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Wednesday, 20 June 2001

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (WILDLIFE PROTECTION) BILL 2001

In Committee

Consideration resumed from 19 June.

Senator BARTLETT (Queensland) (9.31 a.m.)—by leave—I move Democrats amendments Nos 80 to 82, 84 to 88 and 92:

(80) Schedule 1, item 11, page 61 (line 11), at the end of paragraph (d), add:
; or (v) the escape of a live plant.

(81) Schedule 1, item 11, page 61 (after line 19), after subsection (4), insert:

(4A) For the purposes of subsection (3), a person is taken to have allowed a plant to escape if:
(a) the plant has grown or propagated in the wild; and
(b) either:
(i) the person allowed the plant to escape; or
(ii) the person failed to take all reasonable measures to prevent the plant from growing or propagating in the wild.

(82) Schedule 1, item 11, page 61 (after line 23), at the end of section 303GF, add:

(6) If a person is convicted of an offence under this section, the Minister must:
(a) cancel the person’s permit under section 303GI; and
(b) not issue any permit under this Part to that person for a period of 10 years after the date on which the person was convicted of the offence.

(84) Schedule 1, item 11, page 66 (line 16), omit “and the person is reckless as to that fact”.

(85) Schedule 1, item 11, page 66 (lines 31 to 34), omit subsection (5).

(86) Schedule 1, item 11, page 67 (lines 56 and 57), omit “and the person is reckless as to that fact”.

(87) Schedule 1, item 11, page 67 (lines 15 to 18), omit subsection (7).

(88) Schedule 1, item 11, page 69 (after line 15), after subsection (3), insert:

(3A) A person is guilty of an offence if:
(a) the person exports or imports a live animal in a manner that subjects the animal to cruel treatment; and
(b) the animal is a CITES specimen.

Penalty: 500 penalty units.

(3B) A person is guilty of an offence if:
(a) the person exports a live animal in a manner that subjects the animal to cruel treatment; and
(b) the animal is a regulated native specimen.

Penalty: 500 penalty units.

(3C) A person is guilty of an offence if the person imports a live animal in a manner that subjects the animal to cruel treatment.

Penalty: 500 penalty units.

(3D) Strict liability applies to paragraphs (1)(a) and (b), (2)(a) and (b) and subsection (3).

Note: For strict liability, see section 6.1 of the Criminal Code.

(92) Schedule 1, page 87 (after line 22), after item 32, insert:

32A Paragraph 489(1)(a)
Omit “or 13”, substitute “, 13 or 13A”.

32B Paragraph 489(2A)(a)
Omit “or 13”, substitute “, 13 or 13A”.

These amendments relate to various offences and the action required when people contravene conditions of permits. They are fairly self-explanatory. I commend them to the Senate.

Senator BOLKUS (South Australia) (9.32 a.m.)—Given the hands-off approach of the government on these sets of amendments, the opposition indicate just that we go along with them, subject to the review process. Some of these penalties look draconian, and I would ask the minister to consider whether there may be some need for discretion—for
instance, under amendment (82), where we are talking about a withdrawal of permit for 10 years. That may be justifiable but there may be circumstances where a degree of discretion on the part of the minister is appropriate. This is probably not the best way to go about amending this legislation but, subject to us having time to review it between this house’s consideration of it and that of the House of Representatives, we will let this go through.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.33 a.m.)—Having had 24 hours, we are now in a slightly better position. Amendments (80) and (81), which extend existing offences to cover the breach of a condition which results in the release or escape of a live plant, seem to us to be okay. In the bill at the moment, it applies only to the escape of a live animal and there is no logical reason why it should not also cover plants. Amendment (82) provides that, if a person breaches permit conditions, the permit is automatically cancelled. The person cannot get another permit for 10 years. That seems to me to be unduly onerous. It may be that in some circumstances the person should not, but to put it in such absolute terms is unwise. In a practical sense, the consequence would be that governments would be likely to prosecute for minor offences. I would be pleased to hear Senator Bartlett’s response to that but, on the face of it, I would be opposed to that particular amendment.

I turn to amendments (84) to (87). Our bill contains an offence of the possession of an illegally imported specimen. The Democrats are seeking to remove the defence of reasonable excuse and the requirement that a person is reckless as to the fact that a specimen is a CITES specimen, or the mental element. I am yet to be convinced that it is a fair thing to remove the defence of reasonable excuse. I would not say that, in relation to wildlife offences, my record is one of being too lenient. I have increased a large number of penalties, you will recall, in relation to medicines used by some cultures utilising the parts of animals. We have reversed the onus of proof and have made a number of changes that some people might have even argued went too far.

To that background I nevertheless think that what the Democrats are suggesting in relation to these provisions is a touch unreasonable. On that basis, I am yet to be convinced on those changes as well. In relation to amendment (88), the government’s bill contains an offence for cruel treatment in the course of importation or exportation, but it only applies to regulated exports or imports—that is, those requiring a permit under the act. The Democrats amendment seeks to create a similar offence of strict liability, and to broaden the provisions to apply to all exports and imports, not just those regulated by the act. For example, the Democrats amendment would apply to the import of all live animals, but the bill does not otherwise regulate the import of all live animals.

For example, if you are importing a racehorse, you do not need a permit under this piece of legislation. I might think there should be a provision somewhere in the law that says that, if you treat the racehorse cruelly in its import, you might be committing some form of offence—but it does not seem appropriate under this piece of legislation, which is designed for a different set of circumstances. The Democrats are seeking to add a new concept to the legislation through the medium of these amendments, which, if treated as a single issue, might have some merit. But it seems to be inappropriately placed within this piece of legislation. Democrat amendment (92) extends the existing offence relating to false and misleading information to wildlife provisions, and that one seems to be reasonable.

The CHAIRMAN—Minister, are you wishing to vote different ways on some of these amendments? I am after your contribution because I am now a bit confused as to how I should put the question.

Senator HILL—Yes. It might be that Senator Bartlett wants to have another go at persuading me I am mistaken in some way, but otherwise I would prefer them to be voted on separately. I would prefer (80) and (81) as a single vote, (82) as a single vote,
to (88) as a single vote.

Senator BOLKUS (South Australia) (9.40 a.m.)—That is probably a bit too detailed. The minister has picked up the concerns that I was expressing in respect of (82) and (84) to (88). Why don’t we treat (82) and (84) to (88) as one single vote and the rest as one single separate vote?

The CHAIRMAN—Are there any objections to that?

Senator Hill—That is okay.

The CHAIRMAN—That appears to be agreeable to everybody.

Senator HARRIS (Queensland) (9.41 a.m.)—I would like to speak briefly to Democrats amendment (88) and request a response from Senator Bartlett. I agree with Senator Hill’s comment that the way the amendment appears to be drafted may not allow any ability for the judiciary to assess a case on its merits. It appears that the judiciary would be locked into only being able to apply 500 penalty units. I am seeking clarification from either Senator Hill or Senator Bartlett on: first of all, whether that is the case; and, second, if it is the case, whether the Democrats would consider adding words to each of the relevant sections so that it would read ‘Penalty: up to 500 penalty units’. I seek clarification on whether I am correct in that the judiciary would have no ability to vary the penalty under the amendment that the Democrats are proposing and, if that is the case, whether the Democrats would consider an amendment that would allow for the judiciary to vary the penalty by up to 500 penalty units.

Senator BARTLETT (Queensland) (9.43 a.m.)—My understanding is that that is not the case. There is still discretion there, in the same way as there are penalty provisions in the bill as it currently stands—for some other offences it has a penalty of imprisonment for two years—and they are not an automatic requirement for every offence. But it is academic, given that this is one of the amendments that the minister and Senator Bolkus indicated they would not be supporting. In the interests of not delaying the proceedings I will not press the issue by looking to amend it further.

The CHAIRMAN—The question is that amendments (80) and (81) be agreed to.

Question resolved in the affirmative.

The CHAIRMAN—The question now is that amendments (82) and (84) to (88) be agreed to.

Question resolved in the negative.

The CHAIRMAN—The question is that amendment (92) be agreed to.

Question resolved in the affirmative.

Senator BROWN (Tasmania) (9.45 a.m.)—I put on the record that I support the Democrat amendments in each of those cases.

Senator BARTLETT (Queensland) (9.45 a.m.)—by leave—I move amendments (93) and (94) on sheet 2224:

(93) Schedule 1, page 87 (after line 22), after item 32B, insert:

32C  After Division 2A of Part 19

Insert:

Division 2B—Animal Welfare Advisory Council

505C Establishment

(1) The Animal Welfare Advisory Council is established.

(2) The Minister is to determine in writing the composition of the Council, including the qualifications of its members.

(3) A determination under subsection (2) must be in accordance with the regulations.

(4) The Minister is to appoint members of the Council on a part-time basis, and must appoint an independent member to chair the Council.

(5) The Minister must ensure that the Council includes at least one member from each of the following organisations:

(a) the Royal Society for the Prevention of Cruelty to Animals (RSPCA);

(b) TRAFFIC Oceania.

(6) In this section:
independent member has the meaning given by the regulations.

505D Functions of the Council

The functions of the Council are:
(a) to advise the Minister, at his or her request or at the Council’s own initiative, in relation to:
(i) the operation of this Act or the regulations, as they relate to animal welfare; and
(ii) applications for permits under Parts 13 or 13A; and
(iii) amendments to the lists established under Part 13A; and
(b) to perform such other functions as are prescribed by the regulations.

(94) Schedule 1, page 87 (after line 22), after item 32C, insert:

32D At the end of section 506
Add:
; (d) the Animal Welfare Advisory Council.

32E At the end of section 506
Add:
(2) In this Division, a reference to a Committee includes a reference to the Animal Welfare Advisory Council.

These are the last of the various Democrat amendments put forward. They basically seek to establish an animal welfare advisory council. This bill, and particularly some of the amendments that were agreed to, including the objects of the act itself, seeks to ensure that humane treatment of individual animals occurs, and these amendments establish an advisory council to advise the minister in relation to the operation of the act as it relates to animal welfare.

I believe that this would be a useful advance in ensuring that better consideration of animal welfare issues occur. It is an important component of the whole movement of wildlife both imported into Australia and exported from Australia. Animal welfare has not had enough focus, I believe, at a national level and this would assist the environment minister to ensure more effectively that the objects of the act will be met.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.46 a.m.)—Again, this is an attempt to implement an agenda which may have merit but under an inappropriate piece of legislation. This piece of legislation basically looks to conserve native species and to do so in relation to the regulation of trade. There are animal welfare issues that are incidental and, in an incidental sense, we have said that we must be conscious of those issues and take the opportunity of trade to seek to ensure that within trade animal welfare considerations are taken into account.

What the Democrats are seeking to do here is to transform this piece of legislation into an animal welfare act and, as I said, no matter how meritorious it might be—perhaps there should be a Commonwealth animal welfare act, and that is something for debate for in the past we have primarily seen it as a state responsibility—whether there is merit in that objective is not the primary purpose of this piece of legislation. Therefore, I think it is inappropriate to attach to this piece of legislation yet another advisory committee dealing with an issue that is not one that is primarily related to the purposes of the act.

I should remind Senator Bartlett that there is already an advisory committee which advises the minister on matters concerning the utilisation of native species in Australia. It looks at state management plans, for example, in relation to the harvesting of kangaroos, wallabies, possums and the like, and I know from experience that it gives the Commonwealth minister very good advice on these matters. That committee is also very sensitive to animal welfare issues, so incidentally it does address these particular issues. In terms of the piece of legislation before the Senate, the committee that currently exists is more than adequate to give the Commonwealth minister the advice that he or she needs. So I am not persuaded that under this piece of legislation we should be setting up a new committee to deal with an issue which is not the primary purpose of the act.
Senator BROWN (Tasmania) (9.50 a.m.)—I support the amendments.

Senator BOLKUS (South Australia) (9.50 a.m.)—Essentially for the reasons the minister has expressed, we do not support the amendments.

The CHAIRMAN—The question is that Democrat amendments (93) and (94) be agreed to.

Question resolved in the negative.

Senator BROWN (Tasmania) (9.51 a.m.)—by leave—I move Australian Greens amendments (1) to (3) on sheet 2243:

1. Schedule 1, page 110 (after line 2), before item 83, insert:
   82A Section 11
   Omit “Regional Forest Agreements or”.

2. Schedule 1, page 112 (after line 28) after item 83, insert:
   83A Division 4 of Part 4
   Repeal the Division.

3. Schedule 1, page 113 (after line 27), after item 85, insert:
   85A Section 528 (definition of forestry operations)
   Repeal the definition.
   85B Section 528 (definition of RFA forestry operations)
   Repeal the definition.
   85C Section 528 (definition of RFA region)
   Repeal the definition.

The thrust of these amendments is to remove the provisions in the Environment Protection and Biodiversity Conservation Act which, in 1999, was passed by the government with the support of the Democrats. It effectively removed the minister’s ability to intervene on the protection of forests, and therefore wildlife, in areas where regional forest agreements have been signed. We know that that includes essentially all the unprotected native forests of Tasmania, including the tallest forests in the Southern Hemisphere and the biggest temperate rainforest in Australia, as well as extensive forests in Victoria and New South Wales, and these are matters of great contention.

It is very pertinent that, when amendments to this bill are being introduced to protect wildlife, committee members consider the fact that federal intervention to protect wildlife, where regional forest agreements have been assessed, is essentially not there. It is not available. Every time an area of forest is destroyed—for example, by Forestry Tasmania or by Gunns, the biggest woodchipping corporation in the Southern Hemisphere—massive destruction of wildlife is involved. There is emerging evidence that this includes extinction of species that have not yet been described by science—for example, insect species—yet the minister is not able to intervene because the regional forest agreement section, passed by the government and the Democrats, says that the forests are out of bounds. That is a terrible shortcoming in this legislation. It should not be the case.

The amendments I have moved make forests—the richest terrestrial ecosystems as far as wildlife is concerned—part of the minister’s responsibility and bailiwick. It is a Commonwealth matter. We are talking about national wildlife repositories and nationally important forests. I do not need to remind the minister that, under the Prime Minister’s signature on the regional forest agreement in Tasmania, this year alone 150,000 log trucks will take native forests to the woodchip mills and will create thousands of hectares of totally destroyed ecosystems. The balance to that, surely, is for the minister to at least be able to intervene to protect areas that are important.

I also draw the minister’s attention to the news in today’s Mercury, under the headline ‘Senator may be parrot’s last hope’, which is very much to do with the regional forest agreement. Under that agreement, the trees upon which the swift parrot feeds and depends in Tasmania ought to be totally protected. The agreement essentially lays down that that species of eucalypt should have a total prohibition as far as destructive activities are concerned. Yet in Hobart, the Hobart City Council is in the business of selling one
of the last areas of these eucalypts to a hospital developer, who is going to clear part of that land—two hectares of that land upon which swift parrots depend particularly when there is a failure of alternative and usual feeding resources. So it is a very important habitat on Mount Nelson in suburban Hobart. It has been a matter of great contention.

A local group is fighting to protect the small area that is involved there. It is an important feeding ground, with adjacent nesting grounds for the swift parrot, which is an endangered species. The minister, under law, is required to have a recovery plan for that endangered species. The news from Tasmania is bad. Effectively the Premier has said that, as the minister for local government, he has got legal advice. As far as I know, he has not shown that advice, but he will not intervene. He said that he will leave it to the ministers for environment at state and federal level. Then we read that, at state level, environment minister David Llewellyn confirmed in an answer to Denison Tasmanian Greens MHA Peg Putt—this is yesterday—that a recovery plan for the parrot had not been finalised. He agreed that without the recovery plan Tasmania’s Threatened Species Protection Act could not be used to intervene at this important swift parrot site at Olinda Grove on Mount Nelson; in other words, the Tasmanian minister for the environment has yet again failed to do his job. David Llewellyn, the honourable minister for the environment in Tasmania, repeatedly fails to protect the environment, which is his job. Fortunately we have a backstop: that it is the responsibility—under the regional forest agreements and in terms of this endangered species—of the federal minister to use his powers to intervene.

There are alternative places for the installation that the developers want to put in; there are a number of alternative sites. There are not alternatives to the habitat of the swift parrot, which is down to a few per cent of the original habitat in Tasmania. The swift parrot is dependent upon that. The article finished with a reference to Friends of Mount Nelson member Janet Henderson, who said she was stunned by the news from the Premier yesterday and expected that a big community protest meeting would be convened within the next few weeks.

About 50 swift parrots return to Mount Nelson each year to nest, feeding on the mature *Eucalyptus ovata* at the site. Birds Tasmania spokesman, Denis Abbott, said that in a decade the parrot population had dropped from 1,320 pairs to 940 pairs. That is very worrying stuff. The regional forest agreement did say that all *Eucalyptus ovata* would be protected. This legislation says that the minister cannot intervene where a regional forest agreement is in place, so we are in a position that, if we do not clear this up, the government will effectively fail at a very important first test of this legislation—the minister’s power to intervene to protect a very important and dramatically beautiful species and its habitat.

I am sure my friends the Democrats will support these amendments and I would ask the Labor Party to reconsider its objection to the environment minister’s powers to intervene on regional forest agreements and to support my amendments. Moreover, I ask the minister whether he can extend to the residents of Mount Nelson—and I add for the record that I live in the same suburb myself, so I have an interest in this—and to those citizens near Olinda Grove some hope that this totally unnecessary move by the Hobart City Council and the failure by the state government to act will be met with an appropriate response from him to save this area.

**Senator Bartlett** (Queensland) (10.00 a.m.)—I want to put on the record that, as Senator Brown correctly indicated, the Democrats will support these amendments. They were amendments that we moved at the time the EPBC bill went through and which were not supported by the ALP. Certainly we are supporting the amendments and the aims of them.

**Senator Bolkus** (South Australia) (10.00 a.m.)—The opposition will not support these amendments. They do go very much to the heart of the RFA repealing definitions. I just wish to make one further point to Senator Bartlett: my recollection is a bit
different from yours, Senator Bartlett. You did have an opportunity to do this in your negotiations with the government when the EPBC legislation first went through the parliament in 1999. You did not insist on them then; you sold out on what you have claimed to be so important since that day. It is a bit rich for you to come in now and say that you are trying to rewrite history and trying to assert that this was something that the Democrats tried to do but did not get support for in 1999. You were at that secret negotiating table with the government. You dropped these amendments; they were not core amendments when you made those agreements with the government. Then you come back into the Senate and ask other senators to do the work for you on something that you were not prepared to make core fundamental concerns in those negotiations. So it is a bit rich to be rewriting history to that effect.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.01 a.m.)—I am tempted to note that Senator Brown now seems to be recognising the merited value of the Environment Protection and Biodiversity Conservation Act in the circumstance of yet another abdication of responsibility by a state government. Senator Brown, it is not unusual to find state governments discovering legal advice that excuses them from interfering in a matter that is obviously, primarily, their responsibility—that is, endangered species. But I will not go down that path. However, I do think that Senator Brown is mistaken in relating the regional forest agreement issue to that of the proposed old folks home in Mount Nelson. The forest agreement is primarily related to forestry operations and, certainly, endangered species that may be affected by such forestry operations are relevant. That is why advice had to be received on endangered species issues and taken into account before the state and the Commonwealth signed off on the regional forest agreement. What we have here is an issue of a nationally endangered species—that is, the swift parrot—and I agree with Senator Brown that any further threat to nationally endangered species is of concern. It should be of concern to all Australians. It is proposed to build in this particular location—I called it an old folks home but that sounds a bit aged, doesn’t it?

Senator Calvert—It is an aged care facility.

Senator HILL—An ‘aged care facility’ is the modern terminology, apparently.

The CHAIRMAN—Yes. That sounds better, Minister, thank you.

Senator HILL—An aged care facility is proposed to be constructed, which would cause the loss of some native vegetation, and the issue is whether that loss would have a significant and detrimental consequence upon the swift parrot, a nationally endangered species. I have written to the relevant authorities in Tasmania and indicated that if such an action could have that consequence they should consider referring it to us, because we have a responsibility in relation to nationally endangered species. I do not think I have had a response as yet on that matter. Now that the state government has washed its hands of the issue, the proponents will no doubt revisit my letter and give further consideration to that matter. Because I might ultimately have to make a judgment, I think it would be inappropriate if I gave a preliminary reaction, except to say that it was on the basis of the advice I had received that I wrote in such terms to the proponents. But, again, I think this is an occasion to say that, while I believe the Commonwealth, on behalf of all Australians, must accept a role and responsibility in relation to nationally endangered species, that should not be used as a justification by local and state authorities to abdicate a primary responsibility. We will only get a more effective outcome in this country in relation to endangered species if all levels of government and the broader community are prepared to accept that we all have a responsibility in this regard.

Senator BROWN (Tasmania) (10.06 a.m.)—The minister indicated that he has written to, I think, the proponents, suggesting that the matter should be referred to him or, if not, to the state government. I have certainly written to the minister indicating that
he should take it up. I get from what the minister says that he will be making a decision on this matter at some stage in the future, anyway. I just want to have it made clear that that is not dependent upon what somebody else does—dependent on a letter coming from the state government or from the proponents—and that, now that the minister is aware of the issue, and failing proper action by the state government, he will be taking the matter up himself. That is not to say what his decision is going to be, but those people who are alarmed about the loss of the *Eucalyptus ovata* and the swift parrot habitat at Mount Nelson need to know that the minister is giving it very serious consideration, that a decision will be handed down some time in the future and, if so, what the likely time reference is.

While the minister is considering a response to that, let me just say that the Hobart City Council stands condemned for not taking up its obligations. It wants to appear to be running a green city, but we are talking about a prime piece of endangered bushland in a suburban area with an endangered species that still goes to that suburban area and is dependent upon it. We are looking at a rapid decline in the number of swift parrots, which of course migrate to the mainland, and that is very much related to the loss of their habitat. So the question for anybody looking at this is: should any more habitat be forgone? And the answer is no, because you must further endanger the species and push it further towards extinction if you remove any of the remaining habitat.

I remind senators that something less than five per cent of the *Eucalyptus ovata* habitat is left in Tasmania. So it is a pretty dire situation. The aged care facility can be built in other places, but you cannot get that habitat back—once it is gone it is gone. I note that Alderman Freeman, from the Hobart City Council, in a rather frivolous offhanded manner has said, ‘Well, what’s another couple of hectares? There’s 20 hectares behind this block.’ You have to say to such insensitivity, ‘Where do you draw the line, Alderman Freeman?’ He will draw the line, I would imagine, when the last developer has put their hand up to get more land.

We have to have a more responsible attitude to rare and endangered species, and I think Minister Hill is capable of having that more responsible attitude. We are left with the state Premier having ducked his duty and the state minister for the environment having failed again—adding this one to a long list of failures on the environment—and people looking for a responsible attitude from the national minister for the environment. I commend the minister for taking the matter seriously and for giving it further deliberation.

I do not have to point out to the minister that he has it within his means to put a lot more pressure on the state minister for the environment and the state Premier as far as this issue is concerned. The state is a recipient of a lot of Natural Heritage Trust funding. It is a recipient of funds earmarked for the environment, and it has to act responsibly in return. Both parties know that. The state government is very remiss in this situation. So we have a domino effect, with the city council falling to the developer’s wishes and the state Labor government failing in its duty, and now the hope rests with Minister Hill. I ask the minister whether he might outline what the process is from here, so that people attending that meeting, if there is a meeting in Mount Nelson, will have an idea of what the process is from here and when a decision might be made on the matter.

**Senator Hill** (South Australia—Minister for the Environment and Heritage) (10.11 a.m.)—We encourage a cooperative approach to these matters, because a cooperative approach, as I said, from all levels of government and the community will achieve a better outcome than a legislated minimum. We are not going to get an optimal outcome in relation to endangered species without a community that understands the importance of the values that we are talking about and properly takes account of those values in determining the appropriate location for aged care facilities, for example. Nobody is opposed to the construction of further aged care
facilities; the argument is whether it is an appropriate location for this development if it adds to a threat to an endangered species.

Having said that we encourage a cooperative attitude, the proponents do have legal obligations under the Commonwealth legislation, and it is their responsibility to make themselves aware of those obligations and to act within the law. To assist them in that regard we have drawn to their attention the provisions of the act. So the ball is back in the court of the proponents at the moment. From memory, I think they were awaiting the appeal that had been made to the state government by opponents to this development. I presume the lack of a response to the Commonwealth has been because they have been focusing on the state issue. If that is no longer an issue, in terms of the state government being unwilling to intervene, I assume that they will now address my correspondence.

Senator BROWN (Tasmania) (10.14 a.m.)—I thank the minister for answering the questions. In this case the proponent is, presumably, developer Mr Jeffrey Markoff. But I wonder if the Hobart City Council, which is selling the land, is not also a proponent. The council has not sold it yet, but it is moving swiftly to finalise that sale. In the sale itself is part of the proposition—and the sale has very much dealt with the proposition—to allow the development to take place. So, in that sense, the Hobart City Council itself can be seen as a proponent. It has adopted and is proposing the development on this site and is actively selling the land as part of that development.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.15 a.m.)—Remember, it was the city council to whom I wrote because there is an issue as to who is the proponent at this stage of the development proposal. But to ensure that all relevant parties were aware of the provisions of the Commonwealth legislation I wrote to the city council.

Amendments not agreed to.

Bill reported with amendments; report adopted.

Third Reading

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

EXCISE TARIFF AMENDMENT BILL (No. 2) 2001

CUSTOMS TARIFF AMENDMENT BILL (No. 3) 2001

Second Reading

Debate resumed from 19 June, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Quorum formed)

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.19 a.m.)—This debate is on the Excise Tariff Amendment Bill (No. 2) 2001 and the Customs Tariff Amendment Bill (No. 3) 2001. The purpose of the Excise Tariff Amendment Bill (No. 2) 2001 is to amend the indexation provisions of the Excise Tariff Act 1921 to restrict the application of the provision of all excisable goods other than petroleum fuels classified to items 11 and 12 of the schedule to the Excise Tariff Act. As a consequence of these amendments, the Customs Tariff Act 1995 is also amended to remove certain excise equivalent imported petroleum fuels from the table of paired customs subheadings and excise tariff items in subsection 19(1) that are subject to indexation.

According to the explanatory memorandum, the bill has substantial financial implications. The cost to the budget of the abolition of petroleum fuels indexation is $150 million in the next financial year, 2001-02, $425 million in 2002-03, $785 million in the year 2003-04 and in the year 2004-05, $1,135 million. So it is a very substantial change to the Commonwealth revenue.

These bills form part of the government’s warm embrace of the policies of the Australian Labor Party. This measure forms part of the backflip crammed acrobatic extravaganza that the government hosted earlier this year. There have been many parts of this great
show put on by the ringmaster, the Prime Minister, Mr Howard, and his nimble chief acrobat, the Treasurer, Mr Costello. As part of this circus, we have seen the deferral and abandonment of many of the measures announced as part of the government’s highly prized Ralph Review of Business Taxation. These backflips include the indefinite postponement of the Mr Costello commitment to tax trusts as companies, a commitment the government botched in the first instance because it refused to listen to those who were going to be most damaged by the changes and then it put it into the too-hard basket, possibly for good. It is clear that the government regards the entities regime—the taxation of trusts as companies—as simply too hard and too hot for it to handle.

We have seen changes to the administration of the GST and the PAYG entities, which included the introduction of less frequent reporting obligations. These changes were curiously similar to those proposed only weeks before by the Australian Labor Party, although the government lacked the courage to adopt our proposals in full. As a consequence, businesses are still burdened by a compliance regime that takes them away from what they do best—that is, running their core business. Ask any small business person about compliance costs and you will get some idea of how much this sector resents the time they have to give up from their core business responsibilities to work for the government.

But back to the backflips. We also saw the government cave in to repeated demands for the excise on beer to be reduced, despite their best efforts to escape on a technicality. We have seen the government announce last-minute rescue attempts for some of the industries damaged by the GST, including the building and car manufacturing industries. This was attempted by the doubling of the first home buyers grants for the purchase of new homes and the recent scrapping of the input tax credit phase-in mechanism for business acquisitions of motor vehicles.

So one is left to ask: why have the government done all of this? They would have us believe that they had turned over a new leaf; that suddenly they were lifting the shutters and letting the light of public sentiment shine through; that they had become a government who were listening. But the facts paint a very different picture of the drivers behind these backflips. It was not the businesses, the families or the industry groups that the government were listening to; it was their party heavyweights who, after the embarrassing losses in the by-election in Ryan and the state elections in Queensland and my home state of Western Australia, finally got the ear of Mr Costello and Mr Howard. These heavyweights, realising that the coalition were on a direct collision course with certain electoral defeat in the federal election due this year, demanded that the Prime Minister and the Treasurer put their tails between their legs and make changes. It was to these powerbrokers that the government listened and they made the changes, many copied from the policy positions of the Australian Labor Party, positions we had announced previously.

Nothing in the government’s behaviour indicates a true commitment to what they have done. I am certain that, if they had the opportunity to govern again, they would reintroduce some of the policies and procedures that they have so recently dismantled. Their behaviour represents a desperate and a cynical attempt to win back those the government have alienated for so long.

I now turn to the issue of fuel prices more specifically. The first issue about petrol prices is the question of world parity pricing. The crude oil market was deregulated a number of years ago and that ended import parity pricing, but effectively we now have the prices of domestic crude oil and petroleum products reflecting world market prices. The ability of companies in Australia to trade internationally ensures that the domestic price reflects the international price, since differences between the two will always result in exports or imports, as the case may be. The bad news is that I do not think Australia has any alternative.
The next question that people ask is: who benefits from the higher world prices for petrol which we have been seeing, and where does the extra money that people pay at the petrol pump go? The answer is that the major beneficiaries of higher prices are the Australian and international producers of crude oil. These are multibillion dollar profit makers who have no interest in seeing fuel prices reduced. The second main beneficiary of these higher world prices generally is the Commonwealth government. It would always get some extra revenue through the petroleum resource rent tax, the PRRT, every time the prices go up. The petroleum resource rent tax is levied at the rate of 40 per cent of taxable profit from a petroleum project.

The next element in the petrol pricing equation and the next chapter in this saga relates back to 1998. On 1 August 1998, the Howard government removed the wholesale price cap on fuel. The ACCC ceased to have any role in monitoring wholesale petrol prices. This was exactly what the oil majors wanted. Labor opposed it at the time, saying that deregulating the petrol industry was a gift to the major oil companies and would lead to higher prices. The Treasurer claimed at the time that deregulation would promote greater competition which would lower prices over time and put downward pressure on petrol prices to the benefit of consumers. These claims have been proven to be a nonsense. What Labor claimed at the time is exactly what has happened, and the government's 1998 changes have been a failure.

The third stage in the petrol price saga came last year with the introduction of the goods and services tax, the GST. Liberal campaign headquarters said in September 1998:

There will be no increase in the price of petrol as a result of the GST. The reason is that the Government will reduce the Petrol Excise by an amount equivalent to the GST.

And Prime Minister Howard had said in August 1998:

The GST will not increase the price of petrol for the ordinary motorist.

In fact, what happened was that the GST had a very substantial impact on petrol taxes. The reasons are as follows. On 1 July last year, the excise dropped by 6.7c per litre, but when the GST came in it added 8.2c per litre, so the cost to motorists was 1.5c per litre and there was a government windfall of $270 million. We then had the August 2000 indexation of 0.65c per litre, which added to government revenue of the order of $115 million. We then had the February 2001 indexation which was another cent or so per litre. That added a further $155 million of government revenue. Added on top of all those things was the fact that, during this period, international prices went up and the GST increased as well. So, as petrol prices rose to $1 per litre, this added an extra 2c in GST—additional costs to motorists, 2c per litre; government windfall, $360 million. So the total increase in petrol tax during this period was around 5c a litre, and the windfall gain for the government was around $900 million. No wonder there was a public outcry concerning the petrol price.

I now turn to the question of why the Howard government were forced to backflip on this particular issue. In the past, when it was put to the government by motoring organisations and others that they should abolish fuel indexation, they said, 'No, you can't do that. Fuel indexation is necessary to maintain Commonwealth revenues. On the one hand, you want to index pensions and the benefits, but you won't be able to index the pensions and the benefits unless you are also indexing things like the fuel excise.' They vigorously resisted that type of change. What happened to change their mind? It was the establishment by the federal parliamentary Labor Party of a petrol price inquiry, which I had the honour to chair. At the time, the government said, 'This is a stunt; this is of no consequence.' The coalition and the Democrats refused to support a Senate inquiry into petrol prices. We would have preferred an all-party Senate inquiry but, in the absence of that, we initiated and proceeded with our own inquiry into the economic and
social effects of higher fuel prices and the significance of the fuel excise indexation adjustment which was coming through in February this year. As part of our inquiry, a number of Labor members and senators visited many locations around Australia. By the time we issued our interim report, the inquiry had conducted hearings in 35 locations, had heard evidence from 180 witnesses and had received hundreds of written submissions. The petrol price inquiry has since received many more submissions, and we remain committed to the task of exploring options that will bring about fairer outcomes on petrol pricing for all Australians.

Labor’s petrol price inquiry heard evidence from Australians from all walks of life, including motoring groups, trucking firms, drivers, farmers, fishing representatives, small business proprietors, taxi operators, tourism operators, community groups, volunteer groups, disability service groups, those looking after aged and welfare sectors of the community, and many individual witnesses. Industries for which fuel was a substantial cost component had been adversely affected by rising fuel costs caused by a combination of rising world oil prices, the falling Australian dollar, non-competitive industry pricing behaviour and, of course, rising fuel taxes led by the GST. Some of the most affected industries were trucking, taxis, tourism, farming and fishing.

Taking the trucking industry as an example, owner-drivers in the trucking industry had increasingly been making long journeys for little or no income above their costs, just to enable them to avoid repossession of their rigs by finance companies. Drivers told the inquiry that they could not afford to stay in the industry but that they could not afford to get out of it either because the price of second-hand rigs had been so badly depressed owing to the large number of repossessions. I was particularly concerned that all this was indeed compromising driver safety, as drivers were working for longer periods without breaks in an effort to recover the large increases in fuel costs. If the government defence was that businesses could claim a rebate—that is the defence, and that defence is in part true—the problem for owner-drivers was that they had to pay their fuel costs up-front. Initially, there was a substantial delay in obtaining the rebate after they had diverted themselves from their core business activities by filling out the necessary forms, and many of them were driven into overdraft on which they paid higher interest rates than was the value of the rebate when it belatedly arrived. Even now, there remains a continuing problem in meeting these issues.

I think the following quote from Coral Davidson of Concerned Families of Australian Truckies in NSW sums up the impact that fuel prices was having not only on trucking businesses but on the families of those involved:

Daily I am getting calls from families, not just drivers any more, from their families, their wives and their daughters; ‘Dad has just lost the truck, the finance company has been out. We can’t pay the fuel bill, we can’t even operate the truck any more.’ The fuel here has just overtaken every boundary that we had left.

Another area that the inquiry heard a lot from was voluntary organisations. In a whole range of areas—volunteer bushfire brigades, Meals on Wheels, aquatherapy groups, senior citizens self-help organisations—we heard from witnesses and representatives about the adverse impact of the GST on all of their organisations. The committee recommended that the federal parliamentary Labor Party propose and support the waiving of the fuel excise increase due on 1 February this year, that we call upon the Howard government to prevent the 1 February indexation from occurring, that we pledge legislative support to achieve this outcome and, in the event that the government fails to act and fuel taxes rise, pushing prices even higher, that we introduce a private member’s bill at the first parliamentary opportunity to remove this excise increase. This is exactly what happened. The government, yet again, failed to act, even in the face of the overwhelming evidence that had been adduced.

In response to the government’s inaction, I introduced into the Senate and the Leader of the Australian Labor Party, the Hon. Kim Beazley, introduced into the House of Repre-
sentatives, on 7 February this year, Excise Tariff Amendment (Petrol Tax Cut) Bill (No. 2) 2001. That bill sought to amend the Excise Tariff Act 1921 to prevent the February 2001 indexation of rates of excise duty applying to various petroleum products.

When I introduced the bill, I said that I was seeking not only to ease the pain of high fuel taxes caused by the government’s attempt ‘to leach millions of dollars out of Australians through its fuel tax squeeze’ but also to stop this government ‘lining its pockets at the expense of families and communities, industries, businesses and voluntary organisations, both in the cities and the bush.’ The debate on my bill was adjourned, but we now see quite clearly what the pattern of events has been.

Labor has also acted to redress some of the other problems, beyond indexation, with fuel pricing. We introduced the Fair Prices and Better Access for All (Petroleum) Bill 1999—a bill that contains measures to address the lack of wholesale competition in the petrol industry by giving service station franchisees the legislatively guaranteed right to shop around for up to 50 per cent of their petrol. The measures in the bill would also increase competition at the wholesale level, curtail the influence of oil majors over retail prices and produce lower retail prices for customers. Finally, the initiatives in the bill would provide the ACCC with enforcement powers, and thus give retailers the protection from retribution that they need.

Labor has also called on the government to bring petrol prices back under the surveillance of the prices watchdog, the ACCC. In contrast with the quite tough approach it takes to many other retailers, the ACCC has accepted manipulation of petrol prices as a fact of life. While the ACCC has released a discussion paper on reducing fuel price variability this month, it goes a long way to fixing the real problem with fuel—that it is simply too expensive.

I should also note that in the budget there is $4 million for a government inquiry into fuel taxation. The review is supposed to recommend changes to the tax arrangements for fuel, but in a revenue neutral way. That means some fuel taxes up, some fuel taxes down—there is no other way to do it. A copy of the inquiry’s terms of reference fell into our hands, and it made for very interesting reading. The inquiry is to examine ‘the total structure of fuel taxation in Australia’, and the only tax quarantined from change is the petroleum resource rent tax—the superprofits tax for oil producers. Therefore, in line for cuts are the Fuel Sales Grants Scheme for regional and remote motorists and the diesel fuel concessions. (Time expired)

Senator MURRAY (Western Australia) (10.39 a.m.)—I rise to speak on the Excise Tariff Amendment Bill (No. 2) 2001 and the Customs Tariff Amendment Bill (No. 3) 2001, both of which have the effect of reducing duties on fuel. When governments go back on their promises, they inevitably run into trouble. Such was the case when the coalition government decided that they would let the cost of petrol rise by more than they were perceived to have promised the community, and in the process they would take an increasing amount of revenue. On 1 March this year, the Prime Minister made the most rational of political decisions: he decided that the increasing cost of petrol was causing a substantial reaction in the community, which was harming the coalition and could be partly ameliorated by government action. It is unfortunate, however, that it took such a long time, because the political damage was sustained for far too long. As our then leader, Senator Meg Lees, said at the time:

The Government is finally giving back to motorists the 1.5 cents a litre it took from them last July. The Democrats opposed the ‘grab’ then as a broken promise and we were determined to reverse it when the legislation hit the Senate ...

It is positive that the government made that decision, recognising the significance of the issue, and it is positive that we have legislation to give back to motorists those 1½c. But the significance of the bills is not simply that of meeting a promise which individual motorists perceived to be made; it is also the government’s coffers—forgone government
revenue will increase from $150 million in 2001-02 to over $1.1 billion in 2004-05.

Someone said to me the other day that motorists are amongst the most extraordinary consumers of all when it comes to price sensitivity. He said that if you work in a service station you will find that people driving in the opposite direction will suddenly swerve across double lines, yellow lines, or whatever the impediment is, to save an extra cent in the service station, and then they will happily buy a packet of Tim Tams at, say, $2 more than they would pay at the local supermarket. He believed that that sensitivity was driven by the continual daily reminder of exactly what the price at the service station is.

It is that continual daily reminder that I, amongst many others, think is a reason that the oil industry really needs to be turned upside down in terms of its pricing systems. It is quite extraordinary and virtually impossible, in a rational sense, for prices to move up to 9c or more on a daily or weekly basis when international or local prices do not shift by as much. You do not see that kind of price manipulation with any other consumer good. That indicates, in my belief, a real failing and a real corruption of the price mechanisms in that industry.

Returning to the bills, to implement the Prime Minister’s announcement which accompanied the 1½c reduction there was an announcement that the indexation of excise tax on all petroleum fuels is to be removed from the indexation period commencing 1 August 2001. That cost, as I have said, is $150 million in the coming financial year, 2001-02; $425 million in 2002-03; $785 million in 2003-04; and $1.135 billion in 2004-05. It is important to note how quickly those lost revenues mount up—they multiply sevenfold in four years.

The Democrats welcomed the decision to reduce the excise by 1½c and we noted the point made by the shadow minister that both Kim Beazley and Senator Cook had put legislation in the House and the Senate which dealt with this issue. Of course, that legislation is now redundant as a result of these bills, but the key issue is yet to be attended to because, while the government has now kept its promise, it has done so in a way that has a substantial impact on future revenue growth. The promise was that the price of fuel would be reduced by 1½c, not that excise would never increase again.

In the House of Representatives, the Treasurer has been baiting the opposition to be precise about how they feel about indexation. I, too, would like them to be precise about that, because the Democrats have perhaps a different perspective on this matter. To the extent that the removal of indexation reduces the growth in petrol prices, it will serve to increase the consumption of fossil fuels. There is an environmental consideration to that, but of course we have to recognise the importance of fuel prices to the ordinary person going about their daily business. That price matters enormously in terms of household budgets. To restore indexation is not to be considered lightly, but neither should the revenue loss be considered lightly.

One of the key themes that I have been developing over some time, and which I recently reinforced, is that there is a huge difference—a huge gap—between community demand for goods and services and community expectations of what they want from government, and what governments feel they can deliver. People are constantly demanding more expenditure on education, health, infrastructure and research and development—the list goes on and on—and you can only meet those needs if you raise additional revenue.

Here is a situation where what has been a standard revenue device has been taken away.

I find myself in the odd position of being, I think, a lone voice against indexation in principle on the grounds that it is inflationary and that it denies parliament the oversight of tax increases. I think indexation says to parliament, ‘We are going to do it automatically and we are not going to come back to you and ask you about price increases.’ However, I also hold the view that if indexation is now widely accepted as public policy—which it is, and it is accepted by all parties, as I un-
derstand it, as public policy—it should apply to as many taxes and income measures as possible. Here we have a situation where indexation is coming off something which it has been on for a long time—and which, as a matter of public policy, it has been on for a long time.

There are other areas which are not indexed and there are strong campaigns that they should be indexed—for instance, income tax rates. All of us have received material campaigning about bracket creep which, I am told, within 10 years, without the indexation of tax rate scales, will result in an additional $16 billion burden on income tax payments by taxpayers. Here, with petrol, is an issue where, in my perspective and in the perspective of the Democrats, we have a high demand for additional expenditure by government and yet indexation has been cut out, with the effect that it will be over $1 billion in 2004.

All tax cuts have the direct consequence of reducing the funds available to government to pursue their social, environmental, economic or strategic priorities. That is an opportunity cost. Taxpayers and consumers have to recognise that, if they want more from government, it has to be paid for from somewhere. So what could be done with $1 billion per annum? Pensioners who have just received their $300 bonus could receive such a payment every year forever with that money. Alternatively, as a nation, we could perhaps pay the farmers to stop all land clearing in Australia; or perhaps, with that money, we could double expenditure on salinity and land degradation; or we could remove all trawling in the Great Barrier Reef World Heritage Area; or we could provide subsidies to public transport; or we could increase our investment in education by that amount; or we could increase our investment in aged care funding, especially capital investment.

I am saying to the government and the opposition: if ever you were to consider putting back indexation, if you were to tell us what you would use that money for, we would consider whether we could support it.

Senator Sherry—Are you advocating that?

Senator MURRAY—You know I advocate greater revenues for government. I am not a person who is afraid to say that we do need more taxes or revenues—not remotely. I think it is about time that people started telling the truth.

There is another area you could attack. I have indicated that indexation of tax rate scales would cost $16 billion by the year 2009, and that looks unaffordable. But if, for instance, you wanted to index the tax-free thresholds, which would be of great benefit to lower income persons, the cost by 2009 would be $2.9 billion—that is just in respect of the tax-free threshold, not in relation to the other income tax rates—and in 2001-02 it would cost half a billion. You can contrast almost directly the abolition of fuel excise indexation at $1.1 billion in the year 2004 with a $1.2 billion cost if you indexed the tax-free threshold.

In every tax cut, you have to recognise that you lose an opportunity to provide something else. I have given you a sample list: you could pay pensioners, you could stop land clearing, you could double the expenditure on salinity and land degradation, you could subsidise public transport, you could increase our investment in education, you could increase investment in aged care funding, or you could introduce indexation to the tax-free threshold. I am sure either side can come up with another wish list, but the point I make to you both is that, in the sterile debate that is going on about who will or will not increase their taxes or revenues, I know and the Australian public know that you are both going to see an increase in revenues in the coming years and that some of that will come from taxes, fees, charges or surcharges. Name them what you will—government revenue will increase. But with this measure you have reduced government revenue and, in so doing, you have sacrificed the opportunity to spend money in areas where it is being demanded by the public, particularly in terms of education and other issues.
I hope to indicate through my remarks that the Democrats are not afraid to say that we have severe doubts about the cut to petrol indexation. We recognise the great importance of fuel prices to consumers. We do not think that, if it is ever put back, it should be put back without specifying exactly where it is going to go. We do think that the government is quite right in asking the Labor Party where they stand on the issue of whether they will restore indexation or not. I think it is incumbent upon every political party to make its position clear. I think the government has made its position clear. We will not consider it unless there is a better use to which the money can be put, and I have spelt out some of those better uses. For those like Senator Sherry who might want to know whether I put my money where my mouth is, I recently made a speech—

Senator Sherry—I did read reports of it.

Senator MURRAY—It is probably why we are a minor party and not a major party.

Senator Sherry—That is a very good point.

Senator MURRAY—Nevertheless, if we are in this chamber and either of you consider putting back the indexation, tell us what you are going to do it for and we will consider the matter carefully.

Senator SHERRY (Tasmania) (10.55 a.m.)—I welcome the opportunity to participate in this debate on the Excise Tariff Amendment Bill (No. 2) 2001 and a related bill. Our frontbencher and deputy leader, Senator Cook, contributed to the debate earlier and outlined the legislation we are considering in some detail. It goes to the excise tax treatment of petroleum in this country. Firstly, I find myself in the unusual position of strongly disagreeing with my deputy leader, Senator Cook, on one matter, and that was his description of the government’s performance on fuel. He described the antics of the Treasurer as ‘nimble acrobatics’. I could not disagree more strongly. The performance of this government—on the excise tax treatment of petroleum products and beer products and on a number of other matters relating to promises given prior to the last election with respect to the tax package that the government presented—is not nimble acrobatics. I would describe the performance of the Treasurer as one of an apprentice clown in a circus ring, characterised by numerous roll forwards, numerous roll-backs and numerous backflips—and ultimately he has fallen flat on his face. I would describe it more appropriately as in-your-face acrobatics rather than nimble acrobatics.

Excise taxes, and in particular excise acrobatics on petroleum products, still represent a very major contribution to total government revenue. If we look at page 5-9 of this year’s Budget Paper No. 1, we have an outline of total Commonwealth government revenue—exclusive of the GST, and I will come to that a little later—to be collected in the year 2001-02. The total is $158.8 billion. Of that, the excise duty on petroleum products and crude oil represents $12.6 billion. That is a significant proportion of tax revenue to be collected by government in this country in the current financial year. Interestingly, despite the legislation we are considering in the Senate, the revenue derived from the excise duty on petroleum products and crude oil will increase from $12.4 billion to $12.6 billion in the current financial year. Despite the legislation, there is a 1.4 per cent increase in revenue derived from excise duty on petroleum products and crude oil.

Page 11-13 of Budget Paper No. 1 lists some historical data and gives the percentage of gross domestic product of revenue collection by the Commonwealth government over the period 1969-70 to the current financial year, 2001-02, and then projected forward to the financial year 2004-05. In the current financial year, the percentage of gross domestic product of revenue totals 23.2 per cent. We compare that with the last financial year, when it was 23.7 per cent; the year 1999-2000, when it was 26.2 per cent; and the last full financial year of a Labor government, when it was 23.9 per cent.

This Liberal-National Party government is fond of making the claim—and I would contend it is a false claim—that it is a low-taxing government. If you compare the gov-
ernment revenue figure for the current financial year of 23.2 per cent of gross domestic product with that for the last year of a Labor government, 23.9 per cent, it is a lower figure. But that is a very superficial comparison and a superficial analysis. It is an analysis on the basis of which the Liberal-National Party makes a false claim. The historical data omits one important tax, and that is the GST. The Treasurer, Mr Costello, in preparing this year’s budget—and I understand he did the same thing last year—excluded GST revenue from Commonwealth revenue as a percentage of the tax revenue that the Commonwealth collects.

The GST is a Commonwealth tax. The money might end up in the hands of the states, but it is a Commonwealth tax, collected under a Commonwealth head of power. The government proudly boasts of its implementation of the GST, although we notice that references made by the government—including the Assistant Treasurer, who I see sitting on the benches opposite—to the GST have been moderated somewhat in recent times. The government’s bubbling enthusiasm for the merits of a GST has waned significantly in recent times. If we are to maintain the government’s historical comparison about the level of taxation in this country, it is grossly misleading on the part of the Liberal-National Party to exclude GST revenues. If we include GST revenues in the list of Commonwealth revenue as a percentage of gross domestic product, this Liberal-National Party is the highest taxing government since World War II, contrary to its claim that it is a low-taxing government.

