were not necessary. Our consideration in all of this legislation has been driven by the fact that, for ordinary Australians, for ordinary Australian families, for ordinary Australian family budgets, petrol is a significant outlay. Our avid commitment has been that governments should respect the needs of households when there are sudden and unexpected huge price increases, as there were—and which remain—and not seek to add to those woes by heaping further taxes on the top.

There is an endemic problem for petrol. The GST is a tax that goes on the final price; and the higher the final price, the more the GST costs. For country Australians, who pay higher prices for petrol, that remains a problem. I wish we did not see this bill either, because we ought not to have seen it from the point of view of what was originally planned by this government on beer. I am now glad that this chamber, by use of numbers, has forced the government into a re-think and, sensitive to the political situation the government finds itself in, the government has changed its mind.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.00 p.m.)—I will briefly respond to the comments made during the third reading debate on the Excise Tariff Amendment Bill (No. 1) 2001 and the Customs Tariff Amendment Bill (No. 2) 2001. I would not normally comment in the third reading debate, but a couple of points were made by the opposition that really do need to be responded to. I am glad that Senator Cook has provided some more detail on the issue of microbreweries. I know that an opposition spokesman—I think it was Mr Crean in the other place—had raised, in a very oblique way, the issue of microbreweries but never provided any information. I note that, in knowledge of the microbrewery issue in the other place, the Australian Labor Party also chose a 48-litre container for its amendment to the excise rates. So in full knowledge of this microbrewery issue, the Australian Labor Party amendment sought to do nothing about it.

If Senator Cook wants to hand over the correspondence he referred to, or if the constituent who obviously lives relatively close to me and Peter Cook, if he is at the Edith Cowan University, wants to write to me, I would be very happy to look at the issue on behalf of the government as a Western Australian senator and as a member of the government. I am informed that the government, under the excise regime, does have a concessional system for microbreweries for their first 30,000 litres of production. I do not have the exact detail of that, but I will certainly make it available to Senator Cook. I am sure people with a microbrewery would be aware of that concession; if they are not, I will make them aware of it. I would be happy to talk to them.

On the broader issue, as I said during the committee stage, this bill does a lot more
than change the excise rates on alcohol. It does provide significant excise reductions to petrol and a range of other important measures. I also make the point in relation to petrol that it would be, and is, very easy to make cheap political capital about fuel prices. We have had an intensive debate in Australia about the impact of the excise and taxes on fuel. Regardless of the politics of it, that is probably a good thing. But at a time of very high world oil prices, there are no simple solutions to the problem. The government has significantly reduced excise on fuel now.

We have also gone so far as to provide a whole range of other measures and financial supports, particularly to people in rural and remote areas and particularly to people involved in primary production. Those measures are never mentioned by the Australian Labor Party and they are very rarely mentioned by the press, but they are appreciated by people out there on the land who are doing it hard at this time because of high fuel prices. People out there on the land, as you know, Mr Acting Deputy President Ferguson, are not easily conned by political scare campaigns. They do understand world markets because they are the miners and the farmers in particular, the ones who are price takers in world markets. They understand the influence of world markets. They know what happens when international markets go up and down when supply and demand changes. They will not be conned by scare campaigns run by an opportunistic and populist opposition who refuse to release policies on their own plans to roll back, as they call it, the GST.

It would have been a lot easier for the government not to reform the tax system. There is no doubt that the politically easy option was to run dead on tax reform and not change the tax system. We introduced a wholesale change of the tax system whereby we abolished thousands of pernicious, hidden wholesale sales taxes. There we were in the information age, when Australia needed to develop its leadership in e-commerce and the application of e-commerce solutions to government and the private sector, and the wholesale sales tax regime applied a tax of 22 per cent to every single piece of hardware you needed to get yourself online. The Australian Labor Party’s policy was to slug 22 per cent on the struggling families in the suburbs of a capital city who wanted to give their kids the best education and who wanted to ensure they had access to the Internet by buying a computer, an Internet package, a modem and a printer from Harvey Norman. That was Labor’s erudite policy, Labor’s informed policy, on the information economy! That was an absurdity. I highlight that as one of the absurdities of the tax system that we have done away with.

Labor would be too lazy and uncommitted to make those sorts of changes, and they were. To Mr Keating’s credit, he did seek to make that historic change in 1984 but was rolled by the thugs in the trade union movement who control the Australian Labor Party. This government has made a decision and we will wear the political pain and we will wear the political blame, because we know that it is the right thing to do for Australia and for the people who struggle to improve their lives and who deserve income tax cuts. We have been able to provide so much relief for the PAYE taxpayers who bore this heavy burden of taxation under the Australian Labor Party.

The hypocrisy of the Australian Labor Party on fuel taxation needs to be recorded, and that is really why I am speaking here today. The last time world oil prices hit the levels they are now was during the Gulf War when they went up to very similar levels in real terms and in constant dollar terms to what they are now. It was not sustained for the same length of time that we are enduring now; but there was a significant period when world oil prices were very high; it was some months. The Australian Labor Party were in power, and what did they do to provide relief from excise indexation for people in rural and remote areas? They did nothing. They saw the indexation increases go ahead; there was no relief, no change.

This government will give all businesses including farmers and miners, regardless of their size, and even microbrewers, a full GST input credit for fuel purchases, which effectively reduces the cost of fuel to them by 10
per cent. The Diesel Fuel Rebate Scheme, which is in place already, has been extended to marine and rail. Eligible users such as farmers and miners as well as marine and rail transporters effectively pay no excise on diesel fuel used off road. The Diesel and Alternative Fuels Grants Scheme provides a 24c a litre cut on top of that. It is available to primary producers, regional transport and a range of selected metropolitan transport, as well as the Fuel Sales Grants Scheme for non-metropolitan fuel prices, to try to provide some relief. There is a suite of significant measures to provide as much relief as we can possibly afford in a responsive and responsible way. I will not allow Labor to get away with a cheap, populist, opportunistic scare campaign when they offer absolutely no alternative, as usual.

Question resolved in the affirmative.

Bill read a third time.

CHILD SUPPORT LEGISLATION AMENDMENT BILL (NO. 2) 2000

Consideration of House of Representatives Message

Message received from the House of Representatives acquainting the Senate that the House has disagreed to amendments Nos 1 to 5 made by the Senate and has made amendments in place of amendments Nos 1 to 4, and requesting the Senate’s reconsideration of the bill in respect of the amendments disagreed to and its concurrence in the amendments made by the House.

Ordered that consideration of the message in committee of the whole be an order of the day for the next day of sitting.

COMMITTEES

Selection of Bills Committee Report

Senator McGauran (Victoria) (4.09 p.m.)—by leave—At the request of Senator Calvert, I present the 6th report of 2001 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE REPORT NO. 6 OF 2001

1. The committee met on 4 April 2001.
2. The committee resolved to recommend.
   (a) That, upon the introduction of the following bill in the Senate, the bill be referred to a committee 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>Interactive Gambling Bill 2001 (see appendix 1 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Environment, Communications, Information Technology and the Arts</td>
<td>23 May 2001</td>
</tr>
<tr>
<td>Measures to Combat Serious and Organised Crime Bill 2001 (see appendix 2 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>19 June 2001</td>
</tr>
<tr>
<td>Workplace Relations Amendment (Transmission of Business Bill 2001 (see appendix 3 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Employment, Workplace Relations, Small Business and Education</td>
<td>18 June 2001</td>
</tr>
<tr>
<td>Workplace Relations (Registered Organisations) Bill 2001 (see appendix 4 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Employment, Workplace Relations, Small Business and Education</td>
<td>18 June 2001</td>
</tr>
</tbody>
</table>

(b) That the following bill be referred to a committee as follows:

(c) That the provisions of the following bills be referred to a committee as follows:
The Committee recommends accordingly.
(Paul Calvert)
Chair
5 April 2001

APPENDIX 1

Name of bill:
Interactive Gambling Bill 2001

Reasons for referral/principal issues for consideration:
To consider the impact and effectiveness of the legislation on interactive gambling service providers, the Internet industry, and the Australian community generally.

Possible submissions or evidence from:
Australian Casino Association (ACA)
Internet Industry Association (IIA)
Inter-Church Gambling Taskforce
Tattersalls
Publishing and Broadcasting Limited (PBL)
TABCORP Ltd
Lasseters Online
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Committee to which bill is to be referred:
Environment, Communications, Information Technology and the Arts Legislation Committee

Possible hearing date(s):
To be determined by the Committee

Possible reporting date:
23 May 2001

Paul Calvert
Whip/Selection of Bills Committee member

APPENDIX 2

Name of bill:
Measures to Combat Serious and Organised Crime Bill 2001

Reasons for referral/principal issues for consideration:
Extension of the scope of controlled operations. Facilitation of the use by Commonwealth intelligence agencies and Commonwealth and State and Territory law enforcement agencies of assumed identities. Provisions for the protection of child victims and witnesses in Commonwealth sex offence proceedings. Detention and questioning issues. Use of listening devices in circumstances where it is not possible to identify suspected offenders. Clarification and updating of the legislative definitions of ‘cash dealers’ and ‘underground bankers’.

Possible submissions or evidence from:
Federal law enforcement agencies and civil liberties groups.

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

Possible hearing date(s):
To be determined by the Committee

Possible reporting date:
19 June 2001

(signed)
Paul Calvert
Whip Selection of Bills Committee member

APPENDIX 3

Name of bill:
Workplace Relations Amendment (Transmission of Business) Bill 2001

Reasons for referral/principal issues for consideration:
Examination of impact of proposed amendment in the workplace

Possible submissions or evidence from:
trade unions, employer associations, federal government

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

Possible hearing date(s):
To be determined by the Committee

Possible reporting date:
20 May 2001

(signed)
Paul Calvert
Whip/Selection of Bills Committee member

APPENDIX 4

Name of bill:
Workplace Relations (Registered Organisations) Bill 2001

Reasons for referral/principal issues for consideration:
Examination of impact of proposed amendments on registered organisations

Possible submissions or evidence from:
Registered industrial organisations (trade unions, employer associations), peak bodies, accountancy profession, federal government

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

Possible hearing date(s):
To be determined by the Committee

Possible reporting date:
20 May 2001

(sign)
Paul Calvert
Whip/Selection of Bills Committee member

Environment, Communications, Information Technology and the Arts References Committee

Extension of Time
Motion (by Senator McGauran, at the request of Senator Allison)—by leave—agreed to:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on telecommunications and electromagnetic emissions be extended to 4 May 2001.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Queensland: Aged Care Places

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.10 p.m.)—On behalf of Senator Vanstone, I seek leave to incorporate in Hansard a response to a question without notice and some additional information relating to a question asked by Senator Gibbs on 29 March 2001.

Leave granted.

The answer read as follows—

QUESTION WITHOUT NOTICE
SENIOR GIBBS - 29 March 2001
AGED CARE: ALLOCATION OF AGED CARE PLACES TO QUEENSLAND

Senator GIBBS - My question is directed to Senator Vanstone, representing the Minister representing the Minister for Aged Care. Can the minister confirm that, while elderly Queenslanders make up 17 per cent of the country's population aged 70 and over, Queensland has received just seven per cent of all new aged care beds allocated by the government over the last two years? Didn't Brisbane get just two nursing home beds in the last allocation round? Isn't it a fact that over the next two years there will be a growing shortage of aged care beds, because of the Howard Government's failure to allocate enough new beds to Queensland?

Senator VANSTONE - The Minister for Health and Aged Care has provided the following answers to the honourable Senator's questions in accordance with the information provided to her:

In the 1999 and 2000 Aged Care Approvals Round, Queensland received 823 residential care places and 1615 Community Aged Care Packages.

Queensland was allocated a total of 460 residential care places in the 2000 Aged Care Approvals Round. The Brisbane South Aged Care Planning Region was allocated 65 residential aged care beds. The Brisbane North Aged Care Planning Region was also allocated 40 residential aged care beds.

No. The Government's allocation of places has been taken into account the fact that Labor left the aged care system 10,000 places short across Australia (ANAO figures). Operational and approved aged care places in Queensland at this time come to over 109 places per thousand people aged 70 years or older thereby exceeding the benchmark of 100 set by the previous Labor government but never reached by it.

Aged Care: Northern Territory

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.11 p.m.)—On behalf of Senator Vanstone, I seek leave to incorporate in Hansard further information in response to a question from Senator Crossin on 29 March 2001.

Leave granted.

The answer read as follows—

SENIOR CROSSIN - 29 March 2001
AGED CARE: ALLOCATION OF AGED CARE BEDS TO THE MORAN HEALTH CARE GROUP

Senator CROSSIN - My question is to Senator Vanstone, representing the Minister for Aged Care. Can the Minister confirm, that the Howard government recently allocated 50 aged care beds to the Moran Health Care group in Darwin, which represented 75 percent of all aged care beds allo-
Minister aware of recent comments by Mr Shane Moran that the Moran group will be handling all of these places back to the federal government because they do not consider them to be viable under the current arrangements? Doesn’t this follow the Government allocating the entire aged care bed allocation for the Northern Territory in 1999 to the Moran group, beds which are yet to be put in place?

Senator VANSTONE - The Minister for Aged Care has provided the following answers to the honourable Senator’s questions in accordance with the information provided to her:

The Department of Health and Aged Care allocated 50 residential care places (beds) to the Moran Health Care Group (Victoria) Pty Ltd. On 5 March 2001, the Moran Health Care Group (Victoria) Pty Ltd, wrote to the Department of Health and Aged Care relinquishing the 50 residential care places allocated in the 2000 Round for the Northern Territory, complaining it did not receive two million dollars in capital in addition to places. The Department allocates capital to organisations with the least capacity to self-fund their projects. $1 million in capital was granted to the Uniting Church in Australia Frontier Services together with 16 residential aged care beds, $100,000 to the Darwin Pensioners and Senior Citizens Association and $41,000 to the Kalano Community Association. An additional half a million in grants were made to 8 Aboriginal community groups and two further providers to establish Community Aged Care Packages.

COMMITTEES

Reports: Government Responses

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.11 p.m.)—I present three government responses to committee reports as listed on today’s Order of Business. In accordance with the usual practice, I seek leave to incorporate the documents in Hansard.

Leave granted.

The documents read as follows—


The Government thanks the Senate References Committee on Foreign Affairs, Defence and Trade for the comprehensive and wide-ranging consideration given to matters concerning East Timor and, in this context, Australia’s relationship with Indonesia.

Australia is committed to promoting the emergence of a stable, secure and democratic East Timor which has positive relations with all of its neighbours, particularly Indonesia. The UN Transitional Administration in East Timor (UNTAET) has achieved considerable progress to date, in difficult circumstances, in preparing East Timor for independence. The continued support of the international community and donors will remain crucial in the lead-up to and following independence.

The Report makes one recommendation relating to the Timor Gap (Zone of Co-operation Treaty) and the Government response to this recommendation is contained below.

4.62 The Committee recommends that, in its negotiations with UNTAET on the future of the Timor Gap Treaty, the Australian Government should take into account current international law in relation to seabed boundaries, the history of our relations with the East Timorese people, the need to develop good bilateral relations with East Timor and the need for East Timor to have sources of income that might reduce dependency on foreign aid.

The Government notes the Committee’s recommendation on the relevance of a range of considerations which need to be taken into account in negotiating a new Timor Gap Treaty.

The Government assures the Committee that all relevant factors are being taken into account in working with UNTAET and East Timorese representatives to arrive at an agreement that is fair and equitable to both sides.

It remains the Government’s position that, under international law, Australia’s seabed rights extend from its coastline throughout the natural prolongation of its continental shelf to the deepest part of the Timor Trough. East Timor has a different position. Under international law, it is for both parties to work to achieve an equitable solution.

The Government notes that the Committee Report also includes a number of observations. The Government’s response to these observations is as follows:

East Timorese Asylum Seekers (paragraphs 5.108-5.109)

The findings of the AAT on 5 October 2000 in the case of one particular person have no precedential effect and are not binding on DIMA’s protection visa decision makers or the Refugee Review Tribunal (RRT). Each protection visa application is determined on its individual merits, and in the
context of country conditions at the time of decision.

Finalisation of the East Timorese caseload is awaiting resolution of a number of legal and country information matters.

Of the approximately 1700 East Timorese asylum seekers whose cases have not been finalised, the vast majority are awaiting a primary decision by DIMA. These cases would be considered by the RRT only in the event that a primary decision, where made, is to refuse grant of a visa.

None of the applicants will be removed from Australia while their cases are under consideration.

International Commission of Jurists’ offer (paragraphs 5.75-5.80)

The Australian Government is committed to providing assistance to ensure perpetrators of human rights abuses committed in East Timor in 1999 are brought to justice. To this end, we assisted the UN Commission of Inquiry on East Timor (CIET). The 31 January 2001 report of the CIET noted its request to Australia for material relevant to its mandate and stated that Australia had “responded positively to that request and the Commission appreciates the Government’s cooperation”. The CIET applauded INTERFET for its forensic work and for the way in which it preserved evidence in difficult circumstances.

Provision of information by DFAT: TNI involvement with militias (paragraph 7.125)

While large volumes of material, including intelligence reports, were available on the links between senior Indonesian military commanders and the militias in East Timor, clear conclusions did not follow from that material. The Department of Foreign Affairs and Trade wished to be careful and judicious about offering judgements, and TNI complicity in East Timor became clearer with the passage of time.

Australia’s relations with Indonesia (paragraphs 8.16, 8.17, 8.22, 8.26, 8.50-8.53)

The Government assures the Committee that it is pursuing a mutually respectful and beneficial relationship with Indonesia. Expanding people-to-people, parliamentary and commercial contact is part of this effort. The Government also regards appropriate defence relations with Indonesia as an element in the overall bilateral relationship. It is committed to working with the Indonesian Government to establish over time a defence relationship that serves our shared strategic interests.

Joint Standing Committee on Foreign Affairs, Defence and Trade: Military justice procedures in the Australian Defence Force, Government Response

EXECUTIVE SUMMARY

BACKGROUND

On 25 November 1997 the Senate referred the matter of Australia’s military justice system to the Joint Standing Committee on Foreign Affairs, Defence and Trade for investigation. The Terms of Reference for the inquiry authorised the Committee to examine the adequacy and appropriateness of the existing legislative framework and procedures for the conduct of military inquiries and Australian Defence Force (ADF) discipline. The Joint Committee charged its Defence Subcommittee with the conduct of the inquiry.

The Committee identified three distinct components of the military justice system operating within the ADF. These were:

a. military inquiries;

b. military discipline; and
c. administrative action.

The Committee sought to examine the existing legislation, policies and framework of the system of military justice employed by the Australian Defence Force and to evaluate their effectiveness and relevance in practice.

A number of recent military inquiries conducted by the ADF had attracted public interest and media comment. Predominantly, though not exclusively, these cases involved the loss of life of service personnel undertaking Defence Force activities. Public and media attention, which focussed on these cases, resulted in public criticism of the efficacy of the current military inquiry system. Questions of natural justice and human rights also had been raised. Most public and media attention had centred on the military inquiry system and less upon the systems of military discipline and administrative action.

OVERVIEW OF THE INQUIRY

The Government and the ADF welcomed the Joint Standing Committee’s inquiry into the military justice system. The current arrangements, both the Defence Force Discipline Act 1982 and the Defence (Inquiry) Regulations, had been in operation for 13 years and it was now appropriate to ensure that they continue to meet the needs of the ADF and at the same time take account of recent developments in legal and community standards.

Arising from similar concerns to those that led the Parliament to refer these matters to the Joint Standing Committee, the Chief of the Defence
Force had initiated two separate reviews. On 17 November 1995, a Deputy Judge Advocate General, Brigadier The Honourable Mr Justice A.R. Abadee, was requested to conduct a study into the arrangements for the conduct of trials under the Defence Force Discipline Act 1982 with a view to determining whether these arrangements satisfy current tests of judicial independence and impartiality. The report of that review, which was to become known as the Abadee Report, was presented to the Chief of the Defence Force on 11 August 1997. In November 1997, the Chiefs of Staff Committee agreed to the implementation of 39 of the 48 Abadee recommendations. Following perceived difficulties arising from inquiries into a particular matter, the Chief of the Defence Force, on 14 July 1995, requested the Defence Force Ombudsman to conduct an ‘own motion’ investigation into the matter. In particular, the Chief of the Defence Force wished to obtain the Ombudsman’s recommendations with respect to what lessons might be learned for the handling of similar inquiries in the future, and what administrative measures and/or management processes might need to be varied or new ones put in place. The Ombudsman’s report was handed down in January 1998. The ‘Own Motion’ Report noted that the ADF had conducted a full consideration of a draft report prepared by the Ombudsman and had accepted the majority of the recommendations. Action was in hand to implement those recommendations that were agreed.

The Joint Standing Committee’s inquiry into military justice procedures was able to take both these reviews into account in their investigations. Throughout the Committee’s deliberations, the ADF demonstrated its willingness to assist the inquiry whenever and however possible.

The Government and the ADF welcome the recommendations of the Joint Standing Committee which were included in the comprehensive report tabled in Parliament in June 1999. The 59 recommendations contained therein are directed at improving the military inquiry, military discipline and administrative action systems within the ADF. Many of the recommendations complement or reinforce those improvements to the military justice system that the ADF was in the process of implementing.

THE TERMS OF REFERENCE

The Terms of Reference for the Committee’s inquiry were as follows.

The adequacy and appropriateness of the existing legislative framework and procedures for the conduct of:

a. military boards of inquiry;
b. military courts of inquiry; and
c. Defence Force discipline.

Without limiting the scope of the inquiry, the Committee was to give consideration to:

a. the needs of the ADF in peace and in the conduct of operations within Australia and overseas;
b. the constitutional and legislative framework within Australia, and particularly precedents established by the decisions of the High Court of Australia;
c. the Judge Advocate General’s annual reports; and
d. other reports including, but not limited to, reports of the Parliament, the Commonwealth and Defence Force Ombudsman’s annual report for the 1996-97 financial year and reports from relevant overseas jurisdictions.

The Joint Standing Committee issued an Information Booklet in December 1997 containing the Terms of Reference, an Issues Paper, advice on how the inquiry would be conducted and a list of the members of the Defence Sub-Committee. The Issues Paper is reproduced at Appendix A.

Amongst other things, the Issues Paper stated that the inquiry was not intended as a forum for reviewing the judgements made in individual ADF disciplinary cases, although the circumstances of particular cases may be reviewed where they provide clear evidence of systemic failures in the conduct of ADF judicial procedures.

CONDUCT OF THE INQUIRY

The Committee advertised the reference on military justice procedures in the national press and invited submissions the closing date for which was 2 February 1998.

The public hearings began on 11 May 1998 and concluded on 24 July 1998. A total of 30 witnesses appeared before the Committee. The present and immediate past Chiefs of the Defence Force and the then Chiefs of the three services appeared before the Committee in their official capacities.

A total of 85 individuals and organisations made written submissions to the Committee. Some individuals submitted more than one submission. A number of written submissions were treated by the Committee as confidential and were not published.

The ADF (Department of Defence) made two major written submissions to the Committee. In addition, nine other submissions containing information requested by the Committee were provided. An initial information briefing was provided to the Committee by the Defence Legal...
Office prior to the commencement of the public hearings.

Following the prorogation of the Parliament on 31 August 1998, the inquiry ceased. The Senate re-referred the Terms of Reference to the Committee on 10 March 1999. The report of the inquiry was tabled on 21 June 1999.

SUMMARY OF THE INQUIRY REPORT
The Committee’s inquiry was comprehensive and detailed. It examined what is unquestionably a complex system of legislation (acts and regulations), policy and procedures. The report of the Committee’s inquiry contains six major sections as follows:

a. a background to the inquiry;
b. an examination of military justice;
c. an examination of military inquiries;
d. an examination of military discipline;
e. an examination of administrative action; and
f. fifty-nine recommendations.

The report is positive and constructive. Reflected is the detailed consideration given by the Committee to the work done by Brigadier Mr Justice Abadee and the Defence Force Ombudsman. Many of the recommendations reflect this consideration.

While the Committee received no evidence to support allegations of a lack of independence in the military justice system, it considered that, unquestionably, there was a perception of this in some quarters.

The Committee recognised improvements to the current military justice system initiated by the ADF but was of the view that these changes would not fully address both the perceived and actual independence and impartiality of the system.

The Committee noted that the principal question confronting it in this inquiry was how to redress what they identified to be a shortfall in the military justice system without impeding the workings of the ADF.

The Committee accepted that the post-Abadee arrangements would significantly improve the impartiality and independence of the military discipline system. Nevertheless, seven of the Committee’s recommendations are related to the military discipline system.

With regard to military inquiries, the Committee was of the view that the issues of independence and impartiality would not be fully addressed by the changes proposed by the ADF. Accordingly, the Committee made 45 recommendations for change to the military inquiries system.

The Committee also proposed some changes to the administrative action processes and procedures employed within the ADF in order to redress what it identified to be shortfalls in the areas of independence and impartiality. Seven of the Committee’s recommendations were related to the administrative action system.

THE GOVERNMENT’S RESPONSE
The recommendations contained in the Committee’s report are directed at improving the military discipline, military inquiry and administrative action systems of the ADF. Suggestions for increased independence and impartiality are at the focus of the changes suggested in the recommendations.

The Government’s Response follows in sequence each of the 59 recommendations. Each recommendation has been given careful consideration by the Government.

In summary:
a. forty-six recommendations have been supported and will be implemented;
b. five recommendations have been supported in principle but there exist some practical difficulties or limitations to implementation;
c. five recommendations have been supported in part and will be implemented accordingly;
d. one recommendation has been supported subject to the outcome of the implementation of another recommendation; and
e. two recommendations have not been supported.

Acceptance and implementation of some of the recommendations will result in amendments to current legislation including the Defence Act 1903, the Defence Force Regulations, and Defence (Inquiry) Regulations. The outcome of various studies and consideration following agreement to a number of the recommendations may result in amendments to other legislation, such as the Naval Defence Act 1910 and Air Force Regulations, and there may be others. Amendments to legislation will take some time to effect.

Agreement to other recommendations will result in changes to policy and procedures which in turn will require amendments to Defence Instructions and various Manuals. Of particular note is the initial issue of the Administrative Inquiries Manual and reference to this publication is made in the responses to a number of the Committee’s recommendations and is itself the subject of a recommendation. Policy and procedural changes can be completed reasonably quickly.
Some of the Committee’s recommendations recognise recommendations made in the Defence Force Ombudsman’s ‘Own Motion’ Report and the Abadee Report and have previously been agreed by the ADF. Some of these have already been implemented and others are in the process of implementation.

The implementation of a small number of recommendations will involve major reviews, on an ADF wide basis, of present policies to determine their appropriateness with respect to the issues raised and suggestions made by the Committee. These reviews are likely to be complex and time consuming. Consequently, it will take some time to complete these reviews and to introduce any changes to policy and procedures that may follow from them.

Details of the Government’s examination of and response to each of the Committee’s recommendations follow.

**RESPONSES TO THE RECOMMENDATIONS**

**RECOMMENDATION 1**

The Committee recommends that, during peace-time, the convening of a General Court of Inquiry by the Minister of Defence should be mandatory for all inquiries into matters involving the accidental death of an ADF member participating in an ADF activity.

**RESPONSE**

Not Supported

This recommendation would mandate that the Minister appoint a General Court of Inquiry in every case involving the accidental death of an Australian Defence Force member participating in Australian Defence Force activities. The recommendation would remove a discretion currently afforded to the Minister by Defence (Inquiry) Regulation 5 as whether or not to appoint a General Court of Inquiry to inquire into matters affecting the Defence Force. The basis for this recommendation appears to be to provide a high degree of impartiality and independence from the Australian Defence Force in inquiries of the type mentioned. This recommendation, if supported, would require that the Defence (Inquiry) Regulations be amended.

The Defence (Inquiry) Regulations provide the Minister and the Australian Defence Force with the authority and procedures to inquire into matters affecting the Defence Force in order that the responsibilities of the command and administration of the Defence Force may be carried out effectively, efficiently and expeditiously.

The Defence (Inquiry) Regulations, as well as providing for a very formal type of external administrative inquiry also provides the Australian Defence Force with less formal internal methods of inquiry. These latter inquiries are essential for the Australian Defence Force to manage its operational capabilities and activities in an effective, efficient and expeditious manner.

The purposes of an inquiry are to determine the cause of an accident or incident and identify remedies that will prevent a recurrence. Speed is of the essence. In some cases the use of Defence equipment, such as aircraft, may be suspended pending the outcome of an inquiry. In such cases, provided that there is no other reason that would justify a General Court of Inquiry, a Board of Inquiry which can be conducted more expeditiously, would be preferred. Experience shows that some civilian investigative mechanisms such as Royal Commissions and Coronial inquiries may take a significant time to be appointed and to begin investigations. Indeed, it may be even years before the report of their investigation has been completed. This is unacceptable in the face of the imperatives of operational capability demanded of the Defence Force. Of course, there is no reason why military Boards of Inquiry should not be undertaken in advance of, or in parallel to, civilian investigations such as Coronial inquiries and this is very often what occurs.

Not all incidents involving the accidental death of an Australian Defence Force member participating in a Defence Force activity are of a nature as to require the highest level of formality, independence and legality as would be provided by a General Court of Inquiry. That is not to say that an incident involving the accidental death of a Defence Force member is not serious, but the circumstances may not be of a nature that a Board of Inquiry could not inquire into the matter in an efficient, effective and impartial way. Incidents which can be adequately investigated by the Defence Force do not warrant or demand the independence, formality or level of legality afforded by a General Court of Inquiry.

The most important elements to be considered in deciding between a General Court of Inquiry and a Board of Inquiry are the presence of a serious national interest in the matters to be the subject of the inquiry and the likelihood that a Defence Force inquiry may be perceived to be biased.

During the Committee’s inquiry a number of next of kin of Australian Defence Force members were critical of the conduct of Boards of Inquiry conducted by the Australian Defence Force into accidental death of members. Some of this criticism has resulted in the Committee bringing rec-
ommendations that would improve the conduct of Boards of Inquiry from the viewpoint of next of kin of deceased members. In particular, the implementation of Recommendations 17, 24, 25, 26, 28, 30, 34 will significantly improve the inquiry process and could be expected to redress much of the criticism of the process that was presented to the Joint Standing Committee during its inquiry.