Let me go back to the issue of excise revenue. It is important to mention in this context the flat-on-your-face acrobatics we have seen in the recent past with respect to beer excise. Many people in Australia would recall that, in the lead-up to the last federal election, the Prime Minister, Mr Howard, made a number of claims about the price impact of the GST on beer in this country. On the John Laws program on 23 September 1998, the Prime Minister said:

There’ll be no more than a 1.9% rise in ordinary beer.

The Prime Minister reiterated that commitment on the Alan Jones program. He told Mr Alan Jones that there would be no more than a 1.9 per cent rise in the price of ordinary beer. That was on 14 August 1998, in the lead-up to the last election, when the Prime Minister, Mr Howard, and others were very anxious to play down the impact of the GST on a variety of sectors of the Australian economy. Mr Howard said categorically that there would be a 1.9 per cent rise in the price of ordinary beer. This was applauded by beer drinkers around Australia. The Herald Sun at the time, on 28 July 1998, screamed in a banner headline: ‘Drinks all round’. Pub drinkers would pay about the same with the goods and services tax as they would prior to the implementation of the GST.

The ANTS package was the government’s tax bible that they produced prior to the last election. In the ANTS package, the commitment that the price of beer would not rise by more than 1.9 per cent was a promise made in respect of packaged beer. Most beer drinkers in this country did not have the ANTS package handy. I cannot recall a pub or a club that I visited at that time having the ANTS package sitting up on the bar for the beer drinkers to flick through, to make sure that the Prime Minister’s commitment was correct. This commitment was a promise made in respect of packaged beer.

The Prime Minister did mislead the Australian public—most importantly, Australian beer drinkers—when he claimed that the price of ordinary beer would increase by 1.9 per cent when that figure related to the price of packaged beer. I would also argue that most beer drinkers in this country who heard the reports of the promise given by the Prime Minister would regard a reference to ordinary beer as a reference to the price of a glass of beer that they would consume over the bar in hotels and clubs in this country. So, during the election campaign, the government made a grossly misleading comment about the price of beer. The incorrect commitment given by the Prime Minister was finally exposed for what it was when Treasury officials at Senate estimates committee hearings last February—on 8 February, to be
precise—finally admitted, under questioning from Labor senators at that hearing, that the price of a glass of beer in pubs and clubs would rise by around seven per cent, not the 1.9 per cent that the Prime Minister indicated during the election campaign.

In fact, by way of analogy, the price of a glass of beer across the bar was to go up by seven per cent, and Treasury officials confirmed that the price of imported French champagne would only go up by two per cent. This was the sort of appalling inequity associated with the introduction of a GST in this country. The Liberal Party were looking after the top end of town by making sure that the price of French champagne would only go up by two per cent but were delivering an increase in the price of a glass of beer of some seven per cent, and that gives a real indication of the priorities of the government in this country.

Further to that, there were some interesting comments by a former Liberal federal member of parliament who was defeated in the 1998 election. Mr Eoin Cameron, following his defeat, repackaged himself as a radio talkback show announcer. Mr Eoin Cameron, who was a member of the government until 1998, said on 8 March 2000:

The government has no mandate to increase the excise by the amount it is proposing. To do otherwise is to let down the battlers that it purports to represent. And I note that a bottle of an expensive imported champagne will go up by less than a middy. If, after the first of July, beer goes up by more than 1.9 per cent, not only will the government have misled the community but it will also have misled its own members because no one was told that a middy of beer would be going up by nine per cent.

Here is Mr Eoin Cameron, a member of the Liberal-National Party government—at least until his defeat in 1998—who participated in the creation of the GST package, pointing out the deception by the Liberal-National Party, at least as enunciated by the Prime Minister at a later date in respect of the price of beer.

It got worse. When this deception was pointed out by the Labor Party in respect of the price of beer, the brewers also pointed out the problems that were arising. The Treasurer then proceeded on a tirade of abuse at certain segments of the brewing industry in this country. He referred to Lion Nathan, a major part of the brewing industry in this country, as being foreign owned. Big deal! There are lots of companies in this country that criticise government policy that are foreign owned, but it is the first time I can remember the Treasurer—any Treasurer, for that matter—attempting to rebut the campaign by the brewing industry by abusing them and referring to them as foreign owned.

He then went on and got stuck into Mr Kevan Gosper, who apparently is a director of Lion Nathan, and proceeded to lecture the beer industry on their ethics because Mr Kevan Gosper was a member of the board of Lion Nathan. After the unrelenting campaign led by the Australian Labor Party to hold the government to its promise that the price of beer would not go up by more than 1.9 per cent, the government finally backed down in respect of its commitment on the GST and ensured that the price of a glass of beer in this country would not rise by more than 1.9 per cent.

Finally, in conclusion, whilst earlier I touched on the list of government revenue as outlined in the current budget paper on page 5-9, I do have to comment on the revenue as listed for superannuation taxes. I am pleased the Assistant Treasurer is in the chamber, and I ask him to answer the point I am now going to make. Taxes from superannuation funds are listed for 2001-02 to raise $4.3 billion.

**Senator Kemp**—Has this got anything to do with the bills, Nick?

**Senator SHERRY**—It is to do with government revenue, and it is to do with government honesty.

**The ACTING DEPUTY PRESIDENT (Senator McKiernan)**—Minister, you are not in your seat. Interjections, in any case, are disorderly.

**Senator Kemp**—Okay, Mr Acting Deputy President.
The ACTING DEPUTY PRESIDENT—You were not called, Minister.

Senator SHERRY—I hope that, at the appropriate time, the Assistant Treasurer can respond to my request on this issue. With respect to taxation and government revenue, superannuation taxes are listed at $4.3 billion. There is, I note, a reference to this including the infamous superannuation contributions surcharge, a tax by another name. In passing, I note the superannuation surcharge was a tax and was another breach of the election commitment in 1996 that there would be no new taxes and no increase in existing taxes. We have ended up with a further tax on superannuation.

I understand that the superannuation surcharge tax raised $577 million in the last financial year. However, nowhere does it disclose what it will raise in the current financial year. I did ask for this information at Senate estimates. It has been detailed in previous budget papers. It highlights the level of cover-up and the level of dishonesty in the budget papers when the revenue to be derived from this new Liberal Party tax is not disclosed. I do have it on confidential advice—from a leak from Treasury—that the superannuation surcharge tax will collect some $750 million in the current financial year. I would appreciate it if you would confirm that figure, Senator Kemp, whilst you have the opportunity.

Before I sit down, I should indicate that the Labor opposition are supporting the legislation that is in front of us. It represents the successful culmination of holding this government accountable and holding it to the commitment that the GST would not mean an increase in the price of petroleum products in this country.

Senator KEMP (Victoria—Assistant Treasurer) (11.15 a.m.)—Normally ministers stand up and thank senators for their contributions to the second reading debate. I am going to break with that precedent. Senator Cook’s speech on the tariff bills was ordinary, to say the least. It went through the usual tired old lines that the Labor Party comes up with. I listened to Senator Sherry’s speech in vain to hear anything that related to the bills. Now he is trying to pin me on superannuation. The word ‘superannuation’ does not appear in the Excise Tariff Amendment Bill (No. 2) 2001, which is not surprising as it deals with fuel and fuel excises. Senator Sherry then wanted to discuss the overall government spending and collection of revenue, then he wanted to discuss beer excise and then he wanted to discuss superannuation. He did not turn his mind to the bills until, I must confess, the last couple of sentences. We waited in vain for that.

Senator Sherry, I know that you have certain obsessions in relation to superannuation. I think we should have a good debate on superannuation. Why don’t you move an MPI motion one day so that we can have a debate on superannuation? Frankly, like everyone else, I am trying to discover what your policy is. I notice that the shadow Assistant Treasurer, Mr Kelvin Thomson, was asked yesterday—and I think that he is responsible for superannuation in the Labor Party, but you and I know that you are really responsible for superannuation—

Senator Sherry—No.

Senator KEMP—Be fair, Senator Sherry.

The ACTING DEPUTY PRESIDENT (Senator McKiernan)—Order! Minister, you should be directing your remarks to the chair. When you make the comment ‘you are really responsible’ you are actually talking to me, and I have no responsibility whatsoever. So address your remarks to the chair. Senator Sherry, if you could restrain yourself as well.

Senator KEMP—Thank you, Mr Acting Deputy President. Of course your ruling is quite appropriate. My remarks should be addressed through you. Unfortunately, despite my well-known self-control, I was provoked just slightly by Senator Sherry. But I will try to ensure that it does not happen again.

The ACTING DEPUTY PRESIDENT—I will assist you.

Senator KEMP—I wanted to indicate what Mr Kelvin Thomson said yesterday.
The Labor Party have been in opposition for five years. Senator Sherry has spent a lot of time on superannuation. I do not say that he knows much about it, but he has spent a lot of time on superannuation. One would have thought that after five years a policy could have been produced on something. I would bet that, because of Senator Sherry’s interest in this matter, and because of Kelvin Thomson’s interest in this matter, the Labor Party could have, after five years, come up with a few policies on superannuation. That would not be unreasonable to expect. Senator Murray knows what is coming, and that is why he is smiling. He has worked it out. Yesterday, Mr Kelvin Thomson was asked in relation to superannuation: what will the Labor Party be doing? Do you know what he said? He said, ‘We are going to have an inquiry after the election.’ I do not know whether this is the ninth inquiry or the 10th inquiry or the 15th inquiry. Could someone in the Labor Party produce a policy on something?

Senator Sherry—What is your policy other than to increase taxation?

The ACTING DEPUTY PRESIDENT—Order, Senator Sherry!

Senator KEMP—Senator Sherry got me speaking about superannuation, but I just want to get that on the record because I think it is important. Senator Sherry, I think you have to take over the superannuation portfolio.

The ACTING DEPUTY PRESIDENT—Minister—

Senator KEMP—Thank you, Mr Acting Deputy President, for your wise ruling, as always. Now that I have responded to Senator Sherry on superannuation, let me deal with some of the other matters.

I have to say that the vast amount of Senator Cook’s comments were essentially a political rant, but there was one issue that I would like to respond to. He was worried about the time taken by truckies to access the rebate. Senator Cook was talking about the road grant delivered under the government’s Diesel and Alternative Fuels Grants Scheme. The advice that I have received—and I think Senator Cook would be interested in this—is that the majority of claims are paid within 14 days. Claimants can claim via the ATO electronic interface to reduce the payment time. I can also inform Senator Cook that the ATO is examining the point-of-sale solutions to further improve the payment system. Senator Cook raised what he saw was an issue, and I hope that comment provides some comfort to him.

In response to Senator Murray’s contribution, I have to say that Senator Murray tries to get into the issues, and sometimes he succeeds. Senator Murray and I do not agree on a lot of things, I have to say. Senator Murray openly admits that he is a taxing man and a government spending man. He is frank with those views. I am not sure that they are views that are in line with the majority of the
Australian community, but Senator Murray has had the honesty to inform the Senate of his views—which puts him in stark contrast with the Labor Party, from whom it is extremely difficult to get any views on any particular issue. Their solution to any problem is, ‘Let’s have an inquiry.’ That is a bit like the Bracks government, because that is the general line that Mr Bracks takes on any problem.

Let me make a few comments on the bill. The bill is widely welcomed. It gives effect to the government’s commitment to abolish the automatic six-monthly indexation of fuel excise to increases in the consumer price index. On 1 March this year, the Prime Minister announced a package of government measures to cut diesel and fuel excise. Included in that announcement was an immediate reduction in the excise on unleaded petrol of 1.5c per litre, with proportionate cuts in other fuels. In addition, the Prime Minister announced that legislation would be introduced in the parliament as soon as possible to abolish indexation of excise and customs duty for all petroleum fuels. These fuels include leaded and unleaded petrol, diesel fuel, aviation fuels and burner fuels such as fuel oil, heating oil and kerosene. The amendments in this bill give effect to the government’s announcement by offering the indexation provisions of the Excise Tariff Act to exclude all petroleum free products from the application of the provisions for the indexation period commencing 1 August 2001 and any subsequent indexation period.

Automatic six-monthly indexation of excise was introduced in 1983 by the Hawke Labor government. Its abolition in respect of petroleum fuel products will be a significant discipline on governments now and into the future. Under the previous Labor government, for the historical record, it is worth mentioning that fuel excise rose from some 6c per litre in 1983 to 34c per litre in 1996. From 1983 to 1996, the excise went up from 6c per litre to 34c per litre. This was due to a combination of excise indexation and discretionary budget increases in fuel excise such as those in the notorious 1993-94 budget. For example, in the final three years of the Keating government, fuel excise rose roughly 8c per litre, consisting of discretionary budget increases of 5c per litre and a further rise of 3c per litre due to indexation. I think those figures alone put into context some of the remarks of Labor senators, who have tried to convey a completely different impression.

By contrast, the Howard government has made discretionary cuts to the excise rate. The excise on diesel and unleaded petrol was reduced by 6.7c per litre on 1 July 2000 to ensure that the pump price need not rise with the introduction of the goods and services tax. The excise rate was cut again, following the Prime Minister’s announcement of 1 March, by 1.5c per litre, effectively offsetting the indexation that took place in February this year. On top of these discretionary cuts, the automatic indexation of fuel excise will be abolished by the bills before this Senate. Complementary amendments for equivalent imported goods are contained in the Customs Tariff Amendment Bill (No. 3) 2001. 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.

CUSTOMS LEGISLATION AMENDMENT AND REPEAL (INTERNATIONAL TRADE MODERNISATION) BILL 2001

IMPORT PROCESSING CHARGES BILL 2000

CUSTOMS DEPOT LICENSING CHARGES AMENDMENT BILL 2000

Second Reading

Debate resumed from 26 March, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Senator BOLKUS (South Australia) (11.28 a.m.)—This package of bills, which comprises the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001, the Import Processing Charges Bill 2000 and the Customs Depot Licensing Charges Amendment Bill 2000, represents a substantial change in the way
that Customs interacts with the import and export industries. The bills do four broad things: they create the legal framework for mandatory electronic reporting of cargo movements, they make provision for compliance management tailored for different industry sectors, they alter controls over cargo movement and they create new cost recovery arrangements to support the changes to cargo processing. The main bill in this package is the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001. This is a large, dense and complex bill in both subject matter and drafting. The evolution of this particular legislation is not, we believe, an example of efficient government legislation.

I think there is another sign here that the government is operating on automatic. We saw signs of that this morning with the environmental legislation and we are seeing it again now. For instance, the explanatory memorandum does in fact do little explaining. It is extremely confusing. I think industry groups have made a pertinent point that the explanatory memorandum contains errors. There has been a cut and paste exercise from previous discussion papers and it is not an accurate guide as to the provisions of the legislation. This sort of explanatory memorandum is not acceptable because it shows a contempt for parliament, and it also shows a real lack of understanding of the importance of the explanatory memorandum in the statutory interpretation process that courts get involved in. As I say, this is a sign that the government has taken its hands off the wheel and that other people are running the agenda.

The bill was referred to the Senate Legal and Constitutional Legislation Committee for inquiry. During the inquiry’s hearings it became quite clear that, although the intent and framework of the legislation were welcomed and supported by industry, there are a huge number of problems with both the form and the process. It disturbs the opposition, and it should disturb parliament, that so many industry groups have expressed dissatisfaction with the way in which Customs consulted with industry on the legislation. The bill has had something like a 10-year gestation period, yet it appears that, in the last 18 months, Customs has disposed of a long history of cooperation and, as such, produced a bill that has so many problems it simply is not possible to address them all in the context of a second reading speech.

We are aware that Customs disputes industry claims that consultation was inadequate. However, we have to confront the fact that so many industry representatives are expressing disquiet about the way in which the bill has emerged in its present form, and it is not possible to dismiss those concerns as being without some substance. So we believe the government should be condemned for the way in which the legislation came before parliament: with poor consultation, allowing an atmosphere of suspicion and doubt to develop between Customs and industry and for the less than satisfactory drafting of both the explanatory memorandum and the legislation itself.

We also believe the government should be condemned for bringing the bill before the parliament when it contains yet another example of the government’s disregard for the burdens it continually places on small business. For instance, the bill provides for the Customs compliance reporting date to be one day after the end of every month. At the same time, the GST compliance reporting date is 21 days after the end of every month. This means that there are two different reporting cycles for revenue collection activities—more bureaucratic red tape, more paperwork and more and more problems because of this government’s GST and insensitivity to the plight of small business. When it comes to this legislation, the victims we are really talking about are involved in the huge and diverse range of small businesses across this country, an ever-increasing number of whom are involved in the import and export business. The government is showing a lack of sensitivity to their plight. As I say, two reporting dates in one month is an example of that.

I understand the government has agreed to support the Democrats amendment to the bill.
that allows Customs to prescribe an alternative reporting date through the regulations. In a sense, that is really not good enough. The government should have been aware of this problem for quite some time and it should not have left it to the last moment to be forced into a response. It should have planned for it. Leaving it up to Customs to have the ultimate power as to whether that date is set and when it is set is also something that should not be allowed. This is a problem of the government’s own making. It is the GST, it is a lack of regard for the processes of small business and a lack of any real understanding of the enormous tasks involved in import and export businesses. The government seems to be intent on throwing up more problems, not removing those that are there now.

There are a number of other flaws within the substance of the bill. Once again, inadequate consultation is relevant. We have received representation after representation from industry groups disgruntled at the way in which the trade modernisation process has taken shape in the legislation. We—and I am sure we are not the only ones—are constantly told that it is substantially different from the models discussed with industry during the consultation phase. So that is another problem. It is clear from the Senate committee process that that committee did not have enough time to uncover or inquire into the depth of all the issues associated with the legislation. So I think that puts the parliament, the opposition and I think the Australian Democrats in a very difficult situation. This is the biggest legislative reform package to the Customs Act since its introduction in 1901. There is broad support for the intention of the bill and for the majority of the reforms it contains. But there are serious flaws within the bill that raise the question of whether or not it should actually proceed as it is currently drafted. The industry working group on Customs went so far as to recommend to the Senate committee that the bill be held up until it is substantially redrafted.

We have given great consideration to this matter. We are faced with a situation where we cannot possibly micromanage this legislation for the government. It has huge drafting problems in the legislative process that really cannot be cured from opposition. Yet we acknowledge the importance of reforming many of the processes of Customs. We do not want to hold up the legislation—in a sense, we do not want to throw out the baby with the bathwater—so we will allow the passage of the legislation. In doing so, we signal that we have concerns with it. We signal that, specifically, we have two major concerns. There are two major proposals and aspects of the bill that the opposition will not support. In fact, we will move amendments in the committee stage that address these concerns. Unless the government supports these amendments, we will not support the legislation.

The first aspect is the use of strict liability offences in the penalty regime. Strict liability offences have been used by Customs since 1998. However, there has always been the availability of an appeal mechanism, an appeal to the AAT. The current admin penalty system is limited to duty related errors appearing on import entries and refund applications only. The government wants to introduce a new strict liability regime via this bill that removes the avenue of appeal. Anyone who has had any experience with business and its relationship with Customs must, I think, be very afraid of this sort of proposal. Over the years as a member of parliament and senator, I have had quite a number of instances where I have had to make representations on behalf of business. The degree of arrogance, the selfclaimed immunity and the unresponsiveness that these people find time and time again is something that we should be curing, not giving a green light to. Once you remove these avenues of appeal, you basically endorse that sort of conduct. You let it off the leash.

The government claims that this regime is needed to preserve appropriate border control and at the same time facilitate the move towards the anticipated self-assessment regime for Customs clearance. Essentially, Customs—and through them the government—argue that a strict liability regime is
necessary to uphold the integrity of a self-assessment system. It is also important to uphold the integrity of the public sector and its processes. To quote the words used by Senators Lundy and Cooney in the committee’s minority report on this bill:

Due process should never be confined to accommodate even the noblest of causes. Its attenuation in the present instance ought be rejected.

When they say ‘the present instance’, I think they very much had in mind the experience small business across this country has with Customs.

This bill will repeal the current administrative penalty provisions and replace them with a three-tiered system of strict liability offences for a range of regulatory breaches: 
1) Customs may prosecute for a strict liability offence where fault must be proven; 
2) Customs may prosecute for a strict liability offence where an infringement notice is not appropriate or where the person elects not to pay an infringement notice; and 
3) Customs may issue an infringement notice in lieu of prosecuting for a strict liability offence, which will attract a penalty of one-fifth of the maximum that a court could impose with a matter successfully prosecuted.

There is no indication in the legislation as to how this regime will be administered. Customs have advised that there are non-binding draft principles for adminstering the proposed penalty regime. Given that this has had a 10-year gestation period, you would have thought they could come up with something better than draft non-binding principles. The committee recommended that these guidelines become a disallowable instrument. It is our understanding that the government may very well be forced into accepting that recommendation — and so it should. We will support such an amendment, but it is not sufficient for us to address the problems associated with the proposed strict liability regime. Such a regime would confer an unfettered discretion on decision makers in relation to the imposition of penalties. The absence of merit review is of concern to us. The cargo reporting offences prescribed relate in the main to data provided by unrelated parties. Local cargo reporters are primarily a conduit for this data; they are not originators of it at all.

The government comes up with the claim that it needs this to protect the community as part of the National Illicit Drug Strategy. I am sure we will hear that argument during this debate, but it has no foundation. Strict liability, as it is being proposed, is being applied to the accuracy of paperwork — to data reporting. Let us face it: the Trimbolis of this world are not known for their propensity to declare their cargoes. The government is drawing a long bow here. It is the view of the Law Council that the penalty provisions were drafted in haste and without proper consultation. I think the concerns of the Law Council hold substantial weight. They are: that the strict liability penalty regimes are not appropriate in areas such as Customs, where the complexity of the legislation in practice can lead to many inadvertent errors; that the availability of the defence of strict liability in the Criminal Code is of little comfort to members of industry whose breaches are either inadvertent or caused by others; and that the ability to invoke those defences is adversely affected by the cost to legally challenge prosecutions.

We also need to take into account the fact that, although the Attorney-General has granted a reference to the Law Reform Commission’s review on civil and administrative penalties, it seems that another arm of his bureaucracy, Customs, are moving to pre-empt that inquiry. We find that quite curious. It is, in a sense, putting the cart before the horse. We do not believe the bill should proceed and pre-empt the findings of the ALRC. We can invoke the experience of the New Zealand Customs Services, where they have tried a similar approach and it has proven not to have worked.

In conclusion on that point, the opposition will not support the introduction of the strict liability regime. At the committee stage we will move amendments that will allow these offences that currently operate as strict liability offences to remain as such, but the amendments will remove the strict liability
element from any new offences introduced under this bill.

The second aspect of concern to us in this current debate relates to the introduction of new arrangements through which clients will be able to communicate electronically with Customs. Section 126D of the bill would enable the CEO to gazette the information technology requirements that must be met by those wanting to communicate with Customs. This section was the subject of concern during the committee inquiry. The majority report recommended that Customs should be required to consult with industry pursuant to section 126D being gazetted. We agree with that recommendation. We are concerned, however, given Customs’ track record, about the quality of consultation that we can expect. It appears that there is a real mistrust between industry and Customs, and I think we have substantive grounds to be concerned that issues will not be discussed in a meaningful way during these consultations.

In addition, there is a range of other issues associated with this aspect of the bill which are causing a great deal of anxiety within the industry and which we are extremely concerned about. The inquiry did not cover all relevant associated issues with Customs information technology and communications facilities. The existing Tradegate system is an industry-Customs owned system run through contract by Connect.com. Tradegate was formed 12 years ago as part of the government’s waterfront strategy to facilitate electronic commerce to service the transport, handling and clearance of Australia’s trade. This system is going to be replaced. How it is going to be replaced by Customs is unclear, as is the involvement of EDS—an organisation which seems to have Customs well and truly trapped within its sphere of influence.

Under this legislation, the communications interface will change from being owned by industry—Tradegate and its contractors—to being owned and managed by the Customs department and its outsourcers, EDS. And haven’t Customs had enough problems with EDS and their system so far—enough problems for us not to have real confidence in the way this might proceed! During the inquiry, the committee heard evidence that the bill would increase costs on small business, including exporters, importers, agents, brokers and forwarders; that the technology relied on in the bill will not take Australian industry forward; and that the removal of Tradegate will restrict industry choice and hinder the development of industry based services. These are serious allegations, and we believe they should be fully explored.

The Custom Brokers and Forwarders Council of Australia have raised serious concerns about the cost implications for industry of adopting the Customs Connect Facility proposed by Customs. Specifically, the council have accused Customs of paying insufficient attention to the downstream cost implications of compulsory communications with Customs through the CCF. They claim that the hardware and software requirements of the new system, when combined with staff retraining, would cost industry more than $17 million in the first year, on top of the document retention costs of $2.5 million plus existing cost recovered Customs charges.

That council has called for a separate Senate inquiry into Customs electronic information and transaction systems, existing and proposed. The Australian Federation of International Forwarders have informed both the Senate committee and the opposition that they are strongly opposed to the new arrangements. They also claim that there is doubt as to whether the present state of connectivity would suit the peak demand of air freight exporters.

There is also a range of issues relating to outsourcing Customs IT which we believe warrant further scrutiny. These issues have been raised time and time again in this place but also in the estimates process. In a submission to the Senate inquiry into this legislation, the industry working group representing a whole list of organisations stated:

The IWGC is mindful that the original urgency attached to the passing of the Bills may well have been overtaken by the time lag in development of the IT systems that underpin the “Trade Modernisation” initiatives of the ACS.
The IWGC submitted that the bills be deferred and be subject to an urgent, detailed, joint Australian Customs Service and industry review under the auspices of the Senate. This is not just a little irrelevant organisation; it is an organisation that represents a substantial proportion of the industry. Its concerns cannot be taken lightly. While we are not convinced that the entire bill needs to be held up, we do believe it is important to have the sort of inquiry that the group recommends. I move:

At the end of the motion, add:

“but the Senate:

(a) condemns the Government for:

(i) introducing important legislation without conducting adequate consultation with industry; and

(ii) placing yet another burden on small business in the form of the dual GST and Customs compliance reporting dates and failing to find a solution to this problem before the Parliament considers the legislation; and

(b) resolves that the following matters be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by the last sitting day in December 2001:

(i) the processes involved in, and the consequences of, the outsourcing of the Australian Customs Service’s (ACS) information technology;

(ii) the benefits and problems associated with the current and proposed ACS communications systems, including (but not limited to) Tradegate and the Customs Connect facility;

(iii) the needs and capabilities of all sections of industry in respect of ACS information technology and communications systems;

(iv) the way in which the ACS has conducted consultation with industry in relation to information technology and communications systems; and

(v) issues associated with the involvement of the ACS in e-commerce”.

I recommend that amendment to the Senate.

As I said earlier in my speech, this legislation is very much about maintaining accountability and ensuring the processes that an ever growing part of Australian industry have to work with are suitable. To give Customs unbridled power in some areas and to allow them to move into a new IT system without adequate scrutiny I think would be letting down that large portion of Australian industry.

Senator MURRAY (Western Australia) (11.48 a.m.)—We are dealing here with the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 and related bills. These bills have long been in gestation—over the period of both the Labor and coalition governments’ tenure—and have been subject to reasonably thorough consultation and have been through Senate committee review. There is broad industry support for these bills.

The bills seek to modernise Customs’ interaction with import and export activity and to increase their capacity to target tax avoiders and unlawful activity. As stated in the second reading speech, the package of bills attempts to achieve modernisation through four key strategies: establishing a legislative framework for mandatory electronic reporting of cargo movements, providing for compliance management that avoids a ‘one size fits all approach’ to the multiple industry sectors which Customs affects, improving controls over cargo and cargo movements, and introducing new cost recovery arrangements to support the changes to cargo processing.

The legislation introduces a new regime for the operations of the Australian Customs Service and related activities. The legislation introduces improved IT processes. It also increases the number of offences under the legislation and makes a number of those strict liability offences. That is a matter which has caused us some concern. The government’s stated intentions are also to com-
plement other initiatives under the Tough on Drugs strategy by improving border surveillance, to enhance the system of reporting to Customs by introducing electronic business management, and to improve cargo control where there has been a failure to meet regulatory requirements.

This package of Customs legislation relates to one of the most important aspects of a national government’s responsibility to its people: the defence of its nation’s borders. Given we live on the earth’s largest island, that responsibility presents an even greater challenge than might be the case for other countries. While this responsibility obviously extends to a whole range of government agencies, in peacetime the role fulfilled by the Australian Customs Service is perhaps even more important than that of the military. This is because of the nature of the activities it monitors.

The role which Customs fulfils involves the supervision of activities which potentially represent a much more subtle but a much more dangerous invasion of our borders. Customs responsibilities are more important because they are exercised every day at a wide range of locations with a large number of industry partners—over 95,000 such partners a year, in fact. Much has been made in recent years of these responsibilities, in particular with regard to the fight against the illegal drugs in our community. In my reference to the dangers that invade our borders, people would obviously have picked up drugs as being a key part of the danger.

It is a campaign that, while sometimes overstated, still remains an important element of the harm minimisation approach that Australia has adopted with regard to drugs. Illicit drugs, however, are by no means the only goods that we are concerned to prevent from entering our country. Illegal firearms, other weapons and harmful and dangerous substances also have the potential to cause serious harm to Australians, to our industries, to our society and to our economy. The role of Customs in preventing the entry into this country of these types of goods or problems is, for that reason, very important.

Customs has for decades fulfilled this role effectively—some would argue not effectively enough. But there is always much more to be done: sometimes it is a question of culture; sometimes it is a question of legislation, which these bills seek to improve; sometimes it is a question of resources; and sometimes it is a question of political will. But, overall, Customs has attempted to fulfil the role effectively. However, the legislation we are considering today is an attempt by the coalition government to further improve and make more effective the exercise of a customs role.

As the explanatory memorandum states, the aim of this package of bills is to support the modernisation of Customs’ processes by: establishing a legislative framework for mandatory electronic reporting of cargo movements, and that gives the opportunity for the speed of access and understanding as to what is going on; providing for compliance management that recognises that the current ‘one size fits all’ approach is no longer appropriate to the many industry sectors which deal with Customs, and that allows for some discretion and flexibility in contractual arrangements; improving controls over cargo and cargo movement—that is probably the most critical element of all; and introducing new cost recovery arrangements to support the changes to cargo processing.

While its main aim is to introduce improved cargo movement and management, the test with this legislation is for the Senate to assess whether it will meet the needs overall of enhancing the protection of our community. The task comes down to balancing the interests of our community generally with those of the people involved in importing and exporting goods to and from Australia. That balance is best represented in this legislation through the introduction of what is known as the accredited client program. The supporters of this program believe it will allow streamlined processing by Customs for those clients who can demonstrate that they are able to provide accurate information to Customs regarding their transactions—in other words, those with a good
history will be allowed as much freedom as possible to get on with their business.

It is a positive step in that those companies who put an effort into the provision of precise information and whose behaviour profile is a good one will be rewarded for such efforts. It is highly likely that such companies will benefit significantly from the ability to retrospectively account for their imports in a periodic declaration, rather than the current system which requires that documentation be lodged prior to their goods being released by Customs. One of our concerns, however, is the timing of the lodgment of such declarations. Despite the concern of some in the industry, the Democrats are persuaded that this program is unlikely to disadvantage small clients or those who have not participated in the pilot program.

The ‘apply and be assessed’ nature of this program will mean that access to it is balanced between those importers and exporters who do a large amount of trading and have a developed relationship with Customs and those who do a small amount of trading but, nonetheless, can demonstrate that they meet the criteria to become part of the program. It will be no news to the Senate to recognise the 80:20 principle is at play yet again in this industry where a small number do the vast bulk of the business. Underlying this trust based client accreditation program is the enforcement ‘stick’ in this legislation—that of strict liability offences and increased penalties.

My own minority report to the Senate Legal and Constitutional Legislation Committee’s inquiry into this bill shows that I have consistently been concerned at the significant increase in strict liability offences in legislation. But we have to recognise that we do have a system whereby there are three grades of liability: absolute, strict and fault liability. If we accept that those three grades are there, then we have to determine that there are circumstances in which we will agree that they should be present. Customs legislation is one area where, in our view, strict liability provisions are properly present; the issue, of course, is in which provisions. We felt that the government bills had clearly gone too far and, accordingly, we will be moving amendments to excise a number of strict liability provisions.

The original bill obviously represented a desire for the wholesale implementation of a strict liability regime in the customs environment without sufficient thought given to a more effective, targeted use of such a penalty system. I do not quite think they were trying it on but they were certainly going too far. We were able to, we think, persuade the government that some of the strict liability offences proposed in the bill might not be as important or necessary as previously thought. We will be interested to see in the debate if they accept our position on that basis. We have agreed that we should support those provisions in the bill which are either a transition from the current legislation or essential to protect the integrity of the revenue base or those that support community protection objectives.

I should make the point that we have seen large numbers of bills coming through the Senate which have had strict liability provisions attached to them, because the model criminal code now requires that we, as legislators, should be explicit about whether something is a fault liability, a strict liability or an absolute liability. That clarification has been coming through. By and large—in fact, I do not recall any occasion when it has not happened, but I might have missed it—the Senate has taken the view that those strict liability provisions that are transitions from current legislation should be allowed through. So we have kept to that principle. We have also had to take a view on those others that are in the bill which are there, in the terms of the government’s explanatory memorandum, to protect the integrity of the revenue base or to support community protection objectives.

When considering this legislation and listening to what witnesses before the committee inquiry had to say, I was particularly concerned to have those provisions relating to an alleged breach of administrative procedures removed from the ambit of strict liability.
provisions. Today I will move those amendments to remove from the strict liability regime provisions relating to: failure to keep or produce records or commercial documents; failure to answer some questions; failure to communicate with or make electronic payments to Customs after information systems failure; and failure to report about stores, prohibited goods as well as a number of other areas. We believe these amendments should strike a better balance between the need for enhanced customs compliance through a strict liability regime and the need to apply penalties appropriate to the type and significance of the offence committed. We would welcome both the government and the opposition’s support for our position, but I am sure there will be a debate concerning it.

There are a number of other important aspects of the bills that are being introduced to facilitate cargo management and border control which are being considered today. These aspects include new export control measures, enhanced electronic communication mechanisms, replacement monitoring powers, duty payments and repayments, and document retention requirements. The Democrats support these measures as complementary to the major changes being proposed in the bills.

I must make one comment on the new export control measures. As I indicated in the Democrats’ supplementary remarks to the report of the Senate Legal and Constitutional Legislation Committee on this legislation, I am very concerned about the level of goods allegedly being diverted into the domestic market from export cargo facilities. As I have already outlined, it appears that the level of forgone revenue for whisky alone could be around $25 million per annum. The Democrats are seriously concerned that such a high level of apparent revenue seepage has not apparently provoked a serious investigation from the government either through Customs or through the Taxation Office. It would appear that at least some sort of analysis of the veracity of the claims represented by the submission from the United Distillers and Vintners Australia and Ernst and Young to the committee’s inquiry into the bills is warranted. I have put a set of questions on notice concerning these matters. I think Customs’ coverage of those matters during the inquiry was weak, and I would expect a far fuller response on that issue to be forthcoming.

I am again calling on the government to consider the prevalence of these sorts of activities and to assess the impact on forgone revenue, as well as with regard to effective cargo management and monitoring. At the least, I would hope that the review of this legislation, which is another committee recommendation strongly supported by the Democrats, contains some detail in relation to these claims and the impact of the new legislation on this issue. In making that remark, I note that people such as UDV and Ernst and Young believe that the legislation will in fact tighten up a number of the areas that they are concerned about.

A further three amendments will be proposed by the Democrats, with the aim of enhancing the smooth implementation of the bills and the practical operation of the Customs system. Another of the concerns that I raised in our supplementary remarks was one that relates to the personal carriage of over-the-counter or prescription pharmaceuticals by airline crew and passengers. It appeared from the bills that these would have had to be reported to Customs for every journey, which clearly would be an unreasonable burden. I suspect it is an unintended consequence, and we will be seeking to have the provision modified in order to make the system work as it should.

With regard to the new section relating to the power of Customs officers to seek answers to questions when they are executing a warrant issued under the provisions of the bills, we are seeking to ensure that the most appropriate person within the company answers those questions, if they are available—and I stress ‘if they are available’. It is obviously the intention of the bills that in serious matters Customs must be able to get answers to questions which could affect the immediacy of the matter, and in a serious way. The Democrats do not believe that it is appropriate, for instance, for a junior staff person to
be questioned by Customs officers when the most suitable person to answer questions in those circumstances might be a more senior person available. Our amendments in this area seek to address this issue and place the obligation to answer questions about a company’s affairs with those in the position with the responsibility to answer them. However, we recognise that in their absence questions will have to be answered on the spot by whomever is present and available.

Our final amendment of the three that I mentioned will seek to change the date on which periodic declarations are to be lodged with Customs. There was support in the committee’s inquiry, most specifically from the Australian Importers and Exporters Association, for an alignment of the reporting dates for the ATO’s business activity statement and the periodic declarations required of accredited clients by Customs. This is an area of some contestability because the Australian Bureau of Statistics are very tough about the dates they want material by and seem to have great influence with the Treasurer. I think these matters need to be resolved. They obviously cannot be resolved in the short time frame available to us and, therefore, they will need to be addressed by further consultation between industry and Customs and the ABS. The principle should be absolutely clear. As far as possible, reporting dates required by legislation of businesses should be coordinated such that they are consistent, and in this case they are not.

The Democrat amendment will allow the minister, by regulation, to alter the reporting date. Frankly, it would have been more satisfying to be prescriptive about it, but we do not think the time available allows that. So should the minister, after consultation, consider that a better alignment of the reporting date is possible and achievable, we would expect the needs of industry and government to be met by doing that. I hope the government will agree to consider that issue favourably. We will obviously discuss further amendments as they arise on the floor of the chamber. I must say that I am pleased that the government has accepted the final recommendation of the legislation committee report. I am pleased that it has reiterated its intention in the chamber to review the legislation within three years of its royal assent. I am pleased that it has taken notice of the Scrutiny of Bills Committee’s recommendation. That is very important to us.

In closing my second reading contribution, I turn to the opposition’s proposed second reading amendment, which was circulated just prior to my rising to my feet. From a quick glance, I need to dissect some of its elements. It asks that the Senate condemn the government for introducing important legislation without conducting adequate consultation with industry. I am not sure that that is an accurate statement. As I said, and as I heard Senator Bolkus say, the legislation has been in gestation for 10 years, over the passage of two governments. It seems to me from the evidence we got that the consultation was reasonable. Whether it was adequate, I am not in a position to judge, but I did not hear anybody squealing that they had been affected by consultation. There is also the question of what ‘adequate consultation with industry’ means. I have found throughout this debate a conflict between service providers, or people who think service providers are part of industry, and industry itself. To me, this is all about import and export, which is industry. Whilst service providers, customs agents and others are important, they are service providers and not the main proponents.

I have covered item 2 in my speech. On item (b), it is a failing to present such a reference without its being previously tabled and opened to consultation. We are not necessarily opposed to reviews of IT processes of this kind, but this is not the occasion to rush it through when I have had literally a few minutes to glance at it as it comes up. I say to Labor that if you want to resurrect—

**Senator Bolkus**—We have been talking to you about it for 10 days.

**Senator MURRAY**—I have not seen your item (b).

**Senator Bolkus**—We have been talking to your office about it for 10 days.
Senator MURRAY—You may have been talking to my office, but I had not seen it until it came through today. I am more than happy to discuss item (b) at some other time. We will oppose the amendment. *(Time expired)*

Senator COONEY (Victoria) *(12.08 p.m.)*—As has already been said, the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001, the Import Processing Charges Bill 2000 and the Customs Depot Licensing Charges Amendment Bill 2000 affect the way in which Customs is to carry out its work. I would like to start by, perhaps, being non-political. You gasp, Madam Acting Deputy President Knowles, but this chamber is shaped like an elongated horseshoe and it is structured so that there will be opposition.

Senator Chris Evans—It is filled with horse manure.

Senator COONEY—Senator Chris Evans says that it is filled with horse manure. I do not accept that, but I understand from where he comes. In the second reading speech the following appears:

The final element of this bill that I wish to emphasise is the revision of the powers of Customs officers to monitor compliance by industry. These powers are a vital adjunct to the controls I have mentioned.

They have been drafted in accordance with the report of the Senate Standing Committee for the Scrutiny of Bills dated 6 April 2000 which examined entry and search provisions in Commonwealth legislation.

I stress that the audit powers set out in this bill can only be exercised with the consent of the occupier of premises and without that consent, only on the basis of a monitoring warrant issued by a Magistrate.

I have to declare an interest: I am Chair of the Scrutiny of Bills Committee, which I think does great work, but its profile is not as pronounced as the profile of many another committee. On 6 April 2000 the committee produced a seminal report—as Senator Murray will agree, and so will the other members of the committee—on entry and search provisions in Commonwealth legisla-

In those circumstances, it is proper to acknowledge the contribution of Senator Ellison—a fellow Western Australian senator to you, Madam Acting Deputy President Knowles—in finding the proper balance to be struck between catching the people who breach the law and allowing the proper processes to take place so that we remain the society that we picture ourselves as being. It may be that the minister who is now looking after this legislation was also a party to this, because it is only recently that she left the portfolio. In any event, I would like to acknowledge that. You have to listen to people to gain the knowledge that you need to conduct this debate—indeed, any debate—in this chamber. I oftentimes get up in the Senate on issues to do with trying to find the balance between enforcement of the law and protection of people who are subject to it so that we can go ahead and be the decent society that I have talked about.

I now see in the chamber Peta Murphy, a very wise adviser to the shadow minister Mr Kerr, to me and to others on this side of the chamber. I suggest to people in the advisers box on the government side of the chamber that it would be well worth talking to Peta Murphy on occasions such as this.

As I have said, this is another bill that seeks to strike the right balance between bringing to justice or bringing to book people who break laws that are set in our society—that is essential, particularly when drug related offences are committed—and preserving the sort of society that we want to live in: one in which people cannot be accused
falsely and cannot be put into prison without there being due process.

There is a tendency in the community at the moment to think that, for any crime that is committed, someone should end up being punished for it. That is the wrong way of looking at things. Some very terrible crimes are committed in the community and the people who committed them ought to be punished for them. However, we have to be sure that the people who committed the crimes are the ones who are punished for them. There are occasions when the wrong people are taxed with the crime—and that is a proper expression to use—when they should not be. In other words, people are punished for crimes they did not commit and, for that reason, we have a process set out to avoid the dreadful mistake where someone who did not commit a crime is punished for it. That is the first thing about due process.

The second thing about due process is that there are some things that we, as a decent society, would not do. As a society, we do not resort to torture to find out who committed a crime. In days gone by, the society from which we developed did use torture, and torture is used around the world today. That is the sort of thing we would not do. There are just some things that we would not do as a society. That is the second reason why we have due process.

While I am on this topic and talking about the Senate Standing Committee for the Scrutiny of Bills, I must say that there is a presumption somehow that parliament cannot really look after civil life, or proper process, or ensure that civil rights are maintained. The presumption is that you need courts, tribunals and a good legal profession that is interested in these things, and that somehow parliament is to be left outside this. I notice that in many conferences about due process, about matters of rights and about conventions such as the International Covenant on Civil and Political Rights, there are people from universities and law schools, lawyers and learned professors from overseas giving talks on the subject, but rarely do you get a parliamentarian speaking at these conferences, making a contribution and outlining what has happened in the Senate Standing Committee for the Scrutiny of Bills, for example, or in the Senate committee that looks at regulations and ordinances. You rarely get that.

There is a division—and I think a false division—created between the mechanisms that parliament uses to maintain our rights and the mechanism used by people outside parliament, mainly lawyers. Being an old lawyer myself, and my wife being a lawyer and practising as such when she is not in Ireland, as she presently is, I simply say that I am not lawyer bashing now, but there is an inclination to think that we do not do as much as we ought to as parliamentarians. These comments arise out of the fact that, on this occasion, this legislation has been framed with the report of 6 April 2000 from the Scrutiny of Bills Committee very much in mind. I make this point to the minister who is responsible for the bill and to the minister at the table who preceded him: note was taken of that report in this legislation.

Much has been said about the strict liability provisions in the bill, and what has been said need not be said again. However, a lot of this arises from the fact that Customs has two functions to perform, one of which is to facilitate the export and import of goods. That function should be carried out with the great desire and ability to help people trade across Australia’s borders. We are a trading nation, as has often been said in this chamber, and it is proper that trade be done as well as possible and Customs helps people trade. The bill contains provisions that deal with that and, if there is time at the end of my speech, I will come back to that point.

The other function of Customs is to enforce the law. That is a regulatory function. So Customs has a facilitating function and a regulatory function. Oftentimes one function affects another and, in this case, the regulatory function may well have affected the facilitating function. As a result of that, we have these provisions about strict liability. Strict liability offences have their place and
the classic case of that is, of course, on the roads. That is done to maintain the safety of our roads. Much is at stake on the roads and that is why we have strict liability. People know what that is all about. If you go more than 60 kilometres per hour in a 60 kilometre per hour zone, you have committed an offence. The fact that you did not intend to do that is not the point.

As has been said by speakers before me, the area dealt with in these bills might not be an area where that is applicable. You have people who have all sorts of things to do. For Customs to have the ability to punish people who have done wrong no matter what their intent is somewhat harsh. When we come to the committee stage, that may be well worth talking about. Then there is the issue of the facilitating functions of Customs, which has arisen from the change contemplated by these bills. There is to be an electronic communication between customers and Customs. That change is to go a particular way. I think there has been much said about that. The notes that Peta Murphy has given me say:

The existing Tradegate system is an industry/customs owned system, run through contract by Connect.com.

Connect is the company that provides the actual machinery by which the communication is made. The notes also state:

Tradegate was formed 12 years ago as part of the government’s waterfront strategy to facilitate electronic commerce to service the transport, handling and clearance of Australia’s trade.

That is about to be changed. Tradegate is to conclude its contract, which has only a limited time to go. When that has finished, it is proposed that another system will be set up. That is to involve EDS, another firm that is to provide this electronic communication. Customs is to outsource it to EDS and EDS is to carry on this work.

It has never quite been explained why there should be this change, and it has never quite been explained how this change is to be made. In the committee stage of these bills, the government would perform a great service to the people who use Customs, to Tradegate, to Connect and to us all if it would explain exactly what is the mechanism contemplated to enable people who want to use Customs to communicate with it electronically. Minister, you would know—because you were the minister at this time, before you went on to become a cabinet minister—that there has for some time been a particular way of dealing with Customs, and that is to be changed. The Labor Party has been told by the people concerned that there is an attempt to find out exactly what the new system is to be, and that explanation has not been forthcoming. It is hoped that that can be teased out in this debate. There are amendments to be made to these bills which have been discussed by Senator Bolkus.

Senator Murray—They have not been circulated, though.

Senator COONEY—Senator Murray says that they have not been circulated yet.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—They have been circulated in the chamber.

Senator COONEY—Senator Murray puts forward his hands and says he has not got them. Let us not have a great fight about this. Senator Murray, I think Senator Bolkus was saying to you that you understood the general thrust of this, that there is no doubt you are a man of some brilliance, that you are a man with a keen mind and are able to comprehend these things very rapidly, and that although you were not given the precise words in black-letter law you knew their intent and were therefore able to prepare yourself for this argument. That would be right. You comprehend the general thrust of it all. You are saying that you did not have it in black print, but you knew what it was all about. The nodding of the head indicates that. Having established that, I think I will sit down.

Debate (on motion by Senator Vanstone) adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.
FAMILY AND COMMUNITY SERVICES LEGISLATION (SIMPLIFICATION AND OTHER MEASURES) BILL 2001

First Reading

Bill received from the House of Representatives.

Motion (by Senator Vanstone) agreed to:

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

Bill read a first time.

Second Reading

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.28 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—

Since its election in 1996, this Government has set about simplifying the social security system.

How have we done this? We have ensured that social security legislation is routinely reviewed so it is simpler, easier to read and to ensure that it does what this Government wants it to do.

This bill is the third bill that seeks to improve the social security laws that underpin Australia’s social welfare safety net.

This bill deals primarily with compensation recovery. It simplifies that part of the Social Security Act 1991 that deals with compensation recovery. It also implements 2000-2001 Budget measures relating to the treatment of a person’s periodic compensation payments and the recovery of certain debts directly from compensation payers and insurers.

This bill is a spending bill. It removes a source of irritation to partners of people who receive periodic compensation payments, such as regular fortnightly compensation from an insurance company. It implements a more generous approach.

Currently, if a person gets a compensation affected payment, which are defined in the Act, then they lose one dollar for every dollar of periodic compensation received. If this amount is reduced to zero then any excess compensation counts against their partner’s compensation affected payment dollar for dollar.

In future, if a person’s partner’s periodic compensation has to be taken into account in working out the person’s income for social security purposes, it will be treated as ordinary income of the person.

It is expected that this measure will result in an increase in the amount of social security payments and benefits paid to couples with low levels of income derived largely, or solely, from compensation payments.

The bill also includes a number of minor simplification measures relating to Chapter 3 of the Social Security Act 1991 that were outlined in the 2000-2001 Budget and some amendments of a technical nature.

This bill demonstrates the Government’s commitment to a simpler and fairer social security system.

Senator CHRIS EVANS (Western Australia) (12.29 p.m.)—At the outset of the debate, let me indicate that Labor will support the Family and Community Services Legislation (Simplification and Other Measures) Bill 2001, which serves to simplify social security laws relating to compensation recovery. In particular, it will remove the existing direct deduction rules for partners of compensation recipients, which will be beneficial to these persons. The bill also gives effect to a number of minor simplification measures contained in the 2000-01 budget, including: streamlining deeming exemption provisions, clarifying the conditions that income streams must meet to gain favourable means test treatment, and allowing compensation arrears debts that are treated as income to be recovered directly from compensation payers and insurers. In addition, the bill contains an amendment that changes the taper rate for the income cut-out formula that is used to calculate the preclusion period for recipients of lump sum compensation. Although retrospective, it is beneficial to customers.

Labor has always held the view that the compensation system has the first responsibility for the provision of income support to those with a compensatable illness or injury, not the taxpayer by way of government sup-
port. However, any concerns about double dipping have to be balanced against concerns that the rules defined in the preclusion period do not impose undue hardship on an individual at a time of injury or illness. The changes which the government made to the preclusion period formula in 1997 did impose such hardship while saving the government $25 million per year. The changes in this bill are, at the very least, an improvement. The new income cut-out amount formula will now be consistent with the 40 per cent pension income taper and will be beneficial to recipients.

The measures relating to partners of people who receive periodic compensation payments are similarly beneficial. Currently, if a person gets a compensation affected payment, they lose one dollar for every dollar of periodic compensation received. This amount is reduced to zero, then any excess compensation counts against their partner’s compensation affected payment, dollar for dollar. In future, if a partner’s periodic compensation has to be taken into account in working out the person’s income for social security purposes, it will be treated as ordinary income. The measure to streamline debt recovery is sensible and will ensure the compensation recipient can plan effectively without the likelihood of a subsequent debt after an arrears compensation payment is received. In a similar vein, provisions related to income streams are reasonable and provide balanced protection for both the recipient and the Commonwealth.

I have seen the amendment to be moved by Senator Bartlett on behalf of the Democrats, and it relates to compensation payments to victims of the Chile military dictatorship. This issue is very dear to my heart. The overthrow of the Allende regime was the single most important event in stirring my interest in political matters and becoming politically active, many years ago. I have always had a special interest in the political affairs of Chile and the victims of that military dictatorship. I am pleased that Senator Bartlett has sought to raise this issue. We are very keen to hear the government’s position on that and its arguments on how we ought to treat those compensation payments. We are sympathetic to the Democrat amendment and I am interested to hear what Senator Vanstone has to say about it.

In conclusion, the ALP is pleased to support what is essentially a housekeeping bill. The focus on simplification contrasts with the approach the government has taken in its other measures dealing with older voters in the recent budget. The ALP is happy to support this bill, and I will not delay the Senate any longer.

Senator BARTLETT (Queensland) (12.33 p.m.)—I rise to speak on behalf of the Australian Democrats on the Family and Community Services Legislation (Simplification and Other Measures) Bill 2001. As the name suggests, this legislation aims to, among other things, simplify the Social Security Act. The Democrats have long supported moves that simplify the social security legislation that underpins our social welfare safety net, as long as such simplifications do not result in significant disadvantage to less well-off people in the Australian community.

The three acts that make up the social security and family assistance laws are still very complex. Despite bills such as this, they are overall becoming progressively more complex. It is pleasing to note that the bill introduces changes to the compensation provisions which reflect a greater degree of reality. The present rules, where any excess of periodic compensation payment reduces a partner’s income support payment, also on a dollar for dollar basis, have been in place for a considerable period, cause hardship to persons who have suffered an unforeseen event and are clearly unfair. I circulated an amendment relating to the compensation payment a day or two ago—to which Senator Evans has alluded. I will address that later on. The application of the more lenient tapered income test as provided for by this bill is welcome, as partners will benefit from it. It could be argued that this change does not go far enough on the issue of whether compensation should be treated the same as other income. The measure will result in an in-
crease in the amount of pension and allowances paid to couples with low levels of income derived largely or solely from compensation payments.

Getting back to the notion of a simplified social security system, it is unfortunate that—notwithstanding the word ‘simplification’ in the title of this bill—the results achieved by this measure will vary, depending on what sort of income support payment the partner is receiving. Most will be allowance partners, receiving one of the allowance payments. They will be forced to endure an excess partner income of 70 cents in the dollar, as for allowance recipients. Where the partner is on a pension payment, the result is different, because those pension payments have a different income test. The Democrats believe that, as part of the simplification of social security, there should be one standard income test for all income support recipients. It is disappointing that that aspect was not dealt with in the recent response to the welfare reform issue.

Schedule 2 of the bill provides a more rigorous test to income stream products to enable these to fairly gain access to the asset test free concession. People who purchase allocated pensions and annuities generally exchange a lump sum amount in return for a guaranteed series of future periodic payments. The asset value is generally disregarded, as the income stream payments received generally include a return of a part of the capital used to purchase the product. The beneficial rules of asset test exemption under the present act were aimed at providing an incentive for people to use lump sums to purchase an income stream that could be expected to last over their retirement, rather than relying on the age pension. The Democrats acknowledge that this measure is disadvantageous to some people. However, it is targeted at ensuring that persons who need income support in retirement receive it and that those who are more able to provide for their retirement do so, while at the same time being able to access concessional taxation treatment.

The introduction to section 9 of the Social Security Act of measures akin to the Australian Prudential Regulation Authority and the superannuation industry supervision requirements to income stream product will have a direct impact on how products are assessed under the income and assets testing rules. Schedule 2 of the bill also provides for the creation of a debt where an income stream product which has had concessional assets test treatment is commuted or dissolved. Generally, the Democrats would be concerned about disadvantageous legislation which seeks to recover social security monies already received and presumably spent. We recognise that, while commutation or dissolution can be one means of manipulating the income stream assessment, it is not always the case, and we would not support legislation which retrospectively removes assets test concession where that is legitimately applicable.

This bill provides that the commutation dissolution needs to have been contrary to the contract or governing rules applying to the product on creation, thereby protecting those products which arguably warranted assets test concession. The extension of hardship rules, which allow for an exception to the general prohibition on commutation, albeit limited, will nonetheless provide a means whereby a person faced with exceptional unforeseen circumstances who is required to commute funds to meet unavoidable expenditure is able to do so without penalty of overpayment.

A further measure of the bill is to introduce into legislation the assessment of rental income in allowable deductions, which existed in the 1947 Social Security Act and was dropped in the 1991 rewrite. Notwithstanding the absence of legislation in the intervening period, I understand Centrelink’s policy treatment of rental income has remained consistent with the pre-1991 legislation. Therefore, this bill is placing those provisions back into legislation. The Democrats have foreshadowed an amendment relating to exempting compensation payments for victims of the military dictatorship in Chile. I will speak to that in the committee stage.
when I move the amendment, rather than address that further now.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.39 p.m.)—in reply—I thank the two senators for their contributions and support for the bill. We will obviously deal with the amendment in the committee stage.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The TEMPORARY CHAIRMAN (Senator McKiernan) (12.39 p.m.)—On 26 June 2000 the Senate agreed to an order requiring all amendments moved in the form of requests be accompanied by a statement of reasons for their being framed as requests, together with a statement by the Clerk of the Senate on whether the amendments would be regarded as requests under the precedents of the Senate. I believe there would be value in having these statements on the record and therefore propose that the committee adopt the practice of incorporating them into the Hansard immediately following the requests to which they refer. There is a request to this bill which is accompanied by the required statements of reasons. Is it the wish of the committee that these statements be incorporated in Hansard? There being no objection, it is so ordered.

The statements read as follows—

Statement pursuant to the order of the Senate of 26 June 2000

This amendment is framed as a request because it excludes from the income test under the Social Security Act 1991 a class of payment that is currently counted as income. Exclusion of the amount will have the effect of reducing the income of certain people for the purpose of the income test. Such people may then qualify for a social security payment or a higher rate of social security payment. As the amendment would have the effect of increasing expenditure under the standing appropriation in the Social Security Act 1991, it increases the “proposed charge or burden on the people” within the meaning of the third paragraph of section 53 of the Constitution.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure under a standing appropriation in an Act amended by the bill. This request is therefore in accordance with the precedents of the Senate.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.41 p.m.)—Thank you for giving me the call. I apologise to Senator Bartlett, because I know he has an amendment to move, but there is a possibility that I will not be here in the remaining part of the committee stage, so I thought I would put the government’s position now in relation to the proposed amendment rather than leave it to a duty minister to do.

This government, and clearly the opposition and the Democrats, sympathise with anybody who has endured pain and suffering at the hands of another government or regime. That, I think, we can take as a given. But with all proper policy making you do need to have all the facts in front of you. A good key to policy making is ensuring that there is consistency across the community in the treatment of them for any proposed law. I am a little bit disturbed by a Democrat trend to choose to make amendments that are not directly related to the bills to which they are attached. In this particular case, my advice is that the Democrats have been advised that the government is in the middle of a dialogue with the Chilean government to gather information about the compensation payments in question. We do want to make the right decision on this issue. It is not only a serious issue but also an emotive one. Because it is a serious issue, it deserves a properly considered response.

Good government is not always about making easy or popular decisions—in fact, very rarely—to make people feel warm and fuzzy on the inside. It does appear that, in the rush to want to appear warm and fuzzy, the
Democrats have not necessarily considered the effect of this proposed amendment on, for example, compensation payments, such as the French restitution payments to orphans or the Netherlands restitution payments.

At the end of the day, what the Democrats are proposing may in fact come about. The government is not rejecting it outright but simply saying that it is not in possession of sufficient facts to say whether that should be the case at the time or not. I think it is a fair bet that, if we are not in the position to make that decision, neither are the Democrats. We are happy to further consider the proposal and give an undertaking to do that, simply because the process is already under way. It is regrettable that an amendment has been tacked on when, as I am advised—and I am happy to correct the record if I am incorrectly advised—the Democrats have been told we are in a dialogue on this matter. We do want to resolve it, but it is not appropriate to resolve it until we have all the relevant information.

Senator BARTLETT (Queensland) (12.44 p.m.)—I move:

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

(1) Schedule 2, page 36 (after line 9), before item 2, insert:

1A After paragraph 8(8)(p)
Insert:

(pa) an amount paid by the Republic of Chile under the laws of that Republic by way of compensation to a victim of the military dictatorship which ruled during the period 1973 to 1990;

I will not be able to respond in detail, in the 35 seconds available to me, to the minister’s comments. Whilst I would be generally supportive of dealing with issues promptly, I think this is an important issue. It is not just a matter of trying to be warm and fuzzy, and certainly the people affected are not just wanting to feel warm and fuzzy. It is an important issue, and it does need some proper examination. So in that context, rather than give a very rushed 10-second outline of it, it is appropriate to simply move the request for amendment at this stage and address it more fully when we return to the committee stage later on.

Progress reported.

MATTERS OF PUBLIC INTEREST

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

Electoral Matters

Senator FERRIS (South Australia) (12.45 p.m.)—Over the last day or two since the tabling of the report of the Joint Committee on Electoral Matters there has been a curious reaction by the Labor Party to at least two important recommendations that were made by the committee. These recommendations cover proof of identity at the time of enrolment and the question of one vote, one value. You may ask: what could be more simple than these principles? It is a question that my colleague Senator Nick Minchin has been asking for some years since his term as a distinguished member of this electoral matters committee. And at this point I would like to acknowledge his advocacy of voter ID over a long period of time—interestingly against the views of some other members of the committee in the past. So the need for voter identity should be a simple matter of amending legislation. Indeed, it should. Proof of identity at the time of enrolment is surely a simple fundamental of democracy.

The video shop asks for it; airlines ask for it for electronic tickets; you need it to open a bank account. So why would the ALP not support it for enrolment on the electoral roll and the privilege of voting in our elections?

Senator Faulkner claimed on the 7.30 Report on Monday night that voter ID would mean that ‘there’ll be people who won’t be able to vote in our electoral system’ and that it would affect people ‘who are marginalised and disadvantaged in our community’. But the evidence to our electoral matters committee may give a clue as to the real reason the Labor Party is running this patronising and misleading line in relation to voter identity. For example, we heard evidence from 189 voters on the federal roll in New South
Wales who all used the same post office box for their address on the roll.

Senator Schacht—You want the Australia Card, do you?

The ACTING DEPUTY PRESIDENT (Senator McKiernan)—Order, Senator Schacht!

Senator Ferris—We uncovered a number of examples of blatant electoral fraud including the electoral roll registration of the now infamous Curacao Catt and a voter whose name curiously translated to Mickey Mouse. In fact, well-known roll rorter Lee Birmingham considered that false enrolments were possible and that not only did they take place but also the AEC appeared to be incapable of detecting them. This is the reason that Karen Ehrmann went to jail and maybe why the former deputy premier of Queensland, Jim Elder, resigned, and why perhaps just yesterday it was announced that four charges have been laid against Mr David Barbagallo, a former adviser to a Queensland Labor Party Premier.

There is no doubt that the faith of the Australian community in the integrity of our electoral roll has been profoundly shaken by the evidence about Mike Kaiser, Tony Mooney, Shane Foster, Andy Kehoe and Grant Musgrove as well as Jim Elder and Karen Ehrmann. Of course these people all have one common characteristic: every single one of them is, or was, a member of the Australian Labor Party, the party of Senator Schacht, who has consistently and constantly interjected on this issue—and I am wondering why Senator Schacht would not join with us in trying to clean up the integrity of the electoral roll.

Senator Schacht—You are talking about an Australia Card.

The ACTING DEPUTY PRESIDENT—Order, Senator Schacht!

Senator Ferris—Some of these people have been convicted of electoral fraud. Some resigned with a lengthy mea culpa and others are awaiting the decision of the DPP in Queensland following evidence to the Shepherdson inquiry. So isn’t it almost unbeliev-
The ACTING DEPUTY PRESIDENT—Order, Senator Schacht!

Senator Schacht—Mr Acting Deputy President, I rise on a point of order. If Senator Ferris is going to be so provocative with misleading facts, we are going to respond, even in the form of interjections.

The ACTING DEPUTY PRESIDENT—Order! There is no point of order. If there were to be a point of order, it would have been about your interjections. I have asked you to cease interjecting. I hope that I do not have to ask you again. There is no point of order.

Senator FERRIS—The second recommendation in relation to one vote, one value, which is being opposed by the ALP, strikes at the heart of our democracy. But does it also strike at the heart of the Labor Party’s democracy? With union members barely making up 25 per cent of the workforce now, it is hard for me to believe that they can still have 60 per cent of the vote within the ALP. It is pretty obvious to me why the ALP is so bitterly opposed to the implementation of this vital recommendation, when unions still have such a disproportionately high level of influence within the Labor Party.

Our one vote, one value recommendation guarantees greater power and representation to the rank and file members of the ALP and will at least try to restore fair and honest proportional representation. There is no doubt that this recommendation will cause some grief in the Australian Labor Party because the Senate and the House of Representatives are filled with trade union loyalists who have had the ultimate promotion and who will face something of a conflict of loyalty when this particular recommendation is debated in the chamber. The integrity of our electoral system must be more important than union power in the ALP. Surely there can be no greater democracy for the Labor Party than to give power back to their own rank and file.

There are a number of other very important recommendations in this report, which was tabled in this chamber on Monday. The recommendations cover issues such as the timing of the closure of the rolls when an election is called, a streamlining of the process by which questionable voting takes place and, importantly, a doubling of the penalties for electoral fraud. The committee also recommended that, to test the integrity of the electoral roll, there be a roll cleansing in the federal seat of Herbert in Queensland, which covers the Townsville area, where the infamous Karen Ehrmann and her team operated so fraudulently but so successfully and initially undetected.

The integrity of the staff at the Electoral Commission is of the highest priority. The committee recommended that not only should the staff involved in the prevention and detection of fraud be appropriately trained for that job but those who have access to the roll be required to obtain a position of trust security clearance. There can be no more important priority for a government, and in fact for all political parties, than to ensure that our voting processes are clear and are cleansed of any possibility of fraud or covert manipulation. I urge all political parties to join with the government in implementing, as a matter of urgency, the very important recommendations of the Joint Committee on Electoral Matters.

Howard Government: Communications Policy

Senator MARK BISHOP (Western Australia) (12.55 p.m.)—The list of communications policy failures of this government is long, and the failures have serious consequences for all Australians. As time goes by and this government nears the end of its second term, the consequences of those bad policies are becoming apparent. In a number of cases, the opposition has warned the government that its policies were bad and that the implications of the failure of those policies were serious. Many of those policies have had the effect of stifling the Australian IT industry to the detriment of our economy.

Today I wish to discuss the oppressive impact of a number of this government’s communications policies. Those policy failures relate to digital television and the absence of new services; the government’s
failure to put a workable and viable data-casting regime in place; Telstra, and the government’s failure to ensure that Australians receive adequate service; the ABC, and the government’s ongoing attempts to undermine and destroy the national broadcaster; Australia Post, and the government’s decisions that have detrimentally affected this corporation in its financial capacity to properly fulfil its role; and, in relation to spectrum auctions, the government’s failure to achieve forecast revenues, which demonstrates its fiscal irresponsibility and mismanagement.

Cancellation of the datacasting spectrum auction demonstrated the government’s inability to put in place a workable and viable policy framework for the new services. On the policies that the government has sought to implement over the past few years, we have warned the government that a considerable number of them would fail and that they were flawed. We recommended viable alternative policies, which the government rejected. These deliberate policy decisions of the Minister for Communications, Information Technology and the Arts, Senator Alston, with all of their weaknesses, have been out in the open for public scrutiny.

This government is stifling Australia’s development. Communications policy and consequent technological advancement are critical to the generation of wealth and employment and the generation and sustenance of new industries. The Howard government seems to be scared of new technologies and opposes market solutions, so it has chosen to restrict communications industries. However, these industries, as we all know, are one of the keys to the future. Technological industries provide the infrastructure and act as a feeder industry by stimulating other industries. The government’s regulatory framework for digital television has been and continues to be a resounding failure.

One of the critical measures of success of digital television policy is the take-up rate of digital equipment. The Broadcasting Legislation Amendment Bill (No. 2) 2001 amends the Broadcasting Services Act 1992 to permit broadcasters to broadcast demonstration tapes on new equipment to encourage take-up of digital equipment by retailers. This amendment, to be discussed in the near future, evidences the failure of digital take-up, and the government has been forced to amend its own legislation. Still today, following the introduction of digital television six months ago, a minuscule number of Australians have access to the new range of services that digital television was supposed to offer. The introduction of digital television in Australia could not have been handled more unsatisfactorily. Back in August 1999, the minister stated:

The government is confident that its decisions will ensure that Australians enjoy the best broadcasting in the world, while introducing new information and entertainment options through the establishment of a thriving and viable datacasting industry.

It is obvious that Australians are not yet privy to these promised services and that there is no datacasting industry and no prospect of one in the near future. The reason why Australia does not have a datacasting industry is that the government put in place a regulatory framework that was so restrictive that no-one could come up with a viable business plan. The failure of government to come up with a reasonable policy has led to no new entrants in the emergent industry, thus preventing additional economic growth and a range of new products, services and choices for consumers.

Potential datacasters and the opposition warned the government that its policy was bad, and doomed to failure. Those potential datacasters consequently did not bid in the government’s datacasting spectrum auction and the government had to cancel the auction last month. The government has effectively managed to stifle a new industry and all the opportunities for the economy and consumers that are associated with such.

The Minister for Communications, Information Technology and the Arts is also responsible for the government’s majority share in Telstra. This has proven to be a particularly useful instrument for the minister to make him look good. On the occasions when Telstra has made a positive announcement...
the minister takes credit for it. On the more numerous occasions that Telstra has slipped up or made an announcement that is politically unsavoury, the minister has affirmed Telstra’s independence to operate and make its own decisions as a corporate entity. Just last weekend, the minister was pleased to take credit for the changes resulting from Telstra’s call zone review. The changes will benefit some customers but fail to address the more fundamental inequities in the existing call zone arrangements. Still, however, the minister supports the full privatisation of Telstra. If the minister is in a position to take credit for the announcement, he must have exerted some influence over Telstra in its decision making process. Yet the minister still considers it appropriate to fully privatise Telstra. In that case, the government of the day will no longer be able to exert any influence over Telstra and consequently it will not be able to ensure benefits like this for Australian consumers.

The minister continues to advocate the privatisation of Telstra in spite of the fact that Telstra’s service provision is so clearly inadequate in a number of areas. To fully privatise Telstra now would be a breach of the government’s 1998 election commitment that the government would not fully privatise Telstra until an independent legislated inquiry certified the adequacy of Telstra’s service levels. So the minister pulled together the Besley inquiry, which was neither independent nor legislated, and which still concluded that Telstra’s service levels are inadequate, particularly in remote and rural areas of Australia. The government has failed to adequately respond to the Besley inquiry but will still proceed with the full privatisation of Telstra at the earliest opportunity.

The ABC is another agency for which Senator Alston is responsible. The chain effect of inappropriate board appointments has had a deleterious impact on the national broadcaster. Inappropriate board appointments have led to an even more inappropriate choice of managing director by that board. The managing director, in his short time at the helm, has demonstrated to date that he has no clear vision for the ABC’s future—unless that vision is destruction of everything worth while while about our national broadcaster. This lack of vision is evidenced by the imprudent manner in which Mr Shier undertook his misguided restructure of the organisation. With the advice of several consultants, Mr Shier embarked on his project of redundancies and new appointments. As a consequence, staff morale at the ABC is at an all-time low. The broadcaster’s cupboards are bare of quality Australian programs. What is more, there is nothing promising in the pipeline to fill the void that has been created. In fact, the most successful aspect of the ABC’s operations has been ABC Online, and even that was at the innovation of the previous managing director Mr Brian Johns.

Australia Post is another agency that comes within Minister Alston’s portfolio. The government has tried to come up with a useful policy for Australia Post as well. In pursuit of its ideological obsession with competition, even where it is unwarranted and likely to be detrimental to Australians, the coalition last year sought to deregulate the postal industry further when it introduced the Postal Services Legislation Amendment Bill 2000. When its ideas proved unpopular with the electorate, the government did one of those backflips that it was famous for. In the year or so since the announcement of Australia Post deregulation, the government has changed its mind. It has backed off, for the time being at least. Deregulation of a successful public institution that provides vital community and economic services was the government’s best attempt at innovation and changing with the times. It was one of the few occasions on which the government had tried to introduce reform. Yet, as soon as there was a little criticism of, a little media attention to, the deficiencies of the policy, the government got scared and ran away from what it believed in, at least for the election year.

This is just another example of the coalition’s lack of vision. It seems that whenever it has a policy idea, it is a bad idea. Because the idea is bad, it is criticised and the government backs off for electoral reasons. In its
recently delivered 2001-02 budget, the government proposes to take a secret $200 million special dividend from Australia Post. The GST cost Australia Post something in the order of $90 million to $100 million last year and the government’s plans for further deregulation of the postal service, when reintroduced, will cost Australia Post something in the order of $200 million annually in forgone revenue, according to questions at estimates.

The government has exerted sustained pressure on Australia Post over the last 12 months or so. Surely this is not the most effective policy approach for Australia Post that the minister can come up with. On the occasions when the government has pursued its policy and not done a backflip, the policy has failed. Recent spectrum auctions have highlighted the government’s inability to manage the economy and its failure to implement a workable datacasting regime. In last year’s budget the government increased its estimate of the total revenue it expected to receive from four spectrum auctions to $2.6 billion. Not only was it inappropriate and fiscally irresponsible to place a public value on proceeds expected from special auctions, but those revenue forecasts were also overly inflated. The 3G mobile spectrum auction contributed under $1.17 billion and the government was left with a hole in the budget of at least $1.3 billion when it was forced to cancel the subsequent datacasting auction. The government failed the Australian economy and the Australian people once again.

In conclusion, Senator Alston has demonstrated a remarkable level of incompetence during his time as minister for communications. Recurring policy failures in almost all areas of communications policy point to the government’s lack of vision and foresight. As I have detailed in this speech, the list is long and it is a reflection on the minister and the government.

These notable failures will impact on the Australian economy and Australian consumers in the years to come. The government has failed to adequately introduce digital television, and the absence of new services is proof. The government has failed to put a workable and viable datacasting regime in place. The government has failed to ensure that Australians receive adequate service from Telstra. The government has consistently attempted to undermine and destroy the ABC, while Australians value that institution. The government has made decisions that have detrimentally affected Australia Post and its financial capacity to properly fulfil its role. In relation to spectrum auctions, the government has failed to achieve forecast revenues and demonstrated fiscal irresponsibility and mismanagement. Cancellation of the datacasting spectrum demonstrated the government’s inability to put in place a workable and viable policy framework for these new services. In conclusion, it is fair to comment that this government and this minister have repeatedly failed Australia in the area of communications policy.

Refugees and Asylum Seekers

Senator BARTLETT (Queensland) (1.08 p.m.)—I think it is appropriate to make a few brief comments today, as today is World Refugee Day, on an issue that has been in the news and part of public debate not just in the last few days but in significant ways for a long period of time, as it should: refugees. Indeed, the Democrats would welcome a more significant and meaningful debate on this important issue of refugees.

We saw earlier this week the release of a significant report from the Joint Standing Committee on Foreign Affairs, Defence and Trade on detention centres. This report highlighted the significant problems in relation to the conditions in and various aspects of detention centres. The report recommended that detainees should not be kept locked up indefinitely, that there should be scope for a time limit and that people should not be required to be detained beyond that time limit unless there were justifiable and clearly defined reasons why that had to occur. This policy is not radical, and it is certainly not naive, as the minister and the Prime Minister suggest. It is broadly in accord with approaches in many other countries. To suggest
that it is somehow unworkable is clearly misleading.

It was astonishing to hear the minister’s vitriolic attacks on members of the committee, calling them not just naive but ‘lacking in life experience’. Whatever else one could say about some of the members of that committee, I would think the vast majority of the members would have very significant experience. There has been a lot of focus—quite rightly—on the minister and the Prime Minister’s position on this issue. It seems that fewer and fewer people are supportive of the government’s position. I note that one of the few voices in support of the minister and the Prime Minister has been One Nation. That gives a signal in itself as to where this government’s policy has got it on the issue of refugees and asylum seekers.

It is a great shame, from the Democrats’ point of view, that this recommendation has already been dismissed so contemptuously by the government. It is worth asking a question of the opposition and of Mr Beazley. This was a unanimous cross-party recommendation made not just by members of the Liberal Party and the Democrats but also by members of the Labor Party—some of them very experienced, as well. The question needs to be put to Mr Beazley: does he support this recommendation? It has been ALP policy for some time to support indefinite mandatory detention. This recommendation clearly moves away from that policy. The question needs to be put just as strongly to Mr Beazley. He has been quite happily revelling in the discomfort of the minister and the Prime Minister in relation to this issue, which is all well and good, but what is his position in relation to this very significant recommendation? If he does not support it, then he deserves to be condemned and commented on in exactly the same way as Mr Ruddock and Mr Howard. Certainly the Democrats believe that as much attention should be placed on Mr Beazley and that the challenge should be put to him as to what his response is on this specific, important recommendation.

This report is not just something out of the blue that is completely inconsistent with anything else that has been going on. Indeed, it is exactly the opposite. It is totally consistent with many other reports in terms of the concerns about conditions in detention centres, the concerns about the process, and the clear failure of the direction of the general treatment of asylum seekers and refugees within Australia.

There were other reports, of course, such as the Flood report. There was the Senate committee report handed down last year into our refugee determination process. Each of those highlighted significant areas for improvement. Unfortunately, the government’s response in most cases to these reports has been fairly dismissive and contemptuous. Despite the growing concerns, the regular allegations of mistreatment, of poor conditions and of systemic inhumane aspects of our detention centre regime, the government has consistently refused to acknowledge that it is totally on the wrong track. This is unfortunate not just for the asylum seekers and the refugees themselves but for the broader community and the broader community’s understanding of these issues.

We have the unfortunate situation, particularly on a day like World Refugee Day, of an editorial in today’s Herald Sun specifically calling for all detainees and asylum seekers to be sent back to where they came from at the end of the 14-week period—not released into the Australian community or released from unnecessary and inhumane detention, but sent back in many cases to face persecution or death. There is no doubt that, if an approach such as that suggested by the Herald Sun were undertaken, there would be people being sent back to their death. It is a completely disgraceful and inhumane thing to be advocating, and this particular editorial should be condemned by all sound-thinking Australians. That is the level the debate comes down to, and it is aided and abetted by the approach and the rhetoric of this government.

That is compounded by other measures, again talked about this week, to apply Work
for the Dole to refugees. Again, we have the government advocating and pushing for such a move, despite the fact that refugees do not actually get the dole, for starters. They only get special benefit, which is a different type of payment. They do not get access to the other assistance that unemployed people on Newstart payments get. They do not even get the dole, as it is commonly understood, and yet this minister wants to make them undertake Work for the Dole. It is a completely ridiculous, counterproductive policy, which is obviously aimed solely at trying to paint refugees as somehow or other having done the wrong thing, as deserving punishment—not only deserving punishment in terms of being detained but deserving ongoing punishment even after they have been recognised as genuine refugees by our determination system and released into the community.

This highlights again that the general approach and the general underlying intent of this government in relation to the issues of asylum seekers and refugees is simply to demean and vilify them and to generate a perception that somehow or other these people are second class, should have fewer rights and should be left to suffer in hardship because that is what they deserve. This is a disgraceful situation for Australia to be in. It is one that the Democrats completely oppose. We will continue to voice our concerns as strongly and as loudly as possible. We would urge all in the community and in this parliament to continue to do so.

I congratulate those members of the foreign affairs committee who put forward these recommendations. They do not go as far as the Democrats would like, but in the interests of trying to ensure the forcefulness of unanimous recommendations I think anything that highlights the need to shift away from the failed policy approach of this government in relation to asylum seekers and refugees needs to be supported, backed up and encouraged. Again, I put the question on behalf of the Democrats to Mr Beazley: what is his response to this recommendation? Is he also going to recognise the inherent and almost inevitable problems in the policy approach of this government and make a significant shift? Because that is what is required, and it is required as urgently as possible.

It is appropriate on a day like World Refugee Day to highlight these issues again and to emphasise that the Australian community, when they are aware of the facts of a matter, when they are aware of the individual human suffering that is involved, are a compassionate group of people. They want to help people in need. They do not want people to be made to suffer unnecessarily. They do not want to see families torn apart. They do not want to see families divided and kept separate from the rest of the Australian community. Refugees are part of the Australian community. Refugees have contributed enormously to the development of Australian society and the Australian economy. They should not be treated or portrayed as somehow second class and having fewer rights. The Democrats will continue to speak in support of their rights and push as strongly as we can to get more appropriate treatment and assistance for asylum seekers and refugees.

Rural and Regional Australia

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (1.18 p.m.)—Hundreds of Queensland farming families and thousands of families in south-west Queensland regional centres are facing a major threat to their new, hard-won prosperity and opportunity. I want to stand up for them in the Senate today. These thousands of people are major players in one of the newest, most innovative, promising and productive primary production industries in this country. They are the leaders in establishing, by the success of their farms and by the associated success of their communities, that there can be a real future in rural Australia if people are prepared to seek out new opportunities and put the required energy into developing them. That developing opportunity and that developing example may be about to be cut off at
the knees. If that occurs, all of us in this parliament will have to take at least some responsibility.

The cotton industry has recently transformed the economy of a large sector of the Darling Downs in Queensland as well as a large tract of country over the border in northern New South Wales. Towns like Dalby, St George, Goondiwindi and Dirranbandi on the Queensland side have been given a new lease of life by cotton. Dirranbandi about four or five years ago was a town of 400 people. We were just about to read the last rites over Dirranbandi and then cotton came along and the population of the town in four years has gone up to 1,100 people. It has a whole range of small businesses and tradespeople that simply were not there five years ago. It got a new motel, built to achieve 70 per cent capacity but now only achieving around seven per cent since doubts about the town’s future have re-emerged. The towns of the Balonne have been booming but business from cotton farmers is down nearly 40 per cent for many businesses since doubts about the industry’s future started to crystallise last year.

A great side-effect of this boom in cotton has been one of the clearest examples of practical reconciliation under way anywhere in this country. The St George hotel-motel is owned and run by an indigenous family. An indigenous family owns and operates a weed contracting business at St George employing 40 people and engaging big machinery assets. There are indigenous run cartage operations at Dirranbandi. The Dirranbandi video shop is owned by indigenous people. Scores more indigenous people in Dirranbandi alone win significant seasonal work on cotton farms in the district. If the cotton area in this area is forced to shrink, some of the most disappointed people will be hundreds of indigenous families, to whom the industry has provided new hope. As I have already said, and I repeat for emphasis: this is one of the most shining examples of practical reconciliation in a harmonious setting that is occurring anywhere in Australia.

Contrary to popular opinion, most cotton farmers are not conglomerates. Most cotton farms in the Darling Downs are family affairs in the great tradition of Australian farming. The average cotton farm is run by a family farming about 500 hectares. Over the past decade in particular they have contributed mightily to the economy of the region and to Australia’s export performance. The industry has been built on access to water to irrigate cotton. Much of that water comes from the so-called unregulated sectors of streams in the Condamine-Balonne and border river systems. These rivers have their headwaters in Queensland and flow across the New South Wales border into the Murray-Darling system. Next month, in line with intergovernmental agreements overseen by the Murray-Darling Basin Commission and its ministerial council and by the national competition policy agreements, the Queensland government, in the case of the Condamine-Balonne and the Queensland and New South Wales governments, in the case of border rivers, will announce caps on the flows of these streams over the Queensland border. A key goal of those caps will be to maintain what is determined to be an adequate flow across the border to protect both the environment and other downstream users of the water in those systems. But the danger when those caps are imposed is that they could undermine the newfound prosperity of a very significant area of Queensland, of a very significant number of families and communities and of a significant new exporting industry for this country.

I am fully aware, as I am sure every member of the Senate and the parliament is, of the need to improve the environmental standing of our river systems. It is clear and obvious that over the past 200 years we have progressively put more strain on some of our river systems than they can support. The issues for correcting that situation are issues of equity between the users of water. That equation is now properly seen to include the environment. We know now that inappropriate uses of water, often in association with inappropriate vegetation management, have impacted badly on water quality in this country.
and particularly in the Murray-Darling, which is far and away the most important system both economically and environmentally.

We know that these factors have contributed to what threatens to become in this country a devastating impact from salinity in terms of both soil and water quality. In addressing the Senate on this issue today, on behalf of Queensland families and communities, I do not seek to sidestep those particular issues in the least. But what I want, on behalf of those families and communities, is that we achieve a fair balance in the way we go about resolving these issues and these challenges. A fair balance does not involve, in my view, a position adopted by this parliament, or any other parliament for that matter, which wilfully contributes to the destruction of the livelihoods of thousands of people in Queensland. I am sure there will be people, when the caps in the Condamine-Balonne and the border rivers are announced next month, who will look at the extent of the increase in water consumption and storage in those two systems over the past decade in particular and express little or no sympathy for affected farmers or their communities.

I am sure there will be those who will pick up on the political correctness that now too often surrounds environmental issues in this country and who will be prepared to let farmers and communities carry the cost of protecting the environment. That is predictable, but it is also wrong. I want to make it perfectly clear in the Senate and to the country here and now that I do not believe that is correct and that the National Party will not support that stand or that sort of treatment for those communities.

I have a few references which equate to what I believe are crucial principles we have to follow in this. The first is from the report of the Independent Audit Group of the Murray-Darling Basin Ministerial Council, which reported in March on its review of cap implementation for the financial year 1999-2000. I want to quote one single sentence from page 39 that points to a wider truth. The sentence is in relation to Queensland, and I quote:

The growth in storages and diversions is within the legal and administrative arrangements that existed at the 1993-94 benchmark used to establish the cap.

In other words, the irrigators in that area of Queensland increased their storage and diversions of water in a manner that was formally and officially sanctioned by effectively every government in this country. If the government of Queensland alone had wished those farmers to not increase their storage or diversions, then that government would have had to have taken action which curtailed the rights attaching to various forms of licences to harvest that water which were legally in place and exploitable under the cap definitions, and it did not do so. It did not pose a ban on issuing any further licence in the region from 1995. From late last year, it imposed a moratorium on any further development of pre-existing water rights in the region. But they are the only actions the Queensland government took and therefore the irrigators of the region were simply developing country and accessing water under the terms of their licence arrangements with the government of Queensland in line with the parameters for such ongoing development established by the legal and administrative arrangements associated with the 1993-94 benchmark—the cap—agreed by all Australian governments.

The second reference is related. It is the expression of one of the guiding principles for the reform of the Murray-Darling Basin resources as set down in the document Delivering a sustainable future, published this month on behalf of the Murray-Darling Basin Ministerial Council. The commitment from the council set down on page 3 of the document is this:

We, the community and governments of the Murray-Darling Basin commit ourselves to do all that needs to be done to manage and use the resources of the basin in a way that is ecologically sustainable.

The principle of shared responsibility for the health of the basin between the wide community and governments—in other words,
not just the farmers—is underscored on the same page where the commitment I have just referred to is expanded upon. The document says:

Our past actions have caused the landscape—its land, water, and other environmental resources—to degrade. This has had significant consequences for the people who live in the basin. We do not assign blame for those actions.

This is the ministerial council speaking: ‘We do not assign blame for those actions.’ The council says:

Instead, we look to the future, and seek to balance our need for production with the need to protect the environmental health of the basin so that future generations may also benefit from this fragile and unique landscape.

The third and last reference is from the National Competition Council’s presentation of the national competition policy agreements of COAG, announced formally in April 1995. The NCC says that there were two caveats on COAG’s acceptance of the policy. One concerned some reservations about detail by the Tasmanian and Queensland governments. The second caveat was outlined on page 1 of the NCC’s assessment of the COAG water agreement, which says:

COAG recognised that the speed and extent of water industry reform and adjustment will be dependent on the availability of financial resources to facilitate structural adjustment and asset refurbishment.

On the basis of the fact that we are mostly dealing, in relation to the Condamine-Balonne and the border rivers, with unregulated rivers—rivers largely without dams or weirs, and where access to water is direct from streams—the term ‘structural adjustment’ is a very relevant reference.

What cotton farmers want is what the ministerial council have promised as one of their core commitments: a fair go, a balance between the need for production and the need for protection of the environmental health of the river system. If the Murray-Darling Basin Ministerial Council are prepared to endorse caps imposed by the Queensland government which significantly reduce water allocations, and therefore reduce needed production in the Condamine-Balonne and/or the border rivers sections of the basin, then they have to understand that what they will also be endorsing is a significant reduction in the wellbeing of many thousands of Queensland families.

An unbalanced approach could drive many out of business, on and off the farm, and out of production. An unbalanced approach could devastate the newfound prosperity of towns in the region. It could affect, as I have sought to highlight, one of the best examples of genuine, respectful, practical reconciliation in the country. This could be the price for farming families which have operated within the terms of their legal obligations and within the terms of the cap arrangements to bring into production a highly successful new industry for Australia. It could also be the price for thousands of families spread across towns like Dalby, Dirranbandi, St George and Goondiwindi which rely heavily on the wealth being generated by the cotton industry. I seek leave to have the rest of my speech incorporated in Hansard.

Leave granted.

The speech read as follows—

Madam President, a balanced approach demands that the prosperity of this region is maintained.

Such a balanced approach means that if there are to be reduced rights to water, then, as COAG demanded in 1994, the pace of reform has to be limited to the availability of financial resources for structural adjustment.

How that structural adjustment is funded is not a central part of my concern at the moment: my concern is the principle.

The principle must be based on the Murray-Darling Basin Ministerial Council declaration that no blame attaches to any one group in the community, and that it is government, and the Murray-Darling community at large, which must carry responsibility for the policy approach that is now in motion.

Structural adjustment must be in forms which enable the needed production from the irrigation industry in Queensland to be maintained.
Civil Aviation Safety Authority: Mr Mick Toller

Senator O'BRIEN (Tasmania) (1.33 p.m.)—During the last estimates, I asked a number of questions relating to the investigation of alleged breaches of aviation regulations by the Director of the Civil Aviation Safety Authority, Mr Mick Toller. My questions followed a statement by the then chair of CASA, Dr Paul Scully-Power, to the Rural and Regional Affairs and Transport Legislation Committee that addressed those alleged breaches. The three incidents referred to by Dr Scully-Power were: Mr Toller’s failure to record a defect on a maintenance release after flying an aircraft operated by Brindabella Airlines, Mr Toller’s operation of an aircraft without an endorsement, and the incorrect operation of an aircraft at Moruya Airport.

The breach involving Mr Toller’s operation of an aircraft for which he was not endorsed came to the attention of CASA in early November last year. Immediately following media reports of the breach that appeared in the week of 4 and 5 November, discussions occurred between Mr Toller, Mr Ilyk and Mr Stephen Skehill about the matter. A meeting then followed between Mr Toller, Mr Ilyk and Mr Stephen Skehill, I understand, in Mr Toller’s office. That meeting took place on the morning of 6 November. Mr Ilyk told the recent estimates hearing that the meeting had been called to get advice on whether or not there may have been a breach by Mr Toller.

I have concerns about the propriety of those meetings and discussions between Mr Toller, Mr Ilyk and Mr Skehill. Mr Ilyk’s role at that time appears to have been one of damage control rather than ensuring that a proper and open investigation into the matter took place. He was, after all, at that time—or was shortly about to become—the senior officer responsible for investigation and enforcement of CASA’s regulations, and Mr Skehill’s involvement in the meetings meant that he was assisting Mr Toller to manage one of the breaches and at the same time was advising the authority about another of Mr Toller’s breaches. I do not believe that Mr Skehill can credibly justify his conflict of interest in this case. So the initial response by Mr Toller, Mr Ilyk and Mr Skehill to the public disclosure of Mr Toller’s breach of aviation regulations was inappropriate, to say the least.

I am advised that the Acting Assistant Director of Safety Compliance, Mr Farquharson, had similar concerns. In fact, I am given to understand that Mr Farquharson’s concerns were such that he has committed them to writing. Now, if Mr Farquharson did express concerns about the relationship between Mr Toller, Mr Ilyk and Mr Skehill in relation to what has become known as the Uzu breach, either orally or in writing, the integrity of the internal inquiry into this matter must be called into question. Mr Farquharson was, after all, charged by the chairman of the board with the responsibility of ensuring that the investigation into the Uzu breach was carried out in a proper manner.

Around the time that this breach came to the attention of the authorities, there was a change in the reporting arrangements for investigations. Rather than reporting to the Assistant Director of Safety Compliance, the Manager of Enforcement and Investigations, Mr Peter Boys, was told to report to Mr Ilyk. Mr Boys told the committee that he did not investigate the Uzu breach, and someone else was tasked with the inquiry. Mr Boys confirmed that such an investigation would normally have been referred to him but that the investigation of Mr Toller was not. He said that the changed reporting arrangements should not normally affect the manner in which he progressed his investigations, but in relation to the Uzu matter they did. The treatment of Mr Boys in this matter and the Brindabella investigation was highly irregular, to say the least.

I now want to turn to the Brindabella Airlines breach. Mr Boys told the estimates hearing that the breach relating to Brindabella Airlines was initially referred to him. That incident took place on 24 June last year. During the last estimates hearing, Mr Leav-
ersuch, the officer to whom Mr Boys was reporting at that time, initially could not recall there even being a file on this matter. He said that he could not recall any details relating to the Brindabella breach. He said that he did not control the file or did not recall controlling the file. He then said that he did not recall seeking special advice from an operational person in relation to the matter. However, Mr Leaversuch then told the committee that he had in fact taken the files from Mr Boys. Mr Leaversuch then told the committee that he had made an operational judgment that the matter did not warrant prosecution. It should be understood that Mr Boys was Mr Leaversuch’s key adviser in such matters. Mr Boys is legally qualified, and he has, as I understand it, considerable experience in this particular area. His evidence before the estimates committee indicated that he has a very high success rate in relation to matters referred to the Director of Public Prosecutions as to ultimately proceeding to successful prosecution. However, Mr Leaversuch ignored Mr Boys’ advice, effectively taking him off the case, and he sought no other advice. He then shut the Brindabella investigation down.

There are a number of irregularities in the investigation into the Brindabella breach. Firstly, the note which was left by Mr Toller in the Brindabella aircraft, advising of a particular defect, went missing. Mr Sherman, a lawyer who wrote an advice for the board, said that the loss of the note was:

... puzzling and perplexing because the note would have provided direct evidence of the DAS’s state of mind when he wrote the note ...

Secondly, I understand that, while the licensed aircraft maintenance engineer who worked on the aircraft after Mr Toller reported the defect could not simulate the problem, he still took action to ensure that it did not recur. In other words, he fixed what was reported to be the problem. He then endorsed the maintenance release, which he was required to do. However, rather than endorsing the maintenance release with the date on which the work was done, the engineer backdated his endorsement to ensure his entry and Mr Toller’s flight appeared to have occurred on the same day. I am advised that this matter was drawn to Mr Farquharson’s attention, and I am also advised that a number of inconsistencies appeared in evidence given by witnesses in relation to this matter. I understand that all this information was provided to Mr Farquharson. If this is correct, it is difficult to understand how he could not have formed the view that there was significant doubt about the integrity of the process followed and, therefore, of the conclusions reached in relation to this investigation.

In relation to the Brindabella breach, that is my view. In relation to the Uzu breach, Mr Boys told the estimates committee that the investigation report raised two issues. One was a prima facie breach of the Civil Aviation Act and the other was a prima facie breach of civil aviation regulation 282 by Mr Toller. Civil aviation regulation 282 relates to the need for an endorsement to operate certain types of aircraft. Mr Boys said he discussed the report with Mr Farquharson and during those discussions he advised that there had also been a breach of civil aviation regulation 228. Mr Boys told the committee that, following a review of the file, he advised:

That, for scrutiny and for consistency in accordance with the procedures that have been in place, the matter should be considered for referral to the DPP.

Mr Farquharson told the committee that Mr Boys’s view was one of many, and he referred the matter to external lawyers for advice. That was done through Mr Ilyk. Mr Farquharson said that neither supported Mr Boys’s view.

If we assume that the evidence to the committee was correct, there is a problem with the advice provided to the CASA board by Mr Tom Sherman, a lawyer, on the Uzu matter. Mr Ilyk told the committee that he, Mr Ilyk, had only dealt with the alleged breach of civil aviation regulation 282 and he had never provided advice on the matter of civil aviation regulation 228. He also told the committee that Phillips Fox, a law firm, did not have access to the Horn Island file—that is, the Uzu matter. He said he raised a specific issue in relation to civil aviation regula-
tion 282 with Phillips Fox. So, when Mr Farquharson told the committee that he was faced with a difference between the views held by Mr Ilyk, Phillips Fox and Mr Boys, that was not accurate. A possible breach of civil aviation regulation 228 was not considered at all by Ilyk or Phillips Fox.

Further, Mr Sherman, in his advice, is clearly of the view that the matter of Civil Aviation Regulation 228, in addition to 282 and section 20AB(1) of the Civil Aviation Act, had been referred to two independent law firms. He refers specifically to Civil Aviation Regulation 228 in response to questions asked on the last page of his advice. It is clear from the evidence—if we can accept it—that no such advice exists in relation to Civil Aviation Regulation 228. Either Mr Sherman formed some view that the matter referring the breach of 228 to the DPP had been considered by external lawyers and was rejected or he had been wrongly advised that such advice had been provided to the authority. So on the matter of referral of the Uzu breach to the DPP based on Civil Aviation Regulation 228, at best there are only two views: that of Mr Sherman and that of Mr Boys. As I said, Mr Sherman, in his opinion, incorrectly assumes that a possible Civil Aviation Regulation 228 breach had been considered and rejected by two independent legal assessors and gave some weight to that alleged advice. So there were not three legal views against Mr Boys at all; at best, there was one and one which would have to be qualified in that context.

Mr Elder of CASA told the committee in July last year that Mr Boys decides what is investigated and what is not investigated. In relation to the Brindabella investigation, we know that Mr Boys did commence an investigation but was taken off the inquiry and the files were removed from his possession. His reporting line was then changed at the time of the Uzu investigation and he was basically sidelined on the matter. Based on the evidence to date, it could be argued that Mr Boys as the Manager of Enforcement and Investigations was marginalised in order to prevent proper process being followed in relation to both the Uzu breach and the Brindabella breach. It appears that these actions were designed to prevent Mr Toller from being exposed to a normal investigative process.

We also have missing evidence, changing stories, an apparent backdating of a maintenance release coming to the aid of Mr Toller and irregularities in advice from Mr Sherman. The Civil Aviation Safety Authority took a number of questions on notice on a whole range of issues considered by the estimates committee. CASA has until 13 July to respond. However, given the issues I have raised today, all matters relating to Mr Toller’s breaches—including the release of a number of files—must be provided to the committee as a matter of urgency. Only after the Deputy Prime Minister releases all the relevant files can we get to the bottom of these matters. If those files confirm my advice, Mr Toller’s alleged breaches of the law must be subjected to a full and open investigation as soon as possible.