In peacetime, the accidental death of Australian Defence Force members involved in military activities are investigated by State or Territory coroners. These investigations, being external to the Australian Defence Force, provide the highest possible level of impartiality and independence. Moreover, State and Territory coroners possess considerable professional expertise with respect to the investigation of accidental death and provide this service to the community at large. The Government’s acceptance of the Committee’s Recommendations 3, 4 and 5 will facilitate the investigation of accidental death of Australian Defence Force members by State and Territory coroners.

The Defence (Inquiry) Regulations came into operation on 3 July 1985. They provided the Government and the Australian Defence Force with a range of inquiries to inquire into matters affecting the Defence Force. While similar provisions existed and applied to parts of the Defence Force, they did not apply to all three services. The Defence (Inquiry) Regulations were introduced to fulfil this need following the HMAS Voyager disaster and the subsequent inquiry by a Royal Commission.

Since the Defence (Inquiry) Regulations came into operation on 3 July 1985, no General Court of Inquiry has been appointed. While, as has already been stated, most instances of accidental death of Australian Defence Force members participating in military activities do not justify the highest level of formality, independence and legality afforded by a General Court of Inquiry, there may well be instances of sufficient gravity or special circumstances that might justify such an inquiry.

While the circumstances that might give rise to the appointment of a General Court of Inquiry may be similar to those circumstances that give rise to the appointment of a Board of Inquiry, the distinguishing features between the two that would warrant the appointment of a General Court of Inquiry are:

a. the presence of a serious national interest in the matters to be the subject of the inquiry; and

b. the likelihood that an inquiry by the Defence Force may be perceived to be biased because of the involvement, in the matters to be the subject of the inquiry, of the most senior officers of the Australian Defence Force.

The Government considers that while there may arise cases involving the accidental death of Australian Defence Force members participating in Australian Defence Force activities that may justify the appointment of a General Court of Inquiry, there will also arise cases that do not. Consequently, the Government does not agree that the appointment of a General Court of Inquiry should be mandatory in all cases of accidental death of Defence Force members involved in military activities.

However, to avoid concerns about the perceptions of bias or lack of independence in the conduct of certain types of ADF inquiries, the Government agrees as follows:

a. In each case of accidental death of ADF members involved in military activities, the CDF and/or relevant service Chief of the Defence Force or the Service Chiefs, as appropriate, advise the Minister to determine whether a General Court of Inquiry or a Board of Inquiry is appropriate. The discretion as to whether to appoint a General Court of Inquiry should remain with the Minister as currently provided for by Regulation 5 of the Defence (Inquiry) Regulations.

b. A Military Inspector-General will be appointed whose responsibilities will include the appointment as President of a Board of Inquiry or as an Investigating Officer under the Defence (Inquiries) Regulations, advise and report to CDF on the conduct, findings and recommendations of specified Boards of Inquiry; and, authority to initiate independent inquiries into ADF activities. Legislative amendments will be required.

RECOMMENDATION 2

The Committee recommends that the Minister of Defence continue to have the discretion to convene a General Court of Inquiry in cases of major capital loss.

RESPONSE

Supported

This recommendation reflects the present situation whereby the Minister may exercise a discretion to appoint a General Court of Inquiry into any matter concerning the Defence Force.

RECOMMENDATION 3

The Committee recommends that the ADF develop policy to involve the coroner from the outset of inquiries involving any fatality.

RESPONSE
Supported
The coroner must be informed of all cases of accidental death of ADF members in Australia, usually through State and Territory police.
Policy and procedures will be developed to ensure that ADF authorities involve the coroners from the outset of an accident.

RECOMMENDATION 4
The Committee recommends that the ADF facilitate the involvement of the coroner in the initial stages of an inquiry into an accident involving death, through the provision, as required, of a liaison officer to the coroner.

RESPONSE
Supported
The Government agrees that the ADF should appoint a liaison officer to facilitate the involvement of the coroner in the initial stages of an enquiry into the accidental death of ADF members which occurs within Australia as appropriate to the circumstances.
The requirement to appoint an ADF liaison officer to assist the coroner will be incorporated into the policy and procedures to be developed and have been referred to in the Government’s response to Recommendation 3.

RECOMMENDATION 5
The Committee recommends that the Australian Government ensure that State legislation does not preclude state coroners from investigating coronial deaths of military personnel and civilians involved in military enterprises or on military land or property.

RESPONSE
Supported in principle
This recommendation proposes that State legislation not preclude state coroners from investigating accidental deaths of military personnel and civilians involved in military enterprises or on military land or property. However, in their report the Joint Standing Committee stated, ‘Moreover, the ADF should develop policy to involve the coroner from the outset of inquiries involving fatalities and Commonwealth legislation should not preclude State coroners from investigating coronial deaths of military personnel and civilians involved in military enterprises or on military land or property that would otherwise be the subject of a coronial inquiry.’
The jurisdiction of State and Territory coroners is established by the relevant State and Territory legislation. Currently, except in exceptional circumstances, State and Territory coroners are not precluded from investigating coronial deaths of military personnel and civilians involved in military enterprises or on military land or property.

Defence Force Regulation 27 provides that, subject to a direction of the Minister, a commissioned officer of the Defence Force may give directions for the disposal of a body of a member of the Defence Force who has died in service. Defence Force Regulation 28 provides that a law of a State or Territory relating to coroners or the registration of deaths does not apply in relation to a body with respect to which directions for disposal are given or in relation to the death of a member of the Defence Force with respect to whose body such directions are given. The Ministerial determination on this matter states that a commissioned officer of the Defence Force shall not give directions for the disposal of the body of a member of the Defence Force who died while on service in circumstances where, but for the operation of Defence Force Regulation 28, a law of a State or Territory relating to coroners would apply unless that commissioned officer first signs a written certificate certifying that the body is at a place where it is not practicable to comply with the law.
The Government considers that State and Territory coroners should not be precluded from investigating the death of a Defence Force member except during periods of armed conflict in Australia or where the death occurred overseas or on a ship at sea in waters outside State or Territory jurisdiction. In discussing the matter of coronial jurisdiction, the Joint Standing Committee’s report referred to circumstances where death occurs in Australia. Consequently, it is taken that the recommendation also refers to deaths that occur within Australia.
The recommendation is supported in principle. Action will be taken to amend the current Ministerial determination and the relevant legislation.

RECOMMENDATION 6
The Committee recommends that a coroner investigating the death of an ADF member, should be encouraged to determine whether or not any potential criminal liability exists and, where appropriate, to attribute degrees of responsibility for the incident in his or her findings.

RESPONSE
Not Supported
State and Territory legislation that establishes the coroner and provides jurisdiction will determine whether the particular coroner may attribute degrees of responsibility for an incident, should it be appropriate to do so. Coroners will exercise their jurisdiction with respect to ADF members in the same way as they would with respect to all
other members of the community over whom they may exercise their jurisdiction.

The Government does not consider that it should encourage State and Territory coroners to deal with ADF members in a different manner to that with which they deal with other persons who fall within their jurisdiction.

**RECOMMENDATION 7**

The Committee recommends that the practice of including specialist civilian personnel on BOIs be continued, with specialist qualifications being the basis for appointment.

**RESPONSE**

Supported

The Government agrees that the inclusion, as members of Boards of Inquiry, of specialist civilians, based on their qualifications and experience, enhances the actual and perceived independence of the inquiry process. The Board of Inquiry into the accident aboard HMAS Westralia is a case in point.

When he appeared before the Committee, the Chief of the Defence Force noted that the appointment of civilians to Boards of Inquiry could be considered more widely. Furthermore, he undertook to provide formalised guidance within the ADF on the inclusion of external, including civilian, experts on Boards of Inquiry where appropriate.

**RECOMMENDATION 8**

The Committee recommends that in order to provide a reasonable level of independence, Investigating Officers for military inquiries should be appointed from outside the chain of command of the individual(s) or element immediately under investigation and should not be personally acquainted with any of the parties involved in the incident.

**RESPONSE**

Supported in part

The Joint Standing Committee’s recommendation is in two parts. Firstly, that Investigating Officers be appointed from outside the chain of command of the individual(s) or element immediately under inquiry and secondly, that Investigating Officers should not be personally acquainted with any of the parties involved in the incident.

While the Government agrees that the implementation of both elements of the recommendation would provide an increased level of independence to the military inquiry process, implementation of the latter element, as a requirement for the appointment of Investigating Officers, would be impractical and sometimes impossible.

A requirement for the appointment of an Investigating Officer who is not in the chain of command of the parties involved in the incident would be achievable. A unit/ship commander could appoint an Investigating Officer from one part or section of his/her unit to inquire into an incident involving another part or section of his/her unit. At higher levels, a senior commander, acting as an Appointing Officer could, but would not be compelled, to appoint an Investigating Officer from one unit to conduct an inquiry into a matter involving another unit. In this context, an element is taken to mean a part of a military organisation such as a section or part of a unit as well as a unit or ship organisation. Moreover, the chain of command is taken to refer to the immediate chain of command, either up the chain or down the chain, of the individual(s) under investigation. It does not include other elements under the command of the Appointing Officer. An Investigating Officer should not have day to day responsibility for the individual(s) under inquiry. This aspect of the Joint Standing Committee’s recommendation is agreed.

Accordingly, the Government supports that part of the recommendation which requires the Investigating Officer to be appointed from outside the chain of command of the individual(s) or element under investigation. Detailed guidance on this issue has been drafted and included in the new Administrative Inquiries Manual.

With respect to the second element of the recommendation, it would not be possible for the commander of a ship or unit to appoint an Investigating Officer who is not known to the parties involved in an incident. In a discrete organisation such as a unit, squadron or ship, as an aspect of the function of command, leadership and management, officers are expected to be acquainted with all members of the organisation to which they belong. The strict application of this element of the Joint Standing Committee’s recommendation would prevent a commanding officer, acting as Appointing Officer, from appointing an Investigating Officer from within his/her unit to inquire into any matter affecting his/her command. This is contrary to the intention of Defence (Inquiry) Regulation 69(1) which provides that commanding officers (as Appointing Officers) may appoint Investigating Officers. Acceptance of this element of the Joint Standing Committee’s recommendation would effectively remove Investigating Officer Inquiries as a form of administrative inquiry available to commanding officers to command and administer their units.
Accordingly, the Government does not support that part of the recommendation that requires the Investigating Officer not to be acquainted with the individuals under investigation on the grounds that this is impractical.

RECOMMENDATION 9
The Committee recommends that the ADF provide more extensive guidance to commanders regarding when to invoke the various levels of investigation.

RESPONSE
Supported
The Defence (Inquiry) Regulations provide for three types of inquiry within the Australian Defence Force. In addition, under the inherent authority of command a commander may conduct less formal inquiries not under the provisions of the Defence (Inquiry) Regulations.

The selection of the most appropriate form of inquiry to suit the particular circumstances is an important element to a successful outcome.

The Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998 recommended that guidance be provided on when to choose a Board of Inquiry rather than an Investigating Officer’s inquiry in order to encourage consistency and to minimise any perceptions that complaints were not being treated sufficiently seriously. The ADF agreed to the Ombudsman’s recommendation and drafted guidance on this matter to be included in a new Administrative Inquiries Manual.

Detailed guidance on the selection of the most appropriate method of inquiry has been drafted and incorporated in the new Manual.

RECOMMENDATION 10
The Committee recommends that a legal review of the TOR be conducted prior to the commencement of an inquiry. Where possible for Investigating Officer inquiries and in all cases for BOIs, the review should be conducted by legal officers outside the chain of command of the Appointing Authority.

RESPONSE
Supported in part
Terms of Reference are critical to the successful outcome of an inquiry. Consequently, considerable attention to their drafting is warranted. The ultimate responsibility for the drafting and issue of Terms of Reference lies with commanders acting as Appointing Authorities for Boards of Inquiry and as Appointing Officers for Investigating Officer Inquiries.

The provision of legal advice and, when required, legal review, to senior commanders is the function for which staff legal officer positions are established. However, Terms of Reference especially for Boards of Inquiry are of such importance that special requirements are justified.

The matters inquired into by Boards of Inquiry are generally of a grave and serious nature. Moreover, Boards of Inquiry are not frequently involved in appointments and Appointing Authorities are normally of quite senior rank. There is a clear advantage in Terms of Reference for Boards of Inquiry across the ADF being monitored and reviewed for consistency, legality, practicality and appropriateness.

Accordingly, the Government agrees that Terms of Reference for Boards of Inquiry should be reviewed by a senior legal officer outside the chain of command of the Appointing Authority.

Matters to be inquired into by Investigating Officers are generally of lesser gravity. Nevertheless, Terms of Reference for Investigating Officer inquiries also should be reviewed by a legal officer.

Investigating Officer inquiries are appointed reasonably frequently and the vast majority of these are appointed by Appointing Officers who are commanding officers, although they may also be appointed by senior commanders. Commanding officers usually do not have legal officers on their staff and consequently, review by any service legal officer not previously involved in drafting the relevant Terms of Reference is proposed.

Review of Terms of Reference by legal officers where the Appointing Officer is a senior commander presents practical difficulties. In such cases it would be appropriate and satisfactory for the legal review to be conducted by a service legal officer on the staff of, and therefore in the chain of command of Appointing Officers, provided they have not previously been involved in drafting the relevant Terms of Reference.

In summary, that part of the recommendation that proposes that all Terms of Reference for Boards of Inquiry and Investigating Officer inquiries be subject to legal review is supported. In addition, that part of the recommendation that proposes that Terms of Reference for Boards of Inquiry be reviewed by a legal officer outside the chain of command of the Appointing Authority is supported. However, that part of the recommendation that proposes that, where possible, Terms of Reference for Investigating Officer inquiries be reviewed by a legal officer outside the chain of command of the Appointing Officer is not supported for the reasons outlined above.

RECOMMENDATION 11
The Committee recommends that the Australian Government ensure that an Investigating Officer or Board of Inquiry is empowered, by the D(I)R, to make recommendations flowing from findings germane to the Terms of Reference.

RESPONSE
Supported

Defence (Inquiry) Regulations 25 and 70 provide that the instrument of appointment shall indicate whether or not a Board of Inquiry and an Investigating Officer are empowered to make recommendations arising from their findings. Where the instrument does not empower recommendations to be made, then there is no power to do so.

As the purposes of an administrative inquiry are to find facts concerning a particular incident and to identify remedial action to prevent a recurrence, the Government agrees that a Board of Inquiry and an Investigating Officer ought to be empowered to make recommendations flowing from the findings relevant to the Terms of Reference.

Defence (Inquiry) Regulations 25 and 70 will be amended to reflect the Committee’s recommendation.

RECOMMENDATION 12
The Committee recommends that the ADF amend guidance on the conduct of military inquiries to ensure that Investigating Officers and BOI are always:
a) prohibited from finding that a specific offence has been committed, but
b) empowered to find that specific grounds exist for a matter, or matters to be the subject of a DFDA investigation and to recommend the referral of that matter for DFDA action.

RESPONSE
Supported

The Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998 recommended that administrative inquiries under the Defence (Inquiry) Regulations should not be entitled to find that a specific offence has been committed. The reason for this recommendation was that such a finding would stem from evidence obtained where the rules of evidence did not apply.

The purposes of an administrative inquiry are to find the facts in a particular situation and to identify remedial action to prevent a recurrence. An administrative inquiry is not a criminal or disciplinary investigation.

Nevertheless, this should not prevent an administrative inquiry from recommending to the Appointing Authority/Officer that an investigation under the Defence Force Disciplinary Act be considered where evidence presented to the inquiry suggests that an offence may have been committed.

The Australian Defence Force agreed to the Ombudsman’s recommendation. Accordingly, guidance on this issue has already been drafted and incorporated in the new Administrative Inquiries Manual.

RECOMMENDATION 13
The Committee recommends that the ADF complete the development of and issue, as soon as possible, a manual providing comprehensive guidance on the conduct of military inquiries under D(I)R.

RESPONSE
Supported

The Australian Defence Force has agreed to implement a number of recommendations made by the Defence Force Ombudsman in the ‘Own Motion’ Report of January 1998. As a consequence, appropriate guidance and advice was drafted and incorporated in a draft Administrative Inquiries Manual. This Manual will be published and issued in the near future.

The new Manual will gather together in one volume all the relevant legislation, policy, procedures and guidance relating to administrative inquiries in the Australian Defence Force.

RECOMMENDATION 14
The Committee recommends that the President of a BOI have the responsibility to ensure that lines of questioning are relevant to the TOR and do not include unnecessary personal questions or pursue personal theories.

RESPONSE
Supported

The duties of the President of a Board of Inquiry and an Investigating Officer are presently contained in Defence Instruction (General) Administration 34-1, although no specific mention is made of the President’s responsibility to ensure that lines of questioning of witnesses is relevant to the Terms of Reference and do not include unnecessary personal questions or pursue personal theories.

The Government agrees that such advice is necessary to ensure that inquiries are properly focussed and remain relevant to the Terms of Reference in order to achieve successful outcomes. This duty of the President of a Board of Inquiry should apply equally to an Investigating Officer.
Appropriate guidance on this matter has been drafted and included in the draft Administrative Inquiries Manual.

**RECOMMENDATION 15**

The Committee recommends that the Australian Government ensure that legislation

a) does not provide a privilege against self-incrimination to witnesses to an inquiry conducted by an Investigating Officer; but

b) does provide that any statement or disclosure made to an Investigating Officer by a witness should not be admissible as evidence in civil or criminal proceedings against that witness.

**RESPONSE**

Supported

The Defence (Inquiry) Regulations provide that a witness before a General Court of Inquiry and a Board of Inquiry is not excused from answering a question, when required to do so, on the ground that the answer may tend to incriminate them. The Defence Act 1903 provides that a statement or disclosure made by a witness before a General Court or Board of Inquiry is not admissible in evidence against that witness in civil or criminal proceedings or before a Service tribunal.

The Defence (Inquiry) Regulations require that a witness who appears before an Investigating Officer shall not, without reasonable excuse, fail or refuse to answer a question relevant to the inquiry. Furthermore, they provide that a statement or disclosure made by a member of the Defence Force in the course of giving evidence before an Investigating Officer is not admissible in evidence against that person before a Service tribunal. However, no similar protection applies before a civil court or in criminal proceedings. In consequence, the Federal Court has ruled that self-incrimination constitutes reasonable excuse for not answering questions in an Investigating Officer inquiry.

The Government agrees that it is in the interests of consistency to ensure that there is no distinction with respect to protection against self-incrimination in the case of Investigating Officer inquiries. The compulsion to answer questions before a General Court of Inquiry and a Board of Inquiry, (with self-incrimination not amounting to a reasonable excuse not to answer), is applicable to all witnesses and not just those who are legally represented. Consequently, in Investigating Officer inquiries where the same compulsion to answer questions applies, the same protection against the subsequent use before a civil court or in criminal proceedings of any evidence given to the inquiry and any adverse finding ought also apply to all witnesses. The issue of whether or not a member is legally represented before a General Court or Board of Inquiry ought not deprive a member who gives evidence before an Investigating Officer inquiry of the same protection afforded to witnesses before a General Court or Board of Inquiry.

In Investigating Officer Inquiries where refusal to answer a question on grounds of self-incrimination is provided for by the Regulations, the question of compulsion to answer is decided by the Investigating Officer. This issue may, and indeed has, resulted in conflict with one case having to be decided before the Federal Court. Implementation of the Joint Standing Committee’s recommendation will remove the potential for conflict on this issue.

The distinction that currently exists between the legislative protection given to witnesses before General Courts and Boards of Inquiry on the one hand and Investigating Officer Inquiries on the other appears to be without foundation. Moreover, the distinction has the potential to hinder the effectiveness of outcomes achieved by Investigating Officer Inquiries.

The one factor that remains is the further protection that a witness before a General Court of Inquiry and a Board of Inquiry receives when not represented, and that is; that no adverse finding may be made against the witness unless that witness is given the opportunity to be represented. To ensure consistency, it is proposed that the Defence (Inquiry) Regulations and the Administrative Inquiries Manual provide that no adverse finding may be made against a witness before an Investigating Officer Inquiry unless the witness is given the opportunity to receive detailed legal advice before providing his/her evidence.

The Defence Act, the Defence (Inquiry) Regulations and the Administrative Inquiries Manual will be amended to reflect the recommendation.

**RECOMMENDATION 16**

The Committee recommends that the ADF amend guidance on the drafting of TOR to ensure that investigating bodies are not empowered to make specific findings apportioning blame.

**RESPONSE**

Supported

The Government agrees that the purpose of administrative inquiries as established through the Terms of Reference should not be to apportion blame for criminal or disciplinary issues. The purpose of administrative inquiries should not be distracted from the objective of fact finding and
the identification of remedial action to prevent occurrences.

This will not prevent an administrative inquiry from bringing a recommendation based on the findings that consideration should be given to initiating an investigation under the DFDA or by civil police. It should not prevent a recommendation that adverse administrative action be considered. Nor should it prevent the identification of cause, as distinct from blame.

Guidance on this matter will be included in the general guidance on drafting Terms of Reference in the new Administrative Inquiries Manual.

RECOMMENDATION 17
The Committee recommends that where the case before a BOI is serious and of legitimate public interest, that BOI should be open to the public, with the option to take evidence in camera.

RESPONSE
Supported

Defence (Inquiry) Regulation 29(1) provides, subject to Regulation 29(2), that a Board of Inquiry shall not conduct its inquiry in public. Regulation 29(2) provides that the Appointing Authority may direct that all or part of the inquiry be conducted in public.

The Australian Defence Force Supplementary Submission to the Joint Standing Committee inquiry contained the following statement, ‘It is considered that the option of open and closed inquiries should be available to the ADF depending on the circumstances being investigated but, in future, closed Boards should become the exception rather than the rule. Policy guidelines on these matters have been developed and included in the new ADF Manual of Administrative Inquiries.’

RECOMMENDATION 18
The Committee recommends that members of the ADF should be promptly informed of any complaint or allegation against them where any action under D(I)R is to be taken as a result. The only exception to this right to be informed should be where an individual is suspected of committing an offence and where forewarning may result in the destruction of evidence.

RESPONSE
Supported

The Defence Force Ombudsman noted in the January 1998 ‘Own Motion’ Report that the principles of procedural fairness require that a report that is critical of a member should not be made to an Appointing Authority without the member having been afforded an opportunity to appear before the inquiry and to make any submissions (either orally or in writing) as he or she thinks fit.

In their report, the Joint Standing Committee stated that the subject of a complaint or allegation, against whom action is to be taken as a result, should, after the right to be informed has been satisfied, be afforded adequate opportunity to respond to the allegations or complaint.

The Australian Defence Force agrees with this view and as a consequence of the Ombudsman’s recommendation on the matter, appropriate directions and guidance have been developed and included in the draft Administrative Inquiries Manual.

RECOMMENDATION 20
The Committee recommends that a member against whom action is to be taken should have access to any evidence relied upon in making a decision or taking any action which affects them except where the release of evidence given by another witness may, if disclosed, constitute a threat to the safety of that witness.

RESPONSE
Supported

As a consequence of the Ombudsman’s recommendation, the Australian Defence Force has drafted guidance for inclusion in the Administrative Inquiries Manual to the effect that a member is to be promptly informed where they are the subject of an accusation, allegation or complaint, not being of a criminal or disciplinary nature, that is to be inquired into under the Defence (Inquiry) Regulations.

RECOMMENDATION 19
The Committee recommends that a report that is critical of a member should not be made to an Appointing Authority without the member having been afforded the opportunity to appear before the inquiry and to make any submissions (either orally or in writing) as he or she sees fit.

RESPONSE
Supported

In the ‘Own Motion’ Report of January 1998, the Defence Force Ombudsman stated that where an investigation may adversely affect a person, he or she can have a reasonable expectation that the principles of procedural fairness will apply. This includes access to any evidence relied upon in
making a decision, or taking any action, which affects them.

The Government agrees that the Australian Defence Force’s use of the Defence (Inquiry) Regulations must comply with current standards of administrative law. Natural justice and procedural fairness must be observed throughout the inquiry process. Consequently, within the limitations of national security and personal privacy, evidence that is relied upon to make a decision or take any action that affects them adversely, must be made available to a member.

Guidance on this matter will be drafted for inclusion in the new Administrative Inquiries Manual.

**RECOMMENDATION 21**

The Committee recommends that members who may be adversely affected as a result of the investigating body’s report on an inquiry should be afforded access to that report within the provisions of the Privacy Act.

**RESPONSE**

Supported

The Defence Force Ombudsman’s ‘Own Motion’ report of January 1998 stated that members who may be adversely affected as a result of an investigator’s report should be afforded access to the report.

Present ADF practice is that persons, against whom adverse action is to be taken consequent upon the report of an administrative inquiry under the Defence (Inquiry) Regulations, are provided with those parts of the report that are relevant to them. This practice takes account of the Privacy Act. Defence (Inquiry) Regulation 63 authorises the Minister to release all or part of the report of an inquiry under the Defence (Inquiry) Regulations.

As present ADF practice complies with the Joint Standing Committee’s recommendation, no action is required to implement it.

**RECOMMENDATION 22**

The Committee recommends that when witnesses are informed regarding their status and the outcome of the inquiry in relation to matters relevant to them, they should also be informed as to their rights of review.

**RESPONSE**

Supported

The Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998 recommended that the ADF spell out in the Defence (Inquiry) Regulations and Instruction, and particularly for Investigating Officers, the principle of procedural fairness and rights of review. The ADF’s response to the Ombudsman’s recommendation was to include in the new Administrative Inquiries Manual a requirement to advise members of their rights of review when advising them of the outcome of the inquiry.

The Joint Standing Committee’s recommendation is being implemented.

**RECOMMENDATION 23**

The Committee recommends guidance on confidentiality and privacy be included in the proposed manual providing comprehensive guidance on the conduct of military inquiries under D(I)R.

**RESPONSE**

Supported

Guidance on confidentiality and privacy has been drafted for inclusion in the new Administrative Inquiries Manual consequent upon the ADF’s agreement to do so in response to a recommendation contained in the Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998.

The Joint Standing Committee’s recommendation is being implemented.

**RECOMMENDATION 24**

The Committee recommends that the next of kin, or other immediate relatives, of an ADF member whose death is the subject of an inquiry, should always be permitted to attend that inquiry regardless of whether the inquiry is conducted in private or is open to the public. Exclusion of these next of kin or other immediate relatives from the inquiry should only be on a temporary basis, from those sections of the inquiry dealing with matters of national security.

**RESPONSE**

Supported

The Defence Supplementary Submission to the Joint Standing Committee’s inquiry stated that the ADF had a special responsibility to the next of kin of its members who are killed in duty related accidents, particularly in peacetime. The Supplementary Submission stated that the ADF should ensure that the next of kin can attend Boards of Inquiry that might be closed to the public. The Submission noted that this change in policy could be achieved immediately by strengthening the guidance relating to the conduct of inquiries. As a consequence of the Supplementary Submission policy guidelines were drafted for inclusion in the new Administrative Inquiries Manual.

The Joint Standing Committee’s recommendation is being implemented.
RECOMMENDATION 25
The Committee recommends that next of kin or other immediate relatives of personnel killed in military incidents should, within the provisions of the Privacy Act and relevant security considerations, be provided with a copy of the inquiry report and advice on all actions taken as a result of the inquiry. Where a recommendation from the inquiry report is not implemented, next of kin should be provided with the reasons underpinning the decision not to adopt that recommendation.

RESPONSE
Supported
The Government has agreed that the next of kin of deceased members be permitted to attend the Board of Inquiry whether the proceedings are open or closed to the public within the limitations imposed by privacy and security considerations. However, release of the inquiry report either in whole or in part is at the discretion of the Minister in accordance with Defence (Inquiry) Regulation 63. Where the Minister authorises release of the report then it will be available to the next of kin. Where release of the report has not been authorised by the Minister, the next of kin will be advised of the general outcome of the inquiry. Once the Appointing Authority has decided which recommendations relevant to the death of particular personnel are to be implemented and which are not, this will be communicated to the relevant next of kin in accordance with Defence (Inquiry) Regulations. The reasons for not implementing any recommendations will also be advised. The Government believes that the implementation of this recommendation will make the entire inquiry process more transparent to next of kin and will assist them to fully understand the circumstances surrounding the death and the action taken by the ADF to prevent a recurrence of the accident.

RECOMMENDATION 26
The Committee recommends that next of kin or other immediate relatives of personnel killed in military incidents should be warned prior to the release of information to the press regarding the inquiry.

RESPONSE
Supported
During his appearance before the Joint Standing Committee, the Chief of the Defence Force stated that communication with relatives of members killed in military accidents was something the ADF resolved to do better. The implementation of this recommendation is part of that undertaking. Accordingly, whenever practicable, the next of kin of deceased members will be advised before information is released to the media.

RECOMMENDATION 27
The Committee recommends that the Australian Government ensure that legislation provides a right to Service legal representation, at Commonwealth expense, for any member of the ADF who is likely to be affected by a BOI.

RESPONSE
Supported
Defence (Inquiry) Regulation 33 sub-sections (1), (2) and (3) provide that a person deemed to be likely to be affected by an inquiry may appoint a legal practitioner to represent them subject to the approval of the President of the Board or the Appointing Authority, as applicable. In practice, when a member is deemed by the Appointing Authority or the President, as appropriate, to be likely to be affected by a Board of Inquiry, a service legal officer will be appointed to represent them at Commonwealth expense. Alternatively, the affected person may be given approval to appoint a civilian legal practitioner at their own expense. The Joint Standing Committee’s recommendation will formalise and make mandatory what is presently usual practice. Defence (Inquiry) Regulation 33 will be amended to reflect the recommendation.

RECOMMENDATION 28
The Committee recommends that where a deceased member of the ADF is likely to be affected by an inquiry, the next of kin or other immediate relatives should be afforded the option to have the interests of the deceased member represented, at Commonwealth expense, by Service legal counsel.