During the estimates hearings, Senator Ian Macdonald was doing his best to prevent the committee accessing this information. While Senator Macdonald was doing his best to ensure that this material was withheld, Mr Anderson’s adviser was in the press gallery handing out copies of Mr Sherman’s advice—that is, legal advice given to the CASA board. So from Mr Anderson’s perspective, this material is in no way confidential. Providing a copy to every senior journalist in the press gallery is hardly a controlled release of legal advice to the board of the Civil Aviation Safety Authority. It is not in the interests of CASA, Mr Toller or the government to have only some parts of these files released. Until all the material is released, there will be continuing doubt about how Mr Toller was treated in relation to these alleged breaches. There is certainly considerable doubt at the moment.

Online Gambling

Senator TIERNEY (New South Wales) (1.48 p.m.)—I rise today to draw people’s attention to the fact that the parliament is currently debating the Interactive Gambling Bill 2001. I believe this bill, in its current
form, truly reflects the will of the people. Survey after survey of Australians have shown that people do not want more gambling facilities and they particularly do not want a casino in their lounge room. That is what would happen if gambling on the Internet were allowed. Through your current television set, within a year you could have a casino in your home. This is why the federal government has had to act on this matter.

The debate goes back to two very significant reports: one was by the Productivity Commission and the other was the Senate report Netbet: a review of online gambling in Australia. In 1999, the Productivity Commission laid down the scope of the problem we have and quantified it for the first time. That is why you now have action right around Australia on gambling and the federal government has only restricted power but, in the area in which it can act relating to the Internet, the government is now doing that through this bill.

The Productivity Commission found in 1999 that there were 290,000 problem gamblers in this country—that is, the population of a city the size of Canberra. If you add to that the number of people affected—loved ones, work mates and people who have been stolen from by problem gamblers who are trying to support their habit—the number, it is estimated, is five to nine times that figure, which would take it up to between one and two million people in the country who would be affected. That is why the federal government cannot allow this problem to take a quantum leap, which is what we will be facing if online gambling facilities are allowed. We have many problems already with the expansion of gambling through poker machines, TAB and casinos, but the danger we are facing is that this type of gambling, which is difficult to access, will change dramatically with the advent of Internet gambling where all these services will be available in the home.

The Netbets report was tabled in the Senate and, following that, the legislation committee of the Senate Select Committee on Information Technologies also tabled its report on this bill. It put forward the reasons why Internet gambling should be banned. The first point the report made in favour of a ban was this very point on the significant number of problem gamblers we have in this country. It is no secret that Australians love to have a bet. This is enshrined in our culture, particularly through things like two-up and the Melbourne Cup, but the downside is the number of people who become addicted to this habit and then the social havoc that that wreaks on our society. The report highlighted how, on average, Australians spend twice as much on gambling as do people in North America and Europe. Unfortunately, my home state—New South Wales—is leading the charge in government revenue reaped from gambling now stands at $1.5 billion. The rise to this very large amount has largely been driven by changes under the Carr Labor government in the last five years, changes which have increased the number of poker machines in Australia from 62,000 to 101,000.

The second point the Senate report has made is that accessibility to gambling has increased and that that is linked to the number of problem gamblers, which is also increasing. I mentioned poker machines and the dramatic increase in their availability as they have spread from clubs to the public sector, but there are also other cases where increasing the accessibility has led to unintended consequences. Tim Costello and Royce Millar in their book Wanna Bet? talk about the spread of TABs through Australia. The TABs were originally legalised to try to prevent underground and illegal betting. Today TABs can be found in virtually every suburban and country pub. It also shows that, no matter how much you try to regulate gambling, over time these regulations are peeled back. The TABs were set up under very strict conditions and over the last 30 years all of those have unwound. If you allow highly regulated Internet gambling, you will find that exactly the same thing will happen.

The third point raised in the report is the rapid take-up rate of the Internet. Thirty-five per cent of Australian households are ex-
pected to have access to the Internet by 2002. If left unchecked, this would lead to a quantum leap in accessibility to gambling services if online gambling is allowed. People would be able to access virtual pokies and casino games via the Net 24 hours a day. It will be unrestricted—‘click of a mouse’ spending. I have serious concerns, as well, about the availability this gives to young Australians, particularly those under the age of 18. A child will not have to produce identification, as you do when you walk into a club, a pub or a casino. These restrictions do not apply to the Internet.

The negative effect of this is already starting to show in the United States. The American Psychiatric Association estimates that the number of Americans gambling on the Net will rise from four million to 15 million over the next three years. The association has sent out a warning that young people will be the most susceptible to this form of gambling. This group uses the Internet more than anyone else and they have access to credit cards. The association has found that many online video and board game sites that children play actually have links to gambling web sites which advertise their services. It has found that 10 per cent to 15 per cent of young people surveyed have significant gambling problems and that one per cent to six per cent are pathological gamblers.

Given this sort of negative evidence the federal government has a moral obligation to act on this issue. I want to stress that this is a social problem, not an IT problem. When over 300,000 people have a particular problem, it is socially responsible for governments to act—300,000 problem gamblers is a staggering figure. It seems that only the gambling industry itself is set to benefit from a further expansion. Thousands of families that usually come from poorer socio-economic backgrounds are the ones that lose the shirts off their backs from problem gambling. It is not big business that go to gambling counselling seeking assistance because they have lost their life savings, yet there are some who try to push the line that all you need to do in relation to online gambling is make sure it is regulated. I fear that any regulations put up by the states and territories are just like letting Dracula be in control of the blood bank. The states are addicted to gambling revenues. New South Wales gets $1.5 billion. They will not, of their own volition, wind this back.

The Carr government and other states have started to realise there is a problem and they have installed a moratorium on poker machine licences. I welcome that development, but it does not address the new problem that this country is facing. The federal communications minister, Senator Alston, announced this week that there would be changes to the legislation following the Senate report that I have been speaking about. Lotteries, sports betting, and wagering on horses will be excluded from the ban. Now the focus is on gambling on the Internet. It is mindless, repetitive and highly addictive. Let us not forget that the government are not saying, ‘Let’s get rid of every form of gambling in existence.’ We are saying that there is a major problem out there, and any threat to exacerbate that should be stopped.

The changes in the bill include the exclusion of wagering and sports betting from the scope of the legislation, with the exception of ball-by-ball, or micro event, wagering. That will continue to be prohibited. Lotto and lotteries will be exempt from the bill and the government proposes to amend the bill to ban advertising of gambling services in broadcast, print, publications and on billboards and on the Internet in order to limit the access of gambling operators to the Australian market.

We propose to extend the offence of providing interactive gambling services to persons in Australia to offshore sites. There is an exemption for free-to-air television broadcast to operate interactive game shows. With those exemptions, the actual focus is on the major problem that the country is facing, and that is casino type gambling. These amendments will address the criticism that the interactive gambling ban does not apply to offshore providers. Offshore services will not be able to advertise in Australia or provide their services to Australians without
threat of prosecution upon entering Australia. Amendments to exempt Lotto and lotteries recognise that banning these services will be disproportionate in their effect on the elderly and the disabled as well as to people in remote Australia.

These amendments will also address the concerns raised by the Australian racing industry. The main question we have to ask ourselves as the debate reaches its current point is: why is the Australian Labor Party refusing to support the government on this? Labor obviously does not share the widespread community belief. The Productivity Commission found that 70 per cent of Australians believe that gambling did more harm than good and 92 per cent did not want to see a further expansion of gaming machines. Mark Latham’s very first online ballot in his electorate of Werriwa found that the overwhelming majority, 68 per cent, want online gambling banned—the direct opposite of the federal Labor Party’s position on this issue. I call on the federal Labor Party to support what the government is doing and recognise the fact that the Australian people do not want this sort of gambling expanded. They do not want the quantum leap in gambling that would be created by the extension of this type of service.

QUESTIONS WITHOUT NOTICE

Minister for Agriculture, Fisheries and Forestry

Senator BOLKUS (2.00 p.m.)—My question is to Senator Hill, representing the Prime Minister. I ask the minister whether he can confirm that the Prime Minister removed the Minister for Agriculture, Fisheries and Forestry, Mr Truss, from a ministerial task force responsible for developing policy on land clearing, particularly in relation to compensation issues, due to that minister’s conflict of interest by owning a 459-hectare property in Queensland. Why did the Prime Minister take this action in relation to Mr Truss when he previously refused to act against the massive conflict of interest of the former Minister for Resources and Energy— a minister with significant shareholdings and dividend flows from export coal mines— allowing that minister to continue to take responsibility for these matters in cabinet discussions? Can the minister confirm that Minister Truss is continuing his involvement in cabinet discussions on land clearing, and can the minister indicate how many cabinet meetings Minister Truss has participated in that have involved discussions on land clearing since the Prime Minister removed him from the task force?

Senator HILL—That really is pathetic.
Senator Mackay—No, it’s good.

Senator HILL—Do you reckon that is good? If that is the best you can do, you deserve to stay in opposition for a very long time. Fancy referring back to that very fine former senator, Senator Parer. He was an excellent minister for resources, and I am pleased to have the opportunity to acknowledge that again. We all miss him. To be dragged back into the debate by Senator Bolkus in an attempt to contrast the Prime Minister’s reaction to different ministers is really desperate stuff, to say the least. In relation to Mr Truss, I think the situation is that he and his brother—or his family, anyway—own a small property in Queensland that has an even smaller area of native vegetation remaining.

Senator Faulkner—Why does he stand down and not Parer?

The PRESIDENT—Order! The minister has the call.

Senator HILL—In an exercise that could only be described as wanting to take the greatest care possible to avoid any conflict of interest—Mr Truss believed that some, such as Senator Bolkus, might suggest that, when he dealt with matters to do with land clearing in Queensland, there could be some outcome that might affect him, but that hardly fits the reality of the facts at all. This is a small parcel of native vegetation, and there is no plan to clear that vegetation. Nevertheless, to err on the side of caution in the extreme, he declared that interest. The Prime Minister said to him, ‘In some circumstances, therefore, to avoid the sort of nonsense that Senator Bolkus introduced in the Senate today, you should have your assistant, Minister Tuckey,
represent you.’ That was the Prime Minister’s determination. As I said, he said that it was to err on the side of caution in the extreme and that is the way in which Mr Truss is involving himself in this total issue of land clearing. So I hope that clarifies the position for Senator Bolkus.

In relation to natural resource management matters generally, Mr Truss continues to do an excellent job as part of the government team, as we take on the issues that the previous Labor government found too difficult to tackle in 13 years—issues such as water quality and quantity, issues such as dryland salinity and issues such as native vegetation. There was no leadership from Labor in 13 years, and now that a Commonwealth government under the coalition finally is prepared to stand up to the states and say that it is time we had sound natural resource management in this country for the benefit of not only this generation but future generations what does Senator Bolkus do? He simply condemns it. What is the Labor Party alternative? Of course, as per usual, they simply do not have one. After nearly six years of thinking about the issue, do they have a policy? No, they do not have a policy, not a clue—just grumbling and mumbling about the contribution that Mr Truss might be making to the benefit of the nation as a whole. There is no conflict of interest but, as I said, the Prime Minister said that, to err on the side of caution, in some circumstances it would be better if Mr Truss was replaced by his deputy. (Time expired)

Senator BOLKUS—Bluster is no answer, Minister. You are asking us to believe that an issue which may be a conflict of interest on the task force is not a conflict of interest before cabinet discussions. Madam President, I ask a supplementary question. Minister, since the Prime Minister has actually acknowledged the conflict of interest by removing Minister Truss from the task force, why does he continue to allow that minister to be involved in discussions when he has a direct and acknowledged conflict of interest? Doesn’t this constitute a breach of the prime ministerial guidelines on ministerial conduct? Isn’t this merely just another case of government ministers making a mockery of the Prime Minister’s guidelines following the precedent set by former Minister Parer?

Senator HILL—I have said that I do not actually believe there is any conflict of interest—no more conflict of interest than saying that a farmer cannot be agriculture minister, that a lawyer cannot be Attorney-General or that a doctor cannot be health minister. There is no actual conflict of interest here at all. There might on the finest point be a perceived conflict of interest and, acting in a cautionary way—as the Prime Minister always does—he took the course of action that has been outlined.

Senator BOLKUS—Why is he off the task force and not out of the cabinet? You can’t have it both ways.

The PRESIDENT—Senator Bolkus, you have been constantly interjecting.

Senator HILL—Senator Bolkus, I applaud the fact that the Prime Minister is not going to permit even a perceived conflict of interest in the most extreme circumstances.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the National People’s Congress of China, led by Madam Li Shuzheng. I welcome you to the chamber, and I trust that your visit to this country will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Howard Government: Economic Management

Senator COONAN (2.07 p.m.)—My question without notice is to the Leader of the Government in the Senate, Senator Hill. Will the minister inform the Senate how the responsible economic management of the Howard government has allowed for major investments in important policy areas such as the environment, education and innovation? Is the minister aware of any alternative policy approaches and what would be the impact if these approaches were to be implemented?
Senator HILL—I thank the honourable senator for an important question—back to serious business. There is no doubt that the Howard government has a strong record of responsible economic management. We, of course, brought the budget back into surplus and have kept it that way for five budgets in a row.

Senator Cook—What about the GST and BAS and record foreign debt?

Senator HILL—I am reminded by Senator Cook that it was Labor who ran up $80 billion of debt in their last five years of office. Who could forget Senator Cook and Mr Beazley faithfully promising the Australian people that the budget was in surplus when in fact it was $10 billion in deficit? Labor’s addiction to big spending and big budget deficits saw the Australian people pay a heavy price. There was record unemployment. Who will forget one million out of work under Labor? Who will forget the record high interest rates—more than 17 per cent—and the big tax increases, despite Labor’s pre-election promises that taxes would be cut?

Under our management we have been able to create some 800,000 new jobs and see interest rates drop to their lowest level in 30 years. Under Labor, a family with an average loan of $100,000 paid $1,437 a month; under the coalition, $695—from $1,400-odd a month to nearly $700. We halved what they paid under Labor. But, apart from these major benefits to families, restoring the budget to surplus has allowed us to make major investments in areas that are important to the Australian people.

We have been able to deliver in full our promised personal income tax cuts of $12 billion to Australian workers. We have committed an extra $1 billion to the Natural Heritage Trust, supporting communities to repair the Australian environment—something Mr Beazley said that he would scrap. We have committed $2.9 billion to Backing Australia’s Ability, supporting innovation and strengthening skills and knowledge. For Senator Carr’s interest, we have put more money into universities. These commitments are fully funded and the budget remains in surplus—fully funded and in surplus. This enables us to keep interest rates down.

I have been asked about alternative policies. We know little about what Labor intend. Six years and they still have not been able to come up with one detailed policy. We hear that they have something they call Knowledge Nation. Do we know the details? No—only some vague, vague promises. They say they are going to roll back the GST. They say they are going to put more money into education, health and all of these things, and they are going to do that at the same time as they are going to roll back the GST. How are they going to pay for it? How can you balance the books in those circumstances? There is only one way possible.

Senator Abetz—Senator Conroy told us.

Senator HILL—Senator Conroy let the cat out of the bag: Labor will do what they do best—put up taxes. And when they put up taxes again, up will go interest rates again, down will come employment, up will go unemployment, and we will be back into the dismal malaise that we experienced in this country for 13 years. The contrast is stark: responsible economic management and gains for all Australia; Labor achieved little. *(Time expired)*

Telecommunications: Infrastructure

Senator MACKAY (2.11 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. I ask the minister whether he stands by the claim, as part of his ritual abuse of the Labor Party, that he made on the *Sunday* program last weekend:...

... the Labor Party’s approach to all that is to say we’ll require Telstra to adopt a nation building role. Now this is a recipe for disaster.

I ask the minister why he endorsed precisely that approach, when he said on ABC radio’s *Media Report* on 15 March this year:...

... well from a Government point of view, as opposed to perhaps the company’s point of view, the Government certainly sees telcos as having a crucial role to play in nation-building.
Has the minister’s blatant bipartisanship completely derailed all his consistency on the issue of telecommunications infrastructure development in this country?

Senator ALSTON—I congratulate Senator Mackay on being able to read Mr Beazley’s letter to the Financial Review this morning. But, unfortunately, as so often happens, it is grotesquely out of context. One needs to understand that the essential difference between the two approaches on this critical issue is that telecommunications is a form of infrastructure and, of course, we want to see as much infrastructure out there as possible. We all like to see it available as cheaply as possible and as quickly as possible. But, of course, there are commercial constraints. These things have to be paid for. Infrastructure is not cheap. Roll-outs into regional and remote areas can be very, very expensive. That is why you have a universal service obligation—to require Telstra to provide that money, even though it is uneconomic, and they recover the cost through a levy on the rest of the industry. It is a mechanism that has been well and truly recognised.

In that interview I gave the example of the untimed local calls tender in extended zones. Telstra have always said, ‘We can’t afford to do it,’ and governments—including yours—have always said, ‘Well, that’s too bad; too hard; can’t do anything about it.’ We actually found $150 million, so we made it possible for Telstra to do it. Now they will have the capacity to earn some revenue out of that service which otherwise would not have been available because no-one could afford it. In the same way, it did not make sense for mobile phone carriers to provide continuous coverage on major highways because there is not enough traffic there. So we said that where it is clearly uneconomic we will actually provide $25 million and put it out to competitive tender—and Vodafone won that contract. So that is one approach: where it is not economic to do it, you provide the funds—you have a transparent mechanism for ensuring that you do not force people to do something that is otherwise uneconomic.

We will go into this in a little more detail later, Senator Mackay, but there are plenty of examples of Mr Beazley being caught short. He is actually very much in favour of directing Telstra to do a whole range of things. Directing them—not subsidising them and not providing the funds so they can afford to do it, but making them do it irrespective of what effect it has on two million shareholders and irrespective of what effect it has on the commercial operations of the company. That is the crucial difference.

Labor use the term ‘nation building’ as code for saying, ‘We do not care whether you want to do it and we do not care whether it makes commercial sense; we will require you to do it.’ These are the weasel words backgrounded by an unnamed Labor spokesman in the Financial Review yesterday: ‘We will not have to actually use the power of direction’—in other words, ‘We will just have a bit of a chat to you. We will just have an interview with you and explain how important things are.’ We know exactly what that means because Mr Beazley is already on the record in a number of areas explaining precisely how he is going to direct. You only direct because Telstra cannot otherwise afford to do it and it does not make sense commercially.

That is the difference between nation building as defined by the Labor Party and nation building as defined by us. We provide the resources to enable it to occur so people’s commercial enterprises are not jeopardised. Labor say, ‘We don’t give a damn about that. We’ve got a political agenda. We’re going to come in and run your business and drive it into the ground. And we will direct you to do it even if it does not make commercial sense.’

Senator MACKAY—Madam President, I ask a supplementary question. It is no wonder that you had a starring role in Shane Stone’s memo after that answer.

Honourable senators interjecting—

The PRESIDENT—Order! There is a conversation across the chamber which should cease.
Senator MACKAY—Given that within a few months the minister has claimed both that telecommunications companies have a crucial role to play in nation building and that a nation building role for the country’s largest telco would be a recipe for disaster, which statement on which program is in fact an accurate reflection of this government’s current policy on Telstra?

Senator ALSTON—I wonder why you bother but I will. The fact is, there are two different approaches to nation building. One of them involves forcing the major carrier to do what is uncompetitive, forcing the share price to go south into free fall, not worrying about the commercial activities, pretending it is the PMG and pretending it is a political plaything. That is one approach—your approach. Our approach is to say, ‘If you need the funds to do it, we will provide them.’ So we provide $150 million.

That is why they are opposed to that whole billion-dollar social bonus package. We are prepared to put very serious money on the table to build regional infrastructure. This lot think they can do it for nothing by forcing Telstra. They think they can just treat Telstra as somehow an extension of the Labor Party to meet their political objectives completely unrelated to the cost of providing services. This is mickey mouse land. No wonder you are in diabolical trouble with roll-back. You are going to be in bigger trouble on this one. (Time expired)

Information Technology: International Recognition

Senator LIGHTFOOT (2.19 p.m.)—My question is also addressed to the erudite Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister inform the Senate of findings from respected international organisations which show that Australia is amongst the world leaders in the information economy? What fully funded action is the coalition government taking to support science, innovation and particularly information technology?

Senator ALSTON—There is a whole list. I will just run through them. The Economist Intelligence Unit says that we are the second most e-ready country in the world after the US. That is not a bad start, is it? You can go to the IMF, which says that the pace of ICT investment in Australia during the nineties has been higher than any other industrialised nation. Access Economics ranks our productivity in the second half of the nineties—it was languishing in the first half, thanks to you—amongst the best in the world, and better than the US. In September last year, the IMF said that Australia was second behind Sweden in terms of expenditure on ICT. Merrill Lynch, in August last year, ranked Australia third in terms of technology. Goldman Sachs last year said that we had outperformed the US in productivity. On it goes. Access Economics said all this nonsense about being a user rather than a producer is absolute rubbish.

Senator Hill—Who has been talking us down?

Senator ALSTON—A couple of people out in the community have got this going but the people who really do not seem to understand it are on the other side. There is no doubt at all that one huge step forward is the $2.9 billion innovation package. Science communities universally welcomed it. It is a result of 12 months of intensive research and consultation.

So what is the Labor Party’s approach? Essentially, they do not want to sign on to this. Mr Beazley has got something he calls Knowledge Nation. It is really a knowledge notion. As Paul Kelly said, it is a conceptually elusive knowledge nation idea. It has certainly eluded the Australian population. I saw Mrs Kernot saying that everyone understood what it meant and then she immediately changed the subject. What Paul Kelly said recently was: ‘The document will define decade-long targets.’ In other words, there are no hard yards involved here. What we are going to get is, ‘What we would like to see Australia to be in 10 years time. We would like to reach the OECD average for R&D but we cannot afford to do it in the short term.’ You can, you know. All you have to do is sign on to our Backing Australia’s Ability. It
is $2.9 billion—it is all there. You can deliver the goods overnight.

So why won’t they? Quite clearly, because they do not have any policy alternatives and they are desperate to find money, as Senator Conroy so eloquently explained to us. The Financial Review says:

Knowledge nation will provide the policy substance to the political rhetoric of the past few years.

There certainly has not been any shortage of the latter, and it is hard to imagine how you can get the former when all we are really going to do is probably get a report from some committee that will be tabled for discussion. When you look at some of the articles, you are told that they are proposing to have a summit.

Government senators interjecting—

Senator ALSTON—Do you remember the last one? That is one that led to Paul Keating being very keen on the GST. Do you remember he had that great love affair with the Australian people? Well, he thought another way of capitalising on that was to have a summit. So if you are policy lazy and a son of Hawke, what do you do? You get out there and you say, ‘I will have another summit.’

But the trouble is that the guy in question has the charisma of a bowl of blancmange, and there is no way the Australian public are going to fall for this one the second time around. They actually want some serious policy initiatives. They do not want to be told, ‘We are going to have a look into it; we will have another review; we will think about whether we can afford it 10 years down the track.’ Labor cannot even afford to cost policies six months out from an election—it is all too hard because the numbers might change—yet we can blithely be told that in 10 years time we are going to spend, I don’t know, an arm and a leg or two arms and a leg on R&D, innovation and all the rest. It is not real life. (Time expired)

Senator LIGHTFOOT—Madam President, I ask a supplementary question. I also ask Minister Alston if he is aware of any alternative policies; and, if so, what would be their effect?

Senator ALSTON—There is this vapourware product that Mr Beazley has been trying to retail around the community called knowledge nation. In fact, they put the finishing touches on it at Guernica restaurant in Melbourne recently over some good food and wine. This is about as good as it gets because it is going to be all down hill when this document hits the road. They have no idea. What knowledge nation ought to be about is a quick education course. We could give you a briefing.

Senator Robert Ray interjecting—

Senator ALSTON—You are promising to turn up, are you? We could probably give a discount to caucus because they are starting a long way behind, and clearly there is a need for some people in the community to know what the nation is all about. I think the Labor Party are prime candidates. But I do not think the public is going to be any the wiser from this little piece of work. I would have thought you would keep those sorts of things inside the restaurant. It is not going to impress anyone out there very much. In fact, what they will be doing with a combination of decimating Telstra and disendorsing our innovation action plan is to simply turn Australia from 18th century— (Time expired)

Minister for Foreign Affairs: Comments

Senator JACINTA COLLINS (2.25 p.m.)—My question is to Senator Hill, representing the Minister for Foreign Affairs. Has the minister’s attention been drawn to press reports that the foreign minister, Mr Downer, while attending the Forum for East Asia-Latin America Cooperation in Chile in March referred to poor and underdeveloped nations as BACs—meaning, to quote the minister, ‘busted-arsed countries’? Can the minister categorically deny that Minister Downer used this acronym?

Senator HILL—I think I can categorically deny it.

Refugees: Work for the Dole

Senator BARTLETT (2.26 p.m.)—My question is to the Minister for Family and Community Services. I remind the minister that today is World Refugee Day and I ask if
the minister supports the proposal which has been announced for refugees in Australia to be required to undertake Work for the Dole activities. Given that these refugees are not on unemployment payments and do not have the same level of access to employment assistance as people on those payments, how can the government possibly justify forcing refugees to undertake Work for the Dole? Would a move requiring refugees to work for the dole require a legislative change and, if so, when is such legislation planned to be tabled?

Senator VANSTONE—I thank the senator for his question. If you are referring to the policy that I believe you are referring to, your question is ill-founded. But I would like the opportunity to check on that and I am happy to discuss it with you straight after question time. Do I believe it is fair to ask people who are on a protection visa here and getting assistance to make a contribution? The short answer to that is yes.

Senator BARTLETT—Madam President, I ask a supplementary question. To assist the minister further, my question was relating to comments made, including those by the immigration minister, that asylum seekers who gain temporary protection visas—that is, those who are assessed as genuine refugees—could be obliged to work for the dole by 1 January next year. The minister might also clarify what payments people on such visas receive. My understanding is that it is a special benefit payment, not the Newstart unemployment payment. Are there any other people on special benefit payments in Australia who are required to undertake mutual obligation activities?

Senator VANSTONE—Senator, I think you are right about the special benefit payment. I am not sure it would be required of others but I thank you for the suggestion. The government generally has the view that, if you are asking for assistance from other taxpayers, it is appropriate that you participate in some form of mutual obligation. There will be circumstances, even with Newstart applicants, where there will be limits on what is appropriate for each person. The McClure report, the welfare reform process and the announcements that we have made indicate that we are going to make the welfare system much more targeted to the individual. That is not only in terms of the service that is provided by us through more Centrelink staff and greater personal advice but also what is asked from the individual. (Time expired)

Goods and Services Tax: Wholesale Sales Tax Credits

Senator COOK (2.29 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Is the minister aware that the budget statements confirm that taxpayers are entitled to claim almost $2 billion of total wholesale sales tax credits on existing stocks in their initial GST returns? Didn’t the Howard government originally estimate that wholesale sales tax credits on existing stocks at 1 July 2000 would only be $1 billion? Isn’t the extra $1 billion that the government has unexpectedly had to pay out just one more example of how the implementation of the Howard-Costello GST has been botched from day one?

Senator KEMP—Thank you, Senator Cook, for that question. My first thought is that, if that is the best the Labor Party can do, you are really struggling. We have brought in a major new tax system that even the Labor Party, which opposed it up to 30 June last year, have come to the conclusion that this is a system that they will adopt themselves. What we have seen in question time for quite a long period of time is a deliberate effort by the Labor Party to give an impression that somehow they are opposed to the GST. They are attempting, of course, to take that message to the public, when in fact the Labor Party have adopted the GST as part of their policy. I challenge Senator Cook—I do not often challenge Senator Cook—to drop me a note during question time saying, ‘I am prepared to get up and debate the GST and roll-back after question time.’ I will stay here and take that debate. If I am wrong, Senator Cook, you stand up after question time and debate this issue.
Let me make these assertions. The Labor Party will keep the GST. The Labor Party have indicated that there will be some roll-back but they will not tell us what that roll-back will be. Roll-back was modelled by Mr Murphy—the Murphy model—to determine what would be the consequences of roll-back. If there were, let us say, a minimum roll-back of $4 billion—you would have to say that is a very minimal roll-back for a party that is so opposed to the GST—that would lead to a one per cent rise in interest rates. That is exactly what would happen. This is not surprising. Senator Cook is on record—I have said before that this is Senator Cook’s fourth most famous quote, and there is no man who has followed the contributions of Senator Cook more closely than I—as saying that the Labor Party are a high tax party. He is dead right. He is absolutely right on that issue. I have asserted on many occasions that they are a high tax party and a high interest rate party. This roll-back on the Murphy model will lead, as I have said, to higher interest rates.

**Honourable senators interjecting**—

**The PRESIDENT**—Order! There is too much noise.

**Senator Conroy interjecting**—

**Senator KEMP**—Do not provoke me, Senator Conroy. I will raise the issue, if you are not careful.

**The PRESIDENT**—Senator Kemp, you should not be answering Senator Conroy across the chamber.

**Senator Cook**—Madam President, I rise on a point of order. My point of order is that the minister has four minutes to answer this question; three of those minutes have gone by. I do not mind the abuse of me or the distortion of Labor Party policy, but can you direct him to actually answer the question that was put to him and not run away from it?

**The PRESIDENT**—I cannot direct him how to answer the question.

**Senator KEMP**—I will be waiting during question time for that note from Senator Cook saying that he is prepared to debate roll-back after question time. People who are listening to this debate should be aware that Senator Cook, as usual, will cut and run. In relation to other matters raised in your question, Senator Cook, yes, the amount of credits claimed was more than originally anticipated. That is correct. We have set down a principle that people could be compensated, and that compensation has been provided. To suggest that this has resulted in some sort of botched record on this government is complete and utter nonsense as usual. Senator Cook, I make this assertion in this chamber: the Labor Party have adopted the GST despite the impression they have decided to create. They are too scared to speak about roll-back because they know that roll-back will raise the level of interest rates in this country.

**Senator COOK**—Of course, that is nonsense. Madam President, I ask a supplementary question. Can the minister confirm that the false claims for sales tax were found to be a significant problem for countries like Canada and New Zealand when a GST-style tax was introduced into their economies? Why didn’t the Howard government learn from international experience in calculating a more accurate figure for sales tax credits on existing stocks? How did you get it so wrong?

**Senator KEMP**—Let me say that the only false claim that I am aware of was when Senator Cook stood up in this chamber in November 1996 and declared to us all that the Labor budget was in surplus. It was a $10 billion deficit. He has never corrected that record. I put to you, Senator Cook, that it is an astonishing thing coming from you, with your record, to speak about people giving false figures.

**Senator Cook**—There is nothing wrong with my record.

**Senator KEMP**—Your record, your statement, the untruth that you uttered in this chamber, you have never corrected. I put the challenge out to Senator Cook, and I look forward to the debate on roll-back in taking note of answers.
Immigration: International Obligations

Senator HARRADINE (2.36 p.m.)—My question is to Senator Chris Ellison, representing the Minister for Immigration and Multicultural Affairs. I refer to the agreement to boost cooperation against the illegal traffic in humans that is to be signed between Thailand and Australia in the coming weeks. Bearing in mind that today is World Refugee Day, could the minister advise the Senate on what human rights and refugee protections are being built into that agreement to ensure that our international obligations are observed, particularly those obligations relating to the principle of non-refoulement?

Senator ELLISON—Recently, Minister Ruddock, the Minister for Immigration and Multicultural Affairs, was in Thailand and South-East Asia and he engaged in talks in the region in relation to people smuggling and the recent problems that have been experienced. I acknowledge Senator Harradine’s keen interest over a long time in relation to refugees and this particular matter. I am advised that Thailand is not a signatory to the 1951 refugees convention or its protocols, but it observes the spirit of the convention when dealing with displaced persons and refugees. This is relevant in our dealings with that country. The two governments of Thailand and Australia have agreed on a framework for future cooperation on illegal migration and people smuggling, in the form of a joint ministerial statement. This should be signed by appropriate ministers at the planned joint ministerial meeting between Thailand and Australia on 28 June this year in Canberra.

The joint ministerial statement on mutual cooperation in combating illegal immigration and trafficking in persons as well as the smuggling of migrants provides a broad framework for conducting and developing activities in the areas of the exchange of information, training and technical assistance to enhance each country’s capacity to combat people smuggling and to develop practical initiatives for further cooperation. The joint ministerial statement acknowledges the existing cooperation between Australia and Thailand in combating illegal immigration and trafficking in persons, as well as the smuggling of migrants, and it outlines ways in which this cooperation can be enhanced. This includes strengthening our cooperative efforts in regional fora such as the intergovernmental Asia-Pacific consultations on refugees, displaced persons and migrants, and increasing joint cooperative activities by fostering bilateral programs and building expertise and providing technical and financial assistance relating to the immigration work of both countries.

This matter is regarded most seriously by this government, and it is pleasing to see the cooperation that we are getting from the Thai government. Recently, when I met with the minister for justice in Thailand, I raised people smuggling with him, and it was a matter of high concern to that country. According to Interpol, people smuggling is the third greatest criminal activity that we see in the world today—it traffics in human cargo, with little regard for the welfare or safety of that human cargo, and always for profit. In relation to the other aspect that Senator Harradine mentioned, I will take it up with the minister and get back to Senator Harradine.

Senator HARRADINE—Madam President, I ask a supplementary question. I am aware of the position of Thailand in respect of the international convention. Could you take on board the fact that I did stipulate in my question our international obligations, particularly our obligations in respect of the principle of non-refoulement? I would be grateful if you would take that on notice, please.

Senator ELLISON—That was part of the question that Senator Harradine asked previously. That is an aspect that I will take on board, and I will get back to Harradine once I have spoken to the minister.

Insurance Companies: Actuarial Audits

Senator SHERRY (2.40 p.m.)—My question is to Senator Kemp, the Assistant Treasurer and the Minister representing the Minister for Financial Services and Regulation. Can the minister confirm that the downgrading of APRA’S actuarial audits of
Australian insurance companies is a direct result of the coalition government’s short-sighted cost saving and outsourcing arrangements? Is it not likely that rigorous and full actuarial audits would have uncovered the unsustainable insurance risks being taken by HIH between 1998 and its collapse earlier this year?

Senator KEMP—One of the things that we have a royal commission for, Senator, is to look at those sorts of issues. That is the issue that you have raised in relation to HIH, and there is to be a major royal commission. If I recall correctly, issues were canvassed in the Senate estimates committee, and I refer you to the comments that were made there. As you are aware, this is a matter for Mr Hockey. I will draw your question to Mr Hockey’s attention, and if Mr Hockey has anything more that he wishes to add I will be pleased to pass it on to you.

Senator SHERRY—Madam President, I ask a supplementary question. Minister, you still did not explain why the government allowed APRA to downgrade actuarial audits in this country. Will the government move immediately to reinstate full actuarial audits of insurance companies? This does not relate to HIH—it relates to all other insurance companies in this country. Will you reinstate full actuarial audits, and if not, why not?

Senator KEMP—I mentioned that this is a matter for Mr Hockey.

Senator Conroy—Come on, take a decision!

Senator KEMP—Senator Conroy, I am not as important as you are—I cannot stand up and make big claims about taxes and other things. This belongs in the area of Mr Joe Hockey. As I have said, I will draw your question to him, Senator, and if he has any comments that he wishes to make I will inform you.

CrimTrac

Senator CALVERT (2.43 p.m.)—Will the Minister for Justice and Customs advise the Senate how the Howard government’s new $50 million law enforcement initiative, CrimTrac, which includes a national fingerprint, palmprint and DNA database, will assist the police to make the Australian community safer? If you have time, Minister, could you also make the Senate aware of any alternative policies on crime fighting?

Senator ELLISON—Today, the Prime Minister launched CrimTrac, a $50 million initiative of this government to assist police around Australia in fighting crime. At the outset, I acknowledge the work done by my predecessor, Senator Vanstone, who worked on this. I also want to acknowledge the cooperation that we have had from state and territory governments in relation to this matter. This is a national DNA database, and as from today the Commonwealth legislation will take effect. This will provide police around Australia with access to state-of-the-art technology and will provide an opportunity to match crime scenes with DNA on the database.

This is a great step forward in law enforcement in this country. The national automated fingerprint identification system is another part of this, where police will have unprecedented access to some 2.8 million fingerprints and 4.8 million palm prints. That will be controlled and regulated by state-of-the-art technology. This is leadership at its best from the Commonwealth government in relation to crime fighting. You only have to look overseas to see how well it is working. In the United Kingdom, on a weekly basis, there are some 700 matches from crime scenes to their database and that demonstrates just how successful this can be. At the Commonwealth level, we are providing assistance to those police who are working in local communities and in regional and rural Australia with the means to fight crime. We have also introduced safeguards which will protect the individual. We have strict requirements which regulate the fact that medical and genetic information will not be included and that only law enforcement agencies will have access to this DNA database.

As well as that, we have put in place a review which will take place in 12 months. The Commonwealth Ombudsman and the
Commonwealth Privacy Commissioner will take part in that. That will add reassurance that the individual’s rights are being protected. What we have achieved is a balance between law enforcement and the protection of the rights of the individual. Importantly, this will convict the guilty but also exonerate the innocent. We have seen examples from overseas and locally where DNA evidence has resulted in the exoneration of someone who had been improperly convicted.

Senator Calvert asked: what alternative policies are there? We have nothing like this coming from the Labor opposition. In fact, we have our Tough on Drugs policy; they don’t have a policy. We have a tough on crime policy; they don’t have one. We have a tough on crime policy which deals with things like CrimTrac and which deals with a national system of fingerprints and a national DNA database, and we are developing a national database on sex offenders. That is very good news indeed for law enforcement in this country. We have increased funding for the Australian Federal Police by some $300 million. If you look at what the Labor Party have done, the Labor Party put $13 million into the AFP between 1992 and 1996, compared to what the government have done for law enforcement and the AFP: $314 million from 1997 to 2001. That is just part of the commitment that the Howard government have made to law enforcement. But there is nothing coming from the Labor opposition—nothing at all.

Do they have any policy on drugs? They have 28 pages of nothing; 28 pages of regurgitation of state policies and nothing more. We are committed to law and order.

Banking: Fees

Senator RIDGEWAY (2.50 p.m.)—My question is to Senator Kemp, the Minister representing the Minister for Financial Services and Regulation. Minister, are you aware of the recent *Sunday Telegraph* investigation into bank fees, titled *Now it’s the banks who are the robbers*, and of the fact that Australia has the second highest bank fees in the world, with consumer costs increasing by up to 100 per cent per year? Is it not true that the ACCC and the Reserve Bank have conducted research into the financial sector, which revealed—not surprisingly—that the fees are too high? Given that the Australian Banking Association denies any problem, which has been rejected by the ACA, is it not now evident that self-regulation is not working? Does the government agree that Australian consumers are
paying too much in fees, and when will this government take action to stop consumers from being slugged with high fees, estimated to bring a windfall of $430 million to the banks each year?

Senator KEMP—I thank Senator Ridge-way for that question. I think this is the first time I have been asked a question by Senator Ridge-way in his new post as the deputy leader of the Australian Democrats. I hope he does a better job in that post than the previous occupant. I have no doubt that he will prove to be a very efficient and loyal mem-

Honourable senators interjecting—

The PRESIDENT—Order! Senator Kemp, I was asking you to sit down so we could get sufficient silence for me to hear your answer.

Senator KEMP—Let me make a number of comments in relation to the matters raised by Senator Ridge-way. The government support low fees, not high fees—let me make that clear. Indeed, many of the reforms that we have brought in have been designed to increase competitive practices in the industry, and I think that is delivering a broad range of benefits. One of the comments that I would make—and I think this proposal was supported by your party—is that from 30 June the FID will be removed from bank accounts. That is a saving in the order of $1.2 billion to consumers. It is a very im-

Opposition senators interjecting—

The PRESIDENT—Order! Senators should be aware that Senator Ridge-way is entitled to hear the answer.

Senator KEMP—France, Germany and Australia that appeared in one banking and financial market review into competition in the UK banking industry. The significant cross-subsidies that remain in place for fi-

Senators interjecting—

The PRESIDENT—Order! Senator Conroy, you have been interjecting frequently this question time.

Senator KEMP—Since the time of the survey that was mentioned by Senator Ridge-way, the Australian banking centre has extended the availability of a number of low cost bank accounts. In March 2001, the ABA, the Australian Bankers Association, also announced that members will offer, at a minimum, a safety net basic bank account to people on Commonwealth government
health care, seniors and pensioners cards—
(Time expired)

Senator RIDGEWAY—Madam President, I ask a supplementary question. I thank the minister for his answer. I am not sure whether I heard it all. Minister, are you aware that just recently the ANZ Bank was shamed into doing something for people on social security benefits? Are you also aware that by the week’s end the ANZ Bank had increased two other fees and increased the minimum balance by a factor of four for all other account holders? Minister, is the government satisfied with the banks’ practices of providing limited concessions to pensioners and social security recipients and then passing on those costs to all other account holders? When will the government take action to protect Australian consumers against excessive fees being imposed by the banks?

Senator KEMP—It is a pity that the Senate did not actually hear the answer I gave. I do not blame them for that, because there was so much noise coming from Senator Conroy. Senator Conroy does talk a lot. He has important views, but he should confine himself to the appropriate time. In the short time available, we always say to people that, if they are not happy with the way they have been dealt with by their bank, it is a competitive market and they should shop around. That is the advantage of a competitive market and choice. When you have a chance to read in the Hansard the information I gave you in response to your first question, I think you will find a range of statistics which show that, even in this area, important progress is being made.

Pharmaceutical Benefits: Funding

Senator FORSHAW (2.57 p.m.)—My question is directed to Senator Vanstone, the Minister for Family and Community Services and the Minister representing the Minister for Health and Aged Care. Can the minister confirm that it is now three weeks since he admitted on Sunday Sunrise that she did not know whether the $22.5 million required to fund the extension of pharmaceutical benefits had been included in the Department of Health and Aged Care budget? What steps has the minister or the Minister for Health and Aged Care taken to ensure that these funds have actually been appropriated to the Department of Health and Aged Care and are included in the forward estimates? Can the minister give a guarantee that, if the government has overlooked this allocation, it will stand by its promise to extend pharmaceutical benefits to seniors?

Senator VANSTONE—I am pleased to see that the senator otherwise known as ‘Lucky Forshaw’ is apparently up and watching Sunday Sunrise. It is a great advertisement for them. You asked me some details about the estimates and pharmaceuticals. I will have to take that question on notice and see what Minister Wooldridge can tell me about that. I will come back to you about that as soon as I possibly can.

Senator FORSHAW—Madam President, I ask a supplementary question of the minister, whose luck and time are both running out. Minister, I draw your attention to page 97 of the budget papers for the department of health, which states:

... a provision has been made for these expenses in the Contingency reserve ...

Can the minister confirm that a provision in the Treasury contingency reserve is not an appropriation and applies for one year only? Further, does this not mean that the seniors promise is funded for one year only and that there is no guarantee for future years?

Senator VANSTONE—If you want to ask a question about the estimates and, in particular, what is in that fund, that should be directed to another minister. But I will take it on notice and get Dr Wooldridge to indicate whatever he thinks is appropriate in response to your question.

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

Petroleum Industry: Phantom Fuel

Senator MINCHIN (South Australia—Minister for Industry, Science and Resources) (3.00 p.m.)—Senator Ridgeway asked me a question yesterday about the expansion of fuel volumes delivered to service stations, and I undertook to get him further information. I seek leave to incorporate a detailed response into Hansard.

Leave granted.

The document read as follows—

SENATOR ADEN RIDGEWAY asked the Minister for Industry, Science and Resources, on 19 June 2001:

“My question is to the Minister for Industry, Science and Resources, Senator Minchin, are you aware that oil refineries are currently permitted to sell fuel to service stations at temperatures as high as 52 degrees, which results in the significant expansion of fuel volumes? Minister, given this fact, is it true that service stations sell fuel to motorists at about 15 degrees, after the fuel has significantly contracted? Is it not also true that, due to the contraction, an average of 2.5 per cent of the fuel the service station paid for disappears and that this is known as ‘phantom fuel’? Why hasn’t the Minister stopped small service stations from being cheated, motorists from being ripped off and the government failing to receive large amounts of excise revenue, estimated to be in the vicinity of $200 million a year? Minister, isn’t the phantom fuel practice a direct result of the government’s failure to put in place proper legislation to prevent this ludicrous situation continuing?”

SENATOR MINCHIN—The answer to the honourable senator’s question is as follows:

The claims of intentional rorting by oil companies through sale of “phantom” fuel represent an unjustified attack on the integrity of petroleum suppliers in Australia. For example, I am advised that your reference to media reports of fuel being sold at 52°C was the result of a faulty temperature gauge rather than fuel being exchanged at that temperature.

The volume of fuel delivered to a service station by fuel tankers will not necessarily correspond to the volume loaded into that tanker at the terminal due to changes in volume arising from variations in temperature during delivery. The difference in temperature along the distribution line is typically quite small and has a near negligible impact on the volume of petrol supplied. An 8°C fall in temperature is required to decrease the volume of petrol by 1 percent, however the temperature change along the distribution chain is typically less than 8°C.

The issue of temperature correction of fuel is principally a matter for State and Territory Governments and will be discussed by ministers at the next meeting of the Ministerial Council of Consumer Affairs on 13 July 2001. This discussion will include consideration of the introduction of mirror legislation in each State to address the issue.

I understand the oil industry is supportive of temperature correction at the wholesale level as action at this level will capture the majority of volume changes without unwarranted expense.

Measures to address temperature correction at the retail level are not supported by the oil industry or this Government. Several reports were undertaken in the mid 1990s by the National Standards Commission, the Industry Commission, the CSIRO and Access Economics into the issue of temperature correction. From these reports it was concluded that fuel temperature correction measures at the retail level would result in consumers paying higher petrol prices and that from the national perspective it was not justified.

I note that variations in fuel temperature often work in favour of service station proprietors. On occasion the temperature in underground fuel storage tanks is found to be greater than the temperature at which the petrol left the refiner’s or distributor’s terminal. In such instances the service station proprietor has a greater volume of petrol to sell than was purchased. Nevertheless, as I mentioned earlier, the effect of temperature correction on volumes is typically negligible.

Although the majority of sales of petrol at the wholesale level are not currently corrected for temperature, it is not uncommon for temperature related volume changes to be taken into account when negotiating terms and conditions of these sales.

Finally I note that the use of a 15°C reference temperature for the collection of excise ensures that there is consistency in the taxation base and is in-line with international practice.

Aged Care: Expenditure

Aged Care Facilities: Accreditation

Aged Care: Nursing Staff

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.01 p.m.)—
Senator Evans asked me a question yesterday, as did Senator Crossin, Senator West and Senator Crowley. Senator Allison asked me a question on 5 April. I seek leave to incorporate answers to those questions in Hansard.

Leave granted.

The answers read as follows—

SENIOR CHRIS EVANS – 19 June 2001

AGED CARE FUNDING IN THE FORWARD ESTIMATES

Senator Chris Evans—My question is directed to Senator Vanstone, the minister representing the Minister for Aged Care. Can the Minister confirm that the explanations given by the Assistant Treasurer yesterday for the very small increases in aged care funding in the forward estimates were directly contradicted by answers given by the Department of Health and Aged Care at the Senate estimates process? Didn’t he claim that previous growth in resident frailty is expected to moderate, yet the department clearly stated in estimates on 28 May that the modelling for the forward estimates assumes that the previous trend of five per cent growth in resident frailty would continue! Didn’t the Assistant Treasurer then try to claim that there had been a backlog of beds under Labor, which is also contradicted by any answer from the department to estimates, which shows that there was no backlog of unbuilt beds when Labor left office? Given that the minister was at the estimates hearing, can she confirm that the Assistant Treasurer misled the Senate yesterday in his response to the funding question and will she now correct the record?

Senator Chris Evans—Madam President, I ask a supplementary question. I enjoyed the lecture from the Minister, but I would appreciate it if she actually knew something about the question I asked and had tried to answer it. But if she has to go and ask Minister Bishop about that, I would appreciate it if she would also ask for an explanation as to why the small increase in future aged care budgets is entirely accounted for by the needed increase in subsidies, which leaves the government with no money to fund new beds. Could you find out why it is that you have not provided any additional funding for the new beds that the minister announced? Won’t we be left with another 15,000 phantom beds because you just have not provided the funding that is needed to provide care for the elderly in the out years?

SENIOR VANSTONE—The Minister for Aged Care has provided the following answer to the honourable senator’s question in accordance with information provided to her:

(1) and (2)

Senator the Hon. Rod Kemp answered the question on aged care funding appropriately on Monday afternoon. The department advises that the current evidence is that we are tracking right on estimates.

As the Assistant Treasurer said, the surge in ageing in place and increased levels of payment for frail older Australians with dementia led to strong growth in aged care expenditure during 1997 to 2000, but these factors are moderating as a driver of growth in the average dependency of aged care residents. This also lessens pressure on forward estimates.

There was a backlog of beds left over from Labor when it left office. At 30 June 1996, some 7,500 beds or over 5% of the total available places had been allocated but were not yet operational. In addition, Labor cancelled 1350 provisional allocations which had not been utilised and did not return these beds to the system. There is no contradiction between this and the senate estimates record.

All aged care places that come on line are fully funded under the standing appropriation.

SENIOR VANSTONE – 19 JUNE 2001

TRACEY AGED CARE

Senator Crossin—My question is directed to Senator Vanstone, representing the Minister for Aged Care/Health and Aged Care.

I am surprised that this is not on the list or in your briefs, because it was on the front page of the Northern Territory News today. It is a very serious matter, Madam President, I ask a supplementary question. Why were the serious concerns of staff and the minister’s own complaints scheme overlooked by the accreditation agency in granting Tracey Aged Care three years accreditation? Why hasn’t there been a thorough Commonwealth investigation into these allegations against this provider, who is after all, in receipt of millions of taxpayers’ dollars?

Senator Vanstone—The Minister for Aged Care has provided the following answer to the honourable senator’s question in accordance with information supplied to her:

In August 2000, as a result of complaints to the Complaints Resolution Scheme about the Direc-
tor of Nursing of Tracey Aged Care, the Department referred the issues for investigation by the Northern Territory Nurses Registration Board and the Health Complaints Commission.

The Department has been advised that the Northern Territory Nurses Registration Board first de-registered the Director of Nursing in March 2001, but subsequently reinstated her.

I understand that the professional conduct of the Director of Nursing of the home in question is still being investigated by the Northern Territory Professions Licensing Authority.

The Department also referred the information to the Aged Care Standards and Accreditation Agency and requested that the information be taken into account in their accreditation site audit. The Agency found the home to be satisfactory on 43 of 44 outcomes.

Since the accreditation site audit the Agency and the Department have visited the home on 4 occasions, up to and including 2 May 2001. No significant issues were found during these visits.

Both the Department and the Agency are continuing to maintain regular contact with Tracey Aged Care.

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SENIOR VANSTONE – 19 June 2001

HOMES GRANTED EXCEPTIONAL CIRCUMSTANCE DETERMINATIONS

Senator West—My question is directed to Senator Vanstone, representing the Minister for Aged Care. Can the minister confirm that a number of exemptions from care standards, granted to 19 nursing homes by the Minister for Aged Care last year, expire today and tomorrow? Why hasn’t there been a public statement by the government to clarify the status of these 19 facilities? Don’t these facilities potentially face the loss of Commonwealth funding if they are not granted accreditation, which would signal that they still have not met the government’s care standards?

Senator West—Madam President, I ask a supplementary question. I ask the Minister representing the Minister for Aged Care was the Ritz, a nursing home run by Mrs Millie Phillips and which was exempted from the government’s care standards, granted accreditation and, if so, for what period?

Senator VANSTONE—The Minister for Aged Care has provided the following answer to the honourable senator’s question in accordance with information supplied to her.

The Department of Health and Aged Care announced the outcomes for 20 aged care homes not 19 that were granted exceptional circumstances late last year in a news release on 19 June 2001. 7 of these homes were run by the State Government, 2 by Churches, 2 by charitable organisations and 11 are run privately.

All Australian aged care homes were required to meet the accreditation standards, defined in the Aged Care Act 1997, from 1 January this year. Homes must be accredited in order to continue to receive Commonwealth Government subsidies.

On 1 January, the Aged Care Standards and Accreditation Agency announced that some 2,938 residential aged care services were accredited.

Under s42-5 of the Act the Secretary to the Department or his delegate is able to determine, where there are exceptional circumstances, that an aged care home is taken to have met its accreditation requirements for a maximum period of six months from when the determination is made. During this period, the residential care subsidy continues to be paid to the approved provider.

A total of 20 homes were granted exceptional circumstances status and required to make the necessary improvements to become accredited by the Agency, or arrange an orderly closure. The Department and the Agency have closely monitored all homes during this period.

Of these, fifteen have now been accredited by the Agency. Two homes have closed with residents relocated to homes of their choice; and another two are in the process of closing.

The Ritz Nursing Home achieved accreditation for twenty months and 14 days to 28 February 2003 when it was assessed by the Aged Care Standards and Accreditation Agency this year, as the standards of care and accommodation provided meet the legislated accreditation requirements achieving a score of 43 satisfactories out of 44 outcomes.

The Government’s primary concern is always the health, wellbeing and continuity of care for aged care residents.
### HOMES GRANTED EXCEPTIONAL CIRCUMSTANCE DETERMINATIONS

<table>
<thead>
<tr>
<th>Home</th>
<th>State</th>
<th>Status</th>
<th>Outcome for Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bamfield Nursing Home</td>
<td>NSW</td>
<td>Closing by 20/06/01</td>
<td>All residents relocated to a home of their choice, including to other homes owned by the approved provider of Bamfield.</td>
</tr>
<tr>
<td>The Ritz Nursing Home</td>
<td>NSW</td>
<td>Accredited to 28/02/03</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Numbala Nunga Nursing Home</td>
<td>WA</td>
<td>Accredited to 21/05/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>New Norfolk Nursing Home</td>
<td>TAS</td>
<td>Accredited to 19/06/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Bella Vista Hostel (Villa Lombardia)</td>
<td>VIC</td>
<td>Closed</td>
<td>Residents relocated to a home of their choice by 11/05/01.</td>
</tr>
<tr>
<td>Bellhaven Hostel</td>
<td>VIC</td>
<td>Accredited to 30/05/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Belevedere Park Aged Care</td>
<td>VIC</td>
<td>Accredited to 10/02/02</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Coburg Haven Hostel (Munro Manor)</td>
<td>VIC</td>
<td>Accredited to 30/05/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Edenvale Nursing Home</td>
<td>VIC</td>
<td>Accredited to 21/05/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
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<tr>
<td>Gardenview House</td>
<td>VIC</td>
<td>Accredited to 08/06/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Heywood Nursing Home</td>
<td>VIC</td>
<td>Accredited to 18/06/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Inglewood Nursing Home</td>
<td>VIC</td>
<td>Accredited to 13/06/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Kinkora Court Private Nursing Home</td>
<td>VIC</td>
<td>Closing by end June 2001</td>
<td>Residents will relocate to new approved premises on 26/06/01 as part of a planned relocation. The approved provider has undertaken to continue to provide care without subsidy between 20 and 26 June. The Department will continue to monitor the provision of care at the home.</td>
</tr>
<tr>
<td>Maldon Hospital Nursing Home</td>
<td>VIC</td>
<td>Accredited to 13/06/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Mont Calm Nursing Home</td>
<td>VIC</td>
<td>Closed</td>
<td>All residents relocated to a home of their choice by 26/04/01</td>
</tr>
<tr>
<td>Mowbray House Private Nursing Home</td>
<td>VIC</td>
<td>Accredited to 05/06/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>Nazareth House Nursing Home</td>
<td>VIC</td>
<td>Accredited to 30/05/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>State Benedict’s Private Nursing Home</td>
<td>VIC</td>
<td>Accredited to 12/02/02</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
</tr>
<tr>
<td>St Joseph’s Central Hostel</td>
<td>VIC</td>
<td>Not accredited</td>
<td>Residents will remain as tenants with Community Aged Care Packages provided through an approved provider funded by the Commonwealth.</td>
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<tr>
<td>Swan Hill District (Nyah Campus)</td>
<td>VIC</td>
<td>Accredited to 25/05/04</td>
<td>Standards of care &amp; accommodation provided meet accreditation requirements.</td>
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**SENATOR CROWLEY – 19 June 2001**

**KLEMZIG NURSING HOME**

Senator Crowley—My question is directed to Senator Vanstone, representing the Minister for Aged Care. Can the Minister confirm that the Klemzig Nursing Home in South Australia received three years accreditation in July last year – the highest possible rating? Is the Minister aware that an inspection of the Nursing Home in March
this year found that it failed to meet care standards related to clinical care, pain management, palliative care, nutrition, skin care, the restraint of residents and infection control? In all, wasn’t this Nursing Home found to have failed 27 of the government’s 44 care outcomes? Does this not show either that the Nursing Home should never have been given three years accreditation or that standards of care have significantly declined in just eight months?

Senator VANSTONE—The Minister for Aged Care has provided the following answer to the honourable senator’s question in accordance with information supplied to her:

As part of the accreditation process a home is subject to ongoing monitoring by the Agency. A review audit at the Klemzig Nursing Home that revealed 17 unacceptable outcomes and 27 satisfactory outcomes, not the other way around as reported in the press. The Standards and Accreditation Agency determined that as a consequence the home’s accreditation period be reduced to 15 months. This demonstrates that the system is responsive and working as Homes following accreditation are continually visited and checked.

The Department has conducted spot checks at this Home on a weekly basis since 9 May 2001. A Notice of Non-compliance was issued to the approved provider on 25 May 2001.

The Department wrote to residents and relatives on 19 June advising them of the situation at the home.

The Department and Aged Care Standards and Accreditation Agency continue to monitor the situation closely.

SENATOR ALLISON MP - 5 April 2001

THE CURRENT WAGE DISPARITY BETWEEN NURSES IN AGED CARE AND THOSE IN ACUTE CARE

SENATOR ALLISON—My question is directed to the Minister representing the Minister for Aged Care. Is the Minister aware that the current wage disparity between nurses in aged care and those in acute 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 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 the 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—The Minister for Aged Care has provided the following answers to the honourable senator’s questions in accordance with information supplied to her. Mrs Bishop’s answers are in addition to answers I provided on 5 April 2001 (Hansard attached):

The Government recognises there is a world wide shortage of qualified nurses. In December 1999 the Government announced that $1 million would be provided over two years from Industry Restructuring monies to assist this process. A high-level advisory group, the Aged Care Workforce Committee, oversees the development of appropriate initiatives. The committee is made up of representatives of the Federal and State Governments, the aged care industry, academia, professional bodies, the workforce, consumers and service providers.

The Government’s 2001-2002 budget initiatives regarding nurses, including rural nursing scholarships, is a clear demonstration that nursing issues are being addressed by the Government. Good staff, especially nursing staff, will be attracted to aged care as they can see opportunity for development and career advancement. It is encouraging to see that good aged care providers are developing partnerships with universities (eg Baptists and Wesley Gardens) in order to provide specific aged care components within the nursing degree to give students concurrent work experience and skills on their own campuses.

There is now much more flexibility in wage arrangements that give providers incentives to pay above the award. Furthermore, AWA and enterprise agreements afford much greater flexibility including FBT concessions in the religious and charitable sector.

In response to the Senator’s concerns about the provision of aged care places and investment in these new places, it is important to note:

In 1995-96, the Labor Government spent $2.5 billion on residential aged care. The outlay in 2001-2002 by the Howard Government is esti-
mated to be $4.2 billion. That is an increase of $1.7 billion since coming to office.

There have been a record number of providers interested in entering the industry. In the 2000 Approvals Round for every residential care place available, five places were applied for.

The Gray Report found that income has increased; government outlays have increased; demand for residential places has increased and the value of places has increased. The Report found that most aged care homes should be able to achieve at least a 12 per cent return on investment under the new arrangements. Furthermore, given that there appears to be sufficient capital income to meet the industry needs as a whole, this funding does not necessarily have to come from the Commonwealth.

In addition, people who wish to purchase or expand existing services are paying up to $43,000 for each bed licence.

On 3 April 2001, I announced the release of 9,541 new places to States and Territories for allocation in 2001. This release includes 2,479 residential high care places, 4,508 residential low care places, 2,204 Community Aged Care Packages and 350 flexible care places. A national pool of places is also available for restructuring. I expect the 2001 Aged Care Approvals Round showing the targeted areas to be advertised towards the middle of the year after the Aged Care Planning Advisory Committees work has been completed.

It is important to acknowledge the legacy left by the previous Labor government in failing to provide adequate numbers of aged care places. In 1998, the Auditor-General found there was a 10,000 aged care place deficit left by the previous Labor Government. Since I have been Minister, in the last two Approval Rounds and the 2001 Round, over 31,000 new places will have been released to make up for the deficit left by Labor and meet the need for growth.

I point out that under the Aged Care Act 1997, aged care providers who are allocated places have two years to make the places operational. This is the amount of time it normally takes to obtain all the necessary building approvals and to construct a new home. The Department of Health and Aged Care monitors progress towards making the places operational.

It is worthwhile noting that investment and industry have improved under the Howard government.

The Gregory Report, which Labor commissioned but failed to respond to, identified Labor’s neglect of capital for nursing homes. It further identified the need for $1.3 billion over ten years to 2008.

The Howard Government responded to the report by providing a stream of income for capital by introducing an accommodation charge which will result in $1.8 billion over the ten year period to 2008.

As well, the Government provides subsidies for capital as part of recurrent subsidy and targets rural and remote areas with additional capital grants.

The aged care industry is in fact investing significant funds in new buildings, rebuilding and upgrading work. In all, $1.4 billion was expended or committed by the industry on building and refurbishment in the two financial years to 30 June 2000.

Some 12 per cent of the residential sector has been newly constructed or rebuilt since the reforms and a further 25 per cent per year or more are being upgraded or extended.

**Minister for Foreign Affairs: Comments**

**Senator COOK** (Western Australia—Deputy Leader of the Opposition in the Senate) (3.01 p.m.)—I move:

That the Senate take note of the answers given by the Minister for the Environment and Heritage (Senator Hill) to questions without notice asked by Senator Collins and the Leader of the Opposition in the Senate (Senator Faulkner) today relating to comments made by the Minister for Foreign Affairs (Mr Downer).

This is about a man who was born with a silver spoon in his mouth and who has since taken it out only to put his foot in there instead. The reputation of our foreign minister as a schoolyard giggler making offside jokes is well known. But the events reported today have the power to demean the position of foreign minister and to cause Australia to be severely criticised for an arrogant attitude and a demeaning approach to developing countries in the world.

Let us be clear about what is alleged to have been said. While attending a forum of East Asian and Latin American countries in a cooperation forum in Chile in March, the Minister for Foreign Affairs is said to have referred to poor and underdeveloped nations as ‘BACs’, meaning—and I now quote the minister—‘busted-arsed countries’. When
we asked the Leader of the Government in the Senate today whether he could deny the truth of this allegation, he did. He stood up and said that it was denied.

Senator Heffernan—Madam Deputy President, I rise on a point of order. Senator Cook accused Alexander Downer of having a silver spoon in his mouth, and he has his hand in his pocket.

The DEPUTY PRESIDENT—There is no point of order.

Senator COOK—Excuse me, Madam Deputy President, while I try and bring myself under control; the humour is so devastating. When the leader of the government was given the opportunity to deny the allegations, he did. When the leader of the government was questioned a second time by Senator Faulkner, he was very careful to choose his words in such a way as to make it clear that he was not at all sure what Mr Downer might have said in private. It is clear and known that not only did Mr Downer use this phrase in private but he used it among officials in formal meetings as well.

Senator Faulkner—On many occasions.

Senator COOK—Not once and not twice but on many occasions, as the Leader of the Opposition in the Senate points out. I understand he used the term repetitiously and at boring length. It is what we have come to expect from this minister and it is what we have come to see as a pattern of behaviour. Anyone can make a mistake. Whether there is any leeway for people to understand human error is not a question of whether you make mistakes; it is how you correct them and whether you do it promptly.

This matter has been all over the press today. Has it been denied by the foreign minister? Has he taken the opportunity to put out a statement retracting it? Has he taken the opportunity to put out a statement apologising? No, he has not. When he did a doorstop interview on the way into Parliament House, he had an opportunity to set the record straight. Did he use that opportunity to set the record straight? Did he, with the assembled cameras of the Australian TV industry, the microphones of the radio reporters and the willing pads and pencils of the journalists, use that opportunity to apologise? No, he did not.

In all of those circumstances, if the first offence is bad enough, the compounding of the felony is worse. The correction should have been forthcoming immediately. Remember: this foreign minister just caused the dismissal of an ambassador of 35 years standing—with a distinguished career in the foreign service, heading missions in Laos and at the United Nations in Geneva—because of a glitch in organisational arrangements at the airport, with less than 24-hours notice that the minister’s plane was late. The ministerial limousine was not there correctly, waiting to cart him off to his hotel. A distinguished career of 35 years in the Australian foreign service has been snuffed out on the whim of a foreign minister born with a silver spoon in his mouth and, ever since his birth, a foot in there as well. This is the sort of thing that causes people in our region to regard Australia as still thinking arrogantly about other people in the world. The foreign minister should apologise forthrightly.

(Time expired)

Senator FERGUSON (South Australia) (3.07 p.m.)—There is nothing like the Labor Party to raise an issue when they are in all sorts of trouble in relation to their own state of play with policies that they have been telling us they have been trying to develop when in fact they have nothing. We see today a little bit of headline seeking sensationalism, and who should make the opening comment but the master of the politics of envy, Senator Cook, who can only talk about the politics of envy and silver spoons. This is the senator who, when he was minister, could not handle an appointment before 10 o’clock in the morning. If there were more than two a day, he was overworked. That is how Senator Cook, a former minister—and likely to remain a former minister for the rest of his life—would have handled this. What does Senator Cook do? He resorts to the politics of envy and has to refer to the state of someone’s birth and their education throughout the whole of their life. It is pretty poor track form for Senator Cook to even
start in that fashion, and it is certainly his only way of trying to seek a headline: through some sensational remarks in this chamber.

The current foreign minister is highly regarded wherever he travels overseas. Let us look at the work that Mr Downer has done, for instance, in getting through the United Nations the ratification of the landmines treaty. Look at the work that he did in relation to East Timor and our relationship with the Indonesians, and how the terrible policy that you supported all that time was changed. He played a leading role in the negotiations that were held with the United Nations—certainly in the negotiations this government had—in making sure that it could support the people of East Timor in their self-determination process. That was instigated by this foreign minister. You can sit over there and make all the snide remarks you like or dig up as much dirt as you like in this sensational way, but nobody will take away from the standing of this foreign minister in other countries and the hard work that he has done in a lot of delicate negotiations.

Look at the work that he has done in the Commonwealth. Look at the effort that has been put in by the Commonwealth minister on issues such as Zimbabwe, where we all know there is a considerable number of problems at present. Look at his work on chemical conventions. There is an outstanding number of matters and issues that this foreign minister has raised on behalf of the Australian government. He has made sure that we were at the forefront of these very large numbers of important negotiations that he has taken part in on behalf of the Australian government. At every opportunity Senator Cook likes to practise his politics of envy and make slurs on the personal integrity of people, albeit a person in the other place. Senator Cook leads off this taking note of answers not having asked the question but having carefully prepared his little bit of headline seeking sensationalism.

Having been overseas for a short period of time with one of my Labor Party colleagues, and having seen the foreign minister working at the United Nations on at least one occasion, I know of the work he has done to help Australia be held in high regard at the United Nations, the hard work that he has done while he has been in very delicate negotiations with many countries in the area and the effort that he has put into making sure that the aid we want to give to countries less fortunate than ourselves is properly put in place. The politics of envy and the headline seeking sensationalism show a party totally bereft of their own policies which can only play the man and not the politics—the policy development that we would expect them to do. This shows the Labor Party opposition for what they are. They use sleazy gutter tactics in trying to play the man and do not try to make sure that they are looking at what is best for the future of our country: supporting someone who continuously over the past six years has represented Australia overseas in a manner in which it should be represented. (Time expired)

Senator SCHACHT (South Australia) (3.12 p.m.)—Senator Ferguson talks about sleaze. Who has brought sleaze into this issue? The foreign minister himself, by using remarks such as ‘busted-arsed countries’ in discussions which have now got around the diplomatic world. He is the one who has brought the reputation of sleaze to this country. He is the one who has the disgrace of sleaze. What does he do in his visit to Chile? He gets the ambassador sacked because the car was late. He did not get the ambassador sacked because there had been misappropriation of money, a security breach or something serious.

Senator Faulkner—The ambassador didn’t use the term ‘busted-arsed country’.

Senator SCHACHT—No. This is what he got sacked for: the plane was late, the car was late, Alexander Downer had to stand at the airport for some time and then he had to catch a taxi. Goodness me! That is something several million Australians do every week, but this was a sackable offence to this minister. This is typical of the background of Alexander Downer. He is the last vestige of 18th century Australian aristocracy—a
bunyip aristocracy. He was brought up in the Adelaide Hills at Arbury Park, with 200 acres, deer running around, a dolls house for the children to play in, gatekeepers and gamekeepers. He inherited the seat. His mother won the preselection for him. She got on the phone and won the preselection for Mayo in 1984. She is the one with the real guts in the Downer family. She got him into parliament. He falls into the foreign affairs portfolio as a—

Senator Faulkner—Failed Liberal leader.

Senator SCHACHT—failed Liberal leader, and then he becomes this joke. How can you explain to people in the foreign affairs department that you will not get sacked for a security breach but you will get sacked if the car is late? That is disgraceful. Then they fit up this ambassador, who has had 35 years in the department; the minister tells the department to sack him. He says, ‘Find a reason to say that he was not good at his other work and then we will sack him.’ Also we had the case two years ago when Alexander Downer, because he had got into problems attending the cricket at Lords, said, ‘I have to go to Greece for a meeting.’ He gave two days notice to the ambassador to try and arrange an official dinner. It was a Greek holiday period; all the ministers were out of Athens. The ambassador could not find anybody, so Alexander Downer got him sacked because he could not get the right people to the dinner. That has all been written about.

This minister is capricious and personal in dealing with the members of his department. This is not the way to get department officials working with good morale to the advantage of Australia. They are now petrified. If you get the car booking wrong, or if you do not get the name places at the dinner table right, you get sacked. If you get all the little bits and pieces wrong, you get sacked by this bloke because it does not fit his aristocratic view of how he should be treated as foreign minister.

It is a disgraceful performance, like his performance several years ago when he said that there were no complaints about the ending of the Radio Australia service and other aid programs to Asia. He said, ‘I was not lobbied by any of those ministers from South-East Asia,’ when in fact they had all made complaints; they had all publicly called for him to reverse the decision. He did not sack himself; he did not say that that was his fault. But if you get the car booking wrong or get the dinner table wrong, you are gone in the foreign affairs department. This minister is a giggling joke. He thinks it is funny to make remarks like ‘busted-arsed countries’, as though this is funny. This is public schoolboy humour at its worst.

Senator Sherry—Toilet.

Senator SCHACHT—Yes, that is what it is: the humour you would write on the back of a toilet door at the public school or, if you were a fag for a senior prefect, this is what you would do. This is where Downer has been trained—the fag end of the public schoolboy system. This is his humour. If he wants to do that in the Liberal Party, fine. But if he wants to do it as foreign affairs minister of this country, it is disgraceful and it demeanes the standing of this country. The publicity will not just be restricted to the parliament of Australia; this will go all round the world. Every ambassador in this capital city will send reports of what this foreign minister said back to their country, particularly those he has called a ‘busted-arsed country’; but he is the one with the busted arse. (Time expired)

Senator HILL (South Australia—Minister for the Environment and Heritage) (3.17 p.m.)—This is the high point of Labor Party policy on foreign affairs. This is the best the Labor Party can do after 5½ years of opposition. As with every other field, they have attempted in vain to develop a positive and constructive policy agenda and have come up with nil. In this instance, the absence of a policy agenda is to be substituted just for another personal attack—the typical way in which Labor operate. They play the man; they get down in the gutter; they try to destroy him personally; they do not debate the issues. Even if Labor are unable after 5½ years to come up with an alternative foreign policy, couldn’t they at least attempt to de-
bate the coalition’s foreign policy? That even seems to be too difficult for this opposition. All they can do is pick up a bit of gossip and run with it and attempt to degrade and demean him personally. This is not the first instance: this is Labor tactics on every occasion.

*Senator Schacht interjecting—*

The DEPUTY PRESIDENT—Order, Senator Schacht! You have had your time. Please allow Senator Hill his time to speak in reasonable silence.

Senator HILL—Madam Deputy President, Senator Schacht comes in here today and says that an ambassador has lost his job because a car did not arrive on time.

Senator Schacht—It is true.

Senator HILL—Who says that? That is not true. That has been invented and used by the Australian Labor Party in an attempt to personally attack and demean Mr Downer. Secondly, in relation to this acronym, there has been no suggestion that he has used such an acronym in the public performance of his duties.

Senator Faulkner—Yes, there is.

Senator HILL—I see, so we are in the back rooms now, are we? Do we have the tape recorders running again?

Senator Faulkner—Obviously, every newspaper in the land.

Senator HILL—That is another thing about the Labor Party: its agenda of the day is taken from the morning newspapers. That is about as creative as this alternative government is. There is no suggestion that he used any such expression in the public performance of his duties. He has not said that. Nobody has said that. But that does not matter for the Labor Party. Who cares about that? The Labor Party is not interested in that. All the Labor Party is trying to do, as I said, is to draw him down on a personal basis. In this instance, that is not only pretty shabby politics but also unfair, because there has been no time in my 20 years in this place when Australia has been held in higher esteem around the world than at the moment. A great deal of credit for that very high standing should go to the foreign minister, Mr Downer.

Think of the standing we have now in Asia. Before we came to government it was all rhetoric. It was all huff and puff. There was no substance behind it at all. Our economy was in a mess; we were looked at as the poor cousin of the region. We have been able to rebuild the economy, re-earn respect that Australia once had and, through diplomatic channels under the leadership of the foreign minister, Mr Downer, re-establish the place that we, and most Australians, would wish to have within the region. The best example of that is the international leadership that Australia played in relation to the crisis in East Timor. One would only fear to think what would have been the contribution of Australia if the crisis in East Timor had occurred under the previous government.

I am not the type to start talking about the tantrums of the previous foreign minister, who Senator Faulkner knows so well. I would not talk about throwing ashtrays at staff or anything like that, would I?

Senator Sherry—I remember how he described you one day!

Senator HILL—I don’t care how he described me; what I do care about is when the politics of the individual are played without any substance—(Time expired)

Senator O’BRIEN (Tasmania) (3.22 p.m.)—One would have thought that, indeed the foreign affairs achievements of this government and this minister were so great, they would have understood the harm of this minister’s utterances, which are on the public record all around the world. I would have thought that this government, but Senator Hill in particular, would have been concerned enough not to simply try to push it under the carpet but to have some reasoned and considered approach to how Australia would respond to this embarrassment.

It reminded me of an article I read in the newspaper earlier this week where Ghandi, when asked what he thought of Western civilisation, was quoted as saying that he thought it was a good idea. The response that Mr Downer is reported to have had to what
was probably a fit of high dudgeon because his car was late was to thrash around at the poor and undeveloped nations, describing them as BACs. It has been said many times that he said that that meant ‘busted-arsed countries’. That is in the public domain.

In defending the minister here today, we have had an attack on Mr Gareth Evans. What does that have to do with the outrageous behaviour of this foreign minister? What does our role in East Timor have to do with it? This depiction by the foreign minister of our neighbours being something less than us can do us nothing but harm and can bring undone the goodwill that, I believe, this country has earned by its standing up for the people of East Timor. What credence did Senator Hill and Senator Ferguson give to that complex-ion of this problem? None at all.

Let us get onto the question of the sacking of the ambassador in Chile. Senator Ferguson and I were in Chile in March last year. We stayed with the ambassador. As far as I am aware, there was no concern about his competence at that time, certainly nothing that Senator Ferguson said to me—and, frankly, Senator Ferguson has very close contact with Mr Downer, as you know, Senator Hill.

Senator Hill—Wasn’t he given another post thereafter?

Senator O’BRIEN—No, he was not. He was in the post and he was also servicing Peru. We had dealings with him in both Peru and Chile. There was nothing wrong with the performance of his duties, and nothing has been drawn to anyone’s attention about a lack of performance on his part. In fact, it is clear from the press reports that his contacts with the local community were very good, and that there is consternation at his sacking by the local business community. If there is one thing that could be said about Ambassador Campbell it is that he took seriously his job of promoting Australia’s interests in the region and establishing contacts with the business community, which was germane to the reason that Senator Ferguson and I were in Chile and Peru—as part of a trade sub-committee inquiry into trade prospects.

Let’s not beat around the bush. It is true that the ambassador was sacked because Mr Downer did not have a car provided at the airport. It is true that, because the Chilean officials blocked the motorcade that was going to pick him up from his hotel, he was in a fit of high dudgeon. It is true that, when you look at what Mr Downer was saying in the private forums whilst he was in Chile, he was in a very bad mood and he was lashing about. In doing so, he did not care if he harmed Australia’s reputation, because that must have been his state of mind. No foreign minister in his right mind would lash out and say what he has been saying off the record. I embrace entirely what Senator Schacht said about where he comes from and why he takes that approach. He takes the approach of a spoilt private schoolboy who can lash around and think he is better than the Third World people. In saying that, he does not care what Australia’s reputation is with those countries, because he is upset. The fact of the matter is that, if this government is not prepared to face up to that fact, the Australian people will ultimately censure him. (Time expired)

Question resolved in the affirmative.

Banking: Fees

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (3.28 p.m.)—I also want to talk about sackings—the sackings of people’s piggy banks. I move:

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

I think a number of points need to be put on the record. For quite some time—and this issue was in the Sunday Telegraph last weekend—it has been clear that Australian banking customers are paying the second highest fees in the world, second only to Canada. We might take some warmth from the fact that we are No. 2 rather than No. 1, but at least in Canada there has been some intervention by the government to put in
place a memorandum of understanding to guarantee that banks will provide affordable services to customers, that there will be low-cost account fee arrangements put in place for customers, and that there will be minimum service standards to all of the customers in that country.

On the other hand, I think that our government, in its response given to the question, has essentially offered nothing more to a community that is battling to afford expenses on a daily basis, and now people have got to somehow also budget for meeting bank fee expenses on a monthly basis. There was absolutely nothing in the answer given by the government today, or in previous answers, that we can have any faith that things are going to be fixed, that things will change or that things will get better in relation to banking fees. It seems to me that the government must take responsibility for the laws that apply in this country, including making sure that banks are more obliged to give back from where they take.

If we put this in context: Senator Kemp committed himself by saying that this government supports low bank fees, but we only have to look at the escalation in unfair fees since 1996 up until the end of last year. The average cost for an over-the-counter cash withdrawal from any major bank rose by 175 per cent—that is, from $1 to $2.75. People may not regard that as being excessive but, for people who are on Struggle Street, this is an enormous amount of money for any customer of any bank in this country. Excess withdrawals at any of the major bank branches now incur fees of up to $3. Higher charges are also being introduced in relation to electronic banking and credit cards. So it is a combination of all the fees, and people who are struggling to make ends meet now also have to consider how they are going to meet the cost of those banks fees.

It is hard not to be cynical when you consider that, in the context of how banks have been faring, banks’ profits have grown exponentially. Last financial year the major banks reported more than $8.5 billion in profits. That was a record year and, so far, 2001 seems to be heading in the same direction: it is likely to be another record year, a bumper harvest, in terms of fee collections from customers across the country. At the same time, executives are richly rewarded with million dollar packages, yet staff positions within banks are being slashed. It seems to me that the banks cannot argue that they cannot afford to provide basic banking services and at the same time talk about increasing fees and closing branches. It is little wonder—when you consider the weekend’s investigation by the Sunday Telegraph and the ongoing debate about bank fees—that people are saying it is outrageous and that banks and governments ought to do something about it.

So, on the one hand, while the minister might answer by saying that he agrees that this government ought to support low bank fees, the reality is the opposite: this government is not doing anything to guarantee that there are cuts to fees. Where special arrangements are put in place for those on social security benefits and for pensioners—not surprisingly, the example I used for the ANZ—all account holders, other than those who are pensioners or social security recipients, now have to cover the costs of those special arrangements by their fees going up. I think it is outrageous. (*Time expired*)

Question resolved in the affirmative.

**PETITIONS**

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

**Human Rights: Burma**

To the honourable the President and members of the Senate in Parliament Assembled:

The petition of certain residents and/or citizens of Australia, draws the attention of the Senate to the application of Khin Maung Tunn, a national of Myanmar (Burma), currently residing at 2 Dillwynia Grove, Heathcote New South Wales, for the protection of the Commonwealth of Australia as a political refugee.

Khin Maung Tunn was an active member of the National League for Democracy in Myanmar, and has continued his political activities in Australia for the promotion of the cause of democracy in Myanmar.
In Myanmar, he suffered both imprisonment and professional disadvantage for his support of democratic principles.

Additionally, his family’s relationship, friendship and support for the persecuted leader of the democratic movement in Myanmar, Daw Aung San Suu Kyi, have drawn the intimidating attention of the military government in Myanmar. Consequently, it is our belief that Khin Maung Tunn is in extreme and life threatening danger should he be refused protection, and forced by the Australian Government to return to Myanmar.

Your petitioners therefore request the Senate to do all in its power to ensure that Khin Maung Tunn is provided with protection as a political refugee and is allowed to reside in Australia permanently, or alternatively, that he be granted permanent residency as an act of compassion on humanitarian grounds.

by Senator Forshaw (from 301 citizens)

Occupational Health and Safety Legislation

To the Honourable the President and Members of the Senate in Parliament Assembled: The petition of the undersigned draws attention to the House concerns over the proposal to introduce two (2) Bills before Parliament to amend the Safety Rehabilitation and Compensation Act and the Occupational Health and Safety Act.

These proposed amendments will disadvantage many workers and their families making it harder to obtain Workers’ Compensation and will restrict the capacity of employees and their unions to ensure the workplace is healthy and safe.

Your petitioners therefore request that the powers of the Safety Rehabilitation & Compensation Act 1988 and the OHS Act be preserved and that the proposed changes to these Acts be rejected.

by Senator Murray (from 165 citizens)

NOTICES

Presentation

Senator O’Brien to move, on 25 June 2001:

That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 30 August 2001:

(a) the role of Australian Search and Rescue (AusSAR) in the search for the fishing boat the Margaret J and its crew; and

(b) all communications between AusSAR and the Tasmanian police regarding the role of the Tasmanian police in the search for the missing boat and other related matters.

by Senator Murray (from 117 citizens)

Petitions received.

Senator Jacinta Collins to move, on the next day of sitting:

That the time for the presentation of reports of the Employment, Workplace Relations, Small Business and Education References Committee be extended as follows:

(a) education of gifted and talented children—to 27 September 2001; and

(b) higher education—to 20 September 2001.

by Senator Murray (from 165 citizens)

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

That so much of standing order 36 be suspended as would prevent the Scrutiny of Bills Committee holding a private deliberative meeting on 27 June 2001, from 8 am to 9.30 am, with members of the Scrutiny of Legislation Committee of the Queensland Parliament in attendance.

by Senator Murray (from 165 citizens)

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

That the Sanctions Amendment Principles 2001 (No. 1), made under subsection 96-1(1) of the Aged Care Act 1997, be disallowed.

by Senator Conroy (from 179 citizens)

Petitions received.
That the Senate—
(a) expresses its concern about the decline in investor confidence flowing from:
(i) recent corporate collapses,
(ii) public questions about the independence of auditors and brokers, and
(iii) concerns about the competence and performance of the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA); and
(b) condemns the Minister for Financial Services and Regulation for his mishandled oversight of ASIC and APRA.

Senator Watson to move, on the next day of sitting:
That the Select Committee on Superannuation and Financial Services be authorised to hold a public meeting during the sitting of the Senate on 25 June 2001, from 8 pm to 10.30 pm, to take evidence for the committee’s inquiry into prudential supervision and consumer protection for superannuation, banking and financial services.

Senator Cook to move, on the next day of sitting:
Establishment of a select committee
(1) That a select committee, to be known as the Select Committee on the Impacts of the New Tax System be established to inquire into and report, by 31 December 2001, on the social and economic impacts of the new tax system (NTS) and, in particular, the introduction of the goods and services tax (GST), with reference to the claims, estimates and projections that underpinned the Government’s proposals for the NTS, particularly those contained in Tax reform: not a new tax, a new tax system.

Matters to be explored by the committee
(2) That, in conducting its inquiry, the committee examine the following matters:
(a) the effects of the introduction of the GST (and associated compensation package) on disposable income and household spending power for a range of income groups;
(b) the effectiveness of the NTS in easing the poverty traps facing people on low incomes, and in reforming and streamlining tax and income support for families with children;
(c) the effects of the NTS on tax avoidance and evasion, including an examination of the effects on the cash economy;
(d) the effects of the NTS on small business;
(e) the effects of the NTS on taxation compliance costs;
(f) the effects of the NTS on the non-profit sector, including the total amounts of money contributed by the sector, administrative costs, impacts on the viability of the organisations, and the consequent effects on the well-being of the community;
(g) the effects of the NTS on:
(i) national Gross Domestic Product,
(ii) national export performance and national debt,
(iii) the national Consumer Price Index, and
(iv) the distribution of wealth in the Australian community;
(h) the levels of revenue generated or foregone due to the NTS and subsequent related policy announcements by the Government;
(i) the effects of the NTS on future federal budget revenues, expenditures and surpluses; and
(j) options for amending the legislation which underpins the NTS to improve its fairness, simplicity or efficiency.

Composition of the committee
(3) That the committee consist of 7 senators, 3 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, and 1 nominated by the Leader of the Australian Democrats.

(4) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.
(5) That:
   (a) senators may be appointed to the committee as substitutes for members of the committee in respect of particular matters before the committee;
   (b) on the nominations of the Greens or independent senators, participating members may be appointed to the committee; and
   (c) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee.

(6) That the committee shall elect as its chair a member nominated by the Leader of the Opposition in the Senate.

(7) That the committee shall elect as its deputy chair, immediately after the election of the chair, a member nominated by the Leader of the Government in the Senate.

(8) That the deputy chair act as chair when there is no chair or the chair is not present at a meeting.

Powers and administration of the committee

(9) That the committee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.

(10) That the quorum of the committee shall be a majority of the members of the committee.

(11) That the committee set 28 July 2001 as the date for receipt of submissions, but that the committee be empowered to receive and consider submissions at any later time.

(12) That the committee hold hearings in each state and territory as required.

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

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

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

That the Senate—

(a) notes that:

(i) 20 June 2001 is the United Nations World Refugee Day, and

(ii) the United Nations High Commissioner for Refugees believes that, ‘Detention [of asylum seekers] is only acceptable if it is brief, absolutely necessary, and instituted after other options have been implemented’; and

(b) calls for an end to mandatory, non-reviewable detention of asylum seekers in Australia, with adequately funded community release programs.

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

That the following matter be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 25 September 2001:

The development and implementation of options for methods of appointment to the board of the Australian Broadcasting Corporation (ABC) that would enhance public confidence in the independence and representativeness of the ABC as the national broadcaster.

COMMITTEES
Selection of Bills Committee

Report

Senator CALVERT (Tasmania) (3.35 p.m.)—I present the eighth report of 2001 of the Selection of Bills Committee.
Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 8 OF 2001

1. The committee met on 19 June 2001.
2. The committee resolved to recommend (a) That the provisions of the following bills be referred to committees as follows:

<table>
<thead>
<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation committee</th>
<th>Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bankruptcy Legislation Amendment Bill 2001 Bankruptcy (Estate Charges) Amendment Bill 2001 (see appendix 1 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>7 August 2001</td>
</tr>
<tr>
<td>Patents Amendment Bill 2001 (see appendix 2 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Economics</td>
<td>7 August 2001</td>
</tr>
<tr>
<td>Space Activities Amendment (Bilateral Agreement) Bill 2001 (see appendix 3 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Economics</td>
<td>7 August 2001</td>
</tr>
<tr>
<td>Workplace Relations Amendment (Prohibition of Compulsory Union Fees) 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>30 August 2001</td>
</tr>
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(b) That the following bills not be referred to committees:

- Appropriation (HH Assistance) Bill 2001
- Corporations (Fees) Bill 2001
- Corporations (Futures Organisations Levies) Bill 2001
- Corporations (National Guarantee Fund Levies) Bill 2001
- Corporations (Securities Exchanges Levies) Bill 2001
- Corporations (Repeals, Consequentials and Transitional) Bill 2001
- Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Bill 2001
- Excise Tariff Amendment Bill (No. 2) 2001
- Customs Tariff Amendment Bill (No. 3) 2001
- Export Market Development Grants Amendment Bill 2001
- Family and Community Services Legislation (Simplification and Other Measures) Bill 2001
- Governor-General Legislation Amendment Bill 2001
- Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001
- Higher Education Funding Amendment Bill 2001
- Indigenous Education (Targeted Assistance) Amendment Bill 2001
Wednesday, 20 June 2001

- Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001
- New Business Tax System (Simplified Tax System) Bill 2000
- New Business Tax System (Capital Allowances) Bill 2001
- Passenger Movement Charge Amendment Bill 2001
- Workplace Relations (Registered Organisations) (Consequential Provisions) Bill 2001

The committee recommends accordingly.

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

Bills deferred from meeting of 22 May 2001
- Aviation Legislation Amendment Bill (No. 2) 2001
- Finance and Administration Legislation Amendment (Application of Criminal Code) Bill (No. 1) 2001
- Financial Sector (Collection of Data) Bill 2001
- Migration Legislation Amendment (Immigration Detainees) Bill 2001
- Taxation Laws Amendment Bill (No. 3) 2001
- Trade Marks and Other Legislation Amendment Bill 2001
- Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 2) 2001

Bills deferred from meeting of 19 June 2001
- Financial Services Reform Bill 2001
- Financial Services Reform (Consequential Provisions) Bill 2001
- Corporations (Fees) Amendment Bill 2001
- Corporations (National Guarantee Fund Levies) Amendment Bill 2001
- Corporations (Compensation Arrangements Levies) Bill 2001
- Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Bill 2001
- States Grants (Primary and Secondary Education Assistance) Amendment Bill 2001
- Taxation Laws Amendment Bill (No. 2) 2001
- Vocational Education and Training Funding Amendment Bill 2001

(Paul Calvert)
Chair
20 June 2001

Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
- Bankruptcy Legislation Amendment Bill 2001
- Bankruptcy (Estate Charges) Amendment Bill 2001

Reasons for referral/principal issues for consideration:
- Inquiry and report into the provisions of the bills, in particular, impact on low income earners of abolition of “early discharge” provisions
- Possible submissions or evidence from: Insolvency experts and practitioners, credit counselling services, ITSA
- Committee to which bill is referred: Legal and Constitutional Legislation Committee
- Possible hearing date: Discretion of the committee
- Possible reporting date(s): no earlier than 6 August 2001

(signed) Kerry O’Brien
Whip/Selection of Bills Committee member

Appendix 2
Proposal to refer a bill to a committee
Name of bill:
- Patent Amendment Bill 2001

Reasons for referral/principal issues for consideration:
- This bill implements a number of recommendations of the Intellectual Property and Competition Review (Ergas Committee). There has been no formal Government response to this review, and further, a number of recommendations from the Ergas Committee came after the consultation process and relevant bodies have therefore not been consulted on all recommendations. There is a lack of clarity as to intent of some changes and there are a number of changes to definitions in the Bill which may have quite important legal consequences. These changes to definitions go to the very heart of the patent system and need further scrutiny.
**Possible submissions or evidence from:**
Institute of Patent Attorneys and Trade Mark Attorneys of Australia (IPTA)
Australian Academy of Science
Australian Academy of Technological Sciences and Engineering
Australian Tertiary Institutions Commercial Companies Association, Inc
Intellectual Property Committee of the Australian Vice Chancellors Committee
Federation of Australian Scientific and Technological Societies (FASTS)
National Tertiary Education Union
Law Council of Australia.

**Committee to which bill is to be referred:** Economics Legislation Committee

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

*(signed) Vicki Bourne*
Party Whip/Selection of Bills Committee Member

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Appendix 3

**Proposal to refer a bill to a committee**

**Name of bill:** Space Activities Amendment (Bilateral Agreement) Bill 2001

**Reasons for referral/principal issues for consideration:**
To examine the provisions of the bill in relation to probability of risk, public safety, insurance, site suitability, EIS arrangements and possible concerns of Indigenous Land Councils. The nature and extent of technology transfer arrangements with Russia also needs to be examined in the context of Space Activities Amendment Bill as, too, does the content of Australian technology.

**Possible submissions or evidence from:**
Office of Space Science and Applications (CSIRO)
Asia Pacific Space Centre
CRC for Satellite Systems (Dr Brian Embleton)
Kissler
Space Lift Australia
Queensland University of Technology
University of South Australia - Institute of Telecommunications
Ward and Partners (Solicitors - Adelaide)

Australian Space Industries Chamber of Commerce
Federation of Scientific and Technological Societies
Australian Conservation Foundation
Relevant Indigenous Land Councils

**Committee to which bill is to be referred:** Economics Legislation Committee

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

*(signed) Vicki Bourne*
Party Whip/Selection of Bills Committee Member

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Appendix 4

**Proposal to refer a bill to a committee**

**Name of bill(s):** Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2001

**Reasons for referral/principal issues for consideration:**
Issue has not been canvassed in and other inquiry to examine validity of claims that such fees are consistent with “user pays” principles

**Possible submissions or evidence from:**
ACTU, ETU (VIC), WA ANF, AWU, AIG, ACCI, DEWRSB, OEA

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

**Possible hearing date:** 10 August 2001
**Possible reporting date(s):** 30 August 2001

*(signed) Kerry O’Brien*
Whip/Selection of Bills Committee member

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**AUSTRALIAN BROADCASTING AUTHORITY: CROSS-MEDIA OWNERSHIP RULES**

**Motion (by Senator Brown) agreed to:**
That the Senate—

(a) notes:
(i) the advocacy comments by Professor Flint, head of the Australian Broadcasting Authority (ABA), for the abolition of cross-media ownership rules in Australia,
(ii) that Professor Flint did not accurately represent ABA-commissioned research when he said that media proprietors do not influence media content, and
(iii) the importance of cross-media ownership rules in preventing further concentration of media control in Australia; and

(b) calls for Professor Flint to correct the public record.

GOVERNMENT AGENCY CONTRACTS

Motion (by Senator Murray)—as amended, by leave—agreed to:

That—

(1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than the tenth day of the spring and autumn sittings, a letter of advice that a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the department’s or agency’s home page.

(2) The list of contracts referred to in paragraph (1) indicate:

(a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of $100 000 or more;

(b) the contractor and the subject matter of each such contract;

(c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether any provisions of the contract are regarded by the parties as confidential, and a statement of the reasons for confidentiality; and

(d) an estimate of the cost of complying with this order.

(3) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, within 6 months after each day mentioned in paragraph (1), a report indicating whether any inappropriate use of such provisions was detected in that examination.

(4) The Finance and Public Administration References Committee consider and report on the first year of operation of this order.

(5) This order has effect on and after 1 July 2001.

(6) In this order:

“agency” means an agency within the meaning of the Financial Management and Accountability Act 1997;

“autumn sittings” means the period of sittings of the Senate first commencing on a day after 1 January in any year; and

“spring sittings” means the period of sittings of the Senate first commencing on a day after 31 July in any year.

COMMITTEES

Public Works Committee

Meeting

Motion (by Senator Calvert) agreed to:

That the Parliamentary Standing Committee on Public Works be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on 21 June 2001, from 10.30 am to 12 pm.

Corporations and Securities Committee

Extension of Time

Motion (by Senator Calvert, at the request of Senator Chapman) agreed to:

That the time for the presentation of the report of the Parliamentary Joint Committee on Corporations and Securities on the provisions of the Corporate Code of Conduct Bill 2000 be extended to 28 June 2001.

MATTERS OF URGENCY

Aged Care

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 20 June, from Senator Chris Evans:

Dear Madam President

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

That, in the opinion of the Senate, the following is a matter of urgency:
The emerging crisis in the provision of aged care and the failure of the Minister to properly provide for the needs of the elderly.

Yours sincerely
Senator Chris Evans

Is the proposal supported?

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

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

Senator CHRIS EVANS (Western Australia) (3.39 p.m.)—I move:

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

The emerging crisis in the provision of aged care and the failure of the Minister to properly provide for the needs of the elderly.

I have moved this matter of urgency today to raise serious concerns about the administration of aged care in this country. In fact, when considering what to concentrate on today, I had a multitude of issues that could be brought to the attention of the Senate and the Australian public. I think the Australian public are well aware of many of those issues. They include the bed shortages and the phantom aged care beds; the failure of the government to properly fund care standards; the budget black hole in the provision for aged care in future years; the critical shortage of skilled staff, particularly nursing staff; and the inadequate indexation of care subsidies which brought about that situation.

There are a whole range of other issues, but I want to concentrate on the inconsistent application of accreditation standards within the aged care industry, the vast disparities in the treatment of various aged care providers and the failure to protect the interests of residents and their families. In particular, I want to concentrate on the Minister for Aged Care’s treatment of provider Mrs Millie Phillips in Sydney and the way that the Department of Health and Aged Care and the minister have handled concerns about two of her nursing homes: the Ritz and Yagoona.

The Yagoona story is a long and complicated one, but it raises very serious public policy issues about the administration of aged care in this country. On 10 November last year, the Yagoona Nursing Home, operated by Mrs Millie Phillips, was granted three years accreditation. That is the highest possible level. It received satisfactory ratings on all four care standards. But in April 2001, just five months later, an assessment team from the aged care status agency visited the home after concerns were raised about the care of the residents. The assessors spent three days inspecting Yagoona, and the 96-page report, which documents their findings, makes for shocking reading.

Five months after Yagoona received a clean bill of health, it failed all four of the key care standards and 20 of the 44 substandards. The home failed to meet standards on clinical and skin care, behavioural and continence management, nutrition and hydration, fire safety and record keeping. I do not have the time today to read the complete list of the failures at Yagoona. On two key standards, staffing and environment, Yagoona’s performance was not only unacceptable; it was given the worst possible rating: that of critical. The accreditation guidelines state that any nursing home with one or more standards rated critical will not be accredited. Those are the formal accreditation guidelines which guide the work of the agency. In accordance with those guidelines, the report of the assessment team recommended:

... that the accreditation of the Yagoona Nursing Home be revoked.

The revocation of the nursing home’s accreditation would stop its Commonwealth funding and effectively close it down.