RESPONSE
Supported
In its report the Joint Standing Committee noted that where a deceased member is likely to be affected by an inquiry, a legal practitioner should be appointed by the Appointing Authority to represent the deceased member for the purposes of the inquiry. Furthermore, the Committee stated that the next of kin of a deceased member, who is likely to be affected by an inquiry, should have the alternative option to be represented, at their own expense, by a private legal practitioner. The Government considers that where a deceased member is deemed to be likely to be affected by an inquiry, the same rights to legal representation should be afforded to that deceased member as
would be afforded to any other member of the ADF.

Implementation of Recommendation 27 will provide that a member who is deemed to be affected by an inquiry will have a right to be represented by a service legal officer at Commonwealth expense. This same right will be afforded to a deceased member who is deemed to be affected by an inquiry.

Furthermore, the next of kin of a deceased member, who is deemed to be likely to be affected by an inquiry, may, if they wish, at their own expense, engage a civilian legal practitioner to represent the deceased member.

RECOMMENDATION 29
The Committee recommends that the appointment of a Counsel Assisting to a BOI should be strongly recommended in guidance to Appointing Authorities.

RESPONSE
Supported

Defence (Inquiry) Regulation 51 provides that an Appointing Authority may appoint a legal practitioner to assist a Board of Inquiry.

The Government agrees that the appointment of Counsel Assisting a Board of Inquiry would be advantageous and appropriate to most Boards but would be essential in the more complex inquiries. The role of Counsel Assisting will be to identify relevant issues, determine appropriate witnesses and facilitate the leading of evidence so that Board members may concentrate on considering and weighing the evidence presented. Moreover, Counsel Assisting will be able to advise the Board on matters of law, procedure and precedence especially when such issues are put to the Board by legal representatives who appear before it.

This recommendation will be implemented by inclusion of appropriate guidance in the new Administrative Inquiries Manual.

RECOMMENDATION 30
The Committee recommends that the ADF establish processes to ensure that counselling services are available, if required, to witnesses to a military inquiry and to next of kin and close relatives of ADF members killed in the incident that is the subject of the inquiry.

RESPONSE
Supported

During his appearance before the Joint Standing Committee, the Chief of the Defence Force advised that communicating with relatives and providing them with appropriate support are key areas where the ADF is resolved to do better. He stated that follow-up support, already frequently provided through the good offices of Commanding Officers and supporting agencies, will be mandated.

Relevant guidance will be drafted for inclusion in the new Administrative Inquiries Manual. That guidance will require that, where necessary, counselling and other support services that are reasonably related to the accident and to the subsequent inquiry, are to be provided to witnesses and to next of kin of deceased members at Commonwealth expense.

RECOMMENDATION 31
The Committee recommends that all correspondence between the Appointing Authority and the investigating body should be in writing and should be disclosed to all legal representatives.

RESPONSE
Supported

The Government agrees that, as recommended by the Defence Force Ombudsman in the Own Motion Report of January 1998, an Appointing Authority/Officer should monitor the progress of an administrative inquiry without exerting undue influence with respect to the conduct of the inquiry, including selection of witnesses, interpretation of evidence or the determination of findings and recommendations. The independence and impartiality of the investigating body must be maintained.

All communication relevant to the inquiry between the Appointing Authority/Officer and the inquiry body should be in writing so that the process remains as transparent as possible.

In the case of Boards of Inquiry, written communications between the Appointing Authority and the President of the Board should be disclosed, subject to the limitations of secrecy, to all legal representatives appearing before the Board on behalf of affected persons.

Appropriate guidance will be included in the new Administrative Inquiries Manual.

RECOMMENDATION 32
The Committee recommends that the ADF should issue guidance to Appointing Authorities regarding their duties in monitoring a military inquiry.

RESPONSE
Supported

The Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998 contained the observation that appropriate processes were needed for the supervision and monitoring of inquiries under the Defence (Inquiry) Regulations. The report noted
that a regular reporting arrangement, particularly to cover process questions, would help to ensure that investigations were being conducted properly.

Following the Ombudsman’s Report, appropriate guidance on monitoring inquiries was drafted for inclusion in the new Administrative Inquiries Manual.

The guidance includes written reporting by the inquiry body to the Appointing Authority/Officer in a set format and at regular, predetermined intervals.

**RECOMMENDATION 33**

The Committee recommends that, to protect the independence of the process, guidance should be provided to Appointing Authorities warning against any direct involvement with the conduct of the inquiry.

**RESPONSE**

Supported

The Defence Force Ombudsman noted in the ‘Own Motion’ Report of January 1998 that structured supervision and monitoring arrangements of inquiry bodies do not amount to command influence.

The direct involvement with the conduct of the inquiry referred to in the recommendation is taken to mean that after the Terms of Reference have been issued there is no direction or suggestion by the Appointing Authority/Officer or other commander with respect to such matters as selection of witnesses, questioning of witnesses, evaluation of the evidence, or determination of findings or recommendations.

Relevant detailed guidance will be drafted for inclusion in the new Administrative Inquiries Manual.

**RECOMMENDATION 34**

The Committee recommends that, within the limitations of privacy and secrecy, and at the conclusion of all resultant disciplinary and administrative action, the ADF publicly account for its actions and decisions in discharging the recommendations of a Board of Inquiry.

**RESPONSE**

Supported in part

Defence (Inquiry) Regulation 63 (3) provides that the Minister may authorise the disclosure to particular persons, or authorise the public release of either all or part of the report of a Board of Inquiry.

The public disclosure of the decisions made and the actions taken with respect to the recommendations of a Board of Inquiry would provide transparency to the entire inquiry process.

However, there will be Boards of Inquiry that, because of their subject, properly are not of public importance or may not create public or media interest. Some Boards of Inquiry into personnel matters may fall into this category. Moreover, where there are good reasons why a Board of Inquiry is held in private there may also be good and justifiable reasons why details of the decisions taken with respect to the recommendations ought not be made public.

Consequently, it would not be appropriate that the ADF be required to publicly account for its actions and decisions in discharging the recommendations of every Board of Inquiry. However, where there is no valid reason not to do so and where the Minister agrees, public disclosure will be made.

**RECOMMENDATION 35**

The Committee recommends that, following the conduct of a General Court of Inquiry, within the limitations of privacy and secrecy, and at the conclusion of all resultant disciplinary and administrative action, the Minister of Defence should table in Parliament:

a) the inquiry report;

b) the recommendations of the investigating body;

c) details of action taken to adopt those recommendations; and

d) where a recommendation is rejected, the reasons for that action.

**RESPONSE**

Supported in principle

Defence (Inquiry) Regulation 11 (1) provides that a General Court of Inquiry shall be conducted in public, however, Sub-regulation (2) provides that the President of a General Court of Inquiry, if satisfied that it is necessary to do so in the interests of the defence of the Commonwealth or of fairness to a person who the President considers may be affected by the inquiry, may order that all or part of the inquiry may be conducted in private.

Defence (Inquiry) Regulation 20 (1) requires that a report of a General Court of Inquiry shall be furnished to the Minister. In addition, Defence (Inquiry) Regulation 63 (3) provides that the Minister may make available to the public generally all or part of the report of a General Court of Inquiry.

The Joint Standing Committee’s recommendation provides for exceptions to the tabling in Parlia-
ment of relevant information with respect to a General Court of Inquiry for reasons of privacy and secrecy. The Government agrees that, subject to the stated limitations of privacy and secrecy which should remain at the discretion of the Minister, the report of a General Court of Inquiry, including the recommendations, together with details of action taken to adopt the recommendations and where applicable reasons for rejecting any recommendation, be tabled in Parliament.

In order to implement this recommendation, the Defence (Inquiry) Regulations will be amended to provide that the Minister table the relevant documents in Parliament, subject to the discretion of the Minister not to do so for reasons of privacy and secrecy.

**RECOMMENDATION 36**

The Committee recommends that informal investigations should be more appropriately referred to as preliminary inquiries.

**RESPONSE**

Supported in principle

Commanding Officers have always conducted inquiries under their own authority in response to a given situation or incident which falls within their scope of responsibility. The authority to do so is inherent in the exercise of command. These inquiries do not fall within the provisions of the Defence (Inquiry) Regulations and have sometimes been referred to as informal or initial inquiries. No policy, procedures or guidelines concerning their conduct were issued.

The Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998 recommended that all reference to informal investigations be removed and that Defence Instructions provide clear guidance on the purpose and extent of the use and the accountability requirements for these inquiries. The Ombudsman considered the term informal to be a misnomer and suggested that it be replaced with the term preliminary.

In response to the Ombudsman’s recommendation, the ADF agreed to cease use of the term informal inquiry. However, the term preliminary inquiry, as suggested by the Ombudsman, was not preferred.

The term informal investigations used in the Committee’s recommendation is taken to mean all administrative inquiries that are not conducted under the provisions of the Defence (Inquiry) Regulations. There are two types of inquiry.

One involves a quick assessment of a particular situation with the purpose of identifying what further action, including the selection of the most appropriate form of formal inquiry or investigation, if necessary, is appropriate. This type of inquiry is referred to as the Quick Assessment.

The second type of inquiry involves an inquiry by a Commander into a minor matter or a matter of less seriousness than would justify a formal inquiry under the Defence (Inquiry) Regulations. This inquiry is sufficient to resolve the matter without any further inquiry. This type of administrative inquiry is referred to as a Routine Inquiry.

The terms used in the draft Administrative Inquiries Manual for informal inquiries as referred to in this recommendation are Quick Assessment and Routine Inquiry.

**RECOMMENDATION 37**

The Committee recommends that the ADF should issue guidance for the conduct of preliminary inquiries to be used to assist in determining the best course of action for dealing with an incident.

**RESPONSE**

Supported

The Preliminary Inquiry, to be called Quick Assessment (see response to Recommendation 36), is used by Commanders to determine the best course of action for dealing with an incident or accident.

This process does not fall within the provisions of the Defence (Inquiry) Regulations. The Defence Force Ombudsman noted in the ‘Own Motion’ Report of January 1998 that there is little guidance or adequate documentation or accountability requirements for this type of inquiry.

Following the Ombudsman’s Report, detailed guidance covering the procedures and documentation applicable to the Quick Assessment were drafted for inclusion in the new Administrative Inquiries Manual.

**RECOMMENDATION 38**

The Committee recommends that the ADF should issue guidance to ensure that the requirements for procedural fairness are satisfied in the conduct of preliminary inquiries.

**RESPONSE**

Supported

The Government agrees that the requirements of procedural fairness and natural justice must be observed in the conduct of all types of administrative inquiries in the Australian Defence Force including those conducted under the Defence (Inquiry) Regulations and those that are not.

To implement this recommendation detailed guidance on this matter will be drafted and included in the new Administrative Inquiries Manual.
RECOMMENDATION 39
The Committee agreed that the ADF should include detailed guidance on the issue of secret investigations under the D(I)R in the proposed manual providing comprehensive guidance on the conduct of military inquiries under D(I)R.

RESPONSE
Supported

The Joint Standing Committee’s reference to secret investigations under the Defence (Inquiry) Regulations refers to any administrative inquiry that is conducted without the knowledge of a person who may be deemed to be an affected person if the inquiry was a General Court of Inquiry or a Board of Inquiry. The reference also refers to an administrative inquiry by an Investigating Officer into any allegation, accusation or complaint made against a person.

Implementation of the Joint Standing Committee’s Recommendation 18 will ensure that secret inquiries will not be conducted except as noted by the Committee in that recommendation.

The inclusion of detailed guidance in the new Administrative Inquiries Manual on this issue in response to Recommendation 18 will also implement this recommendation.

RECOMMENDATION 40
The Committee recommends that:

a) guidelines should be established to ensure that members making knowingly false, malicious or vexatious accusations against other members are held accountable and that suitable action is taken against them;

b) members making accusations should be made aware of guidelines regarding the accountability of members making knowingly false, malicious or vexatious accusations;

c) action taken against members making knowingly false, malicious or vexatious accusations should be taken as transparently as possible, to ensure that justice is seen to be done; and

d) where an accusation is found to be false, malicious or vexatious, action should be taken, as transparently as possible, to put right any detriment to the member who was falsely accused.

RESPONSE
Supported

Defence (Inquiry) Regulation 56 provides that a person shall not give false evidence before a General Court of Inquiry, a Board of Inquiry or an Investigating Officer and prescribes penalties for doing so.

A serious difficulty arises in determining whether a particular accusation or allegation is false, malicious or vexatious. Even in cases where it might be suspected that an allegation may have been made for revenge or to deflect action from the accuser, it is often extremely difficult to determine that an accusation or allegations were malicious or vexatious. Sometimes, even when allegations are subsequently proved to be without substance, there may have been something to investigate and at least some evidence gathered. Some cases are extremely difficult to resolve, being a matter of one person’s word against another’s. In cases of personal disagreements between members, accusations may be made by both members and a clear resolution of the matter is not possible.

When allegations are proven to be without substance it may still be a difficult matter to prove that the allegation was malicious or vexatious. Often, it is sufficient that a member has been proven to have no case to answer. This may be sufficient vindication of their innocence.

Nevertheless, in cases where there is no doubt that an accusation or allegation is false, malicious or vexatious, disciplinary or administrative action against the perpetrator is warranted.

Commanders have a responsibility to ensure that no member is placed in a position of disadvantage in any way whatsoever as a result of a false, malicious or vexatious complaint, accusation or allegation.

The Joint Standing Committee’s recommendation is agreed and will be implemented by the drafting of guidance on the issue to be included in the new Administrative Inquiries Manual.

RECOMMENDATION 41
The Committee recommends that the ADF ensure that an adequate level of training is provided to officers required to conduct an investigation under D(I)R.

RESPONSE
Supported

The Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998 contained the recommendation that the Australian Defence Force develop a training strategy for officers who conduct investigations under the Defence (Inquiry) Regulations.

Following the Ombudsman’s recommendation the Australian Defence Force initiated the development of a training strategy for officers who will be involved in administrative inquiries. This strategy will be included in the ADF Training Management Package. The package will include
general awareness training for relevant personnel, a training module for Investigating Officers and a training module for Appointing Officers and Appointing Authorities.

RECOMMENDATION 42
The Committee recommends that the ADF provide comprehensive guidance to Investigating Officers regarding the conduct of investigations under D(I)R.

RESPONSE
Supported
The Defence Force Ombudsman’s ‘Own Motion’ Report of January 1998 recommended that guidance on investigations under the Defence (Inquiry) Regulations should be revised to provide advice to Commanding Officers and Investigating Officers on how to plan and conduct investigations.

In response to the Ombudsman’s recommendation, the Australian Defence Force drafted a chapter entitled Investigating Officer Inquiries for inclusion in the new Administrative Inquiries Manual. This chapter contains detailed and comprehensive direction, guidance and advice on Investigating Officer Inquiries as well as the appropriate policy and procedures to be followed by all personnel who may be involved in this type of administrative inquiry.

RECOMMENDATION 43
The Committee recommends that the ADF provide clear guidance to Appointing Authorities regarding the level of training or experience required of officers selected to conduct investigations under D(I)R.

RESPONSE
Supported
Specific advice regarding the level and type of training and experience required for officers selected to conduct inquiries under the Defence (Inquiry) Regulations will be included in the new Administrative Inquiries Manual. Details to be included in the Manual will be identified when the current study into the development of a training strategy for officers involved in administrative inquiries has been completed.

RECOMMENDATION 44
The Committee recommended that the ADF examine the feasibility of capturing the cost of the military justice system.

RESPONSE
Supported in part
The Joint Standing Committee has used the term military justice system to mean the operation of the DFDA, the military administrative inquiries system and the administrative action procedures. The administrative action system is operated by Service personnel whose normal duty includes the administration of personnel management and by other personnel who undertake relevant tasks in addition to their normal duties. In both cases, the operation of the administrative action system is inherent in normal Service duty and does not involve additional financial expenditure. Consequently, capturing the cost of the administrative action system is not appropriate.

At present the cost of the operation of the administrative inquiry system is not captured. Some inquiries such as simple and short duration Investigating Officer inquiries are conducted entirely by Service personnel using existing Service resources. Consequently, attempts to capture the costs of these would not be productive.

On the other hand, complex and reasonably lengthy Boards of Inquiry may require the allocation of considerable additional Defence resources. These costs may include travel and accommodation costs for the Board and for witnesses, payments for Reserve legal officers, costs for court recording, costs of office requisites, costs of establishing and maintaining a hearing room, etc. Different Defence authorities may be responsible for the provision of funding for various aspects of the inquiry. Capturing of the total costs of these inquiries is, at present, undertaken only when there is a particular need to do so.

The Government agrees that the capturing of the costs of the operation of the administrative inquiry system and the operation of the discipline system would provide valuable management information. Accordingly, an examination of the feasibility of capturing these costs on an ongoing basis will be undertaken.

RECOMMENDATION 45
The Committee recommended that the ADF provide a single annual report on the operation of the military justice system to the Minister of Defence and that the Minister table the report in Parliament. The report should address the operation of the DFDA, the military inquiry system and the administrative action system.

RESPONSE
Supported in part
Defence Force Discipline Act. The DFDA Section 196A requires the Judge Advocate General to report annually to the Minister on the operation of the Defence Force Discipline Act. The operation of the Defence Force Discipline Act and the role of the Judge Advocate General are distinct from the conduct of military administrative inquiries and administrative action in that they are all governed by different legislation. The Judge Advocate General is a statutory, judicial officer appointed under the Defence Force Discipline Act and is independent of the Australian Defence Force. Implementation of the recommendation would require an amendment to the DFDA to remove the reporting responsibility of the Judge Advocate General and place it upon the ADF. This would be counter-productive to the intent of the Committee’s recommendation and to the provision of the current independent reporting on the operation of the DFDA currently required by the Act.

Quick Assessments and Routine Inquiries. Quick Assessments and Routine Inquiries are conducted by commanders under their own authority and not under the provisions of the Defence Inquiry Regulations. The purpose of the Quick Assessment is to determine what action, including what particular form of inquiry or investigation, is appropriate in the circumstances. Routine Inquiries are conducted into minor and less serious matters which can be resolved without the appointment of a formal process of inquiry under the Defence (Inquiry) Regulations or a formal investigation under the Defence Force Discipline Act. Both these forms of inquiry constitute part of the day to day activities of commanders and consequently a public accounting of these activities is not practicable.

Defence (Inquiry) Regulations. There is no provision within the Defence (Inquiry) Regulations that requires reporting on the operation of the Regulations to the Minister and to Parliament. Given that the Regulations provide for a formal process in which the Australian Defence Force conducts internal inquiries into a wide range of matters, including quite serious matters of strong public interest, affecting the command and administration of the Defence Force, the Government agrees that a public accounting for the operation of the Defence (Inquiry) Regulations is appropriate. Accordingly, the Regulations will be amended to incorporate a requirement for the Australian Defence Force to report annually to the Minister on the operation of the Regulations and the Minister in turn to table the report in Parliament.

Administrative Action. Administrative action across the Services is not consistent and this would make reporting of statistics meaningless and unproductive. The Joint Standing Committee’s Recommendations 54, 55, 56 and 57 recommended changes to the present policy and procedures for the application of administrative action within the Australian Defence Force. Should these recommendations be accepted and implemented then some comparable and useful statistical reporting may be possible. However, because the administrative action system covers a wide and comprehensive range of matters including reversion in rank, formal warning, censure, involuntary discharge and termination of service, much of this activity constitutes routine personnel management which ought not be reported to Parliament. Moreover, although referred to as a ‘system’ by the Committee, it consists of a number of related and unrelated policies and procedures most of which have their basis in a range of legislative documents. Little would be gained in terms of the public accountability of the Australian Defence Force for a report on the administrative action system to be reported to the Minister and subsequently to Parliament.

RECOMMENDATION 46
The Committee recommends that, after the proposed post-Abadee arrangements have been in operation for three years, the issue of institutional independence in relation to prosecution in Courts Martial and DFM trials be reviewed.

RESPONSE
Supported
The Abadee Report on independence and impartiality in the operation of the Defence Force Discipline Act contained 48 recommendations of which 39 were accepted and one partially accepted by the Australian Defence Force. These agreed recommendations are currently being implemented and some are already in operation. The Australian Defence Force was of the view that the recommendations that were agreed would significantly improve institutional independence with respect to prosecution in Courts Martial and Defence Force Magistrate trials without creating the position of an independent Director of Military Prosecutions. The Australian Defence Force held serious reservations about the practicality and need for such an appointment under present circumstances.

The Government agrees that a period of three years is a reasonable time in which to reassess these issues. Accordingly, the issue of institutional independence in relation to prosecution in
Courts Martial and Defence Force Magistrate trials will be reviewed after the Abadee recommendations have been in place for a period of three years.

**RECOMMENDATION 47**

The Committee recommends that consideration should be given to reviewing current arrangements to allow the ADF to deal with all cases involving straightforward acts of indecency without requiring the consent of the Director of Public Prosecutions.

**RESPONSE**

Supported

This issue was the subject of a recommendation following the review of the Australian Defence Force Academy.

As a consequence, this recommendation of the Joint Standing Committee has already been implemented. Relevant documentation and instructions have been amended and are now in force.

Ministerial approval has been obtained for the Australian Defence Force to assert jurisdiction with respect to minor acts of indecency. Jurisdiction had always existed, however, the previous situation whereby the Australian Defence Force did not exercise jurisdiction was a policy response to the Senate Standing Committee inquiry into sexual harassment in the Australian Defence Force (the Swan Inquiry). The Commonwealth Director of Public Prosecutions was consulted on this matter and did not oppose the change in policy.

**RECOMMENDATION 48**

The Committee recommends that the ADF ensure that existing guidelines on the right of privacy are adhered to in the conduct of DFDA action.

**RESPONSE**

Supported

This recommendation reflects current practice and is accommodated by existing policy and procedures. Guidelines on the issue of the right to privacy and the need for confidentiality are adequately detailed in the relevant documentation.

Nevertheless, in response to the Joint Standing Committee's recommendation, action will be taken to reinforce the guidelines to appropriate personnel through initial and ongoing training and education.

**RECOMMENDATION 49**

The Committee recommends that the ADF undertake a formal training needs analysis with respect to the use and implementation of the DFDA as a basis for the development and introduction of appropriate education and training courses.

**RESPONSE**

Supported

Five of the recommendations of the Abadee Report proposed that a training needs analysis be undertaken to determine and introduce appropriate training and education for personnel involved in the operation of the Defence Force Discipline Act in various capacities. That training needs analysis has been undertaken and education and training courses are being developed.

Accordingly, this recommendation of the Joint Standing Committee is currently being implemented.

**RECOMMENDATION 50**

The Committee recommends that the ADF consider the introduction of structured continuation training for Defence Force Magistrates and Judge Advocates on the DFDA.

**RESPONSE**

Supported

This recommendation will be referred to the Judge Advocate General for implementation.

**RECOMMENDATION 51**

The Committee recommends that, as part of a comprehensive public disclosure of the matter of AAT, the Meecham report, a comprehensive report on the matter of AAT and any relevant documents relating to AAT should be tabled in Parliament.

**RESPONSE**

Supported

The Australian Defence Force has agreed to the tabling in Parliament of the Meecham Reports and the two Long Reports subject to the removal of personal details from the reports.

**RECOMMENDATION 52**

The Committee recommends that the report on the operation of the DFDA should be tabled in a more timely manner.

**RESPONSE**

Supported in principle

The Defence Force Discipline Act Section 196A requires that the Judge Advocate General report to the Minister on the operation of the Defence Force Discipline Act be tabled as soon as practicable after 31 December each year. The Acts Interpretation Act 1901 provides that where a period for the furnishing of a report is not specified then the report is to be submitted to the Minister within six months of the due date. In the case of the Defence Force Discipline Act report that means by 1 July each year.
In its report the Joint Standing Committee noted that as at 24 May 1999, the Judge Advocate General’s report for 1998 had not been tabled in the Parliament by the Minister. In fact, the report was forwarded to the Minister on 18 June 1999.

The Acts Interpretation Act provisions were not referred to in the report of the Joint Standing Committee. It may be that they were overlooked. No request for information was made by the Joint Standing Committee to the Judge Advocate General in relation to this issue.

The principal difficulty in providing a more timely report arises from the necessity to obtain and collate the statistics for the tables which are a central part of the report. In recent years the Judge Advocate General has expressed concern about the limited information provided by way of statistics and in the last report the tables have been reorganised to provide more useful information. This has involved the Judge Advocate General’s staff officer in a considerable amount of work to ensure that the relevant information is forthcoming from the three Services. Delays have been experienced in obtaining the information and the complete statistics for the last report were not finalised until approximately four months after 31 December 1998.

Now that those responsible for providing the information have become familiar with the new system and the additional information required, it is to be hoped that future reports will be made available for tabling at an earlier time. However, it should be pointed out that the collection of the necessary data for the statistics seems to have proved a difficult task for a number of years. A survey of Judge Advocate General reports going back to 1989 indicates that the reports have taken approximately six months to prepare.

**RECOMMENDATION 53**

The Committee recommends that where professional failure involves negligence of a criminal nature, subject to the weight and probity of evidence being sufficient, criminal proceedings should be initiated.

**RESPONSE**

Supported in principle

In his 1995 Annual Report, the Judge Advocate General recommended that trial by Court Martial with its overtones of criminality is not the most appropriate method of dealing with cases of professional failure. In November 1997, the Chiefs of Staff Committee decided that cases of professional failure should be dealt with by the use of administrative action rather than by action under the Defence Force Discipline Act.

Currently, there exists no policy or procedural guidelines on this matter. Appropriate guidelines concerning the use of administrative action rather than the disciplinary process in cases of professional failure not amounting to criminal negligence will be developed and published as a Defence Instruction.

**RECOMMENDATION 54**

The Committee recommends that the ADF prepare and issue guidelines regarding the use of the administrative action rather than the disciplinary process for cases of professional failure.

**RESPONSE**

Supported

In his 1995 Annual Report, the Judge Advocate General recommended that trial by Court Martial with its overtones of criminality is not the most appropriate method of dealing with cases of professional failure.

In November 1997, the Chiefs of Staff Committee decided that cases of professional failure should be dealt with by the use of administrative action rather than by action under the Defence Force Discipline Act.

Currently, there exists no policy or procedural guidelines on this matter. Appropriate guidelines concerning the use of administrative action rather than the disciplinary process in cases of professional failure not amounting to criminal negligence will be developed and published as a Defence Instruction.

**RECOMMENDATION 55**

The Committee recommends that the ADF review current procedural arrangements to ensure organisational separation between the initiating officer and the decision maker for all administrative action involving the termination of a member’s service with the ADF.
RESPONSE

Supported
The legislation which provides the policy and procedures for termination of an officer’s appointment lies in the Defence Act 1903, the Naval Defence Act 1910 and Air Force Regulations. These form the basis for DI(G) PERS 03-3 Policy on the Retirement and Termination of Appointment of Australian Defence Force Officers. The legislation lists a number of appointments with power to initiate termination procedures and power to terminate the appointments of officers of certain ranks. The power to initiate a termination and the power to terminate the appointment of an officer are both vested in the same appointment. These powers are vested in a relevant authority by the legislation.

The initiating process involves the issuing of a termination notice which includes: advice to the officer that termination of his/her appointment is proposed, a statement of the grounds on which termination is proposed, and an invitation to the officer to provide a statement (show cause) of why termination of appointment should not proceed. The decision-making process involves consideration of the officer’s statement and a final decision as to whether termination of appointment is to be effected.

It could be argued that when the relevant authority specified by the legislation, as initiator of the termination process, issues a termination notice, a decision has already been taken to terminate, notwithstanding that the officer’s statement has not yet been considered. In addition, it could be argued that in so doing the officer’s show cause statement will not receive an impartial consideration as the mind of the initiator/decision-maker will already be made up on the matter. Consequently, the lack of organisational separation of the initiator and decision-maker would appear to make the final decision unfair.

On the other hand, under current practice, the relevant authority rarely, if ever, is the actual initiator of termination action. Almost invariably the relevant authority will decide to issue the Termination Notice on the detailed and considered advice of a senior staff officer who in turn was probably acting on the recommendation of a unit or other commander. Thus, it could be argued that although the relevant authority is the ‘technical’ (in accordance with the words of the legislation) initiator, he or she is not so in practice.

Should the Committee’s recommendation be supported, other appointments within each Service will need to be identified as initiating authorities and the Defence Act, the Naval Defence Act, Air Force Regulations and DI(G) PERS 03-3 will all need to be amended. The effect of the amendment in separating the functions of initiator and decision maker will technically and legally separate those functions which, in practice, are effectively separated already.

Under present legislation, the decision-maker is a very senior appointment in each Service and exercises powers under the legislation with the benefit of considerable specialist advice, including legal advice. As acknowledged by the Joint Standing Committee, there is a comprehensive process of review of a decision to terminate available to the officer if he/she chooses to pursue that course. Where the officer chooses to pursue review through the redress of grievance system, the decision to terminate cannot be implemented until the review process is finalised.

In its report, the Committee acknowledged that it had received no compelling evidence that to suggest that an individual’s service had been wrongfully terminated. However, the Committee noted that current arrangement for the termination of the service of other rank members provides for a separation of the roles of initiator and decision-maker.

Accordingly, the Government agrees that there should be a separation of the roles of initiator and decision-maker for action involving the termination of an officer’s service and that action be taken to amend the Defence Act, the Naval Defence Act, Air Force Regulations and DI(G) PERS 03-3.

RECOMMENDATION 56
The Committee recommends that the ADF consider the implementation of a revised framework for administrative censure and formal warning that:

a) makes the process applicable to all members of the ADF; and
b) incorporates a separation between the roles of initiating officer and decision maker.

RESPONSE

Supported
Currently, the three Services have different policy and procedures for administrative censure and formal warning. While there may be clear advantages in developing an ADF wide policy applicable to all members of the Australian Defence Force, the individual needs of each Service may not be met by a single policy and set of procedures.