But some time between 23 April and 10 May, the recommendation was overturned. Yagoona’s accreditation was not withdrawn; instead, it was reduced from three years to 18 months. This leaves a series of unanswered questions. Why were the accreditation guidelines ignored? Why was the assessment team’s recommendation overturned? Why
did the Yagoona Nursing Home, a home that had slid so far in just five months, receive special treatment—unprecedented and special treatment? Why did Mrs Millie Phillips enjoy the favour of the government in having the decision to close her nursing home down reversed?

Labor put these questions to the Minister for Aged Care on 4 June. The minister stood before the federal parliament and said it had nothing to do with her. In her words, it was not a matter for ministerial judgment. Labor then asked the minister, Mrs Bishop, to confirm that the provider of the Yagoona Nursing Home, Mrs Millie Phillips, had donated $14,000 to the Liberal Party and asked whether that donation had in any way influenced decisions taken with respect to the nursing home. Before the minister could answer, the Speaker shut debate down.

Mrs Bishop was so concerned to establish her ignorance and inaction with respect to Yagoona that she went on 2GB radio the next morning to wash her hands. She told Terry Willesee that she knew nothing about Yagoona until she ‘saw it in the paper’. She acknowledged that she had met Mrs Phillips, but claimed to have ‘no power under the act’ to do anything about her case ‘nor would I, nor did I’. The minister, who was once the doyen of ministerial accountability, had certainly changed her tune.

Later that day in parliament, Labor MP Julia Irwin asked the minister about Gordon Smithers, a 78-year-old veteran and ex-POW who was admitted to Yagoona for respite care in May this year. Mr Smithers and his family were so distressed by his care that his mates from the Liverpool RSL had him moved out of there within 24 hours. The minister claimed to be unaware of the case, despite the letter sent to her by the member for Fowler alerting her to Mr Smithers’s distress.

But it is the history of the Yagoona Nursing Home that makes Minister Bishop’s claims that she was unaware of problems with this home and this provider so implausible. The problems at Yagoona did not start in the early months of this year. It is a home with a troubling record of substandard care. On 15 February 2000, a Yagoona resident died at Bankstown Hospital of sepsis, caused by infected pressure sores. Her son has written to me about what happened. His mother was admitted to Yagoona due to dementia but was otherwise in reasonable health. While in the home, she developed a pressure sore, first documented in the clinical records on January 27. Neither her son nor her medical practitioner were notified of the severity of the pressure sore until her admission to hospital 12 days later. One week later, she was dead. But the son did not only write to me. He filed complaints with the Aged Care Complaints Resolution Scheme and the New South Wales health department and he wrote to Mrs Bishop. I have here a copy of the letter he received from the minister on 20 June 2000, expressing ‘regret that your experience of aged care has been distressing’ and referring his complaint to the department.

Clearly, the minister knew about serious problems with Yagoona. The more important question is: why did Yagoona again get special treatment? In the same month as the minister was informed about the death of a resident at Yagoona, she was claiming to be a proactive minister. According to Minister Bishop, on hearing of the kerosene baths at Riverside, she worked through the night, sent the inspections teams in and used her powers under the act to impose sanctions and shut the home down. But when she receives a letter just a few weeks later advising that a woman had died after developing pressure sores in Yagoona she does not act at all. She does not phone the family. She does not send in the inspection teams. And four months later, her chief of staff sends the son an expression of regret and refers the complaint to the department.

Fortunately, the New South Wales Department of Health took the complaint seriously. They had a complaints investigation officer visit the home and by 27 March the findings of the investigation were in the son’s hands. And they were serious findings. There had been another death in Yagoona due to failure to recognise the severity of a
pressure sore just six months earlier. The investigating officer stated:
The fact that the same members of staff were involved in both matters is of extreme concern. The two deaths at Yagoona and the subsequent failure to care properly for Mr Smithers raise a series of very serious questions about the care standards at Yagoona and about the roles of the department and the minister in ensuring the protection of the residents and those facilities. Why was one of the nurses being investigated by the New South Wales Health Care Complaints Commission still in a senior role at Yagoona until a few weeks ago? How could a home where two residents had died from infected pressure sores in a six-month period and that was under investigation by the New South Wales Department of Health receive the highest possible accreditation rating? How could a home granted three years accreditation fail on all four key care standards just five months later? If the New South Wales Department of Health found that the seriousness of the complaint and the fact that it was the second such incident warranted close and continuous monitoring of the ‘care, safety and quality of life of residents in the Yagoona Nursing Home,’ why did Minister Bishop do nothing?

How can the minister claim that she first heard about problems at Yagoona when she read about it in the *Sydney Morning Herald* two weeks ago? Why was the recommendation to revoke Yagoona’s accreditation rating overturned? Why weren’t any sanctions imposed on Millie Phillips over her clear and repeated failure to provide proper care to the frail residents of Yagoona, yet other nursing homes with similar problems had been sanctioned? When did the minister first know about her own agency’s serious concerns about the care of residents in Yagoona? Why didn’t the minister intervene, as she claims to have done in relation to Riverside, to ensure that the serious concerns of the son of a deceased resident were properly investigated earlier last year?

Why was the Ritz, the other home owned by Mrs Millie Phillips, exempted from the government’s care standards late last year, only to fail them again six months later? How many chances will Millie Phillips be given to meet care standards? Ultimately, the question that has to be answered here is: why have the government and the minister been so keen to bend the rules so that Mrs Millie Phillips’s nursing homes stay in operation?

These are very serious concerns about the Yagoona and Ritz nursing homes. These are not just my concerns. These are concerns raised by the Aged Care Standards Agency officers—the same officers who recommended that accreditation of the Yagoona Nursing Home be revoked. They recommended it be closed down. They were the officers charged with the responsibility under the act to make the assessments. Having made the assessments, having spent three days there and having written a 96-page report, they said that it ought to be closed down. But some time after filing their report, somebody made the decision that it should be allowed to stay open—not only did they make the decision that it stay open but no effective action was taken to ensure the care of the elderly residents of Yagoona.

We made amendments to the Aged Care Act last year which gave the minister greater powers to send in care teams, to send in an administrator or to send in nursing personnel to ensure the care of the residents. These added to her powers to impose sanctions on providers. But none of those powers have been used in relation to Yagoona. There is no shortage of nursing homes around the country who have had sanctions imposed upon them. They, like the rest of the industry, want to know why it is that this Mrs Millie Phillips and the Yagoona and Ritz nursing homes have received special treatment. Why are they different? Why haven’t they had to meet the standards of aged care that all other providers have to meet? Why haven’t they received the punishment and the sanctions that all other providers are supposed to receive if they fail to meet those standards?

These are questions that remain unanswered. These are the questions that the families of the two deceased asked. These
are questions that the family of Mr Smithers asked. These are the questions that a lot of people who have worked at Yagoona and the Ritz asked because they too expressed concerns about the standards and some of the operations of these two nursing homes. Originally, I thought that the answer may well be that, because of the severe bed shortages in this country—because of the minister’s failure to supply enough aged care beds to care for those elderly that need them—the reason she failed to take action against these homes is because they are both large homes. She may have thought the fact that she did not have any alternative accommodation to care for the current residents of those homes meant she could not close them. I thought that the pressure of the unmet demand for aged care meant that she was afraid to take action against them.

But clearly she had other powers; she had options other than to close them, which she has not exercised. She has not taken an interest in this matter. In fact, her public defence has been to say that all she knows about it is what she read in the paper. We must contrast that with the Riverside case where she claimed to be a proactive minister using her powers and intervening to care for the residents. But when it came to Yagoona and the Ritz her response was, ‘Well, I read about it in the paper. That is the first I knew about it.’ We now know that she knew about a lot more.

We now know that she knew about the deaths, because the son of one of the residents who died had written to her and he had got a response from her office. They had taken four months to respond and they had not dealt with it adequately, but they finally did refer it off to the department. We know her office was contacted. She knew about concerns at Yagoona. We also know that she would have known about the New South Wales health department’s investigations and their serious concerns. But, despite all of that, the minister did not take any action, and her department then gave Yagoona a full three-year accreditation later in the year.

How can a nursing home under investigation receive the full three-year accreditation when these serious concerns remain unresolved? These are questions that have not been answered. The minister has failed to seriously try to answer any of these questions. So the families, friends and many former staff members are left wondering what it is about Yagoona and the Ritz that allows such special treatment. Their concerns were heightened by the fact that, when they were talking to the accreditation staff during their last visit and they were asking about whether or not Yagoona would be shut down because of its failure to meet the standards, they were reassured when told, ‘Don’t worry. We know that Millie Phillips has contacts in high places. Nothing will be done that would injure her interests.’ This is the evidence of senior staff at Yagoona. This is evidence, which they are prepared to provide, that says they were told that they knew no serious action was going to be taken because of Millie Phillips’s connections. That provides one explanation because there is no other plausible explanation as to why they have received this special treatment.

We know that Millie Phillips, Liberal Party donor and friend of Bronwyn Bishop, has received special treatment while the elderly residents of Yagoona and the Ritz have received substandard treatment. One of her nursing homes, the Ritz, was exempted from the government’s own care standards for six months. The other, Yagoona, remained open and without sanction despite failing all four care standards. Complaints of shocking, painful deaths have been made to the minister herself, yet she claims to know nothing of matters at Yagoona until she reads about them in the paper.

She claims to have no responsibility for the agency. However, her most senior political campaign worker sits on the board. The aged care industry knows that Millie Phillips is a person that they do not want in their industry. The minister claimed that the accreditation process would clean up the industry, rid it of those providers not interested in providing high quality care. It appears the minister never intended that those standards
apply to her friends. Her friends are more important than the elderly residents who have been left to suffer in Yagoona are.

What we want to know is why the minister has allowed such favourable treatment to be meted out to Yagoona and the Ritz when other nursing homes have received much more severe treatment, have been the subject of sanctions, and have had administrators and nursing personnel appointed to ensure the care of the residents. None of these measures have taken place here. None of the sanctions have been applied in these cases. It really undermines confidence in the standards when people say that they are not being applied fairly or equitably. These concerns abound in the industry. The industry are most concerned by what they see as the failure to apply the standards.

The industry generally support accreditation, support the accreditation standards and have worked very hard to meet them. But they are very disappointed when they see that some providers, who have not made the same sorts of efforts and who have not played by the rules, are receiving favourable treatment and not being required to meet the standards that all others are required to meet. They want to know why, because it gives the whole industry a bad name. They want to know why the Ritz and Yagoona got special treatment on this occasion.

It is important that we get a proper explanation from the minister about the events at Yagoona and the Ritz, because the families of the deceased and the families of the others who made complaints, who have concerns there, deserve a proper explanation. The industry and the public deserve an explanation about why the standards have not been applied equitably and why Mrs Millie Phillips and in particular the Yagoona and Ritz nursing homes have received special treatment. You cannot rebuild confidence in the aged care industry; you cannot rebuild confidence in the integrity of the aged care industry if those standards are not maintained without fear or favour. You cannot choose to apply sanctions to some and not to others without bringing the whole system into disrepute.

A number of very good nursing homes have fallen foul of the accreditation process and have been downgraded. And for some of them it has been quite harsh. They are basically very good homes which, on some technical issues or because of various circumstances, have had their accreditation status downgraded. They have paid very severe penalties for that but they have generally responded positively to those penalties, saying that they know those are the rules and that the rules are there to improve the standards of the industry. But that is not the case at the Ritz and it is not the case at Yagoona. These are examples of where the standards have not been applied and where preferential treatment has been given. They undermine the credibility of the aged care standards and they certainly undermine the credibility of the minister to properly administer the portfolio.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (3.59 p.m.)—I do not know why Senator Evans has moved this motion, because he did not address the matter of urgency as outlined. He came into cowards castle and made accusations about the minister’s motives. I think he should go outside now and say them publicly. As Senator Ray says, it is five yards to courage—go outside and make those statements publicly and see how they are tested outside. You can come in here and, under the protection of privilege, you can make accusations about the motive of the minister and about her influencing decisions. Go outside and say them.

It may have paid the Labor Party, when they were in government, to actually do something about aged care. They sat on their hands and did nothing. The hypocrisy of the Labor Party is absolutely staggering. When I was in opposition, I spent week after week after week visiting nursing homes, and they were absolutely disgraceful. There were situations that were totally abhorrent and unacceptable in a civilised society. I will take you on a trip down memory lane. Senator Evans does not even have the good grace to
stay in the chamber to hear this matter that was so urgent for him to debate. In 1994 Professor Gregory produced a report, which the Labor Party commissioned, on Labor’s record on aged care. The report found that 75 per cent of homes did not meet building standards, 70 per cent of homes needed fixing or rebuilding to meet Australian design standards, 39 per cent of residents were in rooms with four or more beds, 13 per cent of homes did not meet safety standards and 11 per cent did not meet basic health standards. It also showed that $540 million was needed to upgrade nursing homes to meet basic Australian building standards and that $125 million was needed to tackle existing problems. When Dr Lawrence got the report—she was then the minister responsible—she did nothing. She sat on her hands and did nothing. Labor did nothing. They said that they were going to give a miserly $33.4 million over four years, which is less than $10 million a year. That was a drop in the ocean of what was needed. They left a system that was not financially viable, as evidenced by the Gregory report, and there was a lack of a funding stream for capital improvements.

The coalition had put a policy forward before the election. When the legislation came forward—I was overseas at the time at the United Nations General Assembly—I have to say to you that I was appalled by Ms Macklin’s behaviour. I have some respect for some people on the other side. They are doing a job; I do not always agree with them, but Ms Macklin went down in my estimation to zero because she went around frightening older people and the children of people who required aged care, telling them that they would have to sell their homes. I will never forgive her for that. Had that policy been accepted in a bipartisan way similar to a policy for hostels that was initiated by the then Labor government, which we supported and so enabled capital funding for hostels, we would have had capital funding that would have improved nursing homes. However, on our policy, no, the political route was taken. As Richo said, ‘Whatever it takes to win government.’ It does not matter if you frighten older people. The Labor Party would not have that policy. So we lost an opportunity to have capital funding that would have improved nursing homes.

Given that, the coalition have had to turn around and find other forms of funding because we were not able to leave nursing homes in the appalling state that they were in under Labor. I have to tell you that it was disgraceful. Senator Evans talked about one or two nursing homes. I can tell you that I visited nursing home after nursing home after nursing home that failed what I call my mum test—that is, my personal accreditation test: ‘Would I put my mother in that nursing home?’ The answer was: no, no, no, over and over. They were disgraceful, because Labor had let them run down. This will be an ever increasing problem into the future for Australia—it is not going to go away; the baby boomers, who are corporately 55 years of age, are knocking on the door—and unless we find an answer to it in a bipartisan way, unless we can address it, it will not get better and will be a drain on the public purse. But, oh no, Labor will do anything. They will scare older people. We were left with not only nursing homes that were run down but also funding that was run down at an amazing rate. In the Labor Party’s last four years in government, capital funding for nursing homes was reduced by 75 per cent. So three-quarters of the money needed to maintain nursing homes had been taken out—mind you, the Labor Party were borrowing $10 billion in that last year. I do not know why they could not find a bit more. They could have borrowed a bit more. That is what the Labor Party seems to do: if you do not have the funds, borrow them; borrow them off the next generation. They left it. They left a divided industry where residents had to move from one service to another—from hostels to nursing homes—when they were at their most vulnerable. The Labor Party failed to address the issue of dementia care. In the 1998 election they promised to abolish fees and charges and to replace them with a $500 million fund. That represented a cut of $45 million in funds available to build, repair and
maintain nursing homes over three years. The Labor Party had no policy then, and they have no policy now. What they need to do is work on a policy and tell the public what they would do if ever they got into government. I suppose they would not do much more than what they did before—run nursing homes down.

Since coming to office, the coalition have increased funding in the aged care sector from $2.5 billion in 1995 to $5.4 billion. We have allocated almost 31,000 places to meet the needs of older Australians. The current ratio, including allocated places, is 108 places per 1,000 people aged 70 and older. The Labor Party was aiming at 100 places, but it did not even get near that. We have gone to 108 places.

In January 2001, the Minister for Aged Care announced the creation of over 14,000 aged care places worth $156 million. Between 1996 and 2000, the coalition created 24,000 aged community care packages. Those are packages so that older people can choose to stay in their own homes and receive care. We have increased home and community care funding by 34 per cent—from $423 million to $565 million—to assist older people to have facilities in their homes, to be given meals on wheels and to enable them to stay at home for as long as possible.

At the start of 2001, the Aged Care Standards and Accreditation Agency advised that 99.3 per cent of homes had received accreditation.

Other achievements have included the unveiling of a $280 million staying at home package. We have recognised the needs of carers for people with disabilities, with additional funding of $82.2 million, and there has been some respite and other services funding of up to $56 million for people with dementia and other behavioural difficulties. We introduced funding of $37.8 million for aged care assessment teams—an increase of 4 per cent.

For the Labor Party to come in here and say that this government has failed to provide care for older people is hypocrisy. They need to look at their own record. They need to address the fact that this issue is bigger than parties. It is an issue that needs to be addressed by the parliament itself, to see how we are going to fund the increasing demand on aged care. But it is not going to be done the way the Labor Party did it—that is, by frightening older people, by lying or telling untruths about policies. That is not the way to do it. The way to do it is to look at the issues, work out how it can be done and how we can have sustainable funding of aged care. (Time expired)

Senator WOODLEY (Queensland) (4.09 p.m.)—If it were possible to amend an urgency motion, I would do so, because that is what is needed in this debate, but I understand that under the standing orders it is not possible to do that. However, if we were able to amend the urgency motion, it would read 'the failure of successive governments to provide adequate funding to properly provide for the needs of the elderly'. That is the proper motion that should be before this chamber today.

The Democrats are intrigued by the motion and by the use of the term 'emerging crisis' in this matter relating to aged care. If we accept that the term 'emerging' implies 'coming out after a period', the motion moved today by the Labor Party is indeed very short-sighted—or should I say 'very short-memoryed'.

The Democrats know that the aged care problems are ongoing, and they have been ongoing for many years. We have long highlighted these problems over the period of successive Labor and coalition governments. My colleagues have been receiving desperate, sad, pleading submissions from constituents for a long time. They are not new, and they are certainly not 'emerging' at this time. We received them during the 13 years that the Labor Party was in power. At the end of 1996, as identified by the Auditor-General's report, the number of operational aged care places was approximately 6.5 per cent below the official target of 93.5 places for every 1,000 aged persons, which resulted in a critical shortage of 10,000 aged care places in Australia. That was Labor's record. In June 2000, there was a national shortage of 9,700 aged care beds relative to this government's
own targets, and in many regions across the country shortages are chronic.

I do not necessarily want to lay the blame at the feet of either government. I agree with the previous speaker, who said that the only way that this crisis can be addressed—and it is a developing crisis—is by having some kind of multiparty agreement about how to solve the problem. The number of aged people in Australia is growing and the number of aged care places that are needed continues to escalate, and without some kind of agreed commitment to solving the problem we will not solve it, no matter who is in government.

Publicising recent aged care allocations when those allocations are phantom beds in facilities not yet built and therefore not likely to be filled for more than a year is also not addressing the issue. Nor is it a newly emerging crisis that there are bad providers in the aged care sector. I listened carefully to Senator Evans give us a number of anecdotal examples, but you could give those examples forever. You could give them under the Labor government, and you will be able to give them under successive governments in the future. This is a serious issue that cannot be addressed simply by trying somehow or other to take one case and say that it is an example of the whole situation. In a sense it is, but, in another sense, we cannot arrive at a solution by such anecdotal examples.

The problems of bad providers existed during the 13 years from 1983 to 1996 under a Labor government, and they have existed under the six years of the current government. Nobody in this place could give more examples than I could, as a person who was a director of a nursing home at one stage and also, for many years, a chaplain who visited many nursing homes and had to deal with many of these situations.

Of course, nobody wants to witness again in the media the appalling scenes of elderly, frail Australians being publicly removed, under the glare of the media spotlight, from their aged care facility because of poor management and because standards are not being met. The closure of nursing homes is nothing for this government to be proud of, but neither is ignoring the problems that existed, as happened under the Labor government. The Democrats supported measures in this place late last year which would provide for notice for residents to allow them some warning and a measure of dignity in the process. Also, where closure could be prevented, the parliament in that legislation provided for a much better level of care with ongoing monitoring.

The crisis being debated today is not new. Under the Labor Party, it was swept under the carpet. This government can be criticised for its failure to respond to the recommendations of the January 1999 Productivity Commission report. However, Labor is equally guilty of commissioning the Gregory report and failing to act upon it. The Productivity Commission's recommendations are still being ignored today, despite the repeated calls of the Democrats to heed them and act upon them.

No-one was more disappointed than the Democrats at the recent budget's failure to provide a much needed injection of capital funds into the aged care industry. This is where the greatest need lies. Prior to 1997, however, the sector was under the same kind of pressure. Providers were calling out for a review of funding arrangements, and a reference was finally given to the Productivity Commission. In 1999, the Productivity Commission described the funding of aged care as inappropriate and inequitable. What is Labor going to do about it? I have closely scrutinised their five-point plan for quality aged care which is silent on the issue of capital funding. A benchmark of care alone will not provide the much needed purpose built facilities, nor will it provide for special facilities to cater for the needs of dementia sufferers or elderly Australians for whom English is not their first language. Nor will it provide the facilities to meet the increasing standards requirements which must be met in 6½ years time, when many of today's facilities will simply not meet the mark. It will be too late then to consider capital works, and it will be too late at that point to finally accept that not all Australians can continue to be cared for in their own homes.
Over the past years, no government has done enough to address the crisis in aged care capital funding. Where is the legislation to provide wage parity for nursing staff and to address the growing divide in pay between aged care nurses and their acute care counterparts? Aged care nurses are paid 15 per cent less despite the same levels of training, and that is causing a staffing crisis in aged care facilities. Labor’s five-point plan talks about staffing ratios. That is an admirable goal but is of no value when the ratio positions simply cannot be filled because qualified nurses have left, and continue to leave, the industry in droves because it does not remunerate them adequately. A ratio will not help a resident to be toileted, bathed, fed or medicated if there are no qualified staff to do that, or if those staff simply do not have the time.

Let me reiterate that the Democrats understand that there is a crisis. It is not new and it is not simply something that arose under this government. It is something that has been with us for a long time and it is increasing because of Australia’s ageing population. I believe that we should be moving a motion which refers to the failure of successive governments to provide adequate funding. I call on everyone in this place to get together and come up with an agreed means whereby we can begin to tackle properly the crisis in funding which really lies at the base of all the problems. What is in crisis is the failure of successive governments to recognise that advancing age brings with it increasing needs for care and support, particularly for Australians over the age of 80. We would support an amended motion. However, as our amendment cannot be put, we will not support the current proposition.

Senator KNOWLES (Western Australia) (4.19 p.m.)—Today we are debating the most scandalous motion put forward by Senator Evans. I say ‘scandalous’ because clearly it is a total and utter misrepresentation of the facts. I want to go through three main areas. First, I want to refute the allegations Senator Evans made in this place today about Yagoona Nursing Home. Secondly, I want to go through what the coalition has done to provide funding for aged care since it came to office and had to pick up the threads of the disgraceful legacy left by Labor. The third point I want to cover, if I have time, is a brief summary of the independent two-year review of aged care reforms conducted by Professor Len Gray.

I turn first to the issue of Senator Evans’s claims about the Yagoona Nursing Home. He put out a press release on 4 June which said much the same as he said in the chamber today. One of his claims is that the government reversed a decision to close down Yagoona Nursing Home. Wrong. The government is not the decision maker. The decision maker is the Aged Care Standards and Accreditation Agency. Senator Evans is the shadow minister, so he should know that. But, no, he comes in here, and he puts out press statements, claiming that it was the government who did it. It was not the government; it was the agency. The agency did not reverse its decision. The New South Wales state manager of the agency decided not to revoke the home’s accreditation, taking into account all the things that the agency is required to take into account under the relevant legislation, including the review audit report on the home.

Secondly, Senator Evans wrongfully claimed that the nursing home failed all four standards, with two being rated as critical, and that it was recommended that the nursing home be closed down. There was no recommendation that the nursing home be closed down. Why has Senator Evans come in here and again misrepresented the truth? The agency operates under a detailed legislative framework and these legislative principles were designed to ensure that the agency operates in an open and transparent manner. The process for granting, varying and revoking the accreditation of a home is clearly articulated in the legislation. It is such a shame that the shadow minister will not go and look at the act. He will not understand what the truth is before he comes in here and puts out press releases accordingly.

His third claim is:
The Government’s own Accreditation Guidelines state that a nursing home with one or more standards rated critical will not be accredited.

The guidelines were issued in 1998 to assist the industry to prepare for first accreditation. These guidelines became redundant when the accreditation grant principles passed through both the Senate and the House of Representatives in 1999. These principles, as subordinate legislation, must be and are adhered to. Once again, one would suspect that the shadow minister would know that. Clearly, he seeks to misrepresent the position.

His fourth claim is:

... the Government allowed the nursing home to remain open, it failed to impose any of the sanctions it has available under the Aged Care Act.

The government, once again, is not the decision maker. The agency is the decision maker in relation to accreditation. The secretary to the department or his delegate decides whether sanctions should be imposed. The secretary’s delegate is currently considering the question of the imposition of sanctions. Once again, Senator Evans has misrepresented the facts of the matter and come in here and wilfully said something that is not truthful.

He went on to make the further claim:

The Minister has powers to appoint an independent administrator to ensure that the residents receive proper care, but has failed to use them.

Once again, you would think the shadow minister would know that the minister has no such power. Why does he come in here and say that she does? One sanction available is for the provider to be required to appoint an administrator or adviser from one of the established panels. The power to take sanctions under the Aged Care Act rests with the secretary to the Department of Health and Aged Care or his delegate, as I have said before.

The sixth wrong claim that Senator Evans has made is:

... The Ritz in Leura, owned by the same provider was exempted from the Government’s accreditation standards.

It was not exempted in any way, shape or form. That just puts to rest some of the scandalous things that Senator Evans has wilfully come in here and not told the truth about. He has misrepresented the facts.

The ACTING DEPUTY PRESIDENT (Senator George Campbell)—Order! Senator Knowles, I think you are sailing pretty close to the wind in the language you are using in impugning Senator Evans’s motivation. I draw your attention to it.

Senator KNOWLES—Thank you, Mr Acting Deputy President. I will certainly maintain my position, and I will rephrase it if necessary. I do believe it is the responsibility of honourable senators to come in here and be honourable. I have demonstrated that Senator Evans has clearly not said it as it is. If that is going to be deemed unparliamentary then so be it, because quite frankly we have a responsibility to come in here and tell it as it is, not as you might want it to be for political purposes. Senator Evans’s position is appalling.

His position on the funding levels is even worse. After this government came to office in 1996, the Auditor-General found there was a 10,000 aged care place deficit left by the Labor government. In the last two approval rounds and in the 2001 round, over 31,000 new places will have been released to make up for the deficit. The former Labor government spent $2.5 billion on residential aged care. As of this year, it is expected that $3.9 billion will be spent. Senator Evans says that funding has been cut or has not been increased. That is wrong. The total income to providers of residential aged care during the five years following the reforms is projected to increase by some 41 per cent. The industry demonstrates confidence about its future and is engaging in extensive building and upgrading refurbishment work which it could not undertake under the Labor government, and $1.4 billion across Australia has been committed by the industry on capital building works. Twelve per cent of all aged care homes in Australia have been either newly built or completely rebuilt, and the list goes on.

In the limited time I have left, I will go on very briefly to the review by Professor Len Gray, who said:
In general, the fears that were expressed prior to the implementation of the reforms have not been borne out by the evidence ... Substantial improvement in the quality and quantity of residential buildings was a specific objective of the reforms. The evidence indicates that considerable progress has been made towards achieving this objective.

However, it can be acknowledged that the reforms have introduced processes that are clear improvements on the previous system.

And I will put in there the words 'under Labor'. The analysis shows that income has increased, government outlays have increased, demand for residential places has increased and the value of places has increased. The financial analysis conducted by the review indicates that significant resources are being generated by the new arrangements to meet the industry’s capital requirements. There is also evidence that homes are moving steadily towards meeting the 2008 privacy and space requirements. The accreditation process appears to be widely endorsed as an appropriate approach to ensuring standards of care across all homes. (Time expired)

Senator WEST (New South Wales) (4.28 p.m.)—I want to start by making it very clear that The Ritz Nursing Home in New South Wales was granted exceptional circumstances. It was one of the 19 or 20 that had to be given extra time to meet the qualifications. Aged care is an issue of major concern to everybody in this country. We are all going to get old. The government’s problems with aged care started the day they said they were going to lay legislation on the table for 10 days. The peak bodies were flat out getting copies of the legislation at that stage, let alone getting it out to their affiliates.

Senator McGauran—Senator Patterson spoke about the mother test. A lot of people in this country would not have been able to undertake the mother test using the Internet site of the accreditation agency over the past six months, because the agency was not putting the review results on the web site. It happened only in the last two weeks—so much for people being able to undertake their own mother test. This government has not allowed them to do that. It is the government’s responsibility, because the government is ultimately responsible for the activities of the department. There are such a things as Westminster responsibilities, transparency and accountability. If the government does not want to make accountable the actions of its departments, it will be seen as failing the people of this country abysmally.

I am glad Senator Knowles mentioned the two-year review by Professor Len Gray. He raises the issue of staffing. On page 96 of that review, he says:

Staffing was clearly one of the major areas of concern for stakeholders in the first and later rounds of consultations. It was suggested by staff, consumers, providers, and State and Territory governments that the reforms had seen a decrease in the overall level of residential aged care staff and the hours they devoted to direct care. It was also felt that there had been a negative change in the skills mix, with many staff not having the necessary training or qualifications.

To me, that is the most telling thing to outline when talking about the provision of any type of aged care or health service. If you do not have adequate numbers of staff to undertake these procedures and adequate skill mixes, you are not going to get proper skin
care, proper nutritional care, proper patient ambulation, proper patient mobility and all of those sorts of things.

I also apply a test to this, and it is the care that my father was given in a nursing home last year before he died. It was good care. I know the pressure those staff are under and I know that those staff are paid less than they would be paid if they were doing similar sorts of work, with the same qualifications, in acute hospital care. When you look at the figures in the work done by the ANF—and I do claim former membership of that union—you will see that, in some states, the differential is 12 per cent and 13 per cent. In our own state of New South Wales, Acting Deputy President George Campbell, the differential is two per cent. In other states it is 12 per cent or 13 per cent. That is not fair; that is not going to do anything to attract qualified nurses.

I am aware of situations where people with enrolled nurse aide qualifications are being employed at the lower rate of personal care assistants. They are required to work at the enrolled nurse aide qualification level, they are paid at the lower rate and they are not given recognition for that work within the programs that each of the state registration boards have that keep them registered. (Time expired)

Senator TCHEN (Victoria) (4.33 p.m.)—I was surprised to see Senator Evans’ motion, which implies that there is a crisis in the aged care service and that it is about to collapse. Because of my cultural background, I have a particular interest in aged care. Since June 2000, in the last 12 months or so, I have found my way to visit 38 aged care homes in Victoria. I am scheduled to visit five more in the next two months. I am not sure how many such homes Senator Evans has been to, but perhaps he has not had a similar experience.

When I listened to Senator Evans, I found that he was not worried about the aged care service as a whole. He was taking an opportunity to denigrate and single out a particular home, using parliamentary privilege to blacken that home’s reputation. My experience gives me a much better idea of the quality of care that aged Australians enjoy than Senator Evans could possibly have. From talking to residents, visiting families, volunteer helpers and dedicated staff, I have a much better idea than Senator Evans could possibly have of how much better the quality of life for aged Australians is under this government’s aged care management regime.

If Senator Evans spent some time visiting the aged care homes in his electorate, perhaps he would get a better idea of the real state of aged care services in Australia as well. Perhaps, if he were honest with himself, he would acknowledge the excellent outcomes this government has achieved in providing the kind of care, the quality of life and the security in old age for those Australians who contributed so much when they were young and able to the development of this country and to the lives and pleasures that we now enjoy. Perhaps, if Senator Evans were honest with himself, he would direct his energy to persuading his colleagues in the ALP to give some thought to how they might help make the lives of senior Australians comfortable and enjoyable while they are still with us, instead of trying to create mischief in their cups for everyone.

Perhaps not—that might be too hard. Old habits are hard to break. After five years of inactivity, it would be too hard for the Labor Party to start thinking about policy development again. Perhaps Senator Evans will prefer to continue to drag inconsequential and unsubstantiated issues before the Senate in the hope that much motion will substitute for action. The Labor Party will not get away with that, because this government has been doing a good job to provide more places, more funding, better homes and better care for senior Australians. No amount of scaremongering will distract from the Howard government’s achievements in this area.

Senator Bolkus—Which minister wrote this speech for you?

Senator TCHEN—It is common knowledge, Senator Bolkus, that after this government came into office in 1996 the Auditor-General found that there was a 10,000-place
aged care deficit left by the previous Labor government, in which you were a minister. In the five years since then, the Howard government has provided 19,771 new residential places by 2000 and 18,858 new community aged care packages. In the year 2000 allocation round, 7,642 additional residential places and 6,156 new community aged care packages were created. In the 2001 round, 5,612 places and 1,569 community care packages will be added. These add to a total of 33,025 residential places and 26,581 community care packages provided by this government in five years. This is a record of achievement that is remarkable enough standing alone and more remarkable when matched against the previous Labor government’s negligence.

My experience also gives me a good idea of the commendable level of competence, the dedication, the probity and honesty of the carers and the providers managing these aged care homes. If Senator Evans’s colleagues maintained the same standards of competence, dedication, probity and honesty in their jobs, the Australian Labor Party would probably disappear—they would be able to hold their national conference in the proverbial phone booth. Given that Senator Evans has picked a single instance of an aged care home out of nearly 3,000 accredited aged care homes across the nation to denigrate the commendable effort of the government, the aged care service industry, the professional carers and the families of the aged care residents, Senator Evans ought to start looking at himself and question his own motives.

Of course, we do not live in a perfect world. Among these 3,000 accredited aged care homes providing 142,805 operating residential aged care places, not all these places will provide the same standard of care, not all the carers will be of the same standard of competence and not all the providers will have the same standard of management skills. Some will be on the margin. That is where the government’s certification and accreditation process plays such an important and integral part in ensuring the quality of aged care services. This is a point which Senator Evans obviously missed. There are processes in place to judge this standard which are objective and quantifiable. Apart from the certification and accreditation process, the government has also provided for an aged care complaints resolution scheme, an office of the commissioner of complaints, advocacy services and community visitors. (Time expired)

Question resolved in the negative.

COMMITTEES

Scrutiny of Bills Committee
Report


Ordered that the report be printed.

Membership

The ACTING DEPUTY PRESIDENT (Senator George Campbell) (4.41 p.m.)—The President has received letters from party leaders seeking variations to the membership of committees.

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

That—

(a) Senator Murray replace Senator Ridgeway on the Economics References Committee for the committee’s inquiry on mass marketed tax effective schemes and investor protection; and

(b) Senator Lundy be appointed a participating member on the Finance and Public Administration References Committee.
GOVERNOR-GENERAL LEGISLATION AMENDMENT BILL 2001
DAIRY PRODUCE LEGISLATION AMENDMENT (SUPPLEMENTARY ASSISTANCE) BILL 2001
INNOVATION AND EDUCATION LEGISLATION AMENDMENT BILL 2001

First Reading
Bills received from the House of Representatives.

Motion (by Senator Boswell) agreed to:
That these bills may proceed without formalities and be now read a first time.
Bills read a first time.

Second Reading
Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (4.43 p.m.)—I move:

That these bills be now read a second time.

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

The speeches read as follows—

GOVERNOR-GENERAL LEGISLATION AMENDMENT BILL 2001
This bill is to set the salary to be payable to the next Governor-General. Section 3 of the Constitution precludes any change to the salary of a Governor-General during the term of office, and whenever a Governor-General is to be appointed, changes to the salary of the office must be made by way of amendment to the Governor-General Act 1974 prior to the appointment. The salary must be set at that time at a level that will be appropriate for the duration of the appointment.

On this occasion, in conjunction with the prescription of the salary to apply to the next Governor-General, the government has taken the opportunity to update the taxation provisions applying to the Governor-General and to State Governors. This will involve removing the exemption from income tax that has long applied to official salary and overseas-sourced income. The exemption will be removed for Governors with effect from the next appointment of a Governor in each State. Removal of the income tax exemption makes it necessary to set the salary for the Governor-General at a higher level than has previously applied.

The bill also makes a number of changes to ensure that the superannuation surcharge on the retirement allowance payable to governors-general will apply in the same way that it applies to the rest of the community. It also provides an option for post-retirement commutation of the allowance to meet surcharge liabilities as is being done in other defined-benefit superannuation schemes.

Salary
The salary proposed in the bill has been set in line with the convention applying since 1974 under which the salary of the Governor-General has been set with regard to the salary of the Chief Justice of the High Court of Australia. In the past, the Governor-General’s salary has differed from that of the Chief Justice in being exempt from income tax and in not being able to be changed during the period of an appointment. Because of these differences, the comparison of the two salaries has necessarily been of after-tax equivalent incomes over a notional term of appointment.

The salaries of successive governors-general have been set by calculating the after-tax equivalent of the Chief Justice’s salary at the time of appointment of the Governor-General, projecting its likely future movement, and then estimating the average after-tax salary for a notional term of appointment of a Governor-General of five years. The practice has then been to set the Governor-General’s tax-free salary at a level estimated to moderately exceed the projected average after-tax salary of the Chief Justice of the High Court over the notional 5 year term of the Governor-General.

In proposing a salary for the next Governor-General, the government has maintained the link with the salary of the Chief Justice. I note that the Chief Justice’s salary is determined annually by the Remuneration Tribunal, a body that is independent of government.

The tax free salary calculated for the Governor-General when Sir William Deane was appointed in 1996 was $135,000 (which was reduced to $58,000 to take account of a pension he received as a former High Court Judge). This represented an increase of $40,000 from Mr Hayden’s salary of $95,000, set in 1989 on the basis that Mr Hayden’s parliamentary pension was suspended during his appointment. When the change in tax treatment is taken into account, the increase
now proposed in the Governor-General’s salary will be of the same order as the increase in 1996.

It is proposed that the Governor-General’s before-tax salary should be $310,000. This compares to the present salary of the Chief Justice of $276,800 and takes account of the fact that the Chief Justice’s salary will be adjusted periodically while the Governor-General’s salary will remain unchanged during the Governor-General’s term of office. If, as anticipated, the salary for the Chief Justice continues to increase in line with recent trends, it will be significantly ahead of the salary being proposed for the Governor-General at the end of the notional five year term.

**Income Tax**

Section 51-15 of the Income Tax Assessment Act 1997 presently provides for exemptions from income tax of the official salary and any income derived from outside Australia of a taxpayer who is a vice-regal representative. The proposed amendment will remove these exemptions by the deletion of section 51-15 of the Income Tax Assessment Act.

The exemption for the official salary has existed at least since 1922 and the exemption for income from outside Australia at least since 1936. When these exemptions were introduced, vice-regal appointees were normally drawn from the United Kingdom and for income tax purposes they were treated in the same way as non-diplomatic representatives of foreign governments or organisations. Today, the Governor-General and State Governors are invariably Australian citizens and there is no longer any reason to continue to treat them like foreign representatives.

There has also been an additional change relating to taxation payments by the Crown. In the 1920s, the Crown did not pay income tax but since 1993 Her Majesty The Queen has voluntarily paid both income tax and capital gains tax.

In the context of these changes, the government considers it appropriate to remove the income tax exemptions for vice-regal representatives.

Transitional provisions will ensure that the amendment does not apply to the current Governor-General or to incumbent State Governors. Removal of the exemption will take effect with the appointment of the next Governor-General and, in each State, when a new appointment is made to the office of Governor.

**Superannuation**

The current provisions in the Governor-General Act relating to superannuation require amendment. In addition, and as is being done in other public sector defined benefits superannuation schemes, it is desirable to provide for post-retirement commutation of pension to meet surcharge liabilities. In general, the changes will ensure that the surcharge applies to the Governor-General in the same way that it applies to the rest of the community.

The Governor-General Act was amended in 1997 to implement the superannuation surcharge. Under these provisions, the extension of a Governor-General’s term of office or an early retirement could cause some anomalies in the recovery of surcharge liability. I note at this point that this scenario is by no means hypothetical as three of the five most recent Governors-General have had their terms of office extended and one retired earlier than the notional five-year term used to calculate salary and retirement benefits.

The amendments proposed in this bill would ensure that the rate of reduction in a Governor-General’s retirement allowance would not exceed the maximum 15 per cent surcharge rate, regardless of the timing of retirement. Changes with similar intent are being considered for the Judges’ Pension Act scheme.

It is also possible in some circumstances that a notice or notices of assessment of surcharge liability may be issued after the retirement of a Governor-General and at present there is no provision for payment of these liabilities by reduction in the retiring allowance. The bill proposes such a provision and I note that provisions with similar intent are increasingly common in defined benefit superannuation schemes and are being made in other Commonwealth public sector schemes.

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DAIRY PRODUCE LEGISLATION AMENDMENT (SUPPLEMENTARY ASSISTANCE) BILL 2001

**Introduction**

The Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001 provides for additional assistance to be made available to Australian dairy farmers and the communities most adversely affected by the removal of market milk pricing regulations by all Australian States last June. The Bill is a further response by the Commonwealth Government to the needs of dairy farmers and their communities and highlights again the inaction of most State governments in helping their farmers cope with change they implemented.
This assistance comes on top of the substantial package of adjustment assistance already provided to the dairy industry by the Commonwealth Government. Last year, in the lead up to the decision by all States to deregulate their fresh milk arrangements, and as a result of a united request by industry leaders across Australia, the Federal Government put in place a generous dairy adjustment package to the value of $1.78 billion to assist the transition to a deregulated environment.

**Implementation of existing package**

The $1.78 billion Commonwealth Dairy Industry Adjustment Package provides quarterly Dairy Structural Adjustment Program (DSAP) payments for eight years. It also provides a lump sum payment of up to $45,000 tax-free to those dairy farmers wishing to leave agriculture and provides $45 million over 3 years under the Dairy Regional Assistance Program (Dairy RAP) to assist dairy-dependent communities affected by deregulation.

The implementation of the Commonwealth dairy adjustment package is well advanced. Virtually all people with an interest in a dairy farm on 28 September 1999 have applied to the Dairy Adjustment Authority (DAA) for payments under the DSAP. 99% have been notified of their entitlements and 95% are now receiving payments. The remaining applicants are essentially only those whose entitlement is under appeal or who are involved in legal action of one kind or another.

Farmers have used their payments for a variety of purposes, including to improve farm productivity and profitability in the new market environment. Some have reduced their farm debt, while others have invested in new farm capacity and other means of improving farm productivity. Some have chosen to leave the industry and are using their payments to re-establish.

Uptake of Dairy RAP has been significant and has focused heavily on assistance for new business or business diversification. For example, the Bega Cheese factory was provided a grant under the Dairy RAP to assist with the purchase and installation of a new cheese shredding line.

Industry adjustment is underway, although the nature of the adjustment burden varies markedly across the country. Restructuring and rationalisation within the Australian dairy processing and manufacturing sector has intensified as firms expand their operations, or seek to merge in the search for increased scale and production efficiencies. The larger dairy companies are looking for partners in the market to improve their competitive positions, both domestically and internationally.

However, despite the successes of the Commonwealth’s substantial assistance measures, the Government is aware that many producers are still experiencing very difficult circumstances where farm gate price reductions following deregulation have been greater than many farmers expected. In November 2000, the Government asked the Australian Bureau of Agricultural and Resource Economics (ABARE) to investigate the impacts of deregulation to get to the facts of the adjustment situation facing dairy farmers and their communities.

The ABARE report, released in January, confirmed that market milk price declines had been greater than the industry anticipated, particularly in the former quota States of New South Wales, Queensland and Western Australia. The report clearly indicated the magnitude of the challenge facing the dairy industry, particularly those operating in the former quota States where the proportion of market milk to manufacturing milk in the total production of the dairy enterprise was significantly greater.

The ABARE report also highlighted that, with the exception of Western Australia, States have done almost nothing to assist dairy farmers to adjust to deregulation, despite it having been State Parliaments which took the action of removing farm gate market milk price controls. After having ignored the pleas of the industry for so long, it seems improbable that State Governments will ever provide help to farmers affected by their decision to deregulate. The Commonwealth Government has decided to provide $140 million by way of additional assistance, closely targeted to those farmers and dairying communities that have been most severely affected by deregulation.

The Dairy Produce Legislation Amendment (Supplementary Assistance) Bill sets out the framework for the new measures. As with the earlier assistance provided by the Commonwealth, this assistance is not about providing compensation or income support. It is to help with adjustment by those farmers who are most in need, thereby easing their transition to a deregulated market and providing wider public benefits to regional communities.

**Additional market milk payments**

The new assistance will include some $100 million in additional adjustment payments to producers who were heavily reliant on market milk premiums before deregulation and who have consequently experienced significant losses in income.
The additional market milk payment is to be made to people who delivered more than 35% of their total deliveries as market milk in 1998-99. The Government has accepted that, generally, above this level of market milk dependency before deregulation, farmers are now incurring income losses well above that typical of normal business cycles in dairying, and that some further adjustment assistance is warranted.

Specifically, the additional market milk payment entitlement will be calculated on the basis of a sliding scale from 12 cents per litre at 45% or more market milk dependency, tapering down to a rate of 0.12 cents per litre for those whose market milk deliveries were 35.1% of their total deliveries. An individual entity’s entitlement will be calculated with reference to their DSAP delivery record in 1998-99. The payment will be subject to a maximum of $60,000 per enterprise, shared according to the allocation of the enterprise DSAP entitlements for market milk. The payments will only be available to those entities that were still in dairying on a date to be specified.

Farmers will have the option of receiving their entitlement as an additional market milk payment over 8 years, or as a lump sum payment. In effect, these payments are of the nature of a subsidy, and therefore will be subject to normal income tax whether the payments are made over an 8-year period or as a lump sum. The DAA will communicate directly with dairy farmers about this additional market milk payment.

Inevitably in an assistance package of the order of magnitude of the Dairy Structural Adjustment Program, there will be a need to require some adjustment to entitlements as new information becomes available to the DAA. The DAA has been able to correct all underpayments and most overpayments have been addressed on a voluntary basis. The Government stands by its commitment not to recover overpayments made by the DAA under the DSAP scheme where those who received a DSAP entitlement acted in good faith. The Government is aware that a few people with overpayments have committed funds to investments or borrowings on the basis of their advised DSAP allocation. The Government does, however, believe it is appropriate and reasonable for these overpayments to be corrected, and recovered where possible from these additional payments. The Bill, accordingly, makes provision for this to occur in the handful of cases involved where voluntary repayment has not been agreed.

Discretionary payments

The supplementary dairy assistance proposed in this Bill also includes provision for discretionary payments to be made in certain circumstances at an estimated cost of $20 million. The Government accepts that a relatively small number of people have been denied, or have received lower DSAP payment entitlements than they would normally have expected. This may have occurred because of changes in circumstances of farmers, an unfortunate coincidence of timing of the package, or atypical farm management arrangements during the eligibility period.

A Discretionary Payment Right is to be available to address the interests of these people. In principle, to be eligible for a Discretionary Payment Right, an applicant would need to demonstrate to the DAA that they had experienced a significant event, significant crisis or other significant anomalous circumstances which affected their eligibility for, or reduced their DSAP entitlement. Events that may be considered might include personal circumstances such as illness, injury related incapacity, death or animal disease that significantly disrupted production. Atypical farm management arrangements during the base year that resulted in a lower, or zero, milk deliveries by the applicant will also be considered on the merits of each case.

There will also be scope for dairy farm lessors to demonstrate they have suffered a significant event or crisis, which resulted in their temporary or unforeseen change in status from producer to lessor, to be considered for a discretionary payment.

Secondly, limited discretionary payments will be available to other lessors who can demonstrate that they derived 50% or more of their total income from the dairy enterprise lease and who can demonstrate their annual lease income has fallen by at least 20% since 1 July 2000.

The DAA, the independent statutory authority responsible for administering the dairy adjustment program will make recommendations to the Minister for Agriculture, Fisheries and Forestry on the merits of cases coming forward for discretionary payments. The assessment guidelines will allow more scope for consideration of cases on their individual merits. Some people experienced difficulties in meeting the strict criteria which, for reasons of practical administration, addressed the typical circumstances of the large majority of DSAP applicants.

It is not intended there be a new general application process for discretionary payments, however,
there may be some who self-assessed ineligibility under old arrangements, where applications will have to be considered. The DAA will contact dairy farmers directly. If necessary, additional information will be sought from potentially eligible people identified during the DSAP application process. The DAA will, of course, be happy to receive information from people who believe they should be considered when the eligibility criteria for the package are announced. Eligibility criteria and guidelines for administration of these discretionary grants will be announced as soon as possible.

As with the additional market milk payments, discretionary payments will be subject to income tax.

Expansion of the Dairy Regional Assistance Program (Dairy RAP)

As the final element of the new package, an additional $20 million will be made available for the Dairy RAP, administered by the Department of Employment, Workplace Relations and Small Business. Dairy RAP grants are to generate employment and encourage growth through support for new business investment, and establishment of community infrastructure, including counselling services. Priorities for funding will focus on those regions most adversely affected by deregulation, as identified in the ABARE report. The Bill provides for amendments to allow greater flexibility in the administration of the program, to ensure that more projects that are worthwhile can be brought forward and adequately supported early in the life of the program.