In general, the existing policy on administrative censure and formal warning would appear to meet
the requirements of procedural fairness. However, the Joint Standing Committee’s recommendation that there be a separation of the roles of initiating officer and decision-maker goes to the issue of impartiality. The question of a potential conflict of interest arises where the initiating officer and decision-maker are the same officer.

Incorporation of the separation of roles would require significant changes to the present policy and procedures applicable to Commanding Officer’s loggings in Navy, administrative censure in Army, and unit formal warnings in Air Force. Moreover, incorporation of a separation of roles would take these administrative action procedures outside the authority of a commander since he or she would no longer be the decision-maker. Alternatively, an initiating officer or officers below the level of commanding officer could be identified. However, the importance of the administrative action system at unit level as a mechanism of command would be reduced in effectiveness if the commander’s role as sole decision-maker and ultimate authority in this important administrative process is removed.

The separation of roles within the censure and formal warning process would introduce a review mechanism within the process itself. However, a comprehensive system of review already exists in the redress of grievance provisions and option to refer a matter to the Defence Force Ombudsman. This offers adequate protection to a member against misuse of the administrative action system.

There may be advantages in developing a policy on administrative censure and formal warnings that is applicable to all members of the Australian Defence Force, and this aspect will be examined by the Australian Defence Force to evaluate its feasibility.

The Government agrees that the Australian Defence Force should consider the changes to the present single Service policies recommended by the Joint Standing Committee. Implementation of the recommendation will be undertaken by the Australian Defence Force conducting a review of present policies to determine whether a single policy governing censure and formal warning, incorporating a separation of roles, is appropriate and would improve the present arrangements.

RECOMMENDATION 57
The Committee recommends that the ADF prepare and issue revised policy for the imposition of administrative censure and formal warning.

RESPONSE
Supported subject to the outcomes of implementation of Recommendation 56

In response to the Joint Standing Committee’s Recommendation 56, the Government has agreed that the Australian Defence Force examine existing policy and procedures with respect to administrative censure and formal warning. Should that examination identify improvements to the current arrangements then a revised policy will be prepared and issued.

RECOMMENDATION 58
The Committee recommends that where a member affected by administrative censure makes a statement in extenuation/rebuttal, that statement should form part of the censure document and be taken into account during deliberations when the censure is considered.

RESPONSE
Supported

Procedural fairness and natural justice require that a person be advised of any accusation, complaint or allegation made against them, that they be advised of any action to be taken against them and that they have an opportunity to respond to the accusation, complaint or allegation, and to state why the proposed action should not proceed. It follows that any statement made in response to an accusation, allegation or complaint must be considered by the decision-maker prior to making the decision. Therefore, the statement should become part of the documentation relevant to the censure process.

RECOMMENDATION 59
The Committee recommends that the ADF incorporate specific guidance in the revised policy covering administrative censure and formal warning which requires that an individual affected by a censure or formal warning to be advised of his or her rights of appeal.

RESPONSE
Supported

The Government agrees that members who become subject to administrative action in the form of administrative censure or formal warning should be advised of their rights of review and appeal. This issue will be included in the examination of present policy and procedures and will be included in any revised policy prepared and issued in response to the Joint Standing Committee’s Recommendations 56 and 57.

APPENDIX A
INQUIRY INTO THE SYSTEM OF MILITARY JUSTICE PROCEDURES IN THE AUSTRALIAN DEFENCE FORCE ISSUES PAPER
Background to the Inquiry
In the last two years, some investigations and inquiries conducted into disciplinary matters within the Australian Defence Force (ADF) have
attracted considerable media attention and public interest.

Prominent among these was the Board of Inquiry established to examine the circumstances surrounding the collision in June 1996 of two Black Hawk helicopters near Townsville, and the subsequent disciplinary proceedings recommended by that board.

The announcement of a judicial review of the Board of Inquiry’s findings, and media speculation on the review’s recommendations to the Chief of the Defence Force (CDF), have maintained public focus on the procedures adopted for conducting military investigations. It was announced in December that the last of the disciplinary charges against three middle and lower level Army officers had been withdrawn.

A second conspicuous case arose from a RAAF Board of Inquiry appointed in October 1995 to investigate allegations of harassment, inappropriate behaviour and assault at No 92 Wing detachment in Butterworth, Malaysia. Complaints were made to the Defence Force Ombudsman concerning the conduct of this inquiry, and the Minister for Defence decided in July this year that an independent investigator should be appointed to review the Board of Inquiry report.

In a further case, the Defence Force Ombudsman was asked to investigate and report on the handling of a complaint of sexual assault, raised by two serving members of the ADF. Two internal Air Force inquiries had already been held into the matter, causing concern about the high costs involved. Further, the Federal Court identified a number of serious flaws in the second internal investigation process. A major investigation by the Ombudsman during 1996-97 at the instigation of the CDF raised several issues relevant to the ADF’s handling of serious complaints.

After examining this last case and other internal Defence Force investigations, the Ombudsman identified a number of issues requiring remedial action. The majority of these recommendations have been accepted by the CDF, and a tri-service team has been established to assist with implementation of the recommendations.

Concerns were subsequently expressed in Parliament concerning the circumstances under which external reviews of particular military investigations have been considered necessary after commencement of internal ADF proceedings. These concerns culminated in a resolution in the Senate establishing an inquiry into the existing system of military justice in the ADF, including internal investigations such as boards of inquiry. The terms of reference for the inquiry authorise the Committee to examine the adequacy and appropriateness of the existing legislative framework and procedures for the conduct of military boards of inquiry, military courts of inquiry and ADF disciplinary processes.

Focus of the Inquiry

The prime focus of the Committee’s inquiry will be the adequacy and appropriateness of the legislative framework under which the various hearings, inquiries and discipline procedures within the ADF are currently conducted. For example, the Committee notes that the Government intends to amend the Defence Force Discipline Act 1982 to extend the period within which disciplinary action can be taken following loss of life or major loss of property from three to five years. The jurisdictional overlap between military and civilian courts, in terms of the boundaries between military discipline codes and civilian criminal law, is also an area worthy of the Committee’s attention during its inquiry.

Issues already raised by the Ombudsman and the Judge Advocate General (JAG) in annual reports and relevant to the Committee’s own inquiry will provide further avenues for examination. Among issues identified by the Ombudsman in the ADF’s handling of serious incidents are:

- a tendency to investigate complaints, particularly those regarding harassment and discrimination, whether or not an investigation was the most appropriate response;
- widespread use of ‘informal inquiries’ with little guidance on the conduct of such inquiries, and few accountability mechanisms in place to protect the parties involved;
- numerous problems with the way terms of reference for inquiries were framed;
- in the past, little or no training or guidance for investigators;
- no procedures for monitoring and quality control of investigations, leading to some investigations ‘going off the rails’; and
- principles of procedural fairness were not always adhered to during investigations.

In addition to these issues, the Committee will examine recommendations previously made by the JAG such as the appointment of a Director of Military Prosecutions, establishment of professional tribunals rather than courts martial to consider charges of professional negligence, and formal appeal mechanisms for summary proceedings in peacetime. The annual report for 1996 by the JAG indicated that the CDF had given Deputy Judge Advocate General Abuadee responsibility for reviewing arrangements for the con-
The inquiry is not intended as a forum for reviewing the judgements made in individual ADF disciplinary cases, although the circumstances of particular cases may be reviewed where they provide clear evidence of systemic failures in the conduct of ADF judicial procedures.

**Government Response to the Thirty Fourth Report of the Joint Standing Committee on Treaties.**

In this Report the Committee considers two treaty actions: an Agreement with Spain on remunerated employment for dependants of personnel at Diplomatic and Consular Missions and Amendments to the Convention on International Trade in Endangered Species which were tabled on 6 June 2000.

The Report recommends that binding treaty action be taken in relation to the agreement with Spain (Recommendation 1) and makes two formal recommendations in relation to the Amendments to the Convention on International Trade in Endangered Species.

**Recommendation 2**

With reference to the Amendments to the Convention on International Trade in Endangered Species the Committee, at paragraph 3.34 recommends that:

The Minister for the Environment and Heritage should provide the Joint Standing Committee on Treaties with copies of any proposed amendments to the Convention on International Trade in Endangered Species and the Convention on the Protection of Migratory Species of Wild Animals, particularly proposed amendments submitted by the Australian Government, at the same time that they are lodged with the Convention secretariats and made available to Parties to the Conventions.

**Specific comments on Recommendation 2**

The Government is pleased to support the general intentions of Recommendation 2 of Report 34. However, the dates for finalising Australian proposals and finalising Australian positions on the proposals of other Parties are different, and Recommendation 2 does not distinguish between them. The Government therefore proposes that the timing of provision of proposals to JSCOT should depend upon whether the proposals are Australian or whether they are made by another Party. The reasons for this are discussed below.

**Draft Australian proposals**

If draft Australian proposals were provided to JSCOT at the same time as they are lodged with the Convention Secretariats, as suggested in Recommendation 2, this would mean that JSCOT would not receive copies of proposals until they had been finalised in consultation with whole of government and other relevant stakeholders including the States and Territories. At that stage, it would not be possible for JSCOT to have any meaningful input into preparation of the proposals.
It is therefore proposed to provide JSCOT with draft Australian proposals at the same time as they are provided to other stakeholders, so that JSCOT would have an opportunity to comment on the draft proposals prior to their finalisation and lodgement with Convention Secretariats.

Proposals made by other Parties

Copies of all proposals made by other Parties will be provided to JSCOT as soon as practicable after being made available to the Government by the Convention Secretariats. This would enable JSCOT to have input into the Australian positions on proposals lodged by other Parties, as these would still be under consideration pending finalisation of the delegation brief.

It is noted that the preparation of briefing for a Conference of the Parties to a convention is a very resource intensive task. As many proposals and agenda papers arrive shortly before the conference, the delegation brief is usually completed just in time for the Conference. In this context, it would not be possible for Environment Australia to divert resources to assist JSCOT in assessing proposals.

Recommendation 3

At paragraph 3.38 the Committee recommends that:

The Minister for Foreign Affairs, in conjunction with the Minister for the Environment and Heritage and other ministers as appropriate, should:

- Identify the international agreements to which Australia is party that allow amendments agreed at a Conference of Parties, or agreed by correspondence between Parties, to automatically enter into force and provide a list of these to the Committee;
- review whether it is appropriate for the Australian government to continue to subscribe to such provisions, given the transparency objectives of the reformed treaty making process; and
- report back to the Treaties Committee within three months of this report being tabled on the results of this consideration.

The Government recognises the important contribution that the Committee has made in increasing the level of community consultation about treaty actions, and bringing greater transparency to the treaty-making process. In relation to amendments to treaties, the Government considers that the Committee’s role should not be limited to cases where the amendment has not yet entered into force, because the Committee can play a useful role in examining the implications of treaty amendments that have already taken effect or will enter force automatically. The Government acknowledges the Committee’s concerns about its capacity to undertake its functions in relation to “automatic entry” amendments and, consistent with its response to Recommendation 2, will now explore ways to ensure that such amendments are brought to the Committee’s attention in sufficient time to allow it to undertake a fuller consideration of them.

In relation to future multilateral treaties that Australia is considering ratifying, the Government will continue to have regard to their amendment procedures as part of determining whether it would be in Australia’s national interest to become bound by the treaty. Similarly the Government expects that the Committee may have regard to amendment procedures when formulating its views in relation to proposed treaty actions.

In relation to treaties that are already in existence, the Government considers that it would not be fruitful to invest considerable resources reviewing over 2000 treaties, analysing their amendment provisions and conducting a review of whether those provisions are appropriate. This is because any such amendment provisions that exist will be scrutinised (both by the Government and by the Committee) as and when amendments are proposed. If, as a result of an automatic amendment procedure, Australia became bound by an amendment that is not in Australia’s national interest, it would be appropriate for the Government to consider whether continued membership of the amended treaty would be in the national interest. The Government expects that the Committee would contribute to the consideration of that issue.

FOOT-AND-MOUTH DISEASE: EUROPE

The ACTING DEPUTY PRESIDENT (Senator Ferguson) (4.12 p.m.)—I present a response from the British High Commissioner, the Rt Hon. Sir Alastair Goodlad, to a resolution of the Senate of 27 March 2001 concerning the spread of foot-and-mouth disease in Europe.

COMMITTEES

Superannuation and Financial Services Committee

Report

Senator WATSON (Tasmania) (4.12 p.m.)—I present the report of the Select Committee on Superannuation and Financial Services entitled A ‘reasonable and secure’
The benefit design of Commonwealth public sector and Defence Force unfunded superannuation schemes, together with the Hansard record of the committee’s proceedings and submissions received by the committee.

Ordered that the report be printed.

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

Leave granted.

Senator WATSON—I move:

That the Senate take note of the report.

I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

The title of the report, A ‘Reasonable and Secure’ Retirement? reflects the major issue which emerged during the inquiry, namely that Commonwealth public sector and defence force personnel believe that their retirement incomes have not necessarily provided the reasonable and secure retirement which they had expected when they joined the schemes. According to these superannuants this is because the use of the Consumer Price Index (CPI) to index their pensions has not kept pace with the cost of living and the annual adjustments to their pensions result in a 12-15 month time lag in obtaining an increased benefit.

Often perceived as a relatively privileged group benefiting from a comparatively generous superannuation arrangement, Commonwealth superannuants were vocal in explaining that the perception is far from the truth.

In the inquiry, the Committee learned that almost 22 per cent of Commonwealth superannuants receive an income from Commonwealth superannuation funds which is less than the maximum age pension of $11 000 to $12 000; 65 per cent of superannuants receive less than $20 000, while 90 per cent receive below $30 000 per annum.

At the same time, while an increasing number receive part age pensions, and so qualify for some cost of living concessions, most Commonwealth superannuants, as self-funded retirees, do not qualify. Moreover, while the majority of Commonwealth superannuants are on low incomes, many fall above the tax threshold, yet they have limited access to tax concessions, and do not have the option of income splitting as do age pensioner couples.

The benefit design of Commonwealth public sector and defence force schemes specifies the use of the Consumer Price Index (CPI) to adjust the value of the benefits on an annual basis. In keeping with the original intention, the CPI as ‘a measure of inflation’ was expected to maintain the ‘real value’ of the benefits. However, the Australian Bureau of Statistics stated that the CPI is not a measure of the cost of living.

The Committee also had drawn to its attention the differences between the indexation arrangements which apply to Commonwealth superannuants and those applying to the age pension. Because of the CPI’s proven inadequacy to keep abreast with actual costs of living, the age pension is now adjusted bi-annually through a wage-based indexation mechanism.

The Committee was told that, as a result of the use of the CPI to index their pensions, Commonwealth superannuants form an anomalous group, who fall outside of the safety net provided for age pensioners while sharing their vulnerability. Witnesses reported increasing hardship and difficulty in making ends meet, with many ending up on part age pensions, against all previous expectation.

Accordingly, the report has made recommendations to implement immediately a bi-annual adjustment of the CPI and to consider a phased, alternative indexation method. These measures would build a more consistent framework between arrangements for age pensioners, and those for Commonwealth public sector and defence force personnel.

The inquiry also revealed that the issues raised about the benefit design of Commonwealth schemes were similar to those affecting the members of State-run schemes. The Committee has recommended that, for equity reasons, the changes made to Commonwealth public sector schemes, proposed in this report, also apply to State public sector schemes, where appropriate.

In view of the need for increased consumer education and mechanisms for the orderly transfer of lump sum payments into secure and suitable retirement benefit schemes, the Committee expressed its misgivings about the trend towards the provision of lump sum only payments. The Committee has, over the years, strongly supported the provision of superannuation arrangements that provide a secure income stream for retirees. The report therefore recommends that the current review of the Superannuation Industry (Supervision) Act 1993 should take this into account.

Finally, on behalf of the Committee, I would like to express its appreciation to all those who took
part in the inquiry, and particularly to those individual superannuants and retiree organisations, as well as State representatives who appeared at public hearings. The evidence they provided was very helpful to the Committee.

The Committee is also grateful to the States and Territories who responded to the Committee’s survey. The information provided has aided our understanding of the superannuation arrangements in the State and Territory schemes.

On behalf of the Committee I also record my appreciation to the Secretariat for its work during the inquiry and in assisting us to produce our report and to Mr John Maroney, a former Government Actuary and now Director of SuperRe Pty Ltd, who was engaged by the Committee as a consultant. Within a very tight timeframe, he provided valuable advice which I consider has enhanced the Committee’s report and I wish to put on record my appreciation to him for providing such valuable assistance to the Committee.

I commend the report to the Senate.

Senator WATSON—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Finance and Public Administration References Committee

Senator GEORGE CAMPBELL (New South Wales) (4.14 p.m.)—I present the interim report of the Finance and Public Administration References Committee on the government’s information technology outsourcing initiative.

Ordered that the report be printed.

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

Leave granted.

Senator GEORGE CAMPBELL—I move:

That the Senate take note of the report.

The purpose of this interim report is to highlight the apparent lack of understanding in the Australian Public Service about parliamentary accountability—as illustrated by the arguments put forward during this inquiry—and to draw attention to what is clearly a much wider problem. The committee also seeks to facilitate an approved awareness of parliamentary accountability in the private sector, which is a key player in the outsourcing of information technology and other government services and also needs to understand the rules of accountability.

The focus of this report is the oversensitivity of the players in the IT outsourcing initiative to any parliamentary scrutiny of their activities and processes. This report explains that the committee has not required the production of any information identified as sensitive. It has provided the opportunity for sensitive material to be blacked out of documents of interest and required the reasons for this to be provided for its consideration. In spite of this, the committee has had to wait almost four months and move two orders for the production of documents in the Senate to receive the requested documents. The documents were first requested on 19 December 2000 and only provided at 6 p.m. last night. Parliamentary accountability refers to the obligation on governments to give an account of their actions to parliament and, through parliament, to the public. Keeping in mind that the total estimated contract value for this initiative was $4 billion, the committee’s concerns about accountability need to be taken seriously.

In relation to claims of commercial confidentiality, the differing views of the parties about the treatment of similar information were not surprising. However, inconsistencies across departments and agencies which are contracted with the same external service provider require further investigation. This indicates that the variations arise not from the private sector’s sensitivities but from their government partners. The committee is of the view that more guidance on openness and transparency is needed for departments and agencies. This should translate into better informed contractual partners.

An issue they should be of concern to all Australians was revealed at the committee’s public hearings on 15 March. The current environment of doing business with government was described as one of intimidation. The Australian Information Industry Association, which appeared as a witness at the hearing, described what it claimed was an unprecedented level of explicit and strong requests from its members either to be ex-
cluded from the AIIA submission or to have their identity protected. Claims made informally to the committee that witnesses and potential witnesses had been interfered with and are concerned about the commercial consequences of contributing to this inquiry gained credibility with this development. Even if these allegations are found to be unsubstantiated, a critical flaw in the government’s IT initiative has been identified. Open participation in debate about the merits, benefits, advantages and disadvantages of the process to date is seen to lead to adverse business consequences for those in the marketplace and adverse employment consequences for those in the Australian Public Service.

The majority of the committee is greatly concerned about processes and practices that are seen to be intimidatory and to discourage open debate about public policy. Partnerships with government need to be open, well documented and conducted with integrity: not only because the public has a right to know about how public funds are spent but because anything less may expose the Commonwealth to litigation that is costly and undermines public confidence. The majority report states that perceptions of intimidation cannot be lightly dismissed as they are a direct result of a failure to establish an appropriately transparent process and meaningful reporting to parliament.

In conclusion, the committee considers that several issues arising out of the sequence of events described here need to be highlighted: the lack of timeliness and quality of answers in response to the committee’s requests; the future role of OASITO in the initiative; and the apparent lack of understanding about parliamentary accountability and responsibility for performance, delivery of outcomes of the use of public funds in the public and private sectors.

In the coming months, the committee will be examining responses to its requests with a view to establishing the underlying reasons for its difficulties in obtaining the relevant documentation. It is keen to establish whether it is merely a lack of understanding on the part of agencies and private individuals about parliamentary accountability or if it is due to some other reason. The committee notes that the Australian National Audit Office is currently examining issues associated with confidentiality clauses in government contracts and is expected to report within the next few months. The committee is hopeful that this, too, will assist those who must deal with the complexities that arise when the private sector works for government while government continues to be responsible and accountable for the outcome.

The committee takes the opportunity to encourage further contributions to the IT outsourcing inquiry and to flag its intention to conduct a public hearing to take evidence from the Clerk of the Senate, private and academic lawyers, and other appropriate witnesses on issues associated with parliamentary accountability. Comments on matters raised in this report and in relation to IT outsourcing, the government’s initiative and the Humphry review are encouraged. The committee would like to report on the outcome of proceedings in June, along with a final report on the IT outsourcing inquiry.

In respect of the two orders of the Senate that were required to get the documents requested as far back as last December, some toing-and-froing has taken place between ministers, much of which has been generated by the fact that the responsible minister, Mr Fahey, has been off ill over that period and there has been uncertainty as to the minister to whom the direction should be appropriately sent. Despite that fact, it should be noted that the material that was sought has been sitting in the minister’s office for at least two to three weeks ready to be sent to the Senate. It could have been made available to the committee well in advance of now but was held up until the last available moment. At the end of the day, it was not provided by either the offices of Minister Abetz or Minister Kemp but out of Minister Fahey’s office. There might have been some confusion about the appropriate minister to whom the reference was directed to but in the end it was nothing but game playing—again to avoid for as long as possible any presentation of these documents and public scrutiny of them. I seek leave to continue my remarks later.
Leave granted; debate adjourned.

Public Accounts and Audit Committee Report

Senator McGauran (Victoria) (4.22 p.m.)—On behalf of the Joint Committee of Public Accounts and Audit, I present the following report of the committee: Report No. 381: Annual Report 1999-2000. I seek leave to move a motion in relation to the report.

Leave granted.

Senator McGauran—I move:

That the Senate take note of the report.

I seek leave to have the tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

Madam President, on behalf of the Joint Committee of Public Accounts and Audit (JCPAA), I present the Committee’s Report No. 381—Annual Report for 1999–2000. Under the Public Accounts and Audit Committee Act 1951, the JCPAA is required to prepare a report on the performance of its duties during the past financial year. I will briefly discuss the Committee’s highlights for that year.

1999–2000 was the first full financial year following the consolidation of the JCPAA as the Audit Committee of the Parliament with its responsibilities under the Auditor-General Act 1997. In August 1999, the Committee considered the ANAO forward audit work program for 1999-2000 and conveyed to the Auditor-General the audit priorities of the Parliament. The Committee also considered the draft budget estimates of the Australian National Audit Office (ANAO) and tabled its report on the draft estimates before the Budget was brought down on 9 May 2000.

Inquiry Highlights


Corporatisation and the devolution of responsibility for the management of Commonwealth agencies—including successful risk management—to CEOs have been the focus of the Committee’s work in 1999–2000. In its report on Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises (GBEs), the Committee concluded that the existing arrangements, adopted since the 1997 Humphry Report, provide a flexible and effective arrangement for the operations of GBEs under the strategic directions of the shareholder Ministers.

In its review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997, the Committee focussed on whether legislation met the needs of the new financial management framework and the needs of the public sector; whether it remained consistent with other legislation, both Commonwealth and State; and whether accountability to Parliament has been maintained. The Committee made two recommendations aimed at addressing possible inconsistencies regarding defamations and indemnity legislation.

The Committee also recommended that the Department of Finance and Administrative Services and the Department of Prime Minister and Cabinet should review the terminology of the financial management legislation and the public and parliamentary service legislation with a view to removing inconsistency and increasing consistency with the terminology used by the private sector.

The Committee has long supported the concept of the Auditor-General as an independent officer of the Parliament. In 1996 the JCPAA tabled a report entitled Guarding the Independence of the Auditor-General which recommended legislative guarantees of audit independence for the Auditor-General and an extension of the Auditor’s mandate to include performance audits of Government Business Enterprises. The report also recommended an enhanced role for the Committee in the appointment of the Auditor-General and Independent Auditor and in determining the level of appropriations for the Australian National Audit Office. The Committee’s recommendations were incorporated into the present legislation.

In June 1999, the Committee tabled Report 368, which recommended seeking legislative provision for the Auditor-General to have access to contractors’ premises where such access is required to assist in the performance of an audit function. The Committee reaffirmed this need as part of its inquiry into Contract Management.

On 29 November 2000, the Government agreed to implement this recommendation on ANAO ac-
cess to third party premises by advising agencies to include appropriate access clauses in contracts with third parties. The Commonwealth Procurement Guidelines were also amended to emphasise the importance of agencies' ensuring they are able to satisfy all relevant accountability obligations, including ANAO access to contractor records and premises.

Recent JCPAA Auditor-General report reviews have demonstrated significant shortcomings with respect to contract management in an environment where many government services have been subject to commercial contestability and contracting out. On 25 August 1999, the Committee initiated an inquiry into contract management in the Australian Public Service in an attempt to identify systemic problems in contract administration and to encourage better practice standards which can be applied across agencies.

The Committee held public hearings and collected evidence on the Commonwealth Community Education and Information Program. It also advertised an Inquiry into Coastwatch, following the Auditor-General Report No. 38 on the agency. During the 1999–2000 financial year, the Committee tabled seven reports. A total of twenty-one recommendations were made by the Committee. The Government accepted fourteen of these.

In this period of change, the Committee believes it is necessary for management in each Commonwealth agency to demonstrate its commitment to establishing effective control and accountability structures. It is also important for each agency to have a fully operational financial information management system which can provide relevant and accurate information in a timely manner.

Finally, Madam President, I wish to inform the Parliament that in 1999, the JCPAA was nominated as the host for the 6th Biennial Conference of the Australasian Council of Public Accounts Committees. In February 2000, the JCPAA convened a mid-term meeting of representatives of Australasian public account committees. At this meeting, a theme was decided for the 2001 Conference and members gave an indication of the papers they wished to present. The JCPAA then organised and ran a very successful conference on 4–6 February 2001 with participants not only from the Council members but also from the United Kingdom, Canada, South Africa, Fiji and Hong Kong.

The Chairman has asked me to express his indebtedness to our colleagues on the Committee who have dedicated their time and effort to various inquiries and to reviewing Auditor-General's reports throughout the 1999–2000 period. As well, he would like to thank the members of the secretariat who were involved in the inquiries.

Madam President, I commend the JCPAA Annual Report to the Senate.

Question resolved in the affirmative.

Public Works Committee

Report

Senator McGauran (Victoria) (4.23 p.m.)—On behalf of the Parliamentary Standing Committee on Public Works, I present report No. 4 of 2001 entitled Range Support Facilities, Delamere Range and RAAF Base Tindal, Northern Territory, and I seek leave to move a motion in relation to the report.

Leave granted.

Senator McGauran—I move:

That the Senate take note of the report.

Question resolved in the affirmative.

Membership

The Acting Deputy President (Senator Ferguson)—The President has received letters from party leaders seeking variations to the membership of certain committees.

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

That senators be discharged from and appointed to various committees in accordance with the document circulated in the chamber.

Environment, Communications, Information Technology and the Arts Legislation Committee (for the committee's inquiry into the Interactive Gambling Bill 2001):

- Participating members:
  - Appointed: Senators Greig and Woodley.
  - Substitute member: Senator Lundy to replace Senator Bolkus.

Employment, Workplace Relations, Small Business and Education References Committee

- Participating member:
  - Appointed: Senator Bartlett, for the committee’s inquiry into higher education.
BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Electoral and Referendum Amendment Bill (No. 1) 2001

ANTI-GENOCIDE BILL 1999

Second Reading

Debate resumed from 13 October 1999, on motion by Senator Greig:

That this bill be now read a second time.

Senator BARTLETT (Queensland) (4.24 p.m.)—I rise to speak to this particularly important piece of legislation, the Anti-Genocide Bill 1999, which was introduced by my colleague Senator Brian Greig on behalf of the Australian Democrats. I am happy to lend my support to the bill. It is important as part of this debate to outline why this is an important piece of legislation and should be adopted, not just by the Senate but by the parliament as a whole and the government, and implemented. It was first introduced by Senator Greig in October 1999 and subsequently referred to the Senate Legal and Constitutional References Committee for inquiry. The committee had an inquiry and handed down a report in June 2000. Its title says it all: Humanity diminished: the crime of genocide. That fundamentally outlines the abhorrence of genocide and the shame for Australia of not actually having legislation in place to outlaw genocide.

The Convention on the Prevention and Punishment of the Crime of Genocide was ratified back in 1949 by the Australian government, with the then Prime Minister, Ben Chifley, and the then opposition leader, Robert Menzies, both supporting that ratification. Senator Greig’s second reading speech—which I recommend people read from the Hansard of 13 October 1999—gives some quotes from both the Prime Minister and opposition leader of the day. It is unfortunate that it has taken more than 50 years to deal with the unfinished business of implementing that convention’s provisions in Australian legislation. As Senator Greig’s speech outlined, as recently as September 1999 the Federal Court of Australia in a particular case confirmed that there was confirmed that there was indeed no offence of genocide in Australian law—that is, genocide is not unlawful in Australia in its own right.

I mentioned the Senate committee inquiry into this issue, and it is appropriate to refer to the report of that committee. The committee, which of course was made up of members of all parties in this place—Labor, Liberal and Democrat—recommended that the parliament formally recognise the need for anti-genocide laws in Australia. This bill is a mechanism for doing that—indeed, an ideal mechanism. The committee also concluded that antigencide legislation in Australia is both necessary and timely. The legislation which was developed by the Democrats seeks to specifically implement that conclusion and those recommendations, and it actually expands the number of areas that fall under the definition of genocide. Most of the witnesses to the inquiry recognised the benefit of doing that and of putting it in a broader context and in a way that recognises the broader dynamic of genocide and some of the deliberately targeted crimes that occur, whether in times of war or specifically as part of a targeted attack on a group of people.

The convention is now over 50 years old, and the Democrats believe it is appropriate that the scope of activities that come under the definition of genocide be expanded to more adequately address the variety of activities which, very sadly and unfortunately, occur in various parts of the world as some of the worst atrocities committed by humans against their fellow human beings. We see the ongoing extent of this with war crime trials now becoming slightly more achievable and providing the opportunity to prosecute and catch war criminals. The crime of genocide is one of the worst types of crime. It is appropriate for Australia to have legislation, and specifically to have laws not only outlawing genocide but enabling us as a nation to prosecute people for that crime.