Funding of new assistance

The existing $1.78 billion dairy industry adjustment package is being funded from a consumer levy of 11 cents a litre on the sale of liquid milk products. The new assistance will be funded by an extension of the dairy adjustment levy into year nine (2008/2009). Although it is difficult to project levy receipts due to uncertainties such as interest rates and consumption levels so far into the future, it is estimated that the levy would be in place for an additional period of around ten months. The levy will also meet the administration and borrowing costs associated with the new assistance.

Industry consultation

Industry has been consulted on this new package of assistance and strong support is expected from farmers in the former quota States of New South Wales, Queensland and Western Australia, who the ABARE report identifies as being the most adversely affected by deregulation. However, farmers in all States will be eligible for the payments if they meet the eligibility criteria.

Widespread support is also anticipated for the discretionary payment provisions that will undoubtedly alleviate the hardship of those who have been inappropriately excluded from adequate structural adjustment payments. The expansion of the Dairy RAP will be welcomed by those communities in regional Australia who have been identified as being most adversely affected, and who will have the opportunity to bring forward projects for funding.

Timing of payments

The Government has moved promptly to address the concerns of vulnerable dairy farmers and their communities, in the light of the requests it has received from the industry, and as revealed by the ABARE report. Payments under the Supplementary Dairy Assistance Scheme will be largely based on DSAP entitlements and information already largely available to the DAA. Notification of the Additional Market Milk entitlements will be made shortly after passage of this Bill and payments can be made promptly on completion of acceptance processes. I therefore commend this Bill for early passage, so that payments can be made to these most vulnerable dairy farmers and dairy dependent communities as soon as possible.

INNOVATION AND EDUCATION LEGISLATION AMENDMENT BILL 2001

It is now widely recognised that innovation is one of the keys to economic prosperity and will be a major driver of economic growth in the 21st Century. That is why we must grasp the opportunity now available to further develop the partnerships between the education, research, business and government sectors, necessary for Australia to generate and act on ideas. This Bill is an important step in the implementation of a comprehensive strategy that will see Australia harness its talents and resources to remain a nation at the forefront of innovation.

Innovation can be described as the process of developing skills, generating new ideas through research and turning those ideas into successful commercial outcomes. Government has two roles to play in a successful innovation system. Firstly, it must provide the economic, tax and educational framework that will allow innovative businesses to operate effectively and to ensure that people have the right skills and knowledge. Secondly, it must provide direct targeted support in areas
where private sector funding is not appropriate or available. This Government is delivering on both these fronts.

During the term of this Government our economy has enjoyed an unprecedented period of economic growth, averaging 4.5 per cent in the last three financial years, coupled with low inflation and impressive employment and productivity performances. We now have an internationally competitive taxation system, with low company tax rates and a GST to replace the former inefficient indirect tax system. We will soon have a new Capital Gains Tax system that will encourage entrepreneurial behaviour. On the education side, the real value of the Commonwealth’s investment in education has risen from $9.4 billion in 1995-96 to $11.1 billion in 2000-2001.

In January this year, the Prime Minister announced a package of measures, the Government’s Innovation Action Plan, Backing Australia’s Ability, that are the next steps in the Government’s strategy to directly encourage and support innovation. The current Bill deals with the elements of the Innovation Action Plan that are to be delivered through Australia’s high quality higher education sector.

Universities have a vital role in the innovation system. They are the nation’s leading providers of training for our future research workforce and generate much of the new knowledge that drives innovation. Although our investment in higher education research and development as a share of GDP is already high by international standards, the Government has recognised that further investment in higher education research, research infrastructure and skills development is needed.

This Bill provides the first instalment of the $1.47 billion in additional funding being provided over the next five years to boost research and higher education in Australia. This funding will be critical to strengthening our already strong research base and to developing and retaining Australian skills. Together these elements will ensure the flow of the new ideas which underpin innovation.

The Government’s Innovation strategy includes doubling funding for the national competitive grants administered by the Australian Research Council over the next five years. The extra $736 million will improve the competitiveness of researchers’ salaries and increase the support available under the Discovery and Linkage elements of the ARC’s grants programme. The additional funding will be focussed on areas in which Australia enjoys, or wants to build, a competitive advantage.

Complementing this substantial increase in grants funding, will be a total of $583 million over five years in extra funding to maintain and build up the research infrastructure in our universities. $337 million will provide the infrastructure needed to support project-funded research from ARC and National Health and Medical Research Council grants. $246 million will be available to upgrade the basic infrastructure of universities, such as scientific and research equipment, libraries and laboratory facilities.

The Government also seeks to strengthen Australia’s skills base, encourage a wider interest in science, mathematics and technology and retain and attract back to this country the best Australian researchers. Our strategy includes building Australia’s capacity in key enabling technologies such as information and communications technology and biotechnology.

This Bill encompasses two key components of the strategy. The Bill establishes the new Postgraduate Education Loans Scheme (PELS). PELS is designed to encourage life-long learning and to help Australians upgrade and acquire new skills. It is expected that the loans provided under this scheme will amount to some $995 million over the next five years and will assist about 240,000 students in their aspirations to undertake further advanced education.

The Bill also provides the initial years of the $151 million over five years for additional university places in the priority areas of information and communications technology, mathematics and science. The new funding will support an additional 2,000 university places each year, rising to nearly 5,500 places a year, as students continue through the system; or 21,000 equivalent full-time student places over the five years.

A component of the doubled ARC funding will be used to support 25 new Federation Fellowships each year to retain, or attract back, the very best Australian researchers. Each Fellowship will be worth an internationally competitive $225,000 a year in salary for five years.

The Bill will also introduce some amendments to the Higher Education Contribution Scheme and related schemes to streamline their administration and provide important protections in relation to the public’s investment in these schemes. The Bill will give the Minister the discretion to impose a cap on the maximum amount of debt students can accumulate to discourage irresponsible use of the schemes and excessive fee increases. Other provisions in the Bill will make it easier for universities to operate in an electronic environ-
ment consistent with the requirements of the Electronic Transactions Act 1999.

The Bill includes a minor amendment to the States Grants (Primary and Secondary Education) Assistance Act 2000 to ensure that the Government's commitment to maintaining special education per capita funding levels is honoured. A minor increase in funding will ensure that the full level of funding required is available so that independent schools are not disadvantaged by the new arrangements for special education per capita funding introduced in the Act.

The Bill also amends the States Grants (Primary and Secondary Education Assistance) Act 2000 by increasing the funding for establishment assistance to new non-government schools for the 2001-2004 program years, in line with current estimates of demand.

Debate (on motion by Senator Denman) adjourned.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives acquainting the Senate that it had agreed to the amendments made and insisted upon by the Senate to the following bill:

Trade Practices Amendment Bill (No. 1) 2000.

BUDGET 2001-02

Consideration by Legislation Committees

Reports

Senator McGauran (Victoria) (4.44 p.m.)—Pursuant to order and at the request of the chairs of the respective committees, I present reports from all legislation committees, except the Foreign Affairs, Defence and Trade Legislation Committee and the Rural and Regional Affairs and Transport Legislation Committee, in respect of the 2001-02 budget estimates, together with the Hansard record of the committees' proceedings and documents received by certain committees.

Ordered that the reports be printed.

DAIRY PRODUCE LEGISLATION AMENDMENT (SUPPLEMENTARY ASSISTANCE) BILL 2001

Report of Rural and Regional Affairs and Transport Legislation Committee

Senator Crane (Western Australia) (4.44 p.m.)—On behalf of the Rural and Regional Affairs and Transport Legislation Committee, I present the report of the committee on the provisions of the Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001, together with the Hansard record of the committee's proceedings and documents presented to the committee.

Ordered that the report be printed.

FAMILY AND COMMUNITY SERVICES LEGISLATION (SIMPLIFICATION AND OTHER MEASURES) BILL 2001

In Committee

Consideration resumed.

Senator Bartlett (Queensland) (4.47 p.m.)—Prior to the matters of public interest debate, I moved the first Democrat request for amendment to the Family and Community Services Legislation (Simplification and Other Measures) Bill 2001. I will now speak to that request and will do so at some length, partly to enable the minister's representative and Senator Evans to get here but also because it is an important issue, and I think it is appropriate to put it on the record. The minister made fairly dismissive and somewhat unfair comments prior to my moving this request, suggesting that it was a case of the Democrats trying to make people feel warm and fuzzy. I would certainly reject that. It is a significant issue. The people who are affected are small in number but have a legitimate claim. I think it is appropriate to take that claim seriously. The minister also indicated that there are some ongoing discussions and consideration of the issue by the government. Therefore, we should wait to see the outcome of those and basically leave it up to the government as to whether or not they do it. She said it may come about any--
way, and we should just butt out, sit back and wait and see if it comes about.

I will speak briefly further to the request for amendment. It is quite simple: it relates to amounts paid by the Republic of Chile under the laws of that republic by way of compensation to victims of the military dictatorship which ruled during the period 1973-90. During that period under the military dictatorship of Augusto Pinochet, thousands of workers, both men and women, were forced from their jobs in Chile for political reasons. Ten per cent of the population were expelled or exiled from Chile after the coup d’état. More than one million people were forcibly expelled. Those citizens who were known, or suspected, to have sympathies with the democratically elected and overthrown government were forced to suffer one of the most brutal cases of persecution and institutionalised terror that the world knew at that time. They were held in concentration camps where torture was practised as a matter of course and from which both men and women disappeared without trace. More than 3,000 people were killed in cold blood. Most of their bodies are still missing. Others were forced into work gangs for political prisoners.

When democracy was restored to Chile, the government of the Republic of Chile enacted three acts through congress which would indemnify and compensate Chilean citizens who suffered the traumatic experience of exile or disappearance, those who had unjustly lost their jobs for political reasons or those who were deprived of their freedom. These acts were to further compensate financially the spouses and parents of persons imprisoned or who disappeared, presumed dead. These acts from Chile were legislated exclusively for those victims who suffered during the reign of terror that began in 1973, to pay them a special compensation named ‘pension of mercy without contribution’. I am sure all senators would equally acknowledge the significant and serious suffering that those people went through and the appropriateness of that payment. I am certainly not trying to suggest that we have some mortgage on recognition of that. I think that is widely acknowledged.

Of the one million people forced to leave that country, I understand that there are approximately 400 people of Chilean origin living in Australia who are eligible to receive, or are receiving, the pension of mercy without contribution. We already have a precedent for this in that money paid to victims of Nazi persecution by the Federal Republic of Germany and the Republic of Austria is exempt from the income test for social security purposes. This request for amendment seeks to provide that exemption from the income test similarly for those from the Republic of Chile who receive that pension of mercy without contribution.

Our understanding is that none of the countries in which Chileans found political sanctuary during the military dictatorship, or which have the relatives of missing people eligible for this compensation, treat this payment as additional income for the purposes of additional income tax or for the withholding of the benefit. That is due to an understanding of the international community of the victims of the military dictatorship. We believe that it is appropriate to accept that in Australia. That is why we are proposing to exclude the pension of mercy for these people of Chilean origin from the income test in the Social Security Act.

I was aware, as the minister indicated, that there are ongoing discussions with the Chilean embassy, and also with others, on this issue. They are welcomed. It certainly would be useful to hear an indication from the minister as to how long those discussions will continue. From the Democrats’ point of view, it is good that the government is considering not just this issue but other payments that may be appropriate in this area, such as those from France and the Netherlands. The issue comes back to consistency. If there are arguments—and no doubt there are, or it would not be being considered—for payments in relation to other countries, the Democrats think it would be appropriate for those to be included in the exemption. We do not think that it is a reason to not proceed
with this one. The numbers of people are fairly small, but the issue is appropriate.

Whilst it is good that the government is considering it—and, as the minister said, this may well come about anyway, and it would be good for the government to accept that—the Senate is a legislative chamber. As part of this legislation relates to compensation, we think it is appropriate for the parliament to propose changes to legislation. That is a role of the legislature. Obviously the government is in the position to put forward legislation and to decide whether or not to accept legislation in the form passed by the parliament—and it can express that viewpoint in the House of Representatives—but the Democrats certainly reject any inference that it is somehow inappropriate for us, or any other senator for that matter, to put forward legislative amendments on issues that we think are significant. The role of the legislature is not to just sit back and hope that the government does what it says it will do or to hope that the government will address problems without the legislature putting forward amendments. If we were all to just sit back and wait for the government to address issues, we may as well not spend time assessing, considering and amending legislation. So the Democrats believe it is quite appropriate to put forward this request. If the government is looking at it anyway, that is good.

Certainly we hope the request for amendment is passed. We believe the issue is sufficiently significant and that there is no reason why it cannot go forward now. We believe that this is as good a time as any to make it happen. The principle is clearly established and is appropriate. Whilst the minister’s indication is that it is under active consideration—and I think there is at least some indication that it is sympathetic consideration—nonetheless these people are in this situation now. I am not convinced that it is necessary to simply sit back and wait for the government to do as it sees fit at an indeterminate time down the track, particularly with an election coming up in the not too distant future and the potential change of government which would mean that people would have to go back to square one on the whole issue. I still hope that the request for amendment will be given consideration. I could understand it if the opposition felt it appropriate to give the government a bit more time, although I believe that it is an appropriate time to pass it now. I urge the government to reconsider and accept this now. The onus as to whether it accepts it is obviously on the government.

As I indicated in my second reading remarks, the Democrats support the bill as a whole. We think it has positive measures in it, and we certainly do not want to jeopardise it or hold it up. I guess that puts the onus on the government as to whether or not it will accept this request for amendment. The Democrats believe it is a good request for amendment and appropriate to put forward now.

Senator CHRIS EVANS (Western Australia) (4.56 p.m.)—I am very sympathetic to the arguments put by Senator Bartlett, and the Labor opposition in general are keen to facilitate some resolution of this. We agree that people should be treated equally. If these compensation payments for people from Chile are comparable to those made by the Federal Republic of Germany to victims of the Nazi regime, it seems to us appropriate that we support the Chilean people’s treatment in the same manner. If there are other compensation payments from other countries that need to be considered, we need to pick those issues up as well. I think the minister indicated that there might be a couple of instances where that might be the case.

The minister did indicate in response that there was a process occurring; effectively she asked for more time for that process to continue. I would appreciate an indication from the minister on the likely timetable to be applied and when we could expect some resolution of these things. While I am happy to take the minister’s word that these things are being resolved, I think it is only appropriate, if the government is asking us not to support amendments, that we get some sort of indication as to not only the timing but the process of how this matter will be resolved. There are people who are waiting on this
matter to be resolved. They have suffered very badly and are looking to us to help resolve these issues for them.

While I accept that the government wants to get it right and that there does need to be formal resolution of the issues surrounding whether they are appropriate compensation payments and whether the people are treated in the appropriate way, I think Senator Bartlett’s point about it being perfectly appropriate for them to raise the issue here is right. That is how you get these issues on the agenda. For the minister to say, ‘We don’t want to do it now because there are processes in place,’ is perfectly okay as well, but I would like to hear from the minister as to when those processes will reach fruition and how the government intends to resolve the issue.

I think the parliament needs more than an assurance of, ‘Trust us; we’re working on it,’ if we are to be persuaded not to support Senator Bartlett’s request for amendment. At least Senator Newman, who was the minister in January, wrote in January to the Chilean ambassador. I am advised that we do not yet have a response. The best I can do is tell you that we are committed to resolving this as quickly as possible. We want to resolve this as quickly as possible. We just want to make sure that this compensation payment is treated in the same way as others and that we do not create an anomaly by responding to something that is, as I say, a serious issue but also an emotive one and, because of the emotion involved, by responding in a way that could be seen by others to be unfair as a consequence of the way that their compensation payments are treated. In order to resolve this, we think we need more information from the Chilean government. That is why Senator Newman, as I am advised, wrote to them in January. We do not yet have a response. All I can do is tell you that it will be dealt with as soon as possible.

Senator Evans (Western Australia) (5.01 p.m.)—I appreciate the frankness with which the minister responds. I certainly do not want to ask her to set time frames if she then cannot deliver them, because that does not advance us at all. So, on behalf of the opposition, I indicate that we will not support the request for amendment on this occasion but that we will support it on a future occasion, subject to those issues that the minister is seeking clarification on being resolved. So it is our intention to support this type of amendment, but we do think it appropriate that the proper information be gained from the Chilean government to facilitate that.

In addition, all I can say is that, while we do not support the request for amendment on this occasion, we indicate to the Democrats that we share their concern and that, if we feel there is undue delay and if the matter is not resolved satisfactorily in a reasonable time frame, we would be prepared to help advance the issue on another occasion. But we are prepared to accept the minister’s assurances that she is attempting to have the matter resolved in a proper way. On the basis
of that advice, we are prepared to not support the request for amendment on this occasion. But, as I say, we support the sentiments and the direction and we support getting it resolved as soon as possible.

Request not agreed to.

Bill agreed to.

Bill reported without requests; report adopted.

Third Reading

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

CUSTOMS LEGISLATION AMENDMENT AND REPEAL (INTERNATIONAL TRADE MODERNISATION) BILL 2001
IMPORT PROCESSING CHARGES BILL 2000
CUSTOMS DEPOT LICENSING CHARGES AMENDMENT BILL 2000

Second Reading

Debate resumed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.04 p.m.)—The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 and other measures is a momentous change for Customs. In fact it involves one of the greatest reforms for Customs since Federation. The bills that we have before us have been the subject of intense scrutiny by the Senate Standing Committee for the Scrutiny of Bills and the Senate Legal and Constitutional Legislation Committee. At the outset, I want to thank the senators who served on those committees and also the senators who contributed to the debate on the bills. In relation to those two Senate committees, we have adopted the amendments that relate to the recommendations made by those committees.

The reforms in these bills will provide benefits to business, government and the Australian community at large. The bills underpin cargo management re-engineering, which is intended to modernise cargo processes to improve efficiency in the movement of cargo and the early detection of high risk cargo. It is about the creation of an environment that is intended to reduce the cost of communication and to provide choice in how that communication occurs. It establishes an environment that relies on commercial information rather than something specifically created for government. But there are other benefits as well.

In addition to creating a better business environment, the government also has a responsibility to protect the community from threats posed by drugs, firearms and other dangerous goods that are imported into Australia. The bills, therefore, also provide improved mechanisms for the early identification and control of such goods. In this way, their objectives are to intercept high risk cargo while allowing low risk cargo to flow unimpeded. The provision of timely and accurate information is fundamental to achieving rapid movement of cargo across our borders. For this reason, this proposed legislation supports good compliance through initiatives such as the accredited client program and associated administrative mechanisms. At the other end of the scale, it also provides necessary censure for noncompliance through strict liability offences.

The legislation also proposes the replacement of Customs’ current commercial auditing powers with contemporary monitoring powers. These powers, along with new record keeping obligations, will apply to communicators of information to Customs, as well as to the owners of imported and exported goods. This extension acknowledges that the accuracy of trade data is vital in a self-assessment scheme that has the objective of intercepting high risk cargo while allowing low risk cargo to flow unimpeded. The new powers are more consistent with the preferred model for monitoring compliance with Commonwealth laws by ensuring that entry to premises is only by consent or under a warrant.

Rather than focusing on individual measures in this legislation, such as the strict liability offences, record keeping obligations and new monitoring powers, it is important that the measures in this legislation be
viewed as a whole. This proposed legislation provides for a new framework for cargo management—one which allows for the maximum use of technology, more efficient deployment of Customs resources and more rapid cargo clearance times. This will clearly benefit business in Australia and those people who are involved in the import and export of goods in and out of Australia.

The legislation will also benefit government. Australia is not alone in moving towards the maximum use of available technology to manage the movement of goods across its borders. Other customs administrations have moved or are moving in similar directions. It is therefore important that we keep abreast of international best practice. This proposed legislation and the systems re-engineering that it supports will sustain Australia at the cutting edge of customs administration internationally.

I will now turn to the Opposition’s criticism as to there being no consultation by Customs in relation to these measures. This criticism is not warranted at all. Customs has embarked on wide consultation with industry throughout the development of this legislation. Customs will continue this process of consultation with industry associations and individual companies throughout the implementation phase. The government is well aware that industry will need time to adjust to this new cargo reporting process which the bill underpins. That is why the bill provides a moratorium period of six months in which cargo reporters can move to the preferred means of electronic reporting. It is also why the bill contains a two-year proclamation period for its commencement instead of the usual six months. This is something that is quite unique in allowing industry to come to terms with these new provisions. Customs has discussed, and will continue to discuss, business and systems changes with industry to achieve the best possible outcome for cargo management re-engineering and to make the transition as smooth as possible. Therefore, the government rejects outright that part of the second reading amendment which deals with a lack of consultation.

I note that Labor goes on in its second reading amendment to deal with the question of periodic reporting. Firstly, the periodic reporting that we are talking about in this part of the bill is related to the accredited clients program and to accredited clients only. The whole point of the accredited clients program is to reduce the regulatory burden on business with a history of high compliance—and it does. This is evidenced by the fact that many businesses that currently do not qualify for this program have lobbied very strongly for the government to facilitate their early inclusion into that program. The periodic reporting that we are talking about applies only to those businesses that are benefiting substantially from the reduction in the regulatory burden under the accredited clients program. The effective reduction in the regulatory burden achieved through the accredited clients program initiative—an initiative of this government, I might add—completely contradicts the substance of Labor’s proposed second reading amendment on this issue.

Those exporters and importers who have participated in the trial of the accredited clients program have raised with the government the issue of period declarations. They have put to us that they would prefer an alignment in reporting requirements under the Customs Act with reporting obligations under other relevant Commonwealth legislation. To this end, Senator Murray has raised this issue with us, and we have explained to him in detail—as we have explained to the opposition—why that proposal could not be implemented at this time. In brief, the advice to the government, which we have passed on to the opposition and the Democrats, is that the Australian Bureau of Statistics has indicated that any delay in reporting dates would have significant ramifications for the integrity and timely availability of key economic indicators. In this regard, I point to the balance of payments, which everyone relies on. We could not afford to have any delay in those key economic indicators, and that is an essential aspect of this. Incidentally, the ABS has also advised the government that small and medium sized businesses—in contrast to
big businesses pushing for a change on this—prefer to spread out their paperwork. That is the feedback we have had from small to medium enterprises.

Having said all of this, the government is sympathetic to the concerns expressed on this by those who have participated in the trial of the accredited clients program. The government is committed to keeping the regulatory burden on business to a minimum. It is in this context—and after detailed discussions the government has had with the Democrats on this issue—that I have agreed to pursue the establishment of a working group on this matter, involving industry and relevant government agencies, including the Australian Bureau of Statistics. The working group will explore the alignment of reporting obligations under the Customs Act with reporting obligations under other relevant Commonwealth legislation. I understand that, during the committee stage, Senator Murray will move an amendment to the relevant part of the bill which deals with this. The government has indicated that it will support such an amendment. I take this opportunity to thank Senator Murray for the constructive contribution from the Democrats in relation to this very important bill.

The government is totally opposed to the second half of Labor’s second reading amendment, which refers to an inquiry into Customs IT and communications arrangements and which would entail a reference to another Senate committee. As I have said, the Senate Scrutiny of Bills Committee has looked at this proposed legislation in detail, as has the Senate Legal and Constitutional Committee. There has been thorough scrutiny of this proposed legislation, and the government does not believe that this legislation should be delayed any further. Even during Senate estimates there was extensive questioning in relation to this very important bill.

Industry wants this legislation to go ahead and it wants it to go ahead now. But we have indicated that there have been suggestions in relation to the working group that I mentioned and the aspect of a two-year delay before proclamation will allow the transitional phase to take place smoothly. The reforms in this proposed legislation will increase choice in that businesses will be able to choose how they will communicate with Customs. They will no longer be limited to the current exclusive arrangement in place through Tradegate. With respect to the opposition’s criticism that the new arrangements will result in increased costs, the government rejects this as well. The whole purpose of this exercise is to reduce costs for industry, particularly the costs associated with communicating with Customs. With respect to Customs IT arrangements, I do not believe that the opposition’s concerns, as I understand them, would justify delaying this bill further.

Senator Murray in his speech during the second reading debate referred to the problem of goods destined for export being diverted into the domestic market. Senator Murray, I believe, said at that stage that the government needed to take this issue more seriously. Through the chair, I assure Senator Murray that the government does take this issue very seriously and in fact Customs is currently pursuing a number of investigations in this area. The legislation, as acknowledged by Senator Murray, is in fact also part of the government’s commitment to address this issue as effectively as possible.

As I mentioned earlier, these bills have been the subject of extensive scrutiny by the Senate Standing Committee for the Scrutiny of Bills and the Senate Legal and Constitutional Legislation Committee. We have in fact adopted some of the recommendations made by those committees. I once again thank those committees for their thorough examination of these bills.

I will simply foreshadow amendments that the government will be moving. The first will be the requirement of a monitoring officer, before exercising monitoring powers, to give an occupier of premises written notice setting out the occupier’s rights and obliga-
tions, and the second will be to require the Chief Executive Officer of Customs to make and have regard to guidelines for the administration of the infringement notice scheme for strict liability offences. These guidelines will be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901 and therefore subject to the scrutiny of parliament. As I understand it, these were concerns expressed respectively by those Senate committees, who did a very good job in examining this legislation.

I also understand that Senator Murray has a number of amendments to move on behalf of the Australian Democrats, and the government, I believe—subject to what Senator Murray will say—is disposed to accept those. There have been persuasive arguments put in relation to several aspects of those and we look forward to the debate in the committee stage on those amendments.

This is one of the greatest reforms to Customs since Federation and it will be of great benefit to business, to the government and most importantly to the Australian community at large. I commend these bills to the Senate.

Senator Bolkus—Mr Acting Deputy President, on a point of order and before we put the amendment—I think a point of order is the only way I can raise this—given the fact that the Democrats are in no position to support this amendment today and have indicated that they will be considering it tomorrow, I think the best course of action for me to take is to withdraw this amendment now and give notice that we will move it as a separate substantive motion in the Senate next week. This will allow some time for the Australian Democrats to either come behind this or expand it.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Do you seek leave to withdraw it?

Senator Bolkus—I seek leave to withdraw it at this stage.

Leave granted.

Question resolved in the affirmative.

Bills read a second time.

In Committee

CUSTOMS LEGISLATION AMENDMENT AND REPEAL (INTERNATIONAL TRADE MODERNISATION) BILL 2001

The bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.19 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 19 June this year.

Senator MURRAY (Western Australia) (5.20 p.m.)—I would like to indulge the committee first, if I may, with a general question to the minister. You would be alerted to the fact through my minority report on the consideration of the bill that I am particularly concerned with the area exposed by Ernst and Young and the United Distillers and Vintners on revenue leakage, particularly with regard to those items supposedly exported but which are actually used for domestic consumption. You did refer to it in your second reading speech but my question to you is: could you indicate at least in broad terms whether either the Customs department or the tax office or both are following up the allegations made in their public submissions by witnesses and referred to in both the majority and the minority reports? You did clearly indicate to us that the government is taking this matter seriously. If it is, my assumption is that there is an inquiry under way—an investigation—and in due course there will be a report. If you could perhaps give some additional information, apart from that which you gave in your second reading, that would be useful.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.22 p.m.)—Both the Australian Customs Service and the Australian Taxation Office have taken up those matters which were the subject of submissions to the committee. I understand they are being pursued by both of those entities.

Senator MURRAY (Western Australia) (5.22 p.m.)—Unless Senator Bolkus has gen-
eral questions, I will move to my amendments. I move Democrats’ amendment No. 1 on sheet 2213:

1. Schedule 1, item 4, page 6 (line 8), at the end of subsection (2A), add “, other than goods or classes of goods prescribed by the regulations for the purposes of this subsection”.

This amendment addresses the concern raised by the Democrats in relation to the personal carriage by airline crew and airplane passengers of pharmaceuticals, both across-the-counter pharmaceuticals and those on prescription, and seeks to amend the apparent proposition contained in the bill which would require the reporting of all such products to Customs on each journey. We assume that was an unintended interpretation of the legislation, and the way in which we have amended the legislation, we think, would prevent that happening. Obviously, any provision which had that outcome would be far too cumbersome and, frankly, very unpopular as a system to manage, and amending it would appear to represent a minimal risk.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.23 p.m.)—The government will support this amendment as we consider it will clarify the current intent of the provision and reinforce that passengers and crew not be required to seek permits or lodge entries in respect of personal use quantities of pharmaceutical drugs. Senator Murray put the matter quite simply, and the government supports the amendment.

Senator BOLKUS (South Australia) (5.24 p.m.)—So does the opposition.

Amendment agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.24 p.m.)—I move government amendment No. 1 on sheet EZ226:

1. Schedule 1, item 13, page 16 (after line 23), after section 214AC, insert:

214ACA. Monitoring officer to notify occupier of premises of the occupier’s rights and obligations

Before exercising monitoring powers in respect of premises, a monitoring officer must give to the occupier of the premises a written notice setting out the occupier’s rights and obligations under this Subdivision.

Item 13 of part 5 of schedule 1 to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 proposes to introduce into the Customs Act 1901 provisions relating to monitoring powers. These will be contained in new subdivision J of division 1 of part XII of the Customs Act. A monitoring officer will be able to exercise monitoring powers at premises either with the consent of the occupier of the premises or under a monitoring warrant. This amendment responds to a concern expressed by the Senate Scrutiny of Bills Committee. It proposes to insert a new section into the Customs Act requiring monitoring officers to give occupiers of premises a written notice setting out the occupier’s rights and obligations under the new subdivision J of division 1 of part XII of the Customs Act before exercising those monitoring powers. This notice must be given to the occupier where monitoring powers are to be exercised with the consent of the occupier and where those powers are to be exercised under a monitoring warrant. This was of concern to the Scrutiny of Bills Committee, and I believe this addresses the concerns expressed by that committee. I commend the amendment to the Senate.

Senator BOLKUS (South Australia) (5.26 p.m.)—The opposition supports this amendment.

Senator MURRAY (Western Australia) (5.26 p.m.)—I should add that I am a member of the Senate Scrutiny of Bills Committee and was a part of the hearings into that particular report. If there was one area which people were deeply aggrieved by, it is any circumstance where a warrant is served, either a monitoring or a judicial warrant, and they are not apprised of their rights and responsibilities. It really does affect how people feel about an interaction with authority, whether it is the police or as part of an agency’s operations. I want to commend the
government and the minister for acceding to the recommendation of the Scrutiny of Bills Committee. I think it is a great advance in process. We support the amendment.

Amendment agreed to.

Senator MURRAY (Western Australia) (5.27 p.m.)—I move Democrats amendment No. 2 on sheet 2213:

(2) Schedule 1, item 13, page 20 (line 30), at the end of subsection (2), add “if the occupier of the premises, or a representative previously nominated to Customs by the occupier, is unavailable to do so or absent from the premises”.

This amendment relates to the identification of the most appropriate person within an import/export company to answer questions from Customs monitoring officers. We want to make it clear that we believe there should be a hierarchy of people responsible for answering questions posed by Customs. The hierarchy would begin with the most senior person available to do so. The amendment does not intend, however, to restrict the power of Customs officers to ask questions of any staff member. It merely establishes the preferred line of appropriate staff within the company to which such questions should be directed.

The important point to note is that, as I understand it, there are 95,000 importers and exporters. Some of them are owner operated businesses where the man at the bottom is also the man at the top. But then you get exceptionally large companies where the person at the front desk may be very young, very inexperienced or very new, and being asked questions might result in a great deal of tension and aggravation which is unnecessary. We simply wish to make Customs aware that it should, as far as possible, deal with a hierarchy in these matters.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.28 p.m.)—The government will not oppose this amendment. The amendment will simply reflect in legislation the current practice of Customs when conducting audits of larger businesses. It also reinforces the nature of monitoring powers as a tool for assuring compliance rather than being investigative in nature. As I say, the government will not oppose this amendment.

Senator BOLKUS (South Australia) (5.29 p.m.)—Nor will the opposition oppose this amendment.

Amendment agreed to.

Senator BOLKUS (South Australia) (5.29 p.m.)—by leave—I move opposition amendments Nos (5), (6), (8), (9), (17) and (31) together:

(5) Schedule 1, item 20, page 25 (lines 21 and 22), omit subsection (6D).
(6) Schedule 1, item 21, page 27 (lines 10 and 11), omit subsection (8).
(8) Schedule 2, item 5, page 29 (lines 6 and 7), omit subsection 243SA(2).
(9) Schedule 2, item 5, page 29 (lines 14 and 15), omit subsection 243SB(2).
(17) Schedule 3, item 1, page 41 (lines 20 and 21), omit subsection (4).
(31) Schedule 3, item 118, page 122 (line 11), omit subsection (3).

This batch of amendments and the next batch listed could probably be all handled together, but there must be some technical reason as to why we are not doing that. I will speak to both this and the next batch as they all relate to strict liability, and my comments apply to both votes. Essentially what we are doing by this large batch of amendments is attempting to remove the element of strict liability from the new offences established by the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001. The existing offences, which have operated as strict liability offences, are not altered by our amendments.

I outlined the reasons for these amendments in my second reading contribution. I will not go through them all at length again, other than to say that appeal mechanisms are fairly important, particularly in respect of an organisation such as Customs where the business interests of a large and ever growing constituency in this country are at risk, where oppressiveness, insensitivity and unresponsiveness can really devastate one’s business viability and business liquidity. These
appeal provisions are important in their application; they are important by the mere fact that they are there and can signal to the bureaucracy that, if they do get it wrong, there is some recourse for those aggrieved by Customs decisions.

We find this government’s proposal to broaden the range of strict liability to this new range of offences unacceptable. There is some argument that the government will put up to say that they are doing this to protect our borders against organised crime and whatever, but let us keep in mind that the offences that we are talking about here are essentially the process offences such as insufficient paperwork, errors in paperwork and so on. As I said earlier, you will not find organised criminals filling out application forms and compliance forms. They would in no way indicate what their real booty is when they are importing goods into this country. They are, and can be, and will be affected by other offences in both the customs and criminal law. What we are doing here is basically imperilling the interests, rights and viability of legitimate businesses because of this government’s obsession with strict liability offences. We know where it comes from. We know that bureaucracies crave immunity from accountability. Having analysed the government’s proposal, we cannot support them because of the potential downside to industry.

We have our batch of amendments. I note that the Australian Democrats in their amendments, both in this block and the next block, seek to remove some of the new strict liability offences—not all of them, some of them. We do not think that that approach is the appropriate one. We have gone through all the new offences and we think that the best approach to take is to remove strict liability with respect to those. We have tried to analyse where the Democrats draw the line. It is hard to work out what is on this side of the line and what is on the other side of the line for the Democrats. We urge Senator Murray, at this late moment, to rethink his position and to support our amendments with respect to removing strict liability for new offences. As I say, the existing offences will continue to apply where strict liability applies, but we do not think the case has been made out for strict liability with respect to the new offences. It is quite spurious for the government to try to argue that case. The baseless nature of the government’s arguments along the lines that they need these powers to protect the border against organised crime has been elucidated even more through the Senate committee process. The powers are there already; they can apply and are applied. I urge Senator Murray to look at our amendments and to embrace the breadth of our amendments rather than the selective nature of the micromanagement that is reflected in the Australian Democrats’ amendments.

Senator MURRAY (Western Australia) (5.34 p.m.)—Obviously my amendments Nos (3) to (6), (11) and (16) will fall away because we will be supporting the opposition’s amendments. Senator Bolkus quite rightly makes the point that these amendments to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 do not do away with the offence; they simply do away with the strictness of the offence in terms of the way in which liability is expressed. So persons who fail to abide by these particular provisions in the new act, whilst they may not automatically be subject to penalties or to action through Customs, without having to prove intent will still be liable under those provisions. It is important to recognise the agreement between us all that these areas should be offences; it is just a question of the nature of the liability that attaches to them.

The point I should make is that the other area in which we are all in agreement is that those offences which were strict liability in the previous legislation should carry across—and there are, by my count, 11 of those. I must say that, with respect to the opposition’s adviser and my own, ploughing through the legislation to find every strict liability offence was not a great deal of fun and was a little difficult. In short, we agree that we have to be very careful when strict liability applies. We are pleased to see that strict liability in these offences, which we
regard as unnecessary, is withdrawn, and therefore we support the amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.36 p.m.)—Senator Murray has ploughed through it quite well. The situation here is that we have offences in existence which we equate to strict liability, and they are what we call translation offences. They are offences which will be translated, if you like, into this proposed legislation. I think that we have support for the continued existence of these offences from the opposition, the Democrats and, of course, the government, and that strict liability will continue with that.

But I must say, before I go any further, that we have to be careful, because there is an overlapping in relation to these amendments by the opposition and the Democrats, and we really cannot vote on all of them combined with the second lot of opposition amendments that Senator Bolkus has mentioned. The government says that we should vote on opposition amendments Nos. 5, 6, 8, 9, 17 and 31 in the first instance, and we will support that—that overlaps with the Democrat amendments that Senator Murray has mentioned—and then we should go on to opposition amendments Nos. 4, 7, 10 to 12, 18 to 30 and 32, which the government does not support. There are different categories.

We are talking about the translation of offences currently in existence that have strict liability. The other category relates to those offences that the government considers are critical to community and revenue protection objectives. These offences relate to the failure to meet regulatory obligations considered necessary for Customs to identify potential risks to the Australian community as soon as possible. Early and accurate information is critical in that regard, and that objective should not be dependent on the intent of the provider of information. Remember that if there is no strict liability, intention is to be proved. That is very important. I acknowledge the cooperation of Senator Murray on this important point.

With the Democrat amendments we have the inclusion of these further offences that have strict liability. But, at the end of the day, if we supported this group of opposition amendments and the Democrats’ proposed amendments, with the exclusion of the second grouping of opposition amendments, we would have a reduced number of offences with strict liability that was other than that which was originally proposed by the government. I want to make that clear. Some of these offences which have strict liability are translation offences. They are in existence at present. There are some new ones which relate to community and revenue protection objectives, and if the first group of opposition amendments is supported and Senator Murray’s amendments are supported, that will be accommodated. But the government do not see their way clear to support the second group of opposition amendments because they believe that that would then exclude those community and revenue protection objectives which are so essential to the community and which we would seek to include. We can take the opposition amendments first, vote on them and then move on from there.

The TEMPORARY CHAIRMAN (Senator Watson)—The chair agrees with that course of action. The question is that opposition amendments Nos. 5, 6, 8, 9, 17 and 31 be agreed to.

Question resolved in the affirmative.

Senator BOLKUS (South Australia) (5.41 p.m.)—by leave—I move amendments Nos. 4, 7, 10, 12, 18, 30 and 32:

(4) Schedule 1, item 11, page 13 (lines 9 and 10), omit subsection (4).
(7) Schedule 2, item 4 (line 21), omit “strict liability”.
(10) Schedule 2, item 5, page 30 (line 28), omit subsection (2).
(12) Schedule 2, item 5, page 33 (line 17), omit (2).
(18) Schedule 3, item 62, page 90 (line 22), omit subsection (4).
(19) Schedule 3, item 62, page 91 (line 7), omit subsection (3).
(20) Schedule 3, item 62, page 91 (line 18), omit subsection 115(2).
I spoke to the amendments earlier.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.41 p.m.)—Without going too much over ground that was dealt with previously, these amendments would remove strict liability from offences regarded as critical to Customs’ community and revenue protection responsibilities. The government maintains that this removal would adversely affect Customs’ capacity for early identification and treatment of high risk cargo. Early and accurate information is essential to community and revenue protection objectives and it should not be dependent on the intent of the provider of the information. The government is therefore opposed to these amendments and it believes that they carry too far the exclusion of those proposed offences which deal with strict liability. For that reason, there is a very worthwhile public interest objective to oppose the opposition’s amendments.

Senator MURRAY (Western Australia) (5.42 p.m.)—Senator Bolkus is right: in attempting to plough through the amendments, one had to make a judgment call. We, in the end, decided to remove 10, which was quite a substantial number. The point I make to Senator Bolkus is this: the minister has agreed to a provision for a review of the legislation. That will be binding on the next government. I understand that many Labor people think that they will be the next government. If that is so, and you do the review, we would expect you to come back with a view on the strict liability provisions that you oppose. At present, whilst we are sensitive about them, we think that the government’s case is strong enough, but a review process should throw up whether they should be overturned at some future date. If the coalition remain the government, I would expect them to report back on those issues. If you are the government, Senator Bolkus, I would expect you to do the same. For the purposes of the debate, we will oppose those opposition grouped amendments that we are discussing at present.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.44 p.m.)—It is important that we tread our way carefully through these amendments, because the issue is somewhat complex. I want to clarify or correct an answer earlier to Senator Murray, and I want to do it as soon as possible. With regard to the investigations and the submissions to the committee, I am advised that only Customs is looking into the matter; the issues raised do not concern the tax office.

Senator BOLKUS (South Australia) (5.44 p.m.)—I am glad that Senator Murray can tell us now who is going to win the next election. If that is the case, Senator Murray, we might as well call off the whole debate and not even proceed with this legislation. The reality is that one cannot tell now who is going to win and this legislation will have an effect for at least six months or a year before a review could be commenced. I think Senator Murray really needs to consider his position.

We are told that these are fundamentally critical provisions to protect public revenue and, as a consequence, we need to apply, strictly and immediately, strict liability. Amendment (4) goes to the issuing of identity cards. According to schedule 1 part 5:
The CEO must cause an identity card to be issued...

If a person to whom an identity card has been issued ceases to be an authorised officer or monitoring officer for the purposes of the provisions of this Act... the person must return the card to the CEO as soon as practicable.

And this offence is a strict liability offence. A lot can happen outside the control of the person who has been issued with a card in order that that person may come within the ambit of this offence through no fault of their own. That is but one example of what we are concerned about here.

I was looking at an issue that we have already encompassed. According to page 24 of the bill at section 20 subsections 240(4), (5) and (6), under subsection (5):

A person referred to in subsection (4) must:

if the document is in a language other than the English language—keep the document in such a way that a translation of the document into the English language can readily be made;

For the life of me, what does that mean? What is the obligation on a person? Let us face it, when you are importing from overseas, you are more likely than not to have documents in a language other than English. What does that obligation on those people mean, to 'keep the documents in such a way that a translation of the document into the English language can readily be made'? This is bureaucratic nonsense. It is offensive and nonsense, and it is a sign of bureaucracy uncontrolled and off the leash. This is what we are giving a green light to.

Section 20 subsection 240(5)(c) states:

if the document is a record of information kept by a mechanical, electronic or other device—keep the record in such a way that a document setting out in the English language the information recorded or stored can be readily produced.

Once again, who do they think they are kidding? They have kidded the government. They have got this minister right under the thumb and, from what we are hearing now, there is a fair chance that they have got the Australian Democrats under the thumb. These sorts of provisions should not attract strict liability. This department, of all departments, should not be given a blank cheque to trample over the rights of small business in this country. All you have to do is look at some of these amendments. You just have to go through them if you like and see what sort of powers they want to assume for themselves. This is dictatorship at the border, with absolutely no legitimate foundation or support for it.

According to subsection 240(6C):

A document is not taken to be altered or defaced for the purposes of subsection (6B) merely because a notation or marking is made on it in accordance with ordinary commercial practice.

What is 'ordinary commercial practice'? Does it have to be in English? Does it have to be readily translatable into the English language? I could go on, and maybe I will. However, I ask Senator Murray to have a look at amendment (4). A person has a strict liability obligation to return the ID card. This is one of the great offences for which this government deems strict liability to apply; it is a hanging offence. However, what if, for instance, the Customs department sent notification, if in fact notification is required, to the wrong address? In fact, notification is not required that a person ceases to be an authorised officer or a monitoring officer for the purposes of having an ID card. According to 4C(5):

An authorised officer or monitoring officer must carry his or her identity card at all times when exercising powers in respect of which the card was issued.

You would not want to leave it in the shower, would you? That is a strict liability offence. This is going over the top. As I say, I ask Senator Murray to look at amendment (4)—at least for a little while, at least until I have a chance to look at amendment (7). I ask Senator Murray to look at amendment (4) in the context of amendment (6). Amendment (6) is a bizarre amendment.
Senator Murray—Do you want an answer on amendment (4)?

Senator BOLKUS—I wouldn’t mind an answer in respect of (4). Perhaps if I can persuade you to change your mind, and if I have not done that, I will get up and have another go, I suppose. But we have this all the way through. Amendment (7) refers to schedule 2, item 4, line 21. First, we have to find schedule 2, item 4, line 21, and given the way that legislation is written these days, that also is not that easy. If you ask anyone in this debate to tell us where schedule 2, item 4 is, they would probably be hard pressed to do that. Is it division 4? I am told that it is just the heading, ‘Item 4.’ This is a strict liability offence here. The minute it goes through the Senate, it will be a strict liability offence. Senator Murray, tell us where item 4 is. What page is it on?

Senator Murray—I will tell you if you sit down.

Senator BOLKUS—That would be a start.

Senator MURRAY (Western Australia) (5.51 p.m.)—You need to be careful of overstating a case because then you weaken a case, and the case against the excessive application of strict liability is a strong one. We have already agreed with you on six offences on strict liability, and the government have buckled to the inevitable. They know the numbers are there. When it is done with proper motivation, it can be achieved. If you look at 4C, it says:

The CEO must cause an identity card to be issued to an officer who is an authorised officer ...

I could not turn up the definition quickly. I am sure the minister will be able to expand on what an authorised officer is. It continues:

... for the purposes of Division 3A of Part VI or is a monitoring officer—

The minister can again turn that up—

for the purposes of Subdivision J of Division 1 of Part XII.

(2) An identity card:

(a) must be in a form approved by the CEO; and

(b) must contain a recent photograph ...

We were discussing earlier the real importance of the Standing Committee for the Scrutiny of Bills report into search warrants, into the powers and authorities that persons who exercise monitoring warrants or judicial warrants have. One of the key things we were discussing earlier is how important it is for people confronted by a federal authority with the power of a warrant to be apprised of their rights and responsibilities and to be able to react appropriately. What is the key identity matter which such a person carries? This is like a policeman’s badge or some form of authentication for their authority which provides for extremely rigorous and wide powers. That identity card is the access card to a range of powers which should not be carried by anyone who is not properly authorised under the act. Plainly, an officer who is no longer part of Customs should not be allowed to hang on to an identity card which could then be misused. Some circumstances might arise which would be very unattractive if the cards were misused to such an extent.

We looked at the face of it and said that it seemed to us an appropriate way of protecting what is in fact an access card to very strong powers and authorities. We might disagree, of course, on whether that should be an offence. I do not think you disagree that it is an offence. You are quarrelling about whether it should be a strict liability offence. As a judgment call, I think the risk is inclined to the government’s case, but I would certainly like to hear from the minister on this issue. Senator Bolkus, maybe your opinion is that I have misread the act. It says here that an identity card goes to an officer as an authorised officer or as a monitoring officer. As soon as you have an authorised officer or a monitoring officer, you have somebody with extremely wide powers who can really make life quite uncomfortable for somebody when he or she is exercising that power. I do not think those cards should be in the hands of people who are no longer part of the Customs department.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.55 p.m.)—I concur with the remarks made by Senator Murray. This is a very important
aspect, because with the monitoring powers and the powers given to an authorised officer we have done just what Senator Murray points out. The powers are wide, and people have been concerned about it. If we had a lax regime in relation to the provision of that authority and the safeguarding of that authority, I would have thought Senator Bolkus in the opposition would have been the first to complain. I can say that it is an offence. All we are debating here is the question of whether it will be a strict liability. On this issue, I think you have to have such restriction and make it a strict liability offence, because it goes to the heart of the exercise of powers and the indicia by which an officer exercises those powers. If we were to be lax about it and treat it with any degree of lesser regard, I am sure that those who Senator Bolkus purports to represent would have a lot to say. I think this should be a strict liability offence for very good reasons.

I will just go back to the retention of a document which Senator Bolkus referred to. I think it was the translation of a document under section 217 of the Customs Act. That relates to an existing offence. With due respect, it does not form part of these proposals. It is an existing measure in relation to the legislation. Since the act was enacted around Federation, there was a provision for the translation of foreign documents and for the keeping of those documents. That has been there since the beginning, and I do not think it provides the example that Senator Bolkus seeks. But these ID cards are a very important issue and they require strong measures.

**Senator BOLKUS** (South Australia) (5.57 p.m.)—My concern is the strict liability aspect of it. In some instances, the offences may precede this act, but I think strict liability with respect to that is over the top. Senator Murray, let us turn, for instance, to amendments Nos 10, 11 and 12. They are all strict liability offences and are all very much the same in substance, applying in different circumstances. Take amendment No. 10, for instance. On page 30, we have a strict liability offence provided in proposed subclause (2):

An offence against subsection (1) is an offence of strict liability.

Proposed subsection (1) is with respect to ‘False or misleading statements resulting in loss of duty’. It states:

(1) If:
(a) a person:
(i) makes to an officer a statement (other than a statement in a cargo report or an outturn report), in respect of particular goods, that is false or misleading in a material particular; or—
that I think there are problems with that; there might be circumstances in which a person may be led to believe that he is filling out the form completely and honestly, relying on the despatched documentation that might be attached to the import—

(ii) omits from a statement (other than a statement in a cargo report or an outturn report), in respect of particular goods, made to an officer any matter or thing without which the statement is false or misleading in a material particular ...