The fact that the recent War Crimes Tribunal in The Hague specifically defined the rape of women as a war crime was seen at the time—quite rightly—as a significant advance. It specifically acknowledged that the deliberate, targeted use of rape in times of
war is not just a crime against women but a specific war crime. That advance, recognising rape as a war crime, is also an example of why it is appropriate to expand the nature of the definition of genocide as other aspects of this crime come to light. The Democrats support expanding the nature and definition of genocide and, if it goes beyond the precise wording of the convention, that is not a problem, from my perspective. The convention is a foundation. We are 50 years behind in introducing legislation to implement it in Australian law. We can now use this opportunity to be forward looking and to expand upon the definition of the convention in Australia's own law. It is also appropriate to detail the definition in article II of the convention of how genocide is currently defined. Article II stipulates:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

The convention also clarifies that not only is genocide a crime; so is conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide and complicity in genocide. As Senator Greig said, genocide is as much a political crime as it is a crime against humanity. It is one of the worst cases of abuse of power. That is why the bill seeks to broaden the grounds on which groups of people can be identified as a specific group, so it includes definitions of not just national, ethnic, racial or religious groups but also political affiliation, sexuality, disability and gender.

The Democrats believe it is appropriate for gender, sexuality, political affiliation and disability to be included so that a group can be identified if a group is targeted for any of those reasons. Killing, harming or inflicting negative conditions on any of those groups would fall into the definition. It is a logical extension and would increase the effectiveness of the laws and increase the effectiveness of the message that it would send. The Australian parliament would send a message that all such behaviour is completely unacceptable in all circumstances. So it is a positive piece of legislation. It is well overdue. I am very proud to be part of the Democrats party that have put forward this initiative, and I do hope that all other senators support the legislation and support its implementation as speedily as possible.

Senator LUDWIG (Queensland) (4.34 p.m.)—I rise to speak on the Anti-Genocide Bill 1999. It is unfortunate that Senator Greig could not be here this afternoon. I know he did have a strong interest in the issue and he did participate in the Legal and Constitutional Committee inquiry into the matter. But I will deal with that later. The Anti-Genocide Bill 1999 seeks to implement in domestic law the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The convention was produced shortly after the conclusion of World War II as the international community struggled with the events that occurred during the war and sought to put in place measures to avoid the recurrence of state sanctioned policies directed at visiting harm on specific groups of people. It was one of the first human rights treaties adopted by the newly established United Nations organisation, and it grew out of a resolution adopted by the UN General Assembly on 11 December 1946 during its first session. It is worth recounting that resolution. The resolution stated:

Genocide is a crime under international law which the civilised world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds—are punishable.

Subsequent to this, the convention came into effect and it was ratified by Australia shortly thereafter in 1949, with expressions of support from both Labor leader Ben Chifley and then Leader of the Opposition, Mr Menzies.
Article I of the convention confirms that genocide, whether committed in time of peace or in time of war, is a crime under international law that parties undertake to prevent and to punish. Article II of the convention lists the acts to be defined as genocide as:

... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

I have taken the time to go through what the convention says to help put it into the context of the debate we are having today.

The crime of genocide differs from the crime of murder in that 'necessary intent' is an intent to destroy the group as such. Article III of the convention, in addition to genocide, declares other acts punishable when these are related to genocide, such as conspiracy, direct and public incitement, attempt and complicity. Article IV of the convention lays down the principle of individual criminal responsibility. It says:

Persons committing genocide or any of the other acts enumerated in Article II shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

The question of whether there is a crime of genocide in Australia has been considered in recent years by our highest courts. In the 1997 case of Kruger v. the Commonwealth, the High Court held that, even if there were a valid principle of law prohibiting genocide in Australia, the removal of Aboriginal children from their parents in their own best interests did not amount to genocide as it was not possible to establish the necessary intention to harm the group. The question of whether genocide was a domestic crime was left open as the court found it unnecessary to discuss whether genocide formed part of the Australian law. In September 1999, in the case of Nulyarimma v. Thompson, the Federal Court of Australia confirmed that there was indeed no offence of genocide known in Australian law. Justice Wilcox also held that, even if genocide were a crime in Australia, the requisite criminal intent was missing from the alleged acts committed against Aboriginal peoples.

It must be concluded from these authorities that genocide is not at present a criminal offence in Australia. The full Federal Court of Australia has found, however, that—leaving aside the matter of intent—it is possible to make the case that there has been conduct by non-indigenous people towards indigenous Australians that falls within at least four of the categories of behaviour mentioned in the convention’s definition of genocide. In this context, it is appropriate that we must be vigilant to ensure that genocide has no place in Australia and that genocide is legally punishable under Australian domestic law.

The Howard government has—to its great discredit—consistently opposed the need for antigenocide legislation. In September 1999 the Attorney-General’s Department stated the position of the Howard government as follows:

The Government does not view Australia as being in breach of its obligations under the Convention. The common law and the criminal codes of the States and Territories provide adequate punishment for acts identified by the Convention as genocidal and are sufficient to fulfil our international obligations in relation to the Convention. Despite the government’s view that it has complied with its obligations, most submissions to the Senate committee charged with looking into the bill argue that these various enactments amounted to only partial and limited incorporation of the convention into domestic law. As I was on the Senate Legal and Constitutional References Committee, it is a matter that I will come to as far as the report itself is concerned.

Before I turn to that, I will go a little bit further in respect of the Howard government’s view on the antigenocide legislation. The Howard government can be described only as a backward looking government, but Australian antigenocide law should be forward looking. It should affirm the principle
that Australia abhors the crime of genocide and set down clear rules for the punishment of those who perpetrate this heinous crime. I would think that the coalition would agree with that sentiment. It is hoped that there will never be a need to prosecute under ant igenocide legislation in the Australian context. Nevertheless, enacting ant igenocide legislation would have an important educative effect, raise awareness about the horror of genocide and remind us that it should never be countenanced and never be repeated.

Labor believes that an Australian ant igenocide law would be a powerful tool in bringing about a change in attitudes towards the crime of genocide in all its manifestations. The bill has opened the path to discussion of the form that an appropriate law should take. However, as was pointed out during submissions to the Senate committee inquiry into the bill, the bill departs from the text of the ant igenocide convention in a number of significant respects. These departures give rise to a number of issues that cast some doubt on the efficacy of the bill as it is proposed. Because it departs from the text of the convention, questions arise, for example, as to whether enactment of the bill would be supported by the Commonwealth external affairs power. I will come to that shortly, when I go to the report proper.

For this reason, the Senate committee referred a number of examples—and it is worth while having a look at them—to the Attorney-General’s Department for consideration and report by 5 October 2000. That is a past date. It is worth reminding this government that the Senate Legal and Constitutional References Committee take our duties seriously, and we expect the government to undertake to reply in a timely manner to the report of the committee, to provide the answers that were being sought and to elucidate some of the outstanding issues that were being aired in that report. However, we find—and it is perhaps not surprising because of this government’s closed-mindedness on this issue—that no reply was provided. There was no response from the Attorney-General on this matter.

The government has instead indicated that it will address the drafting issue in the Anti-Genocide Bill 1999 when it introduces legislation to implement Australia’s obligations under the Statute of the International Criminal Court. Perhaps it would be worth my coming to that as well to further elucidate the issues themselves. As I understand it, the Minister for Foreign Affairs, Mr Downer, and the Attorney-General, Mr Williams, announced last October that the government would introduce this legislation before Christmas. I can say that the matter is currently before the Joint Standing Committee on Treaties, so I will have to be slightly careful about how I talk to the issues. But I can say that I will deal with them broadly and not deal with what might be referred to the committee or generally regarded as matters for the committee.

Five months have now passed since October, and we are still waiting to see the legislation. Why? There is no explanation from the Minister for Foreign Affairs or the Attorney-General. Perhaps we will hear some of the answers from this government during the second reading debate in the Senate. We can only wait and adopt the charitable view that this government will provide some of those answers. However, it seems all too clear that the government is now facing growing internal pressure from the chairman of the Joint Standing Committee on Treaties, Mr Andrew Thomson, and other opponents of the International Criminal Court, who are providing at least troublesome and perhaps almost misleading—but I would not go that far from this position—anti-International Criminal Court propaganda. The government must stop bowing to pressures from its backbenchers, who are, it seems, intent on embracing One Nation philosophies. We call upon the government to introduce legislation to ratify the Statute of the International Criminal Court once it has been through the Treaties Committee process and there has been proper ant igenocide legislation. It can do that immediately.

While Labor recognises the need for and the importance of Australian ant igenocide legislation, it is not possible to support the bill in its current form. Labor is, however, committed to continuing to explore the issue to secure the enactment of ant igenocide leg-
islation which properly implements our obligations as a nation under the antigenocide convention. It is clear that the opposition believes it is an important issue and that the Australian parliament should acknowledge there is a requirement for antigenocide legislation. However, there have been events, which I referred to earlier, which may give better scope and purpose to the antigenocide legislation.

As I have said, the Democrats bill seems to go to areas that are not found in the primary convention. The International Criminal Court may provide an avenue as well, but that is currently before the Treaties Committee. The national interest analysis does provide scope for explaining the International Criminal Court’s position. In the time I have available, I just want to provide some views on the International Criminal Court and its operation, perhaps on the basis of removing some cobwebs and dispelling what can only be described as some of the myths that surround conspiracy theorists’ views or propaganda about the role of the International Criminal Court. In my view, it is helpful on this occasion to try to remove some of the cobwebs and shadows that surround the Treaties Committee as well. It also seems to be a place that attracts a certain number of conspiracy theorists. This is an opportunity to at least attempt to provide some rationale for the International Criminal Court.

Events in Yugoslavia and Rwanda are clear examples of the need for a method through which the international community can do something positive in deterring and prosecuting serious crimes. Australia played a leading role in the negotiation of the statute. The statute is designed to establish an independent court with jurisdiction over the most serious crimes of concern to the international community. Article V deals with genocide and war crimes, and the definition in that is identical to that contained in the antigenocide convention. However, as I have said, it differs from that which is contained in the bill before the Senate today. The Statute of the International Criminal Court emphasises that it will be complementary to national criminal jurisdictions, recognising that it is the duty of every state to exercise its national criminal jurisdiction. So the answer is not to have an International Criminal Court in lieu of legislation that might also deal with antigenocide but to deal with both in a proper, pragmatic and rational way.

On 14 October 1999, the Senate referred the Anti-Genocide Bill 1999 that is before us today to the Legal and Constitutional Affairs References Committee. Chapter 3 of the committee’s report explains:

3.1 The Bill ... seeks to expand the original target groups based on nationality, ethnicity, race or religion to include four additional groups, based on gender, sexuality, political affiliation or disability.

3.2 The Bill departs ... from the Convention definition by adding the word ‘distinct’ to qualify the group of people.

3.3 The Bill also emphasises that the group can include, but not be limited to, the eight categories of groups listed in the definition.

The bill’s definition also removes the words ‘as such’. In the context of my earlier remarks, that provides a different view of the definition. This raises some other matters highlighted in the Senate Legal and Constitutional References Committee report. Perhaps it is best to put it as the Law Council did in their submission when they said:

We see constitutional problems when you depart from the terms of the convention. They are not insurmountable but ultimately it is a matter that the parliament should consider very carefully and decide accordingly.

I will turn to the report itself and particularly to the recommendations that were made. The concluding remarks at chapter 5 provide a clear elucidation of where the report took the members. It took them to a conclusion that is summarised in 5.3, which states:

The Committee has sought to answer the three questions that it posed at the outset of the Inquiry: whether there is a need for the legislation in Australia; whether the Bill meets such a need; and if it does not, how could it be improved upon?

In the end, the committee accepted the weight of evidence before it that genocide is not a crime in Australia at the present time. The report provided clear recommendations about the way forward. The committee did find that the way forward was to provide clear recommendations that would ensure
that the antigenocide legislation would be brought to the Senate in due course. I commend the report and also the Statute of the International Criminal Court as complementary mechanisms that are worth pursuing. Clearly, the committee has support for its recommendations. *(Time expired)*

**Senator PAYNE** (New South Wales) *(4.54 p.m.)*—I welcome the opportunity to speak in this debate this afternoon in relation to the Anti-Genocide Bill 1999 moved by Senator Greig. The government indicated in debate on a motion earlier this week that we will not support this specific bill. That is not in any way because the government oppose the intent behind the bill—that is, to address the crime of genocide; I do particularly want to emphasise that—rather, it is because of the way this bill in particular is constructed.

The bill would create an offence of genocide in Australian law. In fact, historically it has been the case that successive Australian governments have considered—and this government considers—that the criminal laws of the states and territories cover the majority of the acts described as genocide in the Convention for the Prevention and Punishment of the Crime of Genocide of 1948. This was pointed out by speakers in the debate earlier this week. Many of the acts referred to specifically in the bill are already dealt with under state and territory laws. For example, murder or serious assault or kidnapping, which are examples of the type of appalling conduct typically involved in the commission of genocide, already constitute serious crimes under our laws.

Senator Greig claimed in his contribution earlier in the week—and has said elsewhere on the record—that the bill is in fact 51 years too late and that no Australian government has done anything about the issue in the intervening years since the signing of the convention on genocide. He has broadly accused all governments of procrastination but not really acknowledged that there is an underlying reason why governments of various political persuasions have not enacted this particular type of legislation. Those opposite, for example, suggested earlier in the week that there has been a lack of action from this government on this issue, forgetting that they had 13 years in which to address an issue they are claiming is substantial and which is recognised as substantial.

The genocide convention, though, does not require the creation of a specific offence, provided other laws adequately give effect to the provisions of the convention. I think it is important to note in the debate that the bill as presented by Senator Greig—and as considered by the Senate Legal and Constitutional References Committee—departs significantly from the definition of genocide that was provided for in the 1948 genocide convention. It expands the groups against whom acts of genocide may be committed to those based on gender, sexuality, political affiliation or disability. In previous public comment, the government has indicated that this varying of the definition is not supported. As I understand it, there are quite significant and varied opinions on whether the enactment of the new definition would be a lawful exercise of the external affairs power under section 51(xxix) of the Constitution. The government also notes that, although there are some evident variations in the manner in which the genocide convention is implemented in the domestic laws of other countries, there is no evidence of the adoption by any country of the varied definition of genocide as it is proposed in this bill.

I think it is important to place on the record that there are very strong concerns also about any aspect of retrospectivity. This was an issue canvassed by the Legal and Constitutional References Committee in its consideration of the bill and referred to specifically in paragraph 4.37 of the committee’s report. It is understood that there is support from the mover of the bill and the motion for retrospective application of the antigenocide legislation. We are strongly opposed to retrospectivity in this case. It is certainly the fact that legislation which creates criminal offences does not normally apply retrospectively. It is well established that criminal liability should not be imposed on a person for an act or omission that was made at a time when it did not, in fact, constitute a criminal offence. There is no reason to suggest that this is a principle that should be departed from in this case.
As I have already stated, most serious instances of conduct constituting genocide are already offences under state and territory laws. There is no justification presented for departing from the normal principle in this instance. There are also very significant practical difficulties that can be encountered in applying legislation retrospectively. It is often difficult, for example, to adduce evidence in prosecutions for offences which occurred many years ago.

I want to refer relatively briefly to the inquiry of the Senate Legal and Constitutional References Committee into the bill. I have followed this matter on appropriate action in relation to genocide with some interest before and during that inquiry and in the subsequent period. The bill was referred to the committee in October 1999, and the committee tabled its report in June 2000. We received what I regard as a very comprehensive and broad set of submissions, numbering some 36, and conducted public hearings across two days. Interestingly, the organisations that submitted to the committee and appeared before the committee ranged across a very broad spectrum of Australian society, from the Centre for Comparative Genocide Studies to the Uniting Church to the Returned Services League. Those three instanced also appeared before the committee. The report recommended:

1. The parliament formally recognise the need for antigenocide legislation; and

2. The Bill be referred to the Attorney-General for consideration of the matters identified by the Committee ...

I understand that the government is considering the report. A response to the report is under consideration and will be tabled in due course. In the concluding remarks of the committee’s report, the committee noted that genocide ‘is no easy task to deal with, within the rational construct of law, with the irrationality that perpetrates this crime’. I think we should also acknowledge this in the debate today and should again assure the Senate and the community that, in not supporting this particular bill, we are not questioning either its validity or its worthy intent. We would contend that the crime of genocide should be addressed adequately, but it should also be addressed appropriately.

In some of the debate, it was suggested that this bill is very pertinent to Australia’s global reputation on human rights and that we must pass the bill to maintain that reputation. I think it is very important not to venture down the road of inappropriate rhetoric in this particular debate. It is very easy to engender inflammatory community discussion in this regard, and we have some responsibility to avoid contributing to that. It is important that we neither exaggerate nor trivialise the record of successive Australian governments on human rights.

The stance that the government is taking on this bill does not in any way resemble a backing away from the leading role we as a nation have always played in regard to the protection of human rights. Human rights are an integral part of foreign policy strategy and decisions. Treatment of individuals is of itself a matter of concern to all Australians, and promoting and protecting human rights underpins Australia’s broader security and economic interests. As a member of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, I am particularly looking forward to participating in the subcommittee’s inquiry into the links between aid and human rights, which will begin relatively soon, and exploring that in the Australian context.

Our approach to this bill reflects an adherence to the view that human rights, whether civil, political, economic, social or cultural, are of fundamental importance. On a global level we have always played a major role in human rights undertakings. In 1948, as a foundation member of the UN Commission on Human Rights, we began on that international stage.

Domestically there is strong support for the role of the Human Rights and Equal Opportunity Commission as a means of promoting and protecting human rights through a strong national institution. We acknowledge, though, that HREOC is only one part of the process of protecting and promoting those rights. There are private sector, state based and international human rights groups
and individual Australians, all of whom contribute to the protection and promotion of human rights in Australia and internationally. In fact, one of the most important areas where we have stood proudly to defend human rights in recent times is in relation to East Timor. I have made remarks about this several times in the chamber and about my particular experience in that regard.

At the moment, AusAID is making a significant contribution through the capacity building project for East Timor. That work includes assistance and training from New South Wales parliamentary personnel for members and support staff of the new national council. It includes diplomacy training, training support to the central fiscal authority and the tax office to supplement DOFA and ATO inputs. AusAID has also worked with UNICEF to provide resources to local authorities to address human rights violations, to promote community involvement in the supervision of humanitarian assistance programs and to provide emergency support for women survivors and their immediate families. These are all part of the puzzle—or perhaps it is more accurate to describe them as the building blocks—of establishing good governance and the protection of human rights in our region, which the discussion on this bill is generated from in the very broad.

I think, as Senator Ludwig did, it is important to refer to the consideration that the parliament, represented by the Joint Standing Committee on Treaties, is currently undertaking of the ratification of the treaty to establish an International Criminal Court. Although not a member of the Treaties Committee, I have spoken on this subject and canvassed it elsewhere in recent months and am following it with a great degree of interest. I read with interest Senator Greig’s comments earlier in the week in relation to this process and the proposed International Criminal Court. I share with him the view that I have been happy to put on the record previously—that we should be ratifying the International Criminal Court treaty.

I was concerned to see a suggestion that the government has somehow changed its position on ratification of the legislation. I think it is very difficult to validly claim that the government has changed its position. I will make a couple of comments in relation to that. When the Minister for Foreign Affairs announced that Australia was to sign the treaty, he said:

Australia can be proud of the role it played throughout the difficult negotiating process which led to acceptance of the statute. The establishment of the court will be a great achievement for Australia and like minded countries who fought to ensure that the perpetrators of crimes against humanity are brought to justice.

He went on to say:
The court’s establishment was one of the Government’s prime multilateral and human rights objectives.

Given those statements, it is difficult to see how any assertion can be made that the government has changed its stance on the treaty, especially given that the Attorney-General has also made clear his commitment in that regard. A speech that the foreign minister made at the Commemoration of the Centenary of the 1899 Hague Peace Conference, held at the University of Melbourne in February 1999, is particularly telling in this regard. Mr Downer said:

The wars of our century have witnessed acts of almost unimaginable inhumanity, often on a scale that defies description. The millions which perished at the hands of the Nazis, the genocides in Cambodia and Rwanda, the brutality of ethnic cleansing in the Balkans all beg the same question. Where are our values? What in these situations happened to those beliefs which bind us together in a common humanity?

If we are to reinforce a sense of common values, a sense of what is wrong and what is right, the institutions which underpin our values and our laws must be strengthened. In this regard I believe we have an opportunity to establish, through the creation of an International Criminal Court, a permanent framework to deal with those most serious crimes known to humanity which have so blotted our recent history.

As I said previously, the establishment of the ICC will assist with and address the problem with the current ad hoc processes of the UN which cannot really effectively and efficiently deal with so many of these crimes. Importantly, a continuous and consistently operating body would address the crime of
genocide—that which has prompted Senator Greig’s bill.

The government has committed to enacting an offence of genocide in Australian law as part of the process of ratification of this treaty. We take the view that, while genocidal conduct is adequately covered under existing law, it is desirable in relation to the offences covered in the treaty to guarantee the benefits of complementarity in specific cases which might fall under the ICC’s jurisdiction.

The definition of genocide provided in the convention should be dealt with in a coherent fashion as part of the process of ratification of the ICC statute, not in a piecemeal way as proposed by Senator Greig’s bill. There are better ways to address this process, rather than by this ad hoc step. The government is moving forward in considering the ratification of the International Criminal Court treaty. The commission of the crime of genocide is one of three crimes in that process. In not supporting Senator Greig’s bill this afternoon I want to again emphasise that this is not a reflection or a diminution by the government of the importance of the crime of genocide in the context in which it has been raised, but is rather an endeavour by the government to ensure that this is addressed in the most comprehensive fashion possible.

Senator COONEY (Victoria) (5.09 p.m.)—The Anti-Genocide Bill 1999 is a bill about a most serious subject—that is, the subject of genocide. All of us in this chamber, and I suggest all of us in the Australian community—indeed, all in the world community—who have decent instincts would favour an act to punish the crime of genocide. As has been suggested in the chamber already, genocide in that formal sense is not a crime in Australia, but the concept of what genocide covers is certainly something that all decent Australians would abhor. As has been pointed out, this particular bill deals with a definition of genocide which raises a number of issues and therefore makes it a bill that cannot be accepted without considerable debate. That is a point that was made eloquently by Senator Ludwig and Senator Payne.

We all know what we abhor and what we would all want to see punished. The most dramatic genocide, of course, is the genocide committed by the Nazis during the Second World War. But there are other acts that I think we would now condemn out of hand. History, of course, pours forth all sorts of examples which we would now condemn. The Bible itself talks about one group of people being compelled under religious sanction to wipe out another group. Although we might talk about Alexander the Great, he of course killed many people. Look at the way the Romans dealt with Spartacus, who was simply trying to regain his freedom and that of other slaves back in the time of the Romans. When we were young we were told that the Crusades were something that those of us with Western backgrounds should be proud of, and now the Pope has apologised for the Crusades. The Huguenots were badly dealt with by the French. And the Irish—close to my ancestry—were infamously dealt with by Cromwell at Drogheda. And so it goes on.

So we all know the sorts of things we would now condemn, and it is with that background that we approach this bill. While we have a clear understanding of the sorts of things that we would certainly include in the idea of genocide, the question arises as to whether the definition in this particular bill encompasses too much of what should be encompassed in the idea of genocide. Let me make this clear. The sorts of things that I am talking about here need punishment, but should they be included in the definition of genocide? All we need is a distinct group. It is not said how big that group may be. We might have a group of three people which is based on a political affiliation. If we wanted to eliminate that group or cause them serious mental harm should we be charged with the crime of genocide? Given the factions within political parties and the different political parties, we might all have to be somewhat concerned that we might be charged with the crime of genocide if we try to browbeat and affect mentally a group of people.

Genocide in the form that we all would accept as being genocide is an outrage to everything—to earth, to heaven and to any
other thing—and it is the sort of thing people want to resist. But there are, unfortunately, examples during the 20th century of genocide. Indeed, one that is much contested but is, I think, proper to raise in this context is the action of the Turkish government against the Armenians. It is in that context that I would like to read a piece by Winston Churchill which I took from an article by Robert Fisk published in Spectrum in the Sydney Morning Herald on Saturday, 9 September 2000. The article reads:

In the aftermath of the 1914-18 war, Winston Churchill was the most eloquent in reminding the world of the Armenian Holocaust.

The article then goes on to quote Sir Winston Churchill:

“In 1915 the Turkish Government began and ruthlessly carried out the infamous general massacre and deportation of Armenians in Asia Minor,” Churchill wrote in his magisterial volume four of The Great War. “… the clearance of the race from Asia Minor was about as complete as such an act, on a scale so great, could be well be … There is no reasonable doubt that this crime was planned and executed for political reasons.” Churchill referred to the Turks as “war criminals” and wrote of their “massacring uncounted thousands of helpless Armenians—men, women and children together; whole districts blotted out in one administrative holocaust—these were beyond human redress.”

As the article says, Churchill himself—writing all that time ago, towards the start of the last century—used the word ‘holocaust’. So it is clear what we would condemn as being genocide.

The other point I want to make is this: the thing to be punished is the action, and that action, whether it injures a single person or devastates a whole nation, ought to be punished appropriately. The big issue is whether or not the action that we are looking at ought, in the minds of decent thinking people, to attract a punishment, and how it should be punished. If the action is of such a nature that none of us would have trouble calling it genocide, then the punishment should be very severe indeed. If, on the other hand, the action is one that we might not all agree upon as being genocide, then that might attract a lesser punishment. But the big thing is that, whatever the action is, it ought to be appropriately punished.

It is in that context that I come back to a theme that was raised by Senator Ludwig and continued by Senator Payne: should we be advancing a definition of genocide and trying to get people to pick up on that or should we be looking at what actions constitute crime, working out an appropriate punishment for them and labelling as genocide only those actions which, in the minds of decent people, quite clearly are genocide. Those are the actions that were defined in the treaty about which Senator Ludwig and Senator Payne have already spoken. Indeed, I think if the definition in this bill were brought to a state where everybody could agree and say, ‘Yes, they definitely are acts of genocide,’ then this bill might well become law. I am not saying that Senator Greig is wrong or has made a mistake in introducing his bill in the way he has, but I do say that it would be a pity if penalties were not attached to actions to which those penalties should be attached simply because people are arguing about definitional issues.

I go now to the offence of genocide as set out in item 9 of the bill. Item 9 sets out what the punishment would be if the bill becomes law, and the punishment is life imprisonment. And certainly if the act is an act of genocide which we all agree upon that would be an appropriate penalty. Senator Greig then went through and defined other acts, such as those in subsection (2), which states:

A person who conspires with another person to commit an act of genocide is guilty of an offence against this Act and is punishable on conviction by imprisonment for life.

That is the penalty for conspiracy. A conspiracy is people agreeing to do an unlawful act. What Senator Greig is saying, and quite properly, is that anybody who even plans to do these sorts of things—whether or not that plan is carried out; as long as it becomes a choate plan—ought to be punished. Senator Greig quoted subsection (4), which says:

A person who attempts to commit an act of genocide is guilty of an offence against this Act and is punishable on conviction by imprisonment for life.
Again, he is talking about attempts. The bill points out that the criminal code sets out the general principles of criminal responsibility.

I take it that what Senator Greig contemplates is that they are maximum penalties and that, if the particular action that a convicted person has carried out does not justify life imprisonment, then there should be a lesser penalty. It would be, as Senator Ludwig says, useful to have Senator Greig here so that these issues might be clarified with him. We have been left this afternoon in a hazy area. If some elucidation were available, it would help the debate. The bill says at clause 10:

A person shall not be charged with an offence against this Act unless the person:

(a) is an Australian citizen; or

(b) is present in Australia.

This is a bill that contemplates that Australians only or people over whom Australian courts have jurisdiction will be prosecuted. It is in that context that I take what Senator Payne said: that we ought also to look at the International Criminal Court, because we would condemn not only actions carried out by Australians but actions carried out by people anywhere around the world. We would want to see people punished for the terrible actions they have carried out. Think about the terrible actions in Africa, in Europe and the Middle East—all of the perpetrators of those actions deserve to be properly punished.

This bill brings up the issue of how do we attend to the way the world is conducted, so that it is conducted in a reasonable and decent away. Given the definitions here of genocide, when is an act an act of genocide and when is it a legitimate act of war? I have mentioned before in this chamber the issue of Dresden. Was that a legitimate act? Was that an act that furthered the victory that we all so eagerly sought and obtained in 1945, or did it go beyond the bounds of what is reasonable, and who is going to judge that? Particularly in a war context, how can we make the proceedings fair in the sense that the decision makers—the judges—apply the same law, draw in facts with the same dispassion, no matter who is before them? Can we get a system where not only the losers but the victors are punished?

I think any speech on an antigenocide bill ought to discuss the issue of the way the indigenous people of this nation have been dealt with over the years since Europeans first came here. There has been much discussion in the press of recent times as to whether any of the actions that occurred over that period of time have been acts of genocide. Whether they are acts of genocide or not, the acts have been quite outrageous and quite abominable and worthy of great censure. Let me make this clear: the people that came to this country from overseas have treated the indigenous people at various times in a most frightful way—but that is not everybody of course. The most outrageous examples are back in history; nevertheless, such actions did occur. If we are going to condemn the people who launched the Crusades, or the people who inflicted the slaughter told about in the Bible, or the Roman occupation of other countries or, indeed, any empire that had conquerors, including Genghis Khan and all such other people that we have heard about, if we are going to say that they were wrong and that we have rethought all of these things and that we are now going to be better because we are a more civilised, more decent people, then we also have to look at what we ourselves may have done in this country.

This bill ought to be praised for the intent it has, for what it seeks to accomplish, for the remedies it seeks to give people and for the way it confronts acts that we would all want condemned. What perhaps ought to be brought to the attention of Senator Greig is this issue of definition. Can it be improved? Can it be made more in line with the convention? If we can get agreement that the most outrageous actions are the ones that are condemned as genocide, then the other ones might be added later. But let us come to an agreement about exactly what ought to be condemned as genocide.

Senator COONAN (New South Wales) (5.29 p.m.)—In speaking to the Anti-Genocide Bill 1999 this afternoon I wish to address three fundamental questions: firstly, is there a need for this proposed legislation;
secondly, does the bill meet any identified need that may exist; and, thirdly, if time permits, how can this best be progressed? As a member of the Senate Legal and Constitutional References Committee that inquired into the bill and tabled a report entitled *Humanity diminished: the crime of genocide*, I must say that there is considerable community interest in whether Australia is legally equipped to deal with the claim of genocide.

The starting point, of course, is the Convention on the Prevention and Punishment of the Crime of Genocide, called the genocide convention, to which Australia became a signatory in 1949 pursuant to the Genocide Convention Act 1948. The prevailing view—if you go to the debates and discussions 50 years ago—was that, although it was agreed that Australia should become a signatory, the crime of genocide had little or no application in Australia, where such a heinous crime would not be countenanced.

I think it is important to note this afternoon that no extraterritorial reach is provided for in this bill so what we are looking at is the creation of an offence in Australian law. Subsequent judicial consideration of the Genocide Convention Act has established that the crime of genocide, as such, is not recognised in Australian law. In the somewhat controversial 1997 High Court decision of Kruger v. the Commonwealth it was held that it was not necessary to decide whether genocide was a domestic crime because the necessary intent to destroy Aboriginals as a group was not evident in the removal of Aboriginal children from their parents in circumstances said to be in the children's best interests. In the later cases of Buzzacott and Hill, and Nulyarimma v. Thompson—referred to, I think, by Senator Ludwig—there was reliance on the principle clarified in the Teoh decision, which those present in the chamber will recall is the principle that has occupied the Senate for much of this week in the debate on the Administrative Decisions (Effect of International Instruments) Bill.

Let me say briefly what these cases were about, seeing that we are dealing with genocide in Australian law. In the Buzzacott case the plaintiff sued the Commonwealth, the minister for environment and the Minister for Foreign Affairs seeking damages for genocide for failure to list Aboriginal lands in South Australia on the world heritage register. In the Nulyarimma case the plaintiffs appealed against a court registrar’s refusal to issue warrants against the Prime Minister and other members of parliament for genocide in introducing and passing the Native Title Amendment Act 1998. The cases were heard together by the Federal Court in May 1999 as both raised the question of the status of genocide in Australian law. In a 2:1 decision, the Federal Court held that there was no common law crime of genocide in Australian law and, furthermore, that the provisions of the genocide convention had not been incorporated into Australian domestic law by the principles of international law. The High Court has refused special leave to appeal in both cases.

The next question is whether Australia's laws are adequate to cover genocidal crimes. It is fair to say that successive Australian governments have considered—and, in fact, this government considers—that the existing criminal laws of the Australian states and territories pretty much provide adequate coverage for at least a number of the acts described as genocide in the convention. Murder, serious assault, rape, kidnapping and—perhaps more recently—sexual slavery, are examples of crimes of the kind typically involved in genocide. They are offences which, if committed in any part of Australia, would be regarded as serious crimes and which, if proven, would attract serious punishment. It is arguable, however, that Australia's criminal law may not respond to some of the distinguishing elements of genocide. Our criminal laws are concerned primarily with wrongs done to individuals and not necessarily to groups, and incitement to commit crimes of genocide may not be entirely covered by existing laws. But in any event, the government announced on the 25 October last year that it will move to enact an offence of genocide in Australian law as part of the process of ratification of the statute of the International Criminal Court.

The government considers it would be desirable to have the offence provisions framed on all fours and consistently with the crimes
described in the International Criminal Court. The logic of this is that Australia will be able to guarantee the benefits of complementarity in specific cases as provided in the International Criminal Court statute. The statute explicitly provides for complementarity with national jurisdictions and it is important that any domestic legislation not be piecemeal or sporadic and that it deal with crimes of genocide in a comprehensive way, particularly having regard to the complementarity principle. It is important that any specific enactment of an offence of genocide that will operate prospectively and mirror in definitions those provided in the genocide convention should be dealt with in a coherent way as part of ratifying the ICC statute, which is currently being examined by the Joint Standing Committee on Treaties, on which I serve. The legislation to enable ratification is in the course of being drafted.

It is true to say, as indeed I think earlier speakers have alluded to, that the treaty—that is the ICC statute—has excited some considerable debate in the community. The committee is in the course of its deliberations; it has in no way come to a definitive view or a concluded view. Hearings are continuing. My recollection is that there are at least another couple of days of hearings with a number of witnesses still to give their views to the committee, and it would be inappropriate for anyone of that committee to pre-empt the outcome. It would also not be appropriate for anyone speaking on this bill who is also a member of the committee to pre-empt the outcome. The test is whether it is reasonably appropriate to implementing the relevant obligations in the convention. Evidence given by the Attorney-General’s Department in answer to a question on notice that I raised at the hearing into this bill illustrates the point. It is worth putting that on the record. I quote in part from the answer on notice provided by the Attorney-General’s Department which appears at page 26, paragraph 3.44, of the report. It reads:

Australian governments have taken various approaches to legislation implementing treaty obligations. In some cases, the legislation provides that the treaty or more usually certain provisions of the treaty are to have the force of law in Australia. This approach was taken in the Diplomatic Privileges and Immunities Act 1967 which provides that certain Articles of the Vienna Convention on Diplomatic Relations 1969 are to have the force of law. In other cases, the legislation is recast in ordinary legislative language. An example would be the Sex Discrimination Act 1984, which implements some provisions of the Convention on the Elimination of All Forms of Discrimination against Women, but does not use the language of the Convention. Similarly, the World Heritage Properties Conservation Act 1983 proscribes various activities on world heritage sites, in more explicit terms than the terms of the treaty it implements, the Convention for the Protection of the World Cultural and Natural Heritage; the validity of the Act was upheld by the High Court in Commonwealth v Tasmania ((1983) 158 CLR 1).

Senator Coonan referred in the Committee’s hearings to the criminalisation of bribery. In that case the issue was the implementation in Austra-
ian law of the OECD Convention Against Bribery of Foreign Public Officials in International Business Transactions, under which there was a minimum requirement to create extraterritorial jurisdictional coverage for nationals of parties to the Convention for certain offences. The implementation of the Convention in Australian law (Division 70 of Chapter 4 of the Criminal Code) goes further than the minimum requirement in the Convention, and extends the jurisdictional coverage to Australian residents in respect of conduct occurring wholly outside Australia.

However, whilst of course that very comprehensive answer from the Attorney-General's Department points to the various possibilities of how a treaty can be validly implemented, in this case extending the terms of an international treaty so significantly and broadly by way of definition would, in my view, be of doubtful constitutional validity. There may be, and I acknowledge this, strong policy reasons for expanding the definition 50 years after the original convention. We all know that, with the development of international human rights law and indeed contemporary thinking on many issues, the original definitions may not necessarily be cast in concrete. But that is a different argument from the one we are facing now, which is implementation of a convention and how we can appropriately and validly do that. What we in this place must do in examining this bill is to ensure that any laws passed by this parliament are clear, certain, workable and of course constitutionally valid. The bill, despite its good intentions—and I wholeheartedly acknowledge the good intentions behind the bill—simply fails that test.

Another issue that excites considerable interest in the debate on genocide legislation is the meaning to be given to the mental element or intent required for the crime of genocide. Some submissions to the inquiry argued that the need to prove actual intent is onerous and that the intent requirement should be widened to include negligent genocide or even gross or criminal negligence—designed to comprehend perhaps even economic actions or omissions which have the effect of destroying a group. However, as another witness before the inquiry pointed out, you cannot commit genocide by accident. It is simply not in the nature of the offence. Dr Leadbetter said, as quoted on page 39, paragraph 4.35, of the report:

When one looks at more contemporary cases, for example when one looks at the situation in East Timor or in Cambodia, again there are considerable survivors. So we are not looking at an act which has been successfully encompassed, but at the same time we are not envisaging raising a charge of attempted genocide, but genocide, because what the crime does, what the word seeks to encompass, is not a series of acts of mass murder but acts of mass murder or other acts with the intent to destroy a distinct group of people. The criminality surely must lie, for genocide to occur as opposed to murder or mass murder or any of those other acts which have all been discussed, in the intent itself as expressed in the act. That is what I mean by genocide as a crime of intent.

Earlier, he said:

Genocide needs to be comprehended principally as a crime of intent. That is, when we look historically at genocides, no genocide historically has ever been successful. So when one looks at, for example, the most egregious case, which is the Holocaust, there were a number of survivors. I think he makes a very good point: genocide simply cannot be committed by accident. The intent is critical.

The next point is that there is considerable support for any such genocide bill as Australia enacts to be retrospective to the date Australia became a signatory to the convention. A span of 50 years retrospection for such a serious crime with criminal consequences cannot, in my view, be justified. Legislation creating criminal offences does not usually apply retrospectively, as earlier speakers have said. It is well established, and for sound reasons, that criminal liability should not be imposed for an act or omission that was committed at a time when it did not constitute a criminal offence. Quite apart from almost insurmountable practical difficulties with records and proof—we saw that in the Gunner and Cubillo case, although genocide was not an issue in the ultimate judgment—it is a sound principle that should only be departed from in the most compelling circumstances.

Although some variations in the manner of implementation of genocide conventions in the domestic laws of other countries are evident, there is no evidence of the adoption
by any country of the expanded definition of genocide proposed in the bill. I do not think anyone else has actually mentioned much about the international implications of the bill, but the committee did consider argument suggesting that Australia may indeed be placing itself too far ahead of the international community if it proceeded to pass the bill with its proposed amendments and enhancements—assuming that it was constitutionally valid to do so—and may run into some difficulties with international cooperation. Although many people making submissions agreed that the proposed expansion of the definitions in the bill were worthy of consideration, I think on balance it did come down to a pretty clear consensus that the extension of the definitions could not be justified.

In conclusion, this is a well-intentioned bill that simply fails to meet the mark in terms of its constitutional validity. Indeed, it is probably not necessary, especially given the government’s attention to this matter in the context of its international obligations and in its efforts to make a contribution to the International Criminal Court statute debate that is currently going on in this country. I must say that, having married into a family that suffered the diaspora after the war, I am very much personally in favour of dealing with genocide. (Time expired)

Senator MASON (Queensland) (5.49 p.m.)—I rise to speak this afternoon on the Anti-Genocide Bill 1999, introduced into the Senate by Senator Brian Greig. I warmly commend Senator Greig for his passion for human rights and for his interest in seeing justice done for the victims of genocide throughout the world. While I agree with the general sentiment of all those who want see perpetrators of crimes against humanity brought to justice, I cannot support Senator Greig’s bill as it has been presented to the Senate. My objections to this bill can be summarised as the three Rs: redundancy, retrospectivity and reach.

I believe that Senator Greig’s bill is redundant, as it addresses similar issues to those that the government intends to soon address as part of its larger international human rights agenda. I believe the bill is flawed because its commitment to retrospectivity makes it open to politicisation and abuse by various groups in the Australian community. Rather than human rights legislation reflecting a cultural consensus, it may become a vehicle for division and discord. Finally, I believe that the bill’s reach—which goes beyond the letter and the intent of the 1948 Convention for the Prevention and Punishment of the Crime of Genocide—similarly opens the bill to potential political manipulation by various interest groups, as well as probably representing an invalid exercise of the external affairs power under the Commonwealth Constitution.

Let me not talk any more about redundancy—my colleague Senator Coonan has just touched on that. Let me go to the second point: retrospectivity. My concern with respect to the Anti-Genocide Bill has to do with its retrospective application. It is a well-established principle of law that legislation creating criminal offences does not normally apply retrospectively. It is one of the pillars of the rule of law that a law should not create liabilities for past acts. As legislators, we owe citizens of our liberal democracy at least this certainty.

I also see danger in applying the Anti-Genocide Bill retrospectively in its potential for misuse for domestic political purposes. Perhaps the best example of that would be the use of the antigenocide law by the members of the stolen generation to prosecute former government officials, arguing that their actions amounted to ‘forcibly transferring children of the group to another group’ with ‘the intent to destroy a racial group’, thus constituting genocide under article II of the Convention on the Prevention and Punishment of the Crime of Genocide. A far-fetched scenario? Well, not really—as Senator Greig said himself in his additional comments to the Senate Legal and Constitutional References Committee report on the Anti-Genocide Bill:

The question of whether or not Anti-Genocide laws ought to be retrospective draws a strong response ... Most ... members of Australia’s stolen generations (and their advocates) ... feel passionately that retrospectivity is essential to allow for access to justice ... The Australian Democrats consider that retrospectivity is not only highly
desirable, but necessary for both the prevention and punishment of genocide. We believe that the prospect of Aboriginal Australians taking claims of Genocide for the past policy of removing children from their families is a right that Aboriginal people are entitled to explore.

In this light, the attempts to enact the Anti-Genocide Bill with a clear intention that such law would be used in the context of the stolen generation can be viewed as an exercise akin to jurisdiction shopping. So far, all the legal attempts to use courts to obtain redress for the alleged wrongs committed against members of the stolen generation have ended in failure, most notably—as my colleague Senator Coonan mentioned—in the Gunner-Cubillo case. After failing to establish that an offence of any sort has been committed, or that compensation is owing under existing laws, members of the stolen generation would now be given a new law by Senator Greig to try their luck. As Dr Leadbetter wrote in his submission to the inquiry on the Anti-Genocide Bill, ‘retrospectivity would invite a generation of political trials that the public would find intolerable’, causing the legislation to become ‘an embarrassment’. This indeed would be a tragic outcome, which I fear would only serve to delegitimise in the eyes of Australians the whole concept of antigenocide law and, worse, international treaties seeking to protect human rights.

The third problem I see with Senator Greig’s bill is its attempt to substantially expand the reach of the original convention. The Anti-Genocide Bill does not merely seek to faithfully incorporate into Australian domestic laws the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. It attempts to substantially broaden that definition. Dr Michael Ignatieff, Professor of Human Rights at the Kennedy School of Government at Harvard University, delivered last December a lecture for the Committee of Conscience at the United States Holocaust Memorial Museum. Professor Ignatieff said then:

Those who should use the word ‘genocide’ never let it slip their mouths, and those who use the word ‘genocide’ banalise it into a validation of every kind of victimhood ... Genocide has no meaning unless the crime can be connected to a clear intention to exterminate a human group in whole or in part. Something more than rhetorical exaggeration for effect is at stake here. Calling every abuse or crime a genocide makes it steadily more difficult to rouse people to action when a genuine genocide is taking place.

The danger is that the Anti-Genocide Bill before the Senate will institutionalise an increasing tendency to political hyperbole. The last 50 years have witnessed an enormous expansion in the area of human rights. I welcome these developments that have contributed so much to enhancing freedom and dignity around the world. However, the last 50 years have also witnessed a large-scale abuse of the human rights system, with invention of new, bizarre rights and privileges, and radical reinterpretation of commonly accepted ones, so that they no longer even remotely resemble the original intent. These developments I wholeheartedly condemn. Nothing so damages respect for human rights in this country as when conclusions are reached which are so strongly contrary to commonsense and basic decency.

I oppose the Anti-Genocide Bill because I feel that—however very well intentioned in its general thrust—the expanded definition contained in the bill would only serve to perpetuate the process of devaluation of human rights in pursuit of various politically correct agendas. I fear the bill would further strengthen the influence of pressure groups and the reliance on the judicial process to achieve desired outcomes, overriding the democratic processes that are the foundation of our nation. I fear that this would, in practice, be the greatest legacy of the Anti-Genocide Bill: that most cases of prosecution brought under this law would not be against the Nazis, the Khmer Rouge or other perpetrators of genocide overseas, but against the government and its officials for their past and present policies and actions that various aggrieved minority groups might consider amount to genocide.

In conclusion, Mr Acting Deputy President, through you to Senator Greig, it is noble to champion human rights and condemn genocide. But we must all acknowledge that even the most noble of aims must succumb when a man’s reach exceeds his grasp. Let us hold on to what we can agree to and not di-
eminish humanity by diminishing the crime of genocide.

Senator GREIG (Western Australia) (6.00 p.m.)—by leave—Senator Ludwig, in his speech in the second reading debate, made reference to my absence from the chamber during this afternoon’s debate. I am sure he meant nothing unkind by that, but I wanted to explain that it was simply not possible for me to be here; that, as a courtesy, I would like to have been here to listen to Senator colleagues; and that I will, of course, consult the Hansard.

Debate interrupted.

**DOCUMENTS**

**Consideration**

The following order of the day relating to government documents was considered:

United Nations—International Covenant on Civil and Political Rights—Human Rights Committee—Communications No. 947/2000—Decision. Motion of Senator Ludwig to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

General business order of the day no. 2 relating to government documents was called on but no motion was moved.

**Auditor-General’s Reports**

Report No. 31 of 2000-01

Senator HOGG (Queensland) (6.01 p.m.)—I move:

That the Senate take note of the document.

I rise this evening to talk about Auditor-General’s report No. 31 of 2000-01: Performance audit—administration of consular services: Department of Foreign Affairs and Trade. This was one of the very first reference inquiries that I was involved in when I first came to this place, and I found it a particularly interesting and fascinating inquiry indeed. This report of the Audit Office now looks at the implementation of the recommendations of that committee. In effect, 16 out of the 20 recommendations have been implemented by the Department of Foreign Affairs and Trade. One has not been implemented and three which were not going to be implemented as a result of this ANAO report are now being reviewed by the Department of Foreign Affairs and Trade.

The issue of consular services is very important to a wide range of Australians and, if one looks at the back of the report, one finds that some 3.3 million-plus people travel overseas from Australia each year. It is interesting to note that 24 per cent of Australians leaving—this was for the year 1999-2000—travelled to South-East Asia, 23.3 per cent travelled to Oceania and Antarctica, 21.1 per cent to Europe and the former USSR, 14 per cent to the Americas, 10.7 per cent to North-East Asia and smaller percentages to southern Asia, the Middle East, North Africa and so on. This is a substantial number of people. The report outlines that the Department of Foreign Affairs and Trade gave assistance through consular services in 21,741 cases in the year 1999-2000. These covered a wide range of areas, from welfare cases—of which there were 16,085—to cases where people could not contact their next of kin—of which there were 1,850. There were 604 cases of deaths overseas. This shows the extent of the assistance that is given by this department.

I want to focus on the part of the report that refers to the travel warnings that are issued to Australian travellers overseas, because these are very important. In 1997, 47 travel advices were issued. That number increased to 77 in the year 2000. That increase reflects some of the instability that has occurred overseas. These travel advices are updated at intervals of no more than six months, but the Department of Foreign Affairs and Trade is moving to update them at three-monthly intervals. Included in the appendix to the report is a copy of a travel advice issued in respect of Fiji. I checked the latest travel advice from the web site of the department this afternoon, and it differs from the one published in the appendix, at page 123, in that it shows that the advice was issued on Friday, 23 March 2001 and that the advice is current for Thursday, 5 April 2001. I think I can reasonably lay claim to that change having come out of the estimates committee process, where the department took up my advice that it would be helpful to those accessing the travel advice to know the date on which the advice was first issued and
to know the date on which it was last updated. It is pleasing to see that that has been taken up.

Importantly, these advices do assist Australians in their travel and can be used in any part of the world. Australians can access the DFAT site if they have access to the Net. That is one of the real pluses for Australian travellers today. The advices try to identify the potential risk for Australians and then, where necessary, the department issues a travel advice once the risk has been assessed in a particular country.

The department, as outlined in the report, used six factors to assess the risks and the need for the issuance of the travel advice. The report noted that, in general, only some of the six factors were taken into consideration when the advice was being put together. The important aspect of the report, though, was that the department now have, as a result of the ANAO inquiry, undertaken to be more systematic in their approach in using the six factors in the future. This can do nothing but lead to enhanced and better travel advice for Australians overseas. The other thing that the ANAO report drew specific attention to was:

Four levels of warning are employed in travel advisories, with each level indicating a particular course of action that travellers should take in response to the threat in the country concerned.

The report noted:

DFAT’s general travel advice and web site do not expand upon, nor indeed refer to, the four warning levels.

I have looked at the web site, and that is a concern. Whilst it is an internal mechanism obviously within the department, it is not something that is readily available and visible on the web site to those people such that they can gauge the level that should be applied to that particular warning. The report went on to state:

In practice, it is difficult to distinguish between two of the warnings, and some advisories have contained two warning levels, risking confusion among travellers.

However, the pleasing part as a result of this overview by the Australian National Audit Office is that DFAT has advised that it is moving to adopt these changes to ensure that it is clear as to which warning applies to the travel advice. They are very helpful tools to Australians travelling overseas. It is pleasing to see that the report confirms the implementation of many of the recommendations of the original inquiry I was involved in back in 1997 and that this is a most important area for very great vigilance on the part of the department itself to ensure that Australians are getting the best advice.

Before I conclude, I acknowledge that there has been great assistance given to me on at least two occasions when Australians have felt that they were in danger. Once was when there were difficulties in Jakarta, and the cooperation that was received on that occasion from the Department of Foreign Affairs and Trade was excellent. The Australians did not have access to a web site. The only way they could be contacted was by phone. I spoke to them and, whilst they felt no real threat themselves at that stage, I was able to reassure them of the advice that was available from the web site of the department.

The second occasion was in Zimbabwe. Again, I was able to assist a constituent in allaying fears for their safety and wellbeing, with the assistance of officers of the Department of Foreign Affairs and Trade. It is something that Australians should be aware of: there is such good advice available to assist them in the travels. It is good to see that the department are picking up their act and improving the quality of the information that is available to Australian travellers.

Question resolved in the affirmative.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Order! It being 6.11 p.m., I propose the question:

That the Senate do now adjourn.

Robinson, Ms Kellie
Nielsen, Dr Ebbe

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.11 p.m.)—With all due respect, that is probably one of the greatest and most sensible proposals you have made so far this week. I would like to
support that motion. In so doing, this is a very special day for a very special person who has contributed an enormous amount to the running of the Senate and particularly the government. I refer to Kellie Robinson, whose last day working in this building is today. As you know, she will be leaving on maternity leave. She will not be leaving the job—she will be going back to the department for a few weeks—but she will not be working in this building after the completion of this day. In fact, she has already left to go to her first antenatal class tonight. So I hope Kellie is listening to us as she wanders towards the nearby hospital, with her pillow and her heart in her hands, with her husband Duane, to learn about all the exigencies of motherhood.

I wish to say about Kellie that there are a couple of particularly hard jobs to make this place work. When I am sitting here hour after hour I look at the galleries in this place, particularly the gallery far above us with the glass walls, which are empty at the moment—not to take away from the galleries without the glass walls—to see the children who come into this place, who see this place in action. I am sure that when they look down here and see an acting whip on the other side, a Hansard reporter, a clerk, an acting deputy president and a couple of others they say, 'Where have all the rest of them gone?' I can assure the people in the gallery now that most of them have taken off to the airport and are heading home.

The great thing about schoolkids coming here is that they actually see the parliament and democracy in action. What they do not see, however, is the incredible work that goes on behind the scenes—the work that is involved in getting the legislation here in a format, ensuring the passage of the legislation and the processes that go on do take place, ensuring that the legislative process—which is crucial to the whole functioning of government within the Australian democracy—takes place properly and effectively and ensuring that the machinery keeps working.

The Parliamentary Liaison Officer—PLO is the acronym—has the pivotal job of liaising between the executive government and the parliament. Of course, this is a vital interface in a parliamentary democracy, where the elected representatives of the people in the Senate review and vote on the legislation put forward by the executive. This interaction between the parliament and the executive—which creates the laws, advises on the policy, drafts and generates the legislation and brings it forward into this process—is absolutely crucial. It means that in that job you need someone who has an incredible grasp of how the executive works, how all of the different departments work, how the ministerial offices interact with those departments and ultimately how the legislative program is brought forward into this place. It goes right down to the very detail of ensuring that the advisers who are required to come here and provide advice to ministers, and quite often to spokespeople from the opposition, and conduct negotiations actually turn up on time when their bill is called on.

It is very much a job that is done behind the scenes. Myra Croke has been the PLO for nearly a year, having taken over from Gail Bansemer, who retired in about June last year. Myra has been supported in her role by Kellie Robinson, who, as I said, is going on maternity leave today. Kellie has been an assistant to the Senate PLO since August 1998. I know that Gail would not mind me saying that she could not have done her job as well as she did if it had not been for the incredible support of Kellie, and I know very well that Myra would be very happy for me to say that Kellie’s assistance has made Myra’s transition into Gail’s job that much easier—if there is such a thing as an easy transition into being PLO in the Senate, a place where you are never quite sure how a vote is going to go until it actually takes place.

Prior to her work in the PLO office, Kellie had worked for 18 months in the Senate Table Office. I guess you could not get much better training for the position of assistant to the PLO than that sort of work. Kellie is a marvellous young lady. She will be a marvellous mother. She is supported by her husband, Duane. On behalf of all those who have had the privilege of working with young Kellie over recent years, I wish them
both well. I have not met Duane, but we have heard a lot about Duane’s thumb this afternoon. Duane suffered an accident that those of us who toy with electrical tools and pieces of wood would understand. He suffered a severing of the end of his thumb recently because of an accident with a circular saw—a very dangerous piece of equipment which I use very regularly. Duane is recovering from that, and it looks like he has to have some more surgery. Kellie believes that she and Duane may be in separate wards of the same hospital in a few weeks time. I genuinely wish Duane well with the recovery of his thumb and wish Kellie well with impending motherhood. I hope it all goes very well. We look forward to seeing Kellie, Duane and the new son or daughter around this place very soon.

On behalf of Senator Hill, I seek leave to incorporate a speech about Dr Nielsen of the CSIRO, who passed away in the United States on 6 March.

Leave granted.

The speech read as follows—

NIELSEN, Dr EBBE

CSIRO’s Dr Ebbe Nielsen, who died in the US on 6 March, was Director of the Australian National Insect Collection (ANIC), and an expert member of the Australian delegation which contributed so effectively to the decision by the OECD to establish a Global Biodiversity Information Facility (GBIF).

He died en route to Montreal to present Australia’s bid to host the Secretariat of GBIF in Canberra.

Dr Nielsen was passionate about life, a passion that drove him to be the most successful advocate globally for the science of systematics, especially insect taxonomy. Because of that passion, systematics and the emerging discipline area of biodiversity informatics, are now officially enshrined in GBIF. Dr Nielsen’s drive, vision and personal contact with politicians, bureaucrats and scientists in Australia and around the world have been major forces in bringing this initiative into reality. We, and future generations, owe him enormously for this.

Dr Nielsen was born in Denmark’s lake district in central Jutland. He came from the small rural township of Ry. His mother pointed him in the direction of books about plants and insects and by the age of 14 he had commenced collecting moths.

He was awarded his BSc from university in Arhus and even at this early stage in his career he was regarded as a skilled insect systematist. While completing his PhD at the University of Copenhagen he joined an expedition to work in Argentina, Patagonia, Tierra del Fuego and the Andes during 1979, an expedition he followed up in subsequent years with visits to southern Argentina and Chile, thus fostering a life-long love for the fauna of the southern hemisphere.

In 1981, CSIRO approached Nielsen with a proposal to work in Australia and as he settled into the Australian research scene, his leadership skills and his boundless energy singled him out for a senior management role in CSIRO Entomology. He was appointed Director of the ANIC in 1990 and became increasingly interested in promoting the importance of systematics, communicating scientific results through publishing, and in the management of biodiversity data.

Nielsen was a true scholar and a founding visionary and contributor to the creation of CSIRO’s publishing arm, CSIRO Publishing. He was the motivating force in creating the journal Invertebrate Taxonomy, acting as Editorial Committee Chair and a regular author. He was also a prolific book author and the founding editor of two major series dealing with Australian Lepidoptera and Invertebrates. He remained a vocal supporter of the printed word but was a visionary supporter of electronic delivery of science to both researchers and students.

He was widely acclaimed by the scientific community, receiving numerous awards and medals, and was a Foreign Associate of the US National Academy of Science and a Foreign Fellow of the Royal Danish Academy of Science and Letters. He authored or co-authored eight books and monographs and over 80 other scientific publications. He was a major figure in the international entomological community and held many key positions including secretary to the International Congress of Entomology at the time of his death.

As the word ‘biodiversity’ gained prominence during the 1990s, Ebbe Nielsen was already advocating that if we wanted to continue to use biological resources in a sustainable way, it was vital that we develop our knowledge of species and their characteristics.

With between three million and 100 million species of living things coexisting on Earth today, Ebbe Nielsen was adamant that as we placed increasing demands on the natural world, information about biodiversity at all levels, from mole-
cule to biosphere, will soon come to dominate the world’s economy and its politics. So biological collections, such as the ANIC, were an incredibly important, objective source of information about life on earth.

Dr Nielsen and his scientific colleagues were concerned that the growth of the world’s great collections was outpacing their ability to handle the data inherent in them. They advocated a Global Biodiversity Information Facility (GBIF), incorporating state-of-the-art informatics software, to link together existing databases on biodiversity with new databases into a one-stop global information resource.

The databases would include existing biodiversity databases on the distribution of plants, animals and microbes around the globe, detailed genomic maps, compilations of the physiological functions of organisms, and information about the behaviour and function of species within ecosystems.

Australia was a leading proponent for GBIF, with Dr Nielsen as a key expert member of the Australian team which helped to persuade the OECD science ministers to agree in 1999 to its establishment. Nielsen was absolutely ecstatic when GBIF came officially into being on 1 March this year.

We remember with gratitude Dr Nielsen’s contribution to science and, in particular, his commitment to ecological values.

Howard Government: Youth Policy

Senator LUNDY (Australian Capital Territory) (6.19 p.m.)—Australia’s young people are currently the largest group in our society falling into poverty. This means young people are more qualified than ever to express their views on the performance of the Howard government. It was timely during Youth Week for the Labor opposition to ask questions in both houses of parliament challenging the government on its suppression of the Youth Pathways Action Plan Taskforce report. This report highlighted how young people and their families are faring under this government. The coalition, after first silencing the national youth peak body, AYPAC, has now been caught out unjustifiably delaying the release of an important government commissioned report which provides, amongst other things, what seems to be an honest appraisal of the status of youth in Australia and makes important policy recommendations for improving support for young people and their families during young people’s transition to independence.

This report is more than just damning of the impact of the Howard government’s policies on this generation of young people; it provides constructive criticisms, highlights inadequacies and, importantly, suggests some solutions. Thanks to the Leader of the Opposition, Kim Beazley, who managed to table this document after having his first attempt blocked, these important messages can now be included in wider debates about policy directions for young people. Unfortunately, this government has dismissed the anger, disenfranchisement and disappointment vocalised by many young Australians in their communities by saying that they have ‘never had it so good’. This patronising mentality has sadly destroyed much of the confidence that young people may have had when participating in decision making and in turn has made them feel cynicism.

The government’s Youth Pathways Action Plan Taskforce report paints a picture of young people who are in crisis directly as a result of government policies in the Job Network, Work for the Dole and the cuts to the youth allowance. Young people in crisis are from both metropolitan and regional and rural areas. The report also highlighted the plight of many indigenous young people. The youth pathways report is a damning condemnation of the Job Network, which has been described as a service that is ‘harsh, rigid and complex to navigate’ and which operates in isolation from those support services and community groups that assist young people in crisis. Instead of providing a service that takes into consideration the circumstances that impact on a young person’s transition to economic independence and therefore employability, this government expects all young people to squeeze into a one-size-fits-all model. Captain Eldridge hit the nail on the head when, in a recent interview, he said, ‘Different services do not work together.’

Labor has made this criticism of the Job Network time and time again and has called for better links and coordination between the Job Network and other employment, training and youth services. The report also says that
more young people should have access to intensive assistance. At the moment most of them get cycled and recycled through Work for the Dole, which neither provides them with training and support to increase their skill base nor consults with the young people or communities about the types of programs that are available.

Labor have also been calling for training to be incorporated into the Work for the Dole program. It is now time for the government, despite its recent noises, to reserve its ideological opposition to training for the unemployed under Work for the Dole. Not only does this government actively discourage young people from taking up part-time and casual work by charging them an extra 10 per cent above the free income threshold for pensioners but it breaches them—that is, it finds our young people guilty of breaching the supposed guidelines—in alarming numbers. We also know that this is a specific policy that the government has in place.

It is an unforgivable act by the Howard government to punish and blame young people for their unemployment by taking away their payments. Breaching the guidelines has done more harm to the self-esteem and the ability of a young person to find their own way forward than many of the other harsh initiatives. The government has done nothing to construct pathways for those young people into quality jobs.

The Labor Party, as well as the community, expects that there are responsibilities for young people on income support, but cutting people off benefits without caring for their personal circumstances—and without taking into account what can be very extreme personal circumstances—just highlights the Howard government’s cold-heartedness. This report reveals the sad truth that this government is more interested in punishing the young unemployed than in assisting them to get a job. When a young person loses their income for a minor breach, for which they may have a legitimate excuse, it makes it extremely difficult for them to meet basic needs let alone to phone prospective employers while searching for a job.

This report also highlights Youth Allowance for the cost-cutting exercise it is. Many have been deprived of income. The consequence of that for some young people, unfortunately, is that they have turned to crime and drug abuse. That is why this report concludes that it is the consequence of the government’s harsh economic agenda.

We have a government report that says government policy has deprived young people of their income and of training opportunities. The consequences have in some cases been homelessness. This, I suggest, has added to budget outlays on unemployment benefits and has deprived the Australian economy on a long-term basis of the vital contribution of many young people. With increasing costs of living associated with the GST leading to an economy in recession, anomalies in common Youth Allowance and the 20 March clawback, high HECS payments, insecure jobs and high youth unemployment, youth poverty seems to be a rite of passage under the Howard government. Young people are being forced to endure this initiation process with the only possible respite being their bank balance or the direct support of their parents. It is not surprising that many young people are angry and confused. Mr Howard’s way has seen many more young people become disengaged from society.

Young Australians have the right to feel angry about how they have been treated by a government they did not elect but whose policies they are forced to cop. I hope that these feelings will be expressed at the ballot box for the first time later this year. I believe that young people can see through the government’s recent backflips and the Prime Minister’s cries and insistence that he is listening. This sudden attack of false humility from the Prime Minister does little to take back the hardship many young Australians have been facing. Perhaps more than any other group in society, young people look for leadership qualities that inspire confidence and optimism for the future. I believe they also look for a political party that has the vision and potential to give it form through effective policies and sound governance.

More than ever, this is the point of distinction for Labor. In Kim Beazley we have a leader of integrity and substance. Labor’s
leader rejects Mr Howard’s style of leadership, which is taking the art of political manipulation to new heights through pork-barrelling and absurdly expensive traditional media campaigns. It is with some satisfaction that we now observe that at least some voters around the country are beginning to see through these shallow campaigns. I am further heartened by the recent poll in Ryan, which indicates that young people have rejected the empty rhetoric of the conservatives—with plenty of justification.

The Howard government has made life worse for young Australians. It has created division within our society, governed Australia into a looming recession with a damaged economy and is arrogantly out of touch with grassroots youth—not to mention the rest of the nation. This is not a good report card for the coalition’s years of government.

It is a damning indictment that this report has been brought to the public’s attention only through the diligence of the Labor opposition during Youth Week.

**Dairy Industry: Deregulation**

Senator WOODLEY (Queensland) (6.28 p.m.)—This evening I want to continue an inquiry into the relationship between banks and farmers, which began with the last lot of estimates hearings of the Rural and Regional Affairs and Transport Legislation Committee. It is a serious issue which I intend to speak to the Senate about at greater length in the future, but I want to raise a number of issues this evening.

At the estimates committee, at least three senators raised problems with the relationship between banks and dairy farmers from their own experience and from what they had been told. A couple of problems were raised. One was that there seems to be a program by banks, before the farmers get any benefit from it at all, to access all of the funds that have been made available through the structural adjustment program. As senators would know, this program was put in place by the government to make sure that farmers could adjust their farming practice either to leave dairy farming or to rearrange their farms so that they could increase production and stay in farming. One accusation that was made was that banks were not allowing this to happen but were insisting, where farmers had debts, that the bank access the whole of the package.

Another claim made by senators in the estimates committee was that banks are now charging excess interest rates on loans to dairy farmers. When this evidence was given and I was asked by the media to make some comment on it, which I did, I was approached by a number of banks to provide evidence of what had been happening. I did this. In fact, I rang a number of farmers, who gave me evidence—both documentary as well as telling me of their own experiences—I rang a number of financial counsellors, who confirmed the same evidence, and I rang one solicitor, who was acting on behalf of one of the farmers. A number of claims were made, and a lot of these claims have been backed up by documentary evidence that has been given to me.

One of the claims was confirmed in a whole number of quarters, and that was that banks have been accessing and taking all of the Dairy Structural Adjustment Program money that has been given to farmers. Sometimes that money does not even reach the farmers, because the banks access it before the farmers even have a chance to see it. Another claim made was that, in a number of cases, banks are sending their own valuers along to farms against which the bank has a debt, and the valuations by the bank’s valuer are way below market value. But then the valuation is being used as a reserve price at a fire sale, because all the bank wants is to cover its debt, and the farmers are being left with nothing. That is another action that is claimed to be happening. Another problem is delay in processing the package. It is claimed that, although the banks are given guarantees by the Dairy Adjustment Authority and should be able to process the amount of the structural adjustment package within five days, it is taking up to three weeks before the banks do process the money that should be in the farmer’s pocket.

In order to try to deal with some of these issues, I have sought to negotiate with one bank for the last two weeks. I have been attempting to do this on behalf of farmers who were willing—reluctantly, I might say—to
meet with and put their proposition to offi-
cials from that bank. I have discovered that
what the banks have been doing over the last
two weeks—during which I have been mak-
ing phone call after phone call, day after day,
trying to make an appointment—is trying to
identify the farmer who has been willing to
meet with them. There has been, I believe, a
lack of good faith on behalf of the banks in
seeking to do this.

I wanted simply to put on the record to-
night that this is an issue that will not go
away. I intend to pursue it. I intend to table
documentation in the next sitting of parlia-
ment. This is an issue that causes me great
distress—as, of course, it causes great dis-
tress to the farmers who are affected. So I
thank the Senate for the opportunity to do
this.

Northern Territory: Government Support

Senator TAMBLING (Northern Terri-
tyory—Parliamentary Secretary to the Minis-
ter for Health and Aged Care) (6.34 p.m.)—
Let me talk positively about government sup-
port for the Northern Territory, because
Senator Crossin certainly had selective
memory in her debate on 29 March when it
came to identifying the significant contribu-
tion that this government has made to the
Northern Territory. In fact, the Northern Ter-
ritory has benefited, and continues to benefit,
significantly in many areas. Firstly, there is
the significant funding contribution that the
federal government makes to the Northern
Territory as a whole. Senator Crossin may
prefer to spend her money on irrelevant os-
tentatious monuments to the ALP, but the
coalition is spending taxpayers’ hard earned
money on health care programs and educa-
tion, employment and defence initiatives.
Examples of these worthwhile initiatives
include Networking the Nation; the Regional
Solutions Program; the Stronger Families
and Communities Program; aged and dis-
ability carer support; programs for parenting
skills; the Regional Health Services Pro-
gram; the numeracy and literacy plan; and
New Apprenticeships. The list is endless. I
could go on for ages, but I am sure that you
get the drift that is obvious.

I must say that, for all of Senator
Crossin’s posturing about the railway, the
fact remains that the Howard government
has delivered where Bob Hawke, probably
now crying into his cafe latte, could not. He
can now sip his latte while watching this
great development for Territorians go ahead.
As for the need for the proposed migrant
detention centre, consider the position of
residents on Christmas Island—or has Sena-
tor Crossin forgotten that the island is part of
her constituency?—who are faced with a
frequent stream of new arrivals, ferried by
people smugglers of South-East Asia and the
Middle East. I would draw the attention of
senators to the recent announcement that
potential sites for the new immigration de-
tention facility in Darwin are being identi-
ﬁed. This is also an important capital works
project.

On the issue of the GST, once again
Senator Crossin is using alarmist arguments
to talk down the Northern Territory economy
and undermine the self conﬁdence of Terri-
torians. I, for one, will not tolerate this sort
of affront on my fellow Territorians. Senator
Crossin alleges that we are undergoing a
GST induced recession as if we have fallen
headlong into depression. I suppose Senator
Crossin, as a member of the ALP, should
have a good understanding of recession.
After all, the coalition worked long and hard to
pull Australia out of the ‘recession we had to
have’, courtesy of Paul Keating.

Let me remind Senator Crossin that recent
reductions in mortgage interest rates contrast
sharply with the high interest rates during the
last year of the Labor government. Five
years ago, when this government came into
ofﬁce, the interest rates were 10½ per cent,
and they peaked at a crippling 17 per cent
under Labor. The saving at today’s mortgage
rate of 6.8 per cent compared to Labor’s
peak of 17 per cent is a miraculous achieve-
ment. Territory homeowners and businesses
are certainly better off because of the lower
interest rates. Senator Crossin conveniently
forgets that GST revenue goes back to the
states and territories for programs to provide
new opportunities for Territorians—opportu-
nities that improve the standard of living for
all Territorians.

On the issue of cheaper fuel, Senator
Crossin has put words into the mouths of
myself and my coalition colleagues. We have never claimed to provide cheaper petrol prices, but we were adamant that the impact of the GST would not push costs up. We have worked hard to deliver on that promise. There is the diesel fuel grant and the fuel sales grant for people in the bush. And when oil companies and overseas fuel prices persisted in keeping petrol prices at an unacceptable level, the coalition government listened and acted with two further initiatives: cutting fuel excise and eliminating the CPI-linked indexation. How quickly Senator Crossin forgets, particularly the fact that Labor in office increased excise from 6.15c per litre to 34.18c per litre—an increase of 28c a litre.

As for my bet with ABC radio presenter Fred McCue, I did settle up on my bet. While I maintained that the GST did not force up prices, as an act of goodwill because of the overseas price increases, I gave Fred that slab on 21 August 2000. Senator Crossin owes me an apology on that one. Not only does she have a short memory, but once again it is selective as well.

Senator Crossin is right in saying that the Territory regularly records higher prices for many food items compared to the other states. This reflects the Territory’s small market size, lower levels of competition and higher freight costs. However, with the growing and maturing transportation links to the Territory, this gap has narrowed. In 1993—in the Labor years—the relative cost of living faced by wage and salary earners in Darwin, Perth and Sydney were compared. The conclusion was that overall prices in Darwin were higher than in Perth and Sydney by six per cent and three per cent respectively. However, in December 2000, overall prices in Darwin were 3.9 per cent higher than in Perth and level with Sydney. This indicates that the gap is narrowing.

A major consideration for Senator Crossin is that the lifestyle in the Northern Territory is very amenable to a good shared family life. She herself is a refugee from the Melbourne rat race. The chamber might like to know why Senator Crossin made the move from Victoria to the Northern Territory all those years ago. Could I suggest that it was to get away from the economic mismanagement of the likes of Cain and Kirner and to the stability of a CLP government?

On 9 March the Prime Minister announced a very welcome initiative to provide practical assistance to our building industry. This government will increase the grant available under the First Home Owners Scheme from $7,000 to $14,000 for first home buyers. Once again the Prime Minister has listened and acted to assist the crucial building sector. What a welcome for Territorians! This new initiative, coupled with the first home buyers initiatives offered by the Northern Territory government, is surely a wonderful opportunity for Territorians to make a start in life. It is also a welcome boost for the construction industry, which has moved in a positive direction since this announcement.

The Defence Force is also a significant industry in the Territory, and it provides infrastructure projects to our construction industry regularly. The recent announcement of a $27 million apartment complex in Darwin City is nothing to be sneezed at and a welcome boost for the Territory’s construction industry. Contrary to what Senator Crossin says, there is no better time than now to build or buy in the Northern Territory. I believe the population figures—Palmerston being the fastest growing city—as well as figures on Defence personnel and their families put paid to her claims that the Northern Territory is in stagnation.

I would like to draw the Senate’s attention to the massive amount of positive programs and incentives being implemented by the federal government in the Northern Territory in many areas, such as Aboriginal health, education, employment and housing assistance, and guaranteeing that our youth are being provided with assistance for their future in areas of numeracy and literacy, plus employment initiatives such as the New Apprenticeships scheme and Green Corps. Aged and community care facilities are an important factor for Territorians, with additional assistance being provided for aged care homes, HACC packages, rehabilitation services and in-home care places. The government supports a family commitment
through initiatives such as extra child-care centres and increased family day care assistance, child abuse prevention, disability and carer support, parenting skills programs, child nutrition programs, and funding for action on petrol sniffing and substance abuse.

To assist the Senate assess the Howard government’s support for work in progress in the Northern Territory, I seek leave to incorporate a table of 330 projects and initiatives currently under way.

Leave granted.

The table read as follows—

**CURRENT FEDERAL ISSUES IMPACTING ON THE NORTHERN TERRITORY**

April 2001

<table>
<thead>
<tr>
<th>Department</th>
<th>*Approx. Annual Budget</th>
<th>*Number of Employees</th>
<th>Current Focus</th>
<th>Challenges</th>
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</thead>
<tbody>
<tr>
<td>ABORIGINAL HOSTELS LTD</td>
<td>$9.4 million</td>
<td>154 employees</td>
<td>Aboriginal accommodation requirements</td>
<td>Identifying the needs of Aboriginal communities</td>
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<td>AIR SERVICES AUSTRALIA</td>
<td>$7.5 million</td>
<td>69 employees</td>
<td>Air traffic control services</td>
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<td>ATSIC</td>
<td>$200 million</td>
<td>149 employees</td>
<td>National Aboriginal Housing Strategy (NAHS)</td>
<td>Land Council administration</td>
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<td>CDEP and joint venture projects</td>
<td>Amendments to Aboriginal Land Rights Act NT</td>
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<td>Army infrastructure projects at communities</td>
<td>Alcohol and substance abuse</td>
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<td>Tiwi Land Council</td>
<td>Violence problems</td>
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<td>LGIP $100,000 for Tiwi Assembly Needs Plan</td>
<td>Kenbi land claim (Cox Peninsula)</td>
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<td>Northern Land Council</td>
<td>Sea claims</td>
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<td>Central Land Council</td>
<td>Aboriginal employment and education</td>
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<td>Anindilyakwa Land Council</td>
<td>Community store management</td>
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<td>Aboriginal Benefits Reserve</td>
<td>Groote Eylandt social problems</td>
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<td>Aboriginal Land Commissioner</td>
<td>Pastoral Properties</td>
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<td>Remote Communities Program $1.5m</td>
<td>Treaties</td>
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<td>ATTORNEY –GENERAL’S DEPARTMENT</td>
<td>$8 million</td>
<td>67 employees</td>
<td>Legal Aid funding for fishing claims</td>
<td>Universal obligation to rural and remote communities</td>
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<td>NT Courts</td>
<td>Postal Charges to remote NT stations</td>
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<td>Equal Opportunity Commission</td>
<td>Rural news</td>
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<td>AFP presence in the NT</td>
<td>Towers for remote transmission</td>
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<td>Australian Industrial Registry</td>
<td>Decrease in Science Programs</td>
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<td>Insolvency and Trustee Service</td>
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<td>AUSTRALIA POST</td>
<td>$23 million</td>
<td>212 employees</td>
<td>Postal services incl industrial areas</td>
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<td>Postal reform</td>
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<td>AUSTRALIAN BROADCASTING CORPORATION</td>
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<td>Development of educational programs</td>
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<td>Services in East Timor/Indonesia</td>
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<td>Radio Australia</td>
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<td>Department</td>
<td>Current Focus</td>
<td>Challenges</td>
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<td>AUSTRALIAN BUREAU OF STATISTICS</td>
<td>National Centre for Aboriginal and Torres Strait Islander Statistics (NCATSIS) – Darwin</td>
<td>Funding Issues</td>
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<td>Additional $581,000 for 2000/2001 Census</td>
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<td>AUSTRALIAN COMPETITION AND CONSUMER COMMISSION</td>
<td>Monitoring of price controls</td>
<td>Impact of GST issues</td>
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<td></td>
<td>Investigation of price exploitation</td>
<td>Investigation of companies withholding savings under New Tax System</td>
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<td>Targeting transport companies</td>
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<td>AUSTRALIAN CUSTOMS SERVICE</td>
<td>Coastwatch</td>
<td>Illegal fishing (apprehensions)</td>
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<td>New multi-million dollar customs vessel</td>
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<td>Customs information centre in Darwin</td>
<td>GST implementation issues</td>
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<td>BATCHELOR INSTITUTE</td>
<td>Payment of taxes</td>
<td>Lodgement &amp; revamping of the Business Activity Statement (BAS) for small business</td>
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<td>Assistance to small business, community organisations and individuals with implementation of New Tax System</td>
<td>Tax Effective Schemes</td>
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<td>Tenders and procurements</td>
<td>Funding issues</td>
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<td>CENTRELINK</td>
<td>Indigenous education</td>
<td>Alice Springs proposal – capital works</td>
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<td>1700 students</td>
<td>ABSTUDY</td>
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<td>BUREAU OF METEOROLOGY</td>
<td>Recording meteorological events</td>
<td>Agencies in remote communities</td>
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<td>Cyclone monitoring</td>
<td>Social security fraud and non-compliance</td>
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<td>Issuing of warnings for storms, optimum conditions for wildfires</td>
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<td>CENTRELINK</td>
<td>ABSTUDY – national centre in the NT</td>
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<td>Trust and company legislation</td>
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<td>Jobseekers and mutual obligation</td>
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<td>Preparing for Work programs</td>
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<td>Payments for low income earners and others</td>
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<td>Disability and carers</td>
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<td>Specialist youth services</td>
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<td>Rural and remote visiting service</td>
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<td>ATSIC support</td>
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<td>Assistance for migrants</td>
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<td>CHILD SUPPORT AGENCY</td>
<td>New Palmerston call centre</td>
<td>Collecting payments from non-custodial parents</td>
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<td>Pension payments</td>
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<td>Additional staff in NT Office</td>
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<td>Guidance for parents in meeting their financial responsibilities to children</td>
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<td>Payment programs for parents</td>
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<td>Reform program</td>
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<td>New CSA ‘one-stop shops’ in Darwin and Alice Springs</td>
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<td>CIVIL AVIATION SAFETY AUTHORITY</td>
<td>New office established in Darwin with five staff</td>
<td>Time constraints</td>
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<td>Aircraft regulation and safety</td>
<td>Improved facilities</td>
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<td>CSIRO</td>
<td>Research into remote sensing</td>
<td>Increased efficiency</td>
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<td>Geographic mapping</td>
<td>IT outsourcing</td>
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<td>Arid zone research</td>
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<td>Cooperative Research Centre</td>
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<td>DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY</td>
<td>AQIS – quarantine and inspection services</td>
<td>AQIS operations</td>
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<td>Animal and plant health</td>
<td>Concerns re the importation of foreign diseases via foods, plants and animals</td>
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<td>Food and agriculture</td>
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<td>Fisheries and forestry research</td>
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<td>Trade and international policy</td>
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<td>Natural resource management</td>
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<td>Public education programs</td>
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<td>DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS</td>
<td>Networking The Nation – Xmas/Cocos recently received $280,000</td>
<td>Mobile coverage on major highways</td>
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<td>Outback Digital Network</td>
<td>Internet gambling</td>
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<td>Building Additional Rural Networks (BARN)</td>
<td>Cox Peninsula transmitter</td>
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<td>Remote communications satellite trials in NT</td>
<td>Issues relating to the full sale of Telstra</td>
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<td>Internet Access – LGANT received $713,000 to provide 23 community councils with Internet hardware and software</td>
<td>Television Black Spots eradication</td>
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<td>Australian art industry support – Report</td>
<td>CDMA network coverage</td>
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<td>IT incubator</td>
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<td>Araluen Centre in ASP (capital works)</td>
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<td>Australia Council grants</td>
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<td>Australian Communications Authority - $729,000</td>
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<td>Regional Telecommunications Infrastructure Fund (RTIF)</td>
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<td>DEPARTMENT OF DEFENCE</td>
<td><strong>Current Focus</strong></td>
<td><strong>Challenges</strong></td>
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</table>
| * Approx. Annual Budget $396 m                  | White Paper implications, especially on capital works  
- more resources – cadets/reserves  
- boost to equipment, NT capability  
Ready response group in NT (Darwin-based soldiers)  
14,000-15,000 defence in the NT (including families – boost to economy)  
East Timor effort support  
RAAF Tindal, Delamere and Bradshaw proposed construction works  
Pine Gap facility – estimated funding of $100 million with 900 employees  
Robertson Barracks  
Capital projects in the NT  
Army infrastructure initiative for housing and infrastructure at Aboriginal communities  
Resettlement program & support for Defence members and families into the NT | Employee entitlements and fringe benefits  
Defence Housing – future requirements/Carey Street development $27.5m  
Introduction and use of AIDN services |
| * Number of Employees 4947 employees           |                                                                                                                                                                                                            |                                                                                                                                                           |
| *This figure is separate to funding for the Pine Gap facility |                                                                                                                                                                                                            |                                                                                                                                                           |
| DEPARTMENT OF EDUCATION, TRAINING AND YOUTH AFFAIRS | **Current Focus**                                                                                                                                                                                            | **Challenges**                                                                                |
| * Approx. Annual Budget $107 m                  | Green Corps projects  
Green Reserves project launch  
Indigenous school to work transition program  
Numeracy and literacy programs  
Aboriginal literacy and numeracy  
New learning centre for Aboriginal people in Alice Springs  
New Apprenticeships Access program  
Small business development  
National Youth Roundtable – NT reps  
School infrastructure – capital works funding to include remote communities  
School programs, awards and presentations/visits to Parl House in Canb  
Funding for new pre-schools  
Updating of teacher skills  
Austudy  
Funding of private schools | Funding of private schools  
Development of career paths for indigenous teachers' assistants |
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<th>Department</th>
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<tr>
<td>AND SMALL BUSINESS</td>
<td>Job Pathways</td>
<td>and rural communities</td>
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<tr>
<td>$14 million</td>
<td>Indigenous Employment Program</td>
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<td>41 employees</td>
<td>Regional Assistance Programs</td>
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<td></td>
<td>Indigenous Small Business Fund</td>
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<td>Small Business Enterprise Culture Program</td>
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<td>Small Business Incubators</td>
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<td>STEP Programs (various in the NT)</td>
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<td>DEPARTMENT OF ENVIRONMENT &amp; HERITAGE</td>
<td>The Aust Greenhouse Office</td>
<td>Impact of Tourism in NT Parks</td>
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<td>$45 million</td>
<td>Parks Australia – management of national parks in the Northern Territory (Jabiru &amp; Uluru)</td>
<td>Management of Mining Residues and clean-up</td>
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<td>279 employees</td>
<td>Clean Seas initiative</td>
<td>Photography permits in National Parks</td>
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<td>Northern Territory Planning Issues</td>
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<td>DEPARTMENT OF FAMILY AND COMMUNITY SERVICES</td>
<td>Stronger Families &amp; Communities Program</td>
<td>Aboriginal parental responsibility and support</td>
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<td>$65 million</td>
<td>Family &amp; Community Networks Program</td>
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<tr>
<td>17 employees</td>
<td>Aged/disability/carer support</td>
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<td>New Disability employment service in East Arnhem</td>
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<td>Child abuse prevention (Early Intervention Parenting Project) - YWCA &amp; Playgroup NT</td>
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<td>Good Beginnings Volunteer Home in Katherine – prevention of child abuse funds</td>
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<td>Parenting skills Programme</td>
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<td>Welfare reform – mutual obligation</td>
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<td>Regional Solutions program – eg: Woolaning community</td>
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<td>Child care payments</td>
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<td>Comparable Foreign Payments (pensions)</td>
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<td>New child care centres for urban and remote areas – Katherine $91,026</td>
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<td>Reconnect Program for homeless/at risk children – new Anglicare Service</td>
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<td>Commonwealth Rehabilitation Services - $3 million for 2000/2001</td>
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<td>Social Security Appeals Tribunal - $195,000 for 2000/2001</td>
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<td>10 Family Day Care places at Mandorah recently announced</td>
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<td>15 new In-home care places – Darwin</td>
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<td>Increase in Pension payments</td>
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<td>DEPARTMENT OF FINANCE AND ADMINISTRATION</td>
<td>Australian Electoral Commission</td>
<td>MPs’ entitlements</td>
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<tr>
<td>*Approx. Annual Budget</td>
<td>Electoral roll</td>
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<td>*Number of Employees</td>
<td>Industrial elections</td>
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<td>School and community programs</td>
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<td>Natural Disaster Relief</td>
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<td>$9 million</td>
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<td>13 employees</td>
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<td>DEPARTMENT OF FOREIGN AFFAIRS AND TRADE</td>
<td>Youth Ambassadors Scheme</td>
<td>Australian-Indonesian trade and political relationship</td>
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<td>*Approx. Annual Budget</td>
<td>East Timor mission</td>
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<td>*Number of Employees</td>
<td>EMDG scheme</td>
<td>East Timor reconstruction</td>
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<td>Ausaid</td>
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<td>Austrade</td>
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<td>NT Agencies in overseas aid programs</td>
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<td>Coordinated Care Trials – Tiwi and Katherine West</td>
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<td>DEPARTMENT OF HEALTH AND AGED CARE</td>
<td>Aged and Community Care facilities, packages and infrastructure, including HACC packages</td>
<td>Aboriginal health</td>
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<td>Aged Care Accreditations</td>
<td>Child nutrition</td>
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<td>ASTPRA (Advanced Special Training Posts in Rural Areas)</td>
<td>Substance abuse – Petrol Sniffing programs</td>
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<td></td>
<td>Office of Aboriginal and Torres Strait Islander Health – capital and recurrent funding for programs in remote NT comms</td>
<td>Preventative and public health</td>
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<td>CAPPs – alcohol abuse rehab program</td>
<td>Lack of aged care places in Darwin</td>
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<td>Suicide prevention</td>
<td>Implementation of residential beds</td>
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<td>Community Partnerships Agreement</td>
<td>Needle exchange program for Palmerston – mobile unit</td>
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<td>Rural health spending</td>
<td>Centre for Remote Health – new building in Alice Springs</td>
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<td>$69 million under Health Care Agreements for NT hospitals with NT Government – recurrent funding</td>
<td>Remote Area Nursing conditions</td>
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<td>National Child Nutrition Program</td>
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<td>Rural Clinical Schools – Darwin/ASP/Katherine/Gove</td>
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<td>Remote Communities Initiative - $1.5m</td>
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<td>Regional Health Services Program – Katherine $35,000</td>
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<td>Rural Doctors</td>
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<td>Medicare Rebates</td>
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<td>Tough on Drugs campaign</td>
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<td>Petrol Sniffing assistance $150,000 for pilot programme – 2001</td>
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<td>Current Focus</td>
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<td>Breast Care Nurse support $355,000</td>
<td>Alcohol rehabilitation projects</td>
<td>Bush cancer support</td>
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<td>DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AFFAIRS</td>
<td>$5 million</td>
<td>Processing immigrants to Australia</td>
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<td>25 employees</td>
<td>Migrant/humanitarian settlement program</td>
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<td>Overseas students</td>
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<td>Minister’s community forums</td>
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<td>Aust Nuclear Science and Technology Off</td>
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<td>Australian Sports Commission - $423,000 for 2000/2001</td>
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<td>Scientific and Industrial Research - $1.6 million for 2000/2001</td>
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<td>Oil and gas projects – Timor Sea</td>
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<td>Ranger uranium mine</td>
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<td>New Darwin based CRC for Tropical Savannas Management</td>
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<td>DEPARTMENT OF INDUSTRY, SCIENCE AND RESOURCES</td>
<td>$5 million</td>
<td>Roads to Recovery</td>
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<td>$5m per annum for 4 years</td>
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<td>Road funding - $24.95m for the construction and maintenance of the national highway in NT for 2000/2001</td>
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<td>Alice-Darwin Railway - $165 million allocated to Darwin and Alice Springs Airports</td>
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<td>Black Spots Program - $459,020 allocated to NT for 2000/2001 and $3 million for 2002</td>
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<td>Outback east-west highway development</td>
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<td>Remote Air Services Subsidy (RASS) - $31,234 per month for 2000/2001</td>
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<td>Rural Domestic Violence Program (RDVP)</td>
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<td>Rural Transaction Centres – 15 in NT receiving funding</td>
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<td>Local Government Incentive Program</td>
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<td>Local Government Development Program</td>
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<td>Supermarket to Asia initiative</td>
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<td>Regional Assistance Program</td>
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<td>Australian Maritime Safety Authority</td>
<td>$611,000, plus $1.1 million for 2000/2001 Northern Summit – Katherine Administration of Christmas Island and Cocos (Keeling) Islands New pensioner airfare subsidy scheme for Xmas/Cocos Islands</td>
<td>Pilot payment system in doctors’ surgeries</td>
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<td>HEALTH INSURANCE COMMISSION</td>
<td>Medicare benefits Easyclaim mobile claims in pharmacies</td>
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<td>MENZIES SCHOOL OF HEALTH RESEARCH</td>
<td>Cooperative research centre for Aboriginal and tropical health Public health education and research International health program</td>
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<td>NATIONAL ARCHIVES OF AUSTRALIA</td>
<td>Preservation of Commonwealth records</td>
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<tr>
<td>NT UNIVERSITY</td>
<td>Operating grants, academic support and student services Research funds Specific purpose grants Overseas students</td>
<td>NARU closure</td>
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<tr>
<td>OFFICE OF THE SUPERVISING SCIENTIST</td>
<td>Supervision of uranium mining activity Environmental monitoring and supervision Landcare</td>
<td>Jabiluka/Ranger mine environmental issues</td>
</tr>
<tr>
<td>PRIME MINISTER AND CABINET</td>
<td>Australian Institute of Aboriginal and Torres Strait Islander Studies - $290,000 Indigenous Land Corporation - $894,000 First Home Owners grant doubled</td>
<td>Issues relating to the full sale of Telstra Mobile coverage on major highways Internet services for the bush and distance education Telephone services in rural and</td>
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</table>
Senator TAMBLING—Any study of this list makes a mockery of the statements by Senator Crossin that nothing worth while is attributable to the Howard government in the Northern Territory. Unfortunately, Senator Crossin has not yet repudiated the insidious comments of her hero, ALP Prime Minister Paul Keating, who publicly stated that the Northern Territory was the place to fly over on the way to Paris.

It is vital to the economic stability of the Northern Territory that we encourage development of new industries for the Northern Territory, such as tourism, manufacturing, the recently announced oil and gas projects, and of course the services sector. This is essential to the further growth of the Northern Territory. The encouragement of positive growth in this area makes Senator Crossin’s negative comments and ‘helpless hand-out’ attitude about federal support for the Territory irrelevant and redundant. We are a ‘can-do’ government and we are willing to help people have a go and realise their dreams. The only one out of touch is Senator Crossin. She is carping and negative, and it is fortunate that we do not have people with that kind of attitude in government. She is out of touch with what is going on in her own electorate.

Bellringing
Centenary of Federation

Senator BARTLETT (Queensland) (6.43 p.m.)—Tonight I would like to speak about a group of volunteers who perform an often unrecognised but important and specialised service in Australia. It is appropriate, in what I think will be the last speech in this place before we convene for the centenary sittings in Melbourne, to speak on this topic. I am talking about the role the bellringers of Australia play. In this, the year of the Centenary of Federation and the Year of the Volunteer, the group of volunteers who are the bellringers around Australia deserve some note. On 1 January this year the Ringing the Bells event occurred, when all the towers in Australia joined together to ring at the same time to celebrate the Centenary of Federation. Of course, we as a parliament are meeting in Melbourne next month for that same purpose—to celebrate the centenary of the first sitting of parliament in Melbourne in 1901. Bells have been part of Australia since the early days, with the first peal arriving in 1795 for St Philip’s Church in Sydney. These bells were chimed only, as was the set of eight bells that arrived for St Mary’s Cathedral in 1843. The first bells to be rung full circle were those at Holy Trinity Church in...
Hobart in 1847. These bells were refurbished in 1987 and still are being rung.

For the uninitiated, full circle ringing is where the bell is hung in such a way as to ring a full circle of 360 degrees with each stroke from upright position to upright position. When rung in this way, the ringer can, to some extent, control the position where the bell is rung in relation to other bells, thus allowing the bells to be rung in precisely ordered patterns. The bells do not ring tunes but follow specific mathematical patterns. Thus, although music is produced, musical skill is not necessarily needed; rather, what is needed is some appreciation of the mathematical pattern as well as a degree of physical strength and coordination, a sense of timing, an ability to work as a team and an ability to concentrate for a reasonable length of time. In other words, it is a hobby that quite well combines physical and mental activity and has the added benefit of providing a service to the community. In change-ringing there is always a team of ringers and teamwork is vital. Full circle ringing was developed in England with the technique definitely used by 1600, reputedly first in Cambridge. Other types of ringing that occur in Australia include handbell ringing, sometimes tunes and sometimes through call changes, and ringing from carillons.

Traditionally, bells were used to call people to worship, the bells being placed at the front of the church to help drive away the devil. Perhaps we could put a few bells at the front of the ministerial wing of Parliament House! That might lead to a bit of an improvement in the quality of government! Before the days of mass communication bells were also used to signify local danger such as flood or invasion. Nowadays bells are still used to summon to worship but also are commonly used at times of public celebration, such as at the end of World War II, and public commemoration, such as the recent Centenary of Federation events. They are also used to mark weddings and funerals, such as the memorial service for Sir Don Bradman and other public figures. All this is done on a voluntary basis for the church and the general community. It is a service which is, I think, often not recognised. I suspect some Australians assume that the bells that ring out in many places simply are tape recordings.

The type of people who do bellringing varies greatly. For example, at St John’s Cathedral in Brisbane the team of bellringers and volunteer bellringers who have been working there for many years currently include school and tertiary students, a contract cleaner, an electronics engineer, an accountant, a medical practitioner, a director of education, a public servant, a chemistry lecturer, a mathematician, a nursing sister and a psychologist. They are people from many walks of life. The youngest ringer is 12 years old and has already been ringing for a couple of years. Basically, people can start to learn as soon as they can reach a rope and have the strength to control the bell. And there certainly is no upper age limit: all that is required is the ability to get up the stairs to the belltower.

Currently there are 46 towers throughout Australia where change-ringing is done. Only three of them are in my own state of Queensland: two in Brisbane and one in Maryborough. There are 18 in New South Wales, five in South Australia, two in Tasmania, 12 in Victoria and seven in Western Australia. The majority are in capital cities but there are many in country areas. For example, the newest tower is at All Saints Church in Singleton, with the first peal ringing on Australia Day this year. The number of bells in a tower—a peal—can vary from six to 16 bells. The recently opened Swan Bells in Perth is the largest peal in the world or, to put it in another perspective, the largest musical instrument in the world. Change-ringing is a worldwide phenomena with towers in the UK, the USA, the Irish Republic, Canada, South Africa and Northern Italy, so there is a worldwide community of volunteers who carry on this tradition and celebrate it with great enthusiasm.

I think it is appropriate in the Year of the Volunteer and the Centenary of Federation to note the contribution that these volunteers make in carrying on what has long been a traditional activity. Obviously the activity revolves around churches but it has relevance to the broader community in many
ways as well. If people want more information there is an association of bellringers who celebrate and promote their art. There is a web site at www.anzab.org.au—that stands for Australia New Zealand Association of Bellringers—where a lot of information is available. I pay tribute to the volunteers that perform this community service and to the tradition that they continue to carry on in so many parts of Australia. I note the special role they have played, amongst so many others in the community in so many ways, in marking the great achievement of 100 years of Federation in Australia.

The ACTING DEPUTY PRESIDENT (Senator Calvert)—We have come to the end of a reasonably short but very tiring session. I am sure the President would want me to wish you all a very enjoyable and safe Easter. The Senate stands adjourned until 2.00 p.m. on Wednesday, 9 May 2001 in the Exhibition Building in Melbourne, 100 years after the first parliament sat in the Exhibition Building in Melbourne.

Senate adjourned at 6.51 p.m.

DOCUMENTS
Tabling
The following documents were tabled by the Clerk:

- Civil Aviation Act—Civil Aviation Regulations—Civil Aviation Orders—Directives—Part—


- Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].


- Taxation Ruling TR 2001/1.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Aged Care: Subsidies
(Question No. 2883)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 4 September 2000:

1. Can the Minister explain why the care subsidies increased by 8.7 per cent from the 2000-01 financial year to the 2001-02 financial year ($3 418 million to $3 716 million), yet are then only projected to increase by 4.6 per cent from 2001-02 to 2002-03 ($3 716 million to $3 890 million) and 3.3 per cent from 2002-03 to 2003-04 ($3 890 million to $4 018 million).

2. In the budgetary projections for residential care subsidies provided to Senate Estimates for the 2001-02, 2002-03 and 2003-04 financial years, what assumptions were made in relation to future indexation of care subsidies, the allocation of places and increases in resident dependency.

3. Can the Minister explain: (a) what proportion of the increase to funding in the 2001-02 financial year (8.7 per cent) is due to indexation of care subsidies; (b) what proportion of the increase is due to an increase in bed numbers; and (c) what proportion is due to the increasing dependency of residents.

4. Can the Minister explain: (a) what proportion of the increase to funding in the 2002-03 financial year (4.6 per cent) is due to indexation of care subsidies; (b) what proportion is due to an increase in bed numbers; and (c) what proportion is due to the increasing dependency of residents.

5. Can the Minister explain: (a) what proportion of the increase to funding in the 2003-04 financial year (3.3 per cent) is due to indexation of care subsidies; and (b) what proportion is due to an increase in bed numbers; and (c) what proportion is due to the increasing dependency of residents.

Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

1. The allocation of places for the calendar years 1999 and 2000 which totalled some 22,000 were allocated to make up for the 10,000 places the Auditor-General found the previous Labor Government had failed to make available. The variation in forward estimates highlighted in the question reflects the issuing of additional places to meet the ratio in the short term.

2. Estimates for residential aged care for 2001-02 and onwards take account of indexation of subsidy rates. The subsidy rates are indexed by a mix of movements in the CPI and Safety Net Adjustment decisions made by the Australian Industrial Relations Commission. The index is known as a Wage Cost Index and is consistent with whole of Government indexation arrangements introduced by the former Labor Government in 1995-96. The Wage Cost Index used in indexing residential aged care subsidies incorporates the Government’s forecasts of movements in wages and prices and as such is classified material. Identification of the individual components of the increases in the estimates would compromise the security of those Government forecasts.

3. See above.

4. See above.

5. See above.

Aged Care Complaints Commissioner
(Question No. 2885)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 4 September 2000:

1. Can the Minister indicate what funding has been allocated in the 2000-01 financial year and future years for the Aged Care Complaints Commissioner and his office.

2. What resources have been provided to the Complaints Commissioner (including staff, premises, travel allowance, etc).

3. (a) Under what terms has the Complaints Commissioner been employed (for example salary, conditions, period of office); and (b) is the Complaints Commissioner a full-time position; if not, what hours of duty are expected each week.
Can details be provided of the role and responsibility of the Complaints Commissioner.

How does the commissioner’s role relate to the responsibilities of: (a) the Commonwealth Ombudsman; (b) the Accreditation and Standards Agency; and (c) the department.

When did Mr Rob Knowles formally accept the position of the Complaints Commissioner.

Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

(1) and (2) Resources will include two staff members and office accommodation in Melbourne.

(3) (a) To be determined by the Remuneration Tribunal. The period of office is three years. (b) The position is part-time.

(4) The Commissioners’ role and responsibilities are as stated in Item 5 of the Committee Amendment Principles 2000 (No 1) which inserts s.10.34A to the Committee Principles.

(5) The Commissioner will operate within the scope of the amended Committee Principles.

(6) 31 August 2000.

Aged Care: Residential Facilities
(Question No. 2913)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 12 September 2000:

(1) Can the Minister identify all residential aged care facilities that have closed, with a sale of bed licences, from 1 January 1999 to date (ie, do not include closures where the provider retained the bed licences).

(2) In each case can the following details be provided: (a) the name of the closed facility; (b) the approved provider; (c) the location of the facility; and (d) the number of beds and whether the facility was certified.

Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

(1) In the process of accreditation, we saw 190 residential aged care homes either leave the system or be relocated.

(2) The information requested relating to the name of facilities and approved providers to which any places have been sold or transferred is considered to be protected information under Division 86 of the Aged Care Act 1997 (the Act). It relates to the commercial transactions of aged care services, the disclosure of which would be in breach of the statutory provisions of the Act.

Nursing Homes: Closures
(Question No. 2924)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 14 September 2000:

With reference to a response to a question in Senate Estimates (written question 136 of 1 December 1999) in which the Department provided information on the closure of nursing homes:

(1) Can the Minister provide an updated of this information, including all closures from 1 July 1999 to 12 September 2000.

(2) For each closure can the Minister indicate: (a) the date of the closure; (b) the number of beds affected; (c) the type of beds (high or low care); (d) the nature of the closure (sale of licenses, transfer of licenses, etc); (e) the location (suburb/town and postcode) to which any bed allocations have been transferred; and (f) the identity of any new provider (name of facility and approved provider).

(3) In relation to the information provided previously on closure from 1 July 1997 to 30 June 1999, can the Minister also indicate: (a) the date of each closure; (b) the type of bed affected; and (c) the identity of the provider to which any bed licenses were transferred.

Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

Refer to response to Question 2913.
Aged Care: Residential Facilities
(Question No. 2934)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 14 September 2000, with reference to the accreditation of residential aged care facilities:

(1) Has the Accreditation and Standards Agency been meeting the requirements under the Aged Care Act 1977 in relation to the timing of conducting site audits.

(2) (a) Can the Minister confirm that under the Accreditation Grant Principles the Agency must conduct a site audit of a facility within 17 weeks of receiving its application for accreditation; and (b) what proportion of site audits have been conducted within this time limit.

(3) What is the longest time between an application for accreditation being lodged and a site audit carried out.

(4) (a) Can the Accreditation and Standards Agency publish a list of all accredited facilities, their accreditation period (1 or 3 years) and their ratings in each standard outcome; and (b) why doesn’t the Agency publish this information as a standard practice.

(5) What procedures does the Agency have in place to ensure consistency in assessing accreditation standards.

(6) Does the Agency monitor assessment consistency across assessment teams and states; if so: (a) how is this done and (b) what levels of inconsistency have been found.

(7) Has the Agency taken any action to address inconsistencies in the assessment of the standards; if so: (a) what inconsistencies were identified; and (b) what action was taken.

(8) Can the Agency provide information on the proportion of commendable, satisfactory and unsatisfactory ratings in each state/territory.

(9) Can the Agency provide information on the proportion of one-year and three-year accreditations in each state/territory.

Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

(1) (2) and (3) Every service that applied for Accreditation by the due date was assessed against the Accreditation Standards and received their Accreditation decision prior to the 1 January 2001.

(4) (a) and (b) Accreditation decisions and a summary against the standards for each service are published on the Agency’s website.

(5) The Accreditation Grant Principles 1999 prescribe a standard framework for the accreditation process. A standard approved training course and registration process in aged care quality assessment has been developed for all assessors including the requirements for continuing professional development and comprehensive peer review.

(6) Yes. Feedback to the Agency from training, continuing professional development, peer review, service providers and other stakeholders is constantly applied to the Agency’s performance and development review process.

(7) See above.

(8) Information on the ratings against each of the standards is provided, for each service, on the Agency’s website.

(9) Information on the period of accreditation awarded for each service is provided on the Agency’s website.

Aged Care: Staff Development and Training
(Question No. 3116)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 16 October 2000:

(1) Can the Minister confirm what aged care standards apply to residential aged care facilities concerning staff development and training.
(2) In assessing facilities against those care standards, does the Standards Agency take into account the aged care competency standards developed by the Australian National Training Authority (ANTA) through the Community Services, Health and Education Industry Training Council (ITC).

(3) Are those competency standards formally recognised by the Standards Agency; if not: (a) why has the agency chosen not to recognise those outcomes-based competency standards identifying skills and knowledge used in the aged care sector; (b) when was this decision made and did the agency consult with the ANTA and relevant ITC over the possible use of these standards; and (c) what standards or guidelines does it use in assessing the aged care standards concerning staff development and training and what evidence does the agency use in assessing whether the care standards have been met.

(4) Does the Government consider that the competency standards and training package developed by the ITC are relevant to the aged care sector.

(5) Does the Government recommend that aged care facilities implement the competency standards and use the training package developed by ANTA.

Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

(1) The expected outcomes in the Accreditation Standards that deal particularly with staff development and training are 1.3, 2.3, 3.3, 4.3 and 1.6.

(2) In assessing a service for compliance with those expected outcomes, quality assessors review each individual service regarding education and staff development. Teams assess to ensure the service meets the expected outcome.

(3) (a) See (1), (b) Not applicable, (c) In assessing compliance with the expected outcomes relating to staff development and training in the Accreditation Standards, the Agency assessment includes consideration of:

- the needs of residents;
- the qualifications and experience of staff;
- the identified education needs of staff; and
- recruitment, selection, induction, training and performance management processes.

(4) and (5) National aged care competency standards can assist services to identify a baseline requirement for education and staff development, and can assist in the management of work performance. The Commonwealth requires facilities to have a skills mix appropriate to the care needs of the residents, and arrangements for the ongoing development of staff skills to ensure quality care continues to be delivered.

Wearne Hostel, Cottesloe, Perth

(Question No. 3163)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 8 November 2000:

(1) On what date was the decision not to accredit the Wearne Hostel in Cottesloe, Perth, originally made.

(2) On what date did the provider of that facility lodge an appeal against that decision.

(3) On what date was the decision to reject that appeal made (confirming that the facility will not be granted accreditation).

(4) What is the average length of time between the lodgement of such appeals and the determination of the matter.

(5) Has the facility reapplied for accreditation; if so, what is the status of that application.

(6) Was the original decision not to grant accreditation to the facility in part due to the condition of the building.

(7) Given the nature of the issues at fault in the facility, are the matters likely to be resolved prior to 1 January 2001, thereby allowing the facility to continue operating.
Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

(1) 14 August 2000.
(2) By letter dated 31 August 2000.
(3) 10 October 2000.
(4) Under section 2.33 of the Accreditation Grant Principles 1998, applicants may, within 14 days of being told of a decision not to accredit, apply for reconsideration of that decision. If the Agency receives a valid application it must consider various things specified in section 2.37 of the Principles, and under section 2.38(2) ‘must make its decision within 56 days after receiving the application’. Under section 2.39(1) of the Principles, the Agency must tell the applicant in writing of the decision, within 14 days after making the decision.
(5) Yes, the facility has reapplied for accreditation. The site audit was undertaken 13 to 14 November 2000 and as a result was accredited.
(6) No.
(7) Wearne Hostel has been accredited from 30 November 2000 to 26 October 2003.

Whistleblower Legislation
(Question No. 3175)

Senator Murray asked the Minister representing the Attorney-General, upon notice, on 27 November 2000:

(1) Is anything currently being done to develop comprehensive whistleblower legislation: if not: why not?
(2) If such legislation is being developed or contemplated, when is it likely to be introduced in Parliament?

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) The Public Service Act 1999, which commenced on 5 December 1999, introduced a whistleblowing scheme for the Commonwealth public sector. The Government’s more comprehensive whistleblowing policy is still under consideration.
(2) Not applicable.

Centrelink
(Question No. 3430)

Senator Brown asked the Minister representing the Minister for Employment Services, upon notice, on 22 February 2001:

(1) What are the rules that prevent Centrelink and similar employment agencies/providers giving part-time or casual workers the opportunity to try for full-time positions.
(2) What support does Centrelink and similar agencies offer under-employed people.

Senator Alston—The Minister for Employment, Workplace Relations and Small Business has provided the following answer to the honourable senator’s question:

(1) and (2) There are no rules preventing Centrelink from assisting people who are employed casually or part time to find full time positions. At Centrelink offices, all job seekers are able to use free, employment self help facilities including access to Australian Job Search (AJS) touch screen units which list job vacancies, personal computers and printers, photocopiers, facsimile machines, telephones and relevant newspapers as well as information on local Job Network members.
Job Network members may choose to provide services to assist any job seeker to find employment – including moving from part time to full time work. Job Matching fees, however, are not paid if the job seeker had already been working for 15 hours or more each week. With the exception of young unemployed job seekers or people returning to the workforce after a period as a carer, job seekers not in receipt of income support are ineligible to be referred to Job Search Training, New Enterprise Incentive Scheme and Intensive Assistance. Receipt of income support as an eligibility
criteria for those services is the Government’s means of targeting assistance to the most disadvantaged job seekers.

**Department of Family and Community Services: Fleet Vehicles**

*(Question No. 3458)*

**Senator Allison** asked the Minister for Family and Community Services, upon notice, on 27 February 2001:

With reference to the fuel efficiency of the departmental fleet:

1. How many cars does the department have in its fleet.
2. (a) How many new cars will be purchased or leased in the 2000-01 financial year; and (b) can details be provided of the make, size and horsepower.
3. How many new cars were purchased or leased in the 1999-2000 financial year; and (b) can details be provided of the make, size and horsepower.
4. How many cars in the fleet are fuelled by liquid petroleum gas (LPG), compressed natural gas (CNG) and petrol.
5. Does the agency use its own LPG or CNG refuelling stations; if so, how many are there of these.
6. Does the agency have a policy or strategy to reduce the fuel consumption of its car fleet; if so, can details be provided.
7. What is the fuel efficiency rating of all cars in the fleet.
8. How does the actual fuel consumption and mileage compare with that rating.
9. Nationally, what operating savings would have been achieved for the 1999-2000 financial year if all cars in the fleet were run on: (a) LPG; and (b) CNG

**Senator Vanstone**—The answer to the honourable senator’s question is as follows:

1. 1498 at 16 March 2001 in the Department of Family and Community Services (FaCS), Centrelink, CRS Australia, (CRS), the Australian Institute of Family Studies (AIFS), and the Social Security Appeals Tribunal (SSAT). The Child Support Agency (CSA) utilises vehicles leased by the Australian Taxation Office.

2. (a) 555.
   (b) It would be too onerous a task to list the make, size and horsepower of the 467 Centrelink vehicle fleet, which is generally made up of sedans and wagons in the 150-175kW range.

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<th>100-150kW</th>
<th>150-175kW</th>
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3. (a) 818.
   (b) It would be too onerous a task to list the make, size and horsepower of the 650 Centrelink vehicle fleet, which is generally made up of sedans and wagons in the 150-175kW range.

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<th>100-150kW</th>
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(4) Nil. Nil. 1498.

(5) No.

(6) FaCS and SSAT encourage the leasing of the most efficient vehicles. CRS has a strategy of fleet reduction. In the period since July 1996, a 62% reduction in vehicle fleet has been achieved (from 430 vehicles to the current number of 268 vehicles), AIFS investigates the options of alternative fuels when leasing/purchasing new vehicles; and Centrelink encourages the leasing of fuel efficient small vehicles. Details of small cars available for lease are provided to the area/team leasing the new vehicle. Vehicles are chosen for their appropriateness for the area and/or use.

(7) FaCS and SSAT – individual ratings vary from 8.5L/100km to 12.5L/100km, with the average 11.05L/100km, AIFS – fleet average is 11.75L/100km. CRS – individual vehicle ratings vary from 10.5L/100km to 12.0L/100km, with the average 11.5L/100km; and Centrelink – fleet average is 11.11L/100km.

(8) FaCS and SSAT - actual average fuel consumption is 10.56L/100km compared with an average of 11.05L/100km, AIFS – actual average fuel consumption is 11.79L/100km compared with 11.75L/100km, CRS – actual average fuel consumption is 10.77L/100km compared with 11.5L/100km; and Centrelink – actual average fuel consumption is 11.41L/100km compared with 11.11L/100km.

(9)(a) The information requested is not readily available because small and medium sized vehicles are generally considered unsuitable for converting to LPG due to the cost of conversion, the long payback period and lack of free space. Ignoring the cost of converting approximately 500 vehicles (around $2,000 per conversion) and assuming the price of petrol to be $0.80/L and LPG to be $0.40/L savings in fuel costs would have been around $105,000.

(b) The information requested is not readily available because small and medium sized vehicles are generally considered unsuitable for converting to CNG due to the cost of conversion, the long payback period and lack of free space. Ignoring the cost of converting approximately 500 vehicles (around $2,950 per conversion) and assuming the price of petrol to be $0.80/L and CNG to be $0.35/m3 savings in fuel costs would have been around $140,000.

Burma: International Labour Organisation Resolution
(Question No. 3482)

Senator Bourne asked the Minister representing the Minister for Foreign Affairs, upon notice, on 5 March 2001:

With reference to the International Labour Organisation (ILO) instruction to submit a report to the ILO Director-General by 15 February 2001.

(1) Can details be provided regarding what measures the Government has taken to implement the ILO resolution adopted in 2000.

(2) What is the total value of trade between Australia and Burma including exports, imports and investments.

(3) Can the Minister detail whether the following products, which have been identified by the ILO as using forced labour, prison labour, and or child labour, are imported from Burma: beans, bricks, furniture, rubber, woven products, coconut oil, fish, rice, sesame, sugar cane, carved wood products, cement, joss sticks, teak wood, cashew nuts, coffee, livestock, peanuts, shrimp, vegetables, poultry, eucalyptus wood, rocks, timber (sawed), chilli, corn, mustard, salt, soy-beans.

Senator Hill—The following is the answer to the honourable senator’s question:

(1) We have conducted a review of our relations with Burma aimed at determining if anything in that relationship extends or perpetuates Burma’s system of forced or compulsory labour. My colleague, Mr Abbott, has written to advise the Director-General of the ILO of the action we have taken. In the course of the review we requested formal written confirmation from our Embassy in Rangoon that no Government-funded programs in Burma contribute to the use of forced labour. We also asked for the Embassy’s views on the extent to which Australian companies, known to be working in Burma, would be compliant with the ILO Resolution. The Department advised me that AusAID has confirmed that Australian government-funded programs in Burma do not in any way contribute to the practice of forced labour.
We received written confirmation from the Embassy that they are unaware of any Australian firms engaging in activities in Burma which are linked with forced labour. They also advised Australian companies known to be working or investing in Burma of our review, recommending that they ensure their compliance with the resolution. The Embassy have advised us that only a very small number of companies operate in Burma, and that most of the Australian commercial activity in Burma is in the services sector, located in Rangoon. Neither this sector nor Rangoon itself, is a centre for forced labour. We are thus satisfied that nothing in our relations with Burma in any way perpetuates the practice of forced labour.

We have also taken constructive steps in other areas to encourage the Burmese authorities to tackle the abhorrent practice of forced labour. Our human rights initiative in Burma has raised the issue of forced labour. We funded two training workshops in Rangoon last year, the purpose of which was to contribute towards improved knowledge within Burma of international human rights standards. A workshop on human rights and responsibilities was held (twice) in Rangoon over the period 4-13 July for some 50 middle-level officials. A second workshop, “International Law Overview” was delivered in Burma in October. During this workshop, participants openly discussed sensitive issues including the issue of forced labour in Burma. We continue to believe it is important that the ILO and Burma re-engage on the issue of forced labour.

(2) The total value of trade between Australia and Burma is A$34 million, that is A$17 million imports and A$17 million exports. Burma is our 85th trading partner. Advice from our Embassy in Rangoon indicates that there have been no new FDI approvals from Australia in the past two years. Australia has had only limited relations with the Burmese Government since 1990. We have had a ban on defence exports in place since then, and we neither encourage nor discourage trade. There has been no change in that policy.

(3) The list of products in question 3 appears to be a list compiled by the International Confederation of Trade Unions (ICTFU) from information received from the Federation of Trade Unions - Burma. Nevertheless, we have checked departmental import data which is obtained from ABS files, and regularly updated. This data indicates that Australia only imports a few of the items listed in Question 3. While the ABS data does indicate that Australia imports clothing, textiles, fish, (fresh, chilled and frozen); crustaceans and worked wood products, we have received no evidence that any of these imports involve the use of forced labour, prison labour, and or child labour.

Immigration and Multicultural Affairs Portfolio: Parliament House Staff

Senator Faulkner asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 13 March 2001:

(1) How many Australian Public Service (APS) officers whose salary is being paid, either in whole or in part, by the department or any portfolio agency, are currently employed in any capacity in Parliament House (excluding all persons employed under the Members of Parliament (Staff) Act).

(2) For each of those persons currently employed in Parliament, and without naming those persons, please provide: (a) the capacity in which they are acting; (b) the senator’s or member’s office in which they are employed, or the functional area if they are employed in a parliamentary department; (c) the APS salary level paid to that person; and (d) the period of employment.

(3) Please provide the same details for any such persons not currently employed but who have been so employed at any time during the past year.

Senator Ellison—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator’s question:

(1) There are three staff of the Department of Immigration and Multicultural Affairs currently employed in Parliament House (excluding all persons employed under the Members of Parliament (Staff) Act).

(2) (a) Those staff are employed as Departmental Liaison Officers; (b) two are employed in the office of the Minister for Immigration and Multicultural Affairs, the Hon Philip Ruddock, and one in the office of the Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs, Senator Patterson; (c) they are all paid at the APS Executive Level 1 level plus a Parliamentary allowance in lieu of overtime; and (d) one of the staff has been so employed since 29 October 1998, one since 1 February 1999 and the other since 18 September 2000.
(3) One person was employed in Senator Patterson’s office for the year prior to the change of staff on 18 September 2000 as a Departmental Liaison Officer, paid as an APS Executive Level 1 plus Parliamentary Allowance.