That is, once again, excessive. What sort of judgment is applied? We are talking about strict liability, we are talking about heavy penalties and we are talking about not just heavy penalties in the first instance but penalties that will attach to a particular business’s name into the future. We are saying here that someone is going to make a judgment that some information may, after the event, be deemed to be information without which the form is filled out in a false or misleading matter.

Consider it in the context of importers who rely on documentation provided to them by their suppliers, quite often in different languages. One of the best customs ministers I have come across—and it was quite a while ago, but I have said this consistently since—is Michael Hodgman. He was customs minister in the mid- to late seventies and early eighties. I took cases similar to this to him, where the Australian citizen or company had paid duty, relying on documentation from the exporter. There was one particular case involving tomatoes from Israel. Different rates of duty applied to crushed as opposed to peeled as opposed to non-peeled tomatoes. The Australian company filled out the forms
on the basis of the documentation that was made available by the Israeli supplier, and it was wrong. Once Customs opened the boxes, the actual produce was produce that should have been levied at a higher duty.

Thousands of dollars worth of penalty fines were imposed in this case. The company could have gone broke. At the time, Hodgman decided that there was a case on behalf of the importer in Australia and intervened on their behalf. They have probably had a few problems since in similar circumstances, but the minister was able to intervene. I raise this matter because, in similar circumstances, an innocent Australian company will find itself within the ambit of this legislation and will be strictly liable. Amendment (11) is the same—false or misleading statements not resulting in a loss of duty. Strict liability is still there, even though there is no loss of duty. Amendment (12) on page 33 is similar as well. We are saying that we will give this department power to make an assessment after the event—without guidelines, no direction and no regulations—of what is a material matter which, by its deletion, has produced a false or misleading document. The penalties are huge.

Senator Murray, you should focus on those three amendments. Have a look at their effect. You really are setting up a regime under which innocent Australian operators could find themselves not just incurring a penalty but in a powerlessness situation with respect to the customs department. We must also protect operators against that. The sense of powerlessness that Australian companies feel in these circumstances is real and material. In most circumstances, they cannot afford to take a challenge to the courts. You might say: ‘Okay, taking away appeals might help them here. They won’t have the choice.’ But that shows a black sense of humour. They are powerless already. This tilts the balance even more against them, and it is not fair for them to have strict liability applying, for instance, in respect of those items from which amendments (10), (11) and (12) seek to remove the strict liability regime.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (6.05 p.m.)—The opposition is putting forward a furphy. Peeled and crushed tomatoes are not the issue here. The removal of strict liability would adversely affect the Customs capacity for early identification and treatment of high risk cargo. Senator Bolkus has been talking about the provision of misleading information. We are bringing in a system which makes it easier for importers and exporters to deal with Customs. It is much like a self-assessment situation, but with it go responsibilities. Those responsibilities are that you cannot use the system to beat the system. Therefore, there are offences, and some of them will have strict liability—for very good reasons, because it would make it impossible to police otherwise.

Early and accurate information is essential to community and revenue protection objectives and should not be dependent on the intent of the provider of that information. Senator Bolkus is talking about a question of misleading Customs in relation to imports and exports, and that could be a very serious thing indeed. It goes straight to the heart of our risk assessment of cargo. It is not just duty. These are matters of illegal imports—illicit drugs, firearms and other prohibited goods. Addressing the issue of illegal imports is something that the community at large would support.

Senator Bolkus misses the point when he talks about the crushing and peeling of tomatoes. We are really talking about something much more serious indeed. Treatment of high risk cargo is something which Customs takes seriously. There is not a bureaucratic aspect to it at all; it is a question of what is in the genuine public interest and what is good for Australia. Senator Bolkus also talked about guidelines. If he had listened to my second reading speech, he would have heard that we are going to move an amendment dealing with guidelines, which would be a disallowable instrument. The amendment dealing with that has come about as a result of a suggestion of a Senate committee. He sells himself short by trying to get away with saying that we are not going to be
doing this, because that is on the running sheet. I look forward to Senator Bolkus’s support for it.

Senator BOLKUS (South Australia) (6.08 p.m.)—There are two points to make here. The sort of regime that the minister is advocating was introduced in New Zealand. The experience there, as the Senate committee has discovered from the head people in New Zealand Customs, is that it does not work. The question of crushed and non-crushed tomatoes is relevant. It is a real live case and a real live situation. Although we are talking about high risk people here, you are not going to get a gun smuggler or an illicit drug smuggler messing up the forms in this case. You will get them through other means and other mechanisms, but they are not the ones who are going to be filling out forms incorrectly. If you want to get them, you will get them on the fact that they are importing contraband.

The fact is that these three provisions—and they apply in three or four circumstances under this legislation, and even looking further down the track we can find more examples where there is a degree of precedence in the legislation—are good examples of where there needs to be an appeal mechanism. Let us get this straight: we are not attempting to remove the offence; we are seeking to remove the strict liability nature attached to it.

Senator COONEY (Victoria) (6.09 p.m.)—This is very an interesting debate, because it deals with when it is appropriate to have strict liability offences put in legislation. Strict liability offences are put in, in many cases, in terms of monitoring, and I think that is what the minister is saying. But I got somewhat alarmed when he was talking about offences that might have something to do with firearms, illegal drugs and matters of that nature, and saying that somehow they would become strict liability offences. In a certain sense, the more serious the offence, the more people being accused of it should be protected, because your reputation can be very much at stake. I am sure the minister did not intend that offences like introducing firearms or illegal drugs into Australia should be strict liability offences. They should certainly be offences, but they are of such a heinous nature and such a serious nature that people should not be found guilty of those offences unless they intended to commit them.

Strict liability offences are more apt when they apply to ensuring that there is a monitoring process that should be enforced. If somebody fails to do what they are supposed to do under that, a penalty is attached but it does not in any way take from a person’s character. You can commit a strict liability offence without your character coming into the issue. That is the sort of thing that happens, say, with speeding, when you do 70 kilometres per hour instead of 60 kilometres per hour. It is not a good thing, but it does not ruin your reputation. I was most concerned, when the minister was talking about firearm offences and illegal drug offences, that the impression might have been gained—which I am sure is not the impression that he wanted to give—that somehow we are going to have a strict liability offence, where people’s reputations are at stake and can be very readily lost, because of an offence where they in fact had no moral turpitude attaching to what they did but they just happened to do something which was quite mechanical and were nevertheless convicted of drug offences or firearm offences. Perhaps you would clarify that, Minister.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.13 p.m.)—The amendment we are putting forward in relation to the guidelines can cover that in relation to the infringement notice and how it is dealt with. We are not about destroying in an unwarranted fashion people’s reputations. I was talking about the question of Customs capacity for early identification of high risk cargo. Senator Bolkus said, ‘Of course, you’ll find them in other ways.’ That does not necessarily follow. A lot of intelligence that Customs gains forms the basis for actions in relation to interception at the border and elsewhere. That is an essential part of Customs work and, if that is thwarted, the consequences of that have severe repercus-
sions. I cannot take it any further than that. It is a fact which speaks for itself.

Quite often you have seen that Customs intelligence has been involved in important interceptions. That means assessing the sort of risk that you have with the cargo concerned. That includes what forms people have filled out. Where does it come from? What is it? It is something that is peculiarly in their knowledge. It is not in their ability to examine every container and go through every item that is brought in. They rely on the importer, or the person who is filling in that form, to give them accurate information. That accurate information forms the basis of intelligence for Customs. That is a serious issue indeed. It is an offence and one which should be able to be policed. If it is not a strict liability offence, then Customs will be put in a position of really not being able to police this. I think I have made that point very clearly.

In relation to the question of the guidelines, those guidelines proposed by the government deal with the question of infringements. That was the subject of some suggestion made by one of the Senate committees. I think that really can go some way to addressing Senator Cooney’s concerns. It would allow for provisions catering for administrative penalties in lieu of prosecution. That would be something that could accommodate Senator Cooney’s concerns.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.17 p.m.)—As Senator Bolkus well knows, guidelines in this situation are an adjunct to the legislation and much like regulations. What we have in our proposed amendment is a requirement that the Chief Executive Officer of Customs develop written guidelines that will deal with the exercise of powers and how these matters are approached. The Senate Legal and Constitutional Committee wanted that put in the bill and we have accommodated that. That would be a disallowable instrument. You are going to have scrutiny of parliament in relation to that. You cannot complain that those guidelines are not subject to any purview; they are. They will, as all guidelines are supposed to do, make the operation of the legislation much clearer for those dealing with it. I really fail to see the problems that Senator Bolkus has here.

Senator BOLKUS (South Australia) (6.18 p.m.)—This is a great example of a number of things. First of all, this is the minister trying to mislead with an argument that was convenient at the time. I have raised a legitimate point about how do you interpret this after the event; how do you interpret what matter or thing may be material and may be false or misleading in its omission? The minister gets up and says, ‘We will have guidelines to govern the exercise of power.’ But the fact of the matter is: those guidelines will not give any more substance to that particular provision at least three times under the government’s proposals. No-one will be any clearer after the guidelines as to what is not out—for instance about whether to rely on an interpreter’s assessment of documentation on which a form is filled, the basis of which may lead an importer to omit a particular matter from being a material particular under subsection 2 there.

Those guidelines may govern the conduct of officers but they do not give any substance to those provisions. That is where you are misleading. You were misleading by omission. They are similar circumstances which we are talking about here. You chose not to tell the whole truth. I can make this assertion now. You chose to respond to one aspect of
the conduct of Customs officers but you did not choose to respond to the particular point that I raised. You developed your own straw man and tried to argue against that.

Senator Ellison—I am innocent.

Senator BULKUS—Innocent, he says. That defence will not be available to any poor importer under your legislation with pleas of, ‘I did not understand’ or ‘The documentation on which I relied was wrong’ or ‘You might say that is material, but it did not seem to me to be material earlier on.’ You can now claim, ‘I am sorry; I am innocent. I got it wrong.’ But that is exactly the situation that you will not allow for innocent importers in this country. You are saying to the Customs department, ‘Look, after they have filled out the form, if you guys think that they should have put something in there but they did not, then ping them.’ And they have no defence and no appeal. You are not accountable.

Minister, you were misleading. I think you knew exactly what I was arguing. But even if you did not, on your own criteria that you are applying to Customs officers, you stand guilty of misleading. Can’t you see what we are getting at here? Look at that offence; look at page 30. You say it is high risk—high risk, low risk, the victims in this situation will be the innocent people. You will get the crooks—those who are importing the contraband and the other stuff—anyway. You will not get them under this particular provision. But this is a provision that will apply a regime of terror over Australia’s importers. That is why I asked Senator Murray to look at this provision. It is vague; it is general; it is broad in its application; it is applied after the event. The importers will not know in many circumstances what material fact they may have been led to believe was not available to them. But what we are saying is that the Customs department—after everything has been filled out, and they have had a chance to open the boxes and the cans to check products, and to get a translator to do a second or third or fourth translation of the documentation—might decide that in these circumstances they can this time get the company that has been giving them a hard time and protecting its rights over the years. That is where they do not need strict liability. This is where an appeals mechanism is important. We are not removing the offence; we are saying: make them accountable, especially when you give them such broad power.

Senator COONEY (Victoria) (6.22 p.m.)—I will follow on from what Senator Bolkus and Senator Ellison said. Senator Ellison said—and I hope I have got this right—that the regime of strict liability also enables the administrative penalties regime to run. He did not use those words, but I thought that was the thrust of what he said. I think that is right. The problem with that situation is that, if you have a series of strict liability offences, giving Customs the capacity to give penalty notices in lieu of taking prosecutions will give the people within Customs a very powerful position in respect of those people who are subject to their monitoring.

Take as an example a strict liability offence, such as exceeding 60 kilometres per hour on the road. If you exceed 60 kilometres per hour on the road, that is pretty easily identified—you were driving at 65 or 70 kilometres per hour instead of 60 kilometres per hour, and that is that. But with the sorts of offences you are dealing with in section 243U, the issue is whether somebody has made a misleading statement. Whether a statement is misleading is really a matter of judgment in a different way from a judgment of whether someone was driving at 65 kilometres per hour instead of 60 kilometres per hour on the road. That thereby opens up to the people in Customs the capacity to take proceedings against people they might not like by way of penalty notices instead of prosecutions. It will be a lot easier for people to pay up than to contest the matter in court.

The sorts of matters that Senator Bolkus said may well be matters of judgment as to whether something is misleading would enable Customs officers to issues these notices, which people will pay rather than taking time off to go to court and contest them. I would have thought that this would leave the way
open for a person in the Customs department to take on certain people because of an ill will harboured from a personal dislike of a customer of Customs or from a Customs officer’s view that a person was in some way reprehensible for some other sort of conduct. Therefore, the whole regime of strict liability opens up an opportunity that perhaps should not be there. I would like some comments on that if possible.

Senator Ellison (Western Australia—Minister for Justice and Customs) (6.26 p.m.)—I think the term ‘false or misleading’ is not a strange term to the law. The question of judgment is perhaps not the best way to determine it. It is a question of fact if something is misleading or false. Section 243U, on false or misleading statements, is part of the core of the requirement to have accurate information for Customs to operate by. If Customs does not have that and it cannot police it, it is all very well to say it is an offence because, when you prosecute, you have to show elements of the offence, which makes it impractical to prosecute. That is why you have strict liability in these circumstances.

The government have conceded that the Democrats have made a good point in relation to some of the offences that we propose should carry strict liability—we have acceded to that—but false or misleading statements is really at the core of the issue. I am not going to go over what I have said before, because it is abundantly clear that Customs can only make its assessments as to risk on the statements provided to it. These statements are provided by Customs brokers and by freight forwarders—people who are experienced in this sort of thing. What they want is not to have to hold up cargo and not to have to hold up the importation and exportation processes by having to go into everything that is said and done. We want to be able to take what is on the form as being correct at face value. There is a regime that says that, if you do not, you will be penalised. It is quite appropriate that that be done. If we do not have a smooth operation in the facilitation of this, you will get the benefit which is intended by this taken away completely and the importers and exporters will be the first to complain, because that is why they are supporting this very legislation. So we are giving them this facility, but we are saying that with it goes some responsibilities.

Senator Bolkus interjecting—

Senator Ellison—There is no misleading at all, Senator Bolkus. I do not think your comments are adding much to the debate at all.

Senator Bolkus (South Australia) (6.29 p.m.)—I note that Senator Murray has not entered into this part of the debate. I would like him to.

Senator Murray—When you sit down, I am ready.

Senator Bolkus—Okay. Minister, who was a ‘deliverer’ for the purposes of section 114E on page 89?

Senator Ellison (Western Australia—Minister for Justice and Customs) (6.29 p.m.)—The advice I have is that the term ‘deliverer’ in section 114E refers to the person who delivers goods to either the wharf or the airport. I think it says as much in subsection (1).

Senator Bolkus—And that can be a delivery company, for instance?

Senator Ellison (Western Australia—Minister for Justice and Customs) (6.30 p.m.)—I cannot see why not.

Senator Bolkus—So your proposal, then, is to attach strict liability to any innocent conveyor. Let’s face it, everyone contracts out these days: government’s contract out and the private sector does. If Harvey Norman want to export something, they get in a private contractor to take it to the wharf. That contractor, who is basically doing a job, would fall within the ambit of 114E and would not have a way out. There are no appeal mechanisms. That deliverer has a responsibility to do a number of things. Is that what you are saying should apply: an innocent agent, in a sense, has the obligations of 114E (i) and (ii) imposed on them and, if they do not meet them,
strict liability applies? Or, is there some out for them somewhere?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.31 p.m.)—The thrust of this section is aimed at remedying the very problem that Senator Murray mentioned in relation to goods being exported that do not actually get out of the country but are circulated or turned back into the domestic economy. That is really what this is all about. Section 114E says that the deliverer must not deliver goods to a person at a wharf or an airport unless some requirements have been complied with. It goes on to say that contravention of these requirements results in an offence. This deals with the integrity of the export process and, if someone takes on the responsibility of delivering those goods, there are compliance issues. Quite obviously, we have to ensure against the very problems that were raised in the submissions to the Senate Legal and Constitutional Committee and to which Senator Murray referred. Senator Bolkus, I fail to see where your problem lies with this, because it is about ensuring that the export is facilitated and that we do not have a subversion of the system by having the goods circulated back into the community. Of course, there is every motivation for that, because of the tax benefits. That is what that section is there for. If a person takes it upon themselves to deliver goods for export, they should make sure that the requirements are met.

Senator BOLKUS (South Australia) (6.33 p.m.)—Minister, this is exactly the point. You have confirmed my concern here. An innocent agent, a conveying company, a transport company, relies on the documentation of the exporter. What do you expect them to do? Open the boxes? The problem with your proposal is that, in those circumstances, there is no way out for them. There is no defence of innocence; there is no defence of lack of knowledge. These people pick up the goods from one spot and take them to the wharf or the airport, and there may be an exporter who has fudged the documents. In those circumstances there is no way out for the innocent transport company. That is why you need a capacity to appeal. You need to have non-strict liability, because there are innocent victims in this process. Take the case of an exporter of tiles, for instance, who may have put a few extra products in the box and given it to TNT. TNT takes it to the airport or the wharf, the documentation is completed and your officers open the boxes. Under this provision, through no fault of their own and in circumstances where, really, they can take no action to protect themselves, short of opening every box, short of opening every container, the company is strictly liable. You are going over the top. There is a further issue in respect of exporting companies on page 91. As I say, with each of these amendments we go through, we come across more problems. For instance:

(1) The owner of a ship or aircraft must not permit goods required to be entered for export to be taken on board the ship or aircraft for the purpose of...

A fair enough offence, but are we saying to every airline company in the country that they are going to be strictly liable if Joe Bloggs takes on a bagful of items for export? It is okay to attach the liability to Joe Bloggs but, by applying this in the way proposed, you would have to do strip searches of everyone. No, don’t raise your eyebrows—you would have to do strip searches of everyone if you were a public transport company or a major airline company so that you could be sure you were not attached with liability. You are talking about strict liability here in circumstances that are unreal for them to be met. I must admit I was quite overcome when you said that the deliverer includes anyone who takes the property to the wharf or airport for export.

Senator Ellison—That’s what it says.

Senator BOLKUS—That’s what it says—that is right. That is exactly what it says. It is so broad. There is no definition in the act; it could be anybody along the way who is involved in the delivery process. That is why you need some regime to be able to be applied to Customs, and that is why you cannot attach strict liability—because what you are trying to do is attach it to a broad cross-section of people who are, as I say,
innocent or for whom it is not within their capacity to ensure they are not meeting your legislation.

As I say, this is bureaucratic overkill. It is tyranny at the border. It is about time this government and these ministers actually did the job for which they are paid. They are not here as syphons of the public sector. They are not here as syphons of a bureaucracy such as Customs. They are paid to apply an independent judgment to these issues. They are not paid to just sign the documents as they come through. They are paid to make assessments. They are paid to act as a check on excesses of bureaucracies. That is exactly what is not happening here, Minister. You are the first one to scream for the presumption of innocence—you did just a few minutes ago with respect to a misleading answer you gave the Senate—but you are denying that same capacity for innocent Australian operators. As I say, you will get the drug smugglers—the Trimbolis and all the others—through other mechanisms. But what you are doing here is attaching liability to a broad cross-section of Australians who act innocently.

Senator MURRAY (Western Australia) (6.38 p.m.)—I want to return to 243U, V and T. To recap, there are three things that are happening as a result of the Senate inquiry. Firstly, there will be a review, and whether Customs exercises its new powers or its new legislation in a way that does not have the right outcome should be thrown up. The government has agreed to that review. Secondly, the government has agreed that infringement notices that are served will be reported annually. So we will be able to see what you are doing in each section, and that will alert the parliament and the Senate estimates to probe these issues. Thirdly, as the minister has outlined, there will be guidelines in this area of strict liability which will be disallowable by the Senate. However, that does not absolve the Senate from making a judgment on these issues.

Missing in the debate—perhaps it is implicit in the minister’s remarks, but I want to make it explicit—is the sheer nature of the modern Customs operation. It is a paper based operation. Under both the previous government and this government, the physical activity of Customs has been drastically reduced. From memory, the percentage of containers that are opened and inspected in this country is three percent. So 97 per cent of containers—boxes of tomatoes or boxes of hand grenades—are never opened. In other words, in order to profile, to deal and to manage risk in this area, the paper trail is absolutely integral to the integrity and safety of the system.

You would be able to walk back from some of the strict liability provisions and, indeed, offences in general if you were doing it the old-fashioned way of matching the paperwork to the physical inspection of containers. But that is not happening any more and, unfortunately, the pressures on governments to restrain expenditure has meant that a paper error which is deliberate, false or misleading in material particulars becomes that much more important. I do not think you are accepting that point in the judgment that has to be made about these things. It is a difficult decision to make as to whether it should be applied. But those are the views we have come to in making the decisions we have as to what should or should not be strict liability.

I heard what you said on 114E, but the very same thing applies: very few deliverers are ever attended to physically by Customs. From what I heard, you were actually arguing that there should not be an offence at all, not that there should not be a strict liability offence. You were arguing that every person who drives a vehicle can never know what is in the back of the vehicle and therefore can never be liable. That is an entirely different argument to the argument that I thought was before us. I think your arguments in terms of principle are entirely respectable, because it is a judgment that has to be made as to what should be strict liability or not.

You asked what our view is. Our view is based on the three protective devices I outlined at the beginning and on the fact that Customs these days is a paper business. It is a bit like AUSTRAC and the like, where you
have to run down the paper trail and the crooks are at the ends of pieces of paper. There are not too many people wandering around with guns, but there are an awful lot of people wandering around with other things and making a lot of money out of them illegally. You asked me why we are supporting it in these particular instances, and those are the issues that have led to that judgment. You can criticise the judgment—
of course you can—but we have tried to make a balanced judgment on those bases.

**Senator COONEY** (Victoria) (6.43 p.m.)—Senator Murray said that we need this to enable us to go down the trail to get to the crooks. If that is the primary purpose of these provisions, then we get to the difficulties that Senator Bolkus was talking about, because it really becomes an investigative tool. I thought these matters were being put forward on the basis that they encouraged the proper monitoring of the work that had to be done to import and export goods into and out of the country—that they were to aid the monitoring process rather than to provide a basis for investigating serious crimes.

In any event, the fact that I thought it was for a monitoring purpose is supported by division 5, ‘penalties in lieu of prosecution for certain offences’. That issue does not seem to have been answered. Does this not give tremendous power to the CEO of Customs, and to the people to whom the CEO delegates power, to get penalties from people who they may or may not like and over which there is no real control? In other words, people in Customs can give these default notices to people. The people have to pay up. What else is there to do? They are in a most unhappy position. They are the two points. It is the end of the day, but I would like them clarified. Are these strict liability offences there as a monitoring process or as a means of establishing a trial or gathering intelligence in detecting major crimes, such as importation of drugs and firearms? Which of those is it, or is it both? Secondly, what processes have been put in place to ensure that officers in Customs are going to be reasonable and fair in issuing these default notices?

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (6.46 p.m.)—I will say it again: the guidelines set out the relevant considerations that officers will take when administering these provisions. You have guidelines for prosecutions. The DPP has guidelines and the Australian Federal Police has guidelines in relation to prosecution. They are a common part of the administration of government today and there is nothing magical in them. They set out quite clearly how the provisions are to be administered and whether it is appropriate in all the circumstances to issue an infringement notice or not. Those guidelines, as I and Senator Murray have said, are going to be disallowable instruments and the Senate will have a chance to have a look at that.

In relation to the other question, the section that Senator Cooney points to does form part of a monitoring process. And let us leave guns or drugs alone for the moment. Let us talk about high risk cargo. Let us talk about the exportation of other things which may be totally undesirable to this country, such as some of our exotic animals. Let us talk about a whole range of things that you need to look at. In that process of exportation—and importation, which is paper based, as Senator Murray accurately says—you have to keep a process of scrutiny in place by Customs. That is essential for the good operation of the importation and exportation regime of goods into or out of Australia.

**Senator COONEY** (Victoria) (6.48 p.m.)—I think the minister has explained the matter in the way that I was trying to. He is talking about guidelines. He says the DPP has guidelines and the Australian Federal Police has guidelines, and that is right. But the DPP is going to prosecute matters. The DPP has to prepare the case properly and, in the serious crimes that he deals with, has to prove intent. Of course he has got guidelines to guide him in the prosecution of what are not strict liability offences but offences where there has been mens rea, by and large.

The Australian Federal Police is a body that over the decades, in common with the police forces generally, has set up a protocol,
a culture, that accommodates the relationship between people and the police. It talks about community policing, the civil police and what have you. That gives you an idea of what it is all about. But these people who are going to issue the notices here and who are going to take these prosecutions are Customs officers who have not had the same tradition as the DPP and the Australian Federal Police behind them. That is the concern with the strict liability offences, which are going to be dealt with by penalty provisions—by the issue of default provisions.

Progress reported.

DOCUMENTS
Australia-India Council Annual Report 1999-2000

Senator SANDY MACDONALD (New South Wales) (6.50 p.m.)—I move:

That the Senate take note of the document.

The Australian government established the Australia-India Council in 1992 to broaden the relationship between Australia and India by encouraging and supporting contacts and increasing levels of knowledge and understanding between the peoples of both countries. India has 1,000 million people. It is important to us as a market. It is also important to us geographically. It is a very important trade market and Australia’s trade relationship with India is rapidly developing maturity.

With the coalition victory in March 1996, the development of commercial ties with India has been given new expression and impetus. Strong ministerial support for and involvement in a major integrated country promotion, New Horizons, provided a particularly noteworthy example of this and the leader of my party at that time, the then Deputy Prime Minister, Tim Fischer, was instrumental in that. At the time, there was also some considerable work done in the development of further air links between Australia and India.

The trade figures also reinforce the expanding development of the relationship. Two-way trade between the two countries in 1999-2000 was $2.3 billion, a figure double that of the bilateral trade in 1992-93, the year that the Australia-India Council was established. Development of trade ties to their current levels would have been impossible without the instigation of a program of fundamental economic reform in India itself from the early 1990s. This reform sustained over the course of a decade has significantly redefined the operations of the Indian economy.

Now, for the first time since India’s independence, India has become exposed to competition from without and has taken important initial steps towards becoming an important player in the global economic community. Although there is still some way to go and the reform agenda remains politically difficult, the Australian government is encouraged by India’s efforts to date to strengthen and liberalise its economy. One particular trade commodity that we have been able to develop is wool. We have been able to develop our wool market in India because of a reduction in the greasy wool tariff that has been applied traditionally to wool imports into India.

Considerable media attention was given to the Australian government’s response to Indian nuclear testing in May 1998 and the possible adverse impact this might have on the trading relationship. The government has responded to the tests by suspending ministerial and senior official visits both to and from Australia and suspending defence ties and non-humanitarian aid. Australian measures did not extend to the imposition of sanctions on trade and investment with India and there was no clear evidence that the measures adopted by the Australian government adversely impacted upon the commercial relationship that is ongoing and developing.

The trade relationship and the market development strategy that needs to be put into place takes into account the market diversity borne out by the region, and particularly the importance of the roles that the Indian states themselves play within India. With its economic reform program opening Indian markets to trade and investment and with Australia’s trade push intensifying our under-
standing of India’s regional characteristics and cultural sensitivities, the style of govern-
ance of various states is becoming increas-
ingly important and sophisticated.

I commend to the Senate this annual re-
port of the Australia-India Council because it is interesting reading. It is a broadly based
council including a number of interesting
Australian members with a connection to
India. The Senate needs no reminding of the
importance that India has and will continue to
have in terms of its regional significance,
its international significance, the fact that it
has over one billion people and the fact that
it is increasingly playing a role on the inter-
national stage which will have considerable
importance not only to South Asia but also to
South-East Asia, North Asia and beyond.

Senator COOK (Western Australia—
Deputy Leader of the Opposition in the Sen-
ate) (6.55 p.m.)—I too wish to speak to this
annual report of the Australia-India Council.
Having heard my colleague Senator Sandy
Macdonald, can I endorse many of the things
that he has said. His presentation just now is
a very good exposition of the distinguishing
features of India and Australia and the nature
of the Indian market. The emphasis he has
placed on trade is welcome. Can I say for the
Australian Labor Party and speaking as the
shadow trade minister, we would see India as
a major market, a market that has not been
properly developed in the past between Aus-
tralia and India. It will feature significantly
in our policy pronouncements on trade when
we announce them prior to the coming elec-
tion.

This is for us a major market, and we in-
tend to work very strongly in building not
short-term but long-term links with India that
bind our two countries together and
strengthen the characteristics we currently
enjoy: India is a country that speaks English;
India is a country that has a rule of law that
is based on a system of law we understand
and can operate commercially within; India
is the world’s largest democracy; India is a
country with the world’s largest middle class;
India is a country that is given to resolving
internal disputes by proper and peaceful
means; and India is a country with which
Australia has strong cultural ties, albeit
mostly they are expressed in cricket compet-
titions. We would like to see Australia’s
knowledge of India become broader and be
more automatically across a whole range of
things rather than just simply cricket. But,
without cricket, the understanding between
our two countries would be less.

The Australia-India Council that produced
this report was established in 1992. It was
established under an Australian Labor Party
government, and we would certainly con-
tinue the council on and wish to develop its
operations. In the year under report it has
spent in total $814,943—about $600,000 of
which has been spent on programs which
have all helped to build the relationship.
Having said all of that and indicated the ob-
jectives that we would have as a party in
government in developing our relationship
with India, there are still things on our bilat-
eral agenda that need attention. One of the
most important export industries for Austra-
lia is education exports. It ranks as the sev-
enth most important export and the second
largest services export for our nation. It
earned some $3.5 billion worth of export
revenue last year. Unfortunately, if one looks
at where demand is for access to Australian
education services, one can see around this
region that India is a country where there is
high demand for access but where the taking
up of places in Australian universities actu-
ally fell over the last few years.

One can only lament the obstacles that I as
a member of parliament faced when I tried to
negotiate the entry of a perfectly respectable
and appropriately qualified person into Aus-
tralia as a business migrant—the obstacles I
faced with getting that person recognised as
such from the immigration authorities were
daunting and acted as a deterrent, I think, for
migration at that level. When transposed to
the educational area they are a major barrier,
a non-cost barrier, to our being able to enjoy
stronger relationships on education with In-
dia and being able to take a greater number
of Indian students. It is something that needs
to be addressed, because the education mar-
et is a competitive one. If our immigration
barriers, as they do, impose constraints on the ability to tap that market then it will be to the disadvantage of India and to the disadvantage of the relationship.

I believe there is an informal quota in the department of immigration about Indian students’ entry to Australia. I believe that the most recent decision to impose tests on Indian students as a prequalification for coming—tests that they would not have to pass in Australia—is also a barrier which imposes discrimination. They are barriers that ought to be swept aside not only because of education exports but also to strengthen and improve the relationship and to enable Australian and Indian relations to properly mature and flourish. This is an excellent report, and I commend it to the Senate. I commend the committee and all the members of it, and I look forward to working with them in the future.

Question resolved in the affirmative.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—Order! It being 7.01 p.m., I propose the question:

That the Senate do now adjourn.

International Criminal Court

Senator MASON (Queensland) (7.01 p.m.)—I rise tonight to speak on an issue of great importance for international and domestic law—the International Criminal Court. The ICC is designed to replace existing ad hoc international tribunals such as those operating in Rwanda and the former Yugoslavia with a permanent court with worldwide jurisdiction to hear charges of war crimes, crimes against humanity and genocide. The 1998 international treaty that set up the court has so far been ratified by 29 countries. However, 31 more countries are needed for the court to begin operating. Australia is currently one of the countries considering the ratification of the treaty. I want to speak briefly tonight on this issue both as a member of the Joint Standing Committee on Treaties and as a lawyer with a longstanding interest in human rights and international law.

Let me begin by saying that I support and endorse in principle the concept of an international court that would bring to justice the perpetrators of serious crimes such as genocide. The Nuremberg and Tokyo trials, as well as the more recent efforts to prosecute war criminals in the Balkans and in Rwanda, were all steps in the right direction. All of us who lived through the 20th century cannot remain unmoved by the pleas for justice by millions of victims of tyrants and dictators. However, a lot still remains to be done to overcome the widespread perception that international justice can be very selective and sporadic. As I speak tonight, not one person responsible for crimes against humanity in the former Soviet Union, the People’s Republic of China and their many communist satellites has yet been held accountable for murdering, starving or working to death in excess of a hundred million people. If justice delayed is justice denied, selective justice can be just as corrosive of people’s respect for the international human rights system. My major concern about the International Criminal Court is that, like so many instances in the past, all its best intentions and designs will lose out to politics; that, in practice, it will more likely become a thorn in the side of democracies rather than dictatorships.

It is said by the proponents of the court that we need not worry about its impact on our domestic legal system. The Law Council of Australia, for instance, argues:

... under the Statute the Court must defer to Australia’s own criminal law and proceedings. It is only when a country is unwilling or unable to prosecute an international crime that the ICC may have jurisdiction.

But this is precisely the problem. When one considers how broad and vague the definitions of ‘genocide’ and ‘crimes against humanity’ are under the treaty, one can easily foresee a situation where Australian courts will refuse to try actions that the court itself and the international human rights community consider to amount to breaches of international law. To argue that various non-
governmental bodies and pressure groups will not try to use the machinery of the court to advance their own political agendas is to ignore the 50 years of history of such attempts.

It is similarly concerning to consider that, should Australian citizens ever be tried by the International Criminal Court, some members sitting in judgment might be appointed by governments which are anything but paragons of international virtue. This troubling celebration of judicial diversity, or the belief that all states are equal and that their political and judicial systems are of equal value, underlines and animates the push not just for the International Criminal Court but also for most other international treaties. In fact, despite the recent successful march of democracy and the rule of law and human rights around the world, many governments continue to have only a scant regard for the broadly accepted norms of political behaviour. Unfortunately, history shows that those least fit to sit in judgment are so often the first ones to point the accusing finger.

The International Criminal Court can only assume jurisdiction when a nation is unwilling or unable to prosecute an international crime—in other words, the court is only able to assume jurisdiction when a nation’s justice system is judged to be unjust or inadequate. Imagine the response of the People’s Republic of China to such a claim. Imagine China allowing others to judge her officials and her citizens. Imagine China accepting the international verdict. Under some circumstances it is possible that liberal democracies such as the United Kingdom or the United States might be successfully pressured into submitting its citizens to the court’s jurisdiction, but China—never. In fact, this is the great failing of the ideas that animate the court and the international human rights system generally. It is exactly the more open, democratic and accountable governments that become the easiest targets for the self-styled human rights advocates. When the human rights establishment refuses to see the log in the other state’s eye and it sees only a splinter in their own, everyone loses out—the victims whose oppressors remain unpunished, and the system itself, which loses popular legitimacy.

While this is not the intention of the court’s creators—I accept that—various dictatorships, joined by Western left-wing ideologues and non-government organisations will almost certainly try to use the court to pursue the United States government for its alleged crimes against humanity. There is no guessing that America’s allies—such as Israel or, indeed, Australia—might also become its targets.

Only a few weeks ago, the United States was voted off the United Nations Human Rights Commission, losing its membership for the first time since 1947. At the same time, Sudan and Libya were elected to regional subgroups on the commission. Other members include such paragons of international virtue and staunch defenders of human rights as China, Algeria, Syria, Vietnam, Iran and Cuba. This is the sort of action that does nothing to dispel concerns about the future operation of the International Criminal Court. Not surprisingly, the Bush administration is now unlikely to participate in the work of the court.

It gives me no pleasure to speak here tonight about what I and many others see as problems connected with the International Criminal Court. It gives me no pleasure, because I deeply sympathise with all those around the world who work tirelessly to bring justice to millions of victims of oppressive governments. I share the enthusiasm of those who want to make the world a better and safer place to live. Good intentions are not enough, and noble ideas do not always translate into good outcomes. For the sake of victims of oppression and genocide, it is important that we continue to strive for justice. But for all of us it is equally important that we get it right. Maybe the International Criminal Court is the only way forward for the victims of genocide and war crimes. I accept that. But for some, the fashionable celebration of judicial diversity will come at the price of justice. It seems such a pity that, in the long march towards a meaningful in-
ternational human rights system, the International Criminal Court might not do enough to substitute politics for justice.

While I am at it, the failure of the Left between 1949 and 1976, to say nothing about the 60 million people whom Mao Zedong killed, is the greatest indictment of that side of politics that is ever possible. For them to even mention at all anything about human rights is pathetic, loathsome and, ultimately, hypocritical. They said nothing between 1949 and 1976 about the tens of millions of people who were killed in the People’s Republic of China. Why didn’t they? Ask them! They said nothing because it was not trendy—it was not fashionable. It was somehow a celebration of what?—political diversity. In the view of the Labor Party, communism was fine; it was just different—it was still legitimate. That is what they thought. They were wrong, and that is why they got the 20th century wrong.

The PRESIDENT—I call Senator Hutchins.

Honourable senators interjecting—

The PRESIDENT—Order! Senator Mason, you have had your opportunity. Senator Forshaw, you do not have the call.

Senator Chris Evans—What about the Cold War? That is worth putting in the Hansard.

The PRESIDENT—You are out of your place, Senator Evans, and out of order.

Lindsay Electorate: Defence Land

Senator HUTCHINS (New South Wales) (7.12 p.m.)—I do not know whether I should make this submission on behalf of Senator Forshaw, but Senator Mason probably never knew Frank Knopfelmacher or those people involved in the association for cultural freedom. I seem to remember as a young man—I probably should not admit this to my Labor colleagues—that we used to go to a lot of things in relation to cultural freedom, probably when you were discovering what it all meant. So do not give us a lecture about what we felt about what was going on in those regimes in eastern Europe. We were well and truly made aware of it, and we protested in our party about it.

But I do not want to talk about that tonight. I want to talk about a local issue, and that is an issue that affects people in the western suburbs of Sydney. I want to mention the electorate of Lindsay. I should put it on the record that I am not an elector in the seat of Lindsay. I live in the seat of Chifley, which has a very good and dedicated local member. I want to mention the seat of Lindsay tonight because no one else in this parliament does. In fact, we have a Lindsay watch on Miss Kelly, the member for Lindsay. Miss Kelly has not mentioned her electorate in this parliament in over 1,000 days. That might be significant in light of the fact that President Kennedy was in office for 1,000 days, and Miss Kelly has not mentioned her electorate once in that period. It is getting up to 1,001 or 1,002, but I hope that as a result of my contribution this evening, Miss Kelly might respond.

There is a local issue in the electorate of Lindsay, and it does not relate to the electoral rorting that Miss Kelly was prevented from having to front up and answer for before the electoral committee in the last few weeks. Miss Kelly could tell us a bit about changing electoral rolls and how her staff and supporters were able to move around the electorate of Lindsay from the electorates of Parramatta, Macarthur and all sorts of other areas. However, what I want to talk about tonight is one of Miss Kelly’s latest local publicity stunts which relates to what she calls an interim order on an area in Western Sydney called Orchard Hills.

Orchard Hills is in the Penrith municipality and it is Defence owned land. There are 2,000 hectares of land there that the Defence department obviously does not need. However, in several of the local papers in the last few weeks, Miss Kelly has been trumpeting the fact that, as a result of her activities, she has been able to get an interim listing on the National Estate for 1,370, or 75 per cent, of those hectares. Miss Kelly has done that because, while Miss Kelly was advancing her claim for office in 1996, and in by-elections
and subsequent to that, Miss Kelly misled the people of the Penrith municipality about one of the other major development sites out there which was owned by the Defence department. That site is known as ADI St Marys. Miss Kelly led those people to believe that the whole of that land area would be preserved.

The original interim listing for the ADI site at St Marys was 1,100 hectares. It ended up being 830. At the moment, 200 hectares are being considered again to be opened up for development. I believe that Miss Kelly, as the local member, has misled people over the ADI site at St Marys and she is attempting to do the same thing in respect of the site at Orchard Hills. What is significant about Orchard Hills is that there are still tracts of the Cumberland Plain woodland and Sydney coastal river flat forest. There are still areas like that in western Sydney. Miss Kelly has said in the papers that, by her actions, she has had an interim order placed on that land. As I said earlier, the ADI site that she trumpeted about so loudly has had its interim listing reduced from 1,100 hectares to 830, and 200 more hectares are under threat.

I believe that this should be exposed for the stunt it is. As I said, there is significant resentment about Miss Kelly and her activities in Penrith. I do not know why we would place any confidence in the fact that the Australian Heritage Commission would take any action to preserve areas in western Sydney. The chairman of the commission, Mr Peter King, is the newly endorsed Liberal candidate for Wentworth, that silvertail area of Sydney that includes Double Bay, Potts Point and Edgecliff. People like that in Sydney think Sydney stops at Strathfield and starts again at Leura. They do not think anything exists in that vast expanse of land between Strathfield and the mountains. There are many hundreds of thousands—or probably over a million—people who live in that area. At the moment, the federal government is considering reviewing the Australian Heritage Commission Act to take away the commission’s powers, and to scale it down to an advisory body, acting on the advice, and at the whim, of the minister.

I would say to Miss Kelly: why don’t you start to talk about your electorate, when you have plenty of opportunities in the House of Representatives to do that? I do not think that she is being fair dinkum in the way she is handling this heritage issue out in the west of Sydney. I would like to see Miss Kelly go to the Prime Minister and get a cast-iron guarantee that the 1,370 hectares of land in Orchard Hills are preserved for woodland for western Sydney residents, instead of going to the papers—which is all I believe she has done—to make sure she gets through the next election. It is up to her. It is not up to any of her flunkies in here or anywhere else.

Reconciliation: Indigenous Protocols

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (7.19 p.m.)—I want to bring to the attention of the chamber the issue of indigenous protocols and their incorporation into important public ceremonies and events. Whilst people may regard this as something which is perhaps a little out of context in relation to some of the debates that are raging in the media at present, I think that comment on these things is long overdue. It is an issue that I have been pursuing for some time with the government, and with the various institutions of government, to try and bring about some change.

In the past, the parties represented in this chamber have all expressed their strong support for the concept of reconciliation amongst indigenous and non-indigenous Australians. There was, of course, unanimous support for legislation to establish the former Council for Aboriginal Reconciliation in 1991, and each of the major parties since that time was represented on the council throughout the decade of its existence.

Similarly, all senators supported the motion for reconciliation in August 1999 in which we reaffirmed our wholehearted commitment to the cause of reconciliation between indigenous and non-indigenous Australians as something that we regarded as a national priority for all Australians. We also recognised the achievements of the Australian nation and we committed to work
together to strengthen the bonds that unite us, to respect and appreciate our differences, and to be able to build a fair and prosperous future in which we can all share.

Many senators and members joined the broader community in the spectacular bridge walks that occurred in all capital cities and regional towns across the country. If anything, I think that this indicates that we are all very aware and conscious of the fact that there is a people’s movement for reconciliation, and that the general community does want to show its support in these types of symbolic gestures. Whether it involves signing the sorry books, joining a local reconciliation group, commemorating the Journey of Healing or even acknowledging the traditional owners in their communities at public events, I think that there is a willingness to listen, to sit down and to translate the concept of reconciliation in that practical way.

I want to stress tonight that the so-called symbolic gestures of reconciliation are just as important as the government’s promotion of practical measures which target indigenous disadvantage and the provision of basic citizenship rights. I think we all need to realise that it is often the simple measures that individual people can put into practice in their own communities that, at the end of the day, will be instrumental in healing the wounds that exist as part of our past. I think we have to recognise and incorporate as part of that process indigenous protocols as one simple but effective way of bringing indigenous and non-indigenous people together.

Some of the examples that have been spoken about over the 10 years that I am referring to which are starting to be picked up as part of what I regard as the national protocol and national identity and which are being embraced by all Australians are an acknowledgment of country and traditional owners at events and formal speaking locations. Event organisers are also moving down the path of inviting representatives of the local indigenous communities to welcome their audience to country. Simply being able to invite members or elders of the local indigenous community to attend and be acknowledged at local events shows a sign of respect and where the country ought to be going. As many senators would be aware, the former Council for Aboriginal Reconciliation adopted the use of appropriate indigenous protocols at a range of events, meetings and ceremonies. The goal was to promote understanding of Aboriginal and Torres Strait Islander cultures in the wider community. Whilst we have made inroads there, we can perhaps at best say that we are only halfway along in that journey.

One of my criticisms in recent times has been about the final report the council produced after 10 years of the most extensive conversation with the Australian people about the achievement of reconciliation. In that report, which was tabled in this place in December last year, the parliament and the government were given an opportunity to respond on what the prescription was from the 10 years of dialogue. Out of that have come four strategies which have been included in the Roadmap for reconciliation. One of the key recommendations was:

All parliaments, governments and organisations observe protocols and negotiate with local Aboriginal and Torres Strait Islander Elders or representative bodies to include appropriate Indigenous ceremony into official events.

That was given more credence with a report that was produced by the former council through the University of New South Wales. It suggested that the inclusion of indigenous Australians and their cultural and spiritual protocols in ceremonies of state would make a significant contribution to reconciliation in three ways. The first was about being able to help change the perceptions held by many Australians and to make them realise that the nation’s indigenous peoples’ cultures were living cultures. The second was about providing ordinary Australians with opportunities to witness, embrace and experience first-hand ceremonial aspects of what is the world’s oldest living culture. The third was about communicating to ordinary Australians how the nation’s indigenous peoples view their heritage by seeing these ceremonies performed and explained.
The Australian Democrats endorsed these views, and I have worked hard as the spokesperson on reconciliation to promote the benefits of incorporating those protocols into everyday public events. I have raised this matter with the minister for reconciliation, Mr Ruddock, in the context of the report of the Australian Citizenship Council and the government’s consideration of the law and policy relating to Australian citizenship. That report made the following comment to the minister:

Believing that reconciliation and the completion of the passage of indigenous people to full realisation of their citizenship in Australia are, in the deepest sense, intimately linked, the Australian Citizenship Council wishes to offer the Council for Aboriginal Reconciliation its strongest support and recommends continued government and community involvement in the reconciliation process.

On the basis of that recommendation, I wrote to the minister and suggested constructive ways forward for the government to pick up on it. Whilst the government has responded perhaps in a minuscule way in recent times, the government did not take up the suggestions and instead made only two vague references in its response to the report of the Australian Citizenship Council to indigenous Australians. It said that it:

... encourages continuing community involvement in reconciliation and supports practical initiatives which will enable Aboriginal and Torres Strait Islander peoples to share in the general success of the community.

I am personally disappointed that the minister and certainly the government were unable to go a step further and suggest what they meant by ‘practical initiatives’.

I think it was an opportunity missed. Perhaps it is something that we can revisit. With the upcoming occasion of the swearing in of the Governor-General designate, there is perhaps an opportunity to revisit these issues. Whilst there continues to be a call to acknowledge these protocols in some form—something that I took seriously in terms of my entering the parliament on 1 July 1999, when the Ngunawal people were here to conduct my rite of passage into this place—it can be taken up in the parliament in a more meaningful way.

Ultimately, it is about national character, national identity and being able to express something that is quintessentially Australian. I can think of no better way of being able to do that than to acknowledge and embrace in a greater way than in the past indigenous cultures so that they become part of Australian culture and Australian character. I want to appeal to the government and the opposition to give serious consideration to the proposals that have been put forward and the incorporation of indigenous protocols in everyday formal occasions more generally.

**Anzac Day: Gallipoli Visit**

**Senator SANDY MACDONALD** (New South Wales) (7.28 p.m.)—I had the opportunity of visiting Gallipoli on Anzac Day this year, along with the Minister for Foreign Affairs, Alexander Downer. It was an extraordinary experience, and I shared it with 15,000 other Australians, both old and young, who attended the dawn service and the other commemorative services on the day. The dawn service was held this year at the new commemorative peace park above North Beach, which is just to the east of Anzac Cove itself, where simultaneous landings took place 86 years ago, on 25 April 1915. From the Australian perspective, the organisation of the day was the responsibility of the Commonwealth Office of Australian War Graves, headed by Air Vice Marshal Gary Beck, and I congratulate him on his organisational skills. They were very good indeed.

I was very privileged to have a part in the dawn service, commencing at 5.30 a.m. I gave the call to commemoration, and I was accompanied by my wife and my six-year-old daughter, who wore her great-grandfather’s medals. Her great-great-grandfather had, in fact, served at Gallipoli with one of the Scottish line regiments. It was a particularly moving occasion for all of us and for all the other people there, both young and old, who had made the effort to go. I do not think there are any events so burnt into our soul as the events of Gallipoli, for a number of reasons, both personal and
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It was an experience I will never forget, especially when, with the first rays of the sun rising over the eastern horizon and the sound of the waves lapping the Aegean, we turned to face inland and looked at an outcrop of rock which had been called the Sphinx by the Australians and we sang *Abide With Me*. That was the time when the Australians were landing those 86 years ago.

I would also like to thank the Turkish and New Zealand governments, who made the day such a success. I was particularly grateful to be hosted by the Turkish government for a number of days. The Turkish Grand National Assembly is the Turkish parliament. They hosted me for four days. They were particularly generous to me and gave me enormous access to people, businesses, authorities and the things that make Turkey the country that it is. I was grateful to the Turkish-Australian Friendship Group, of which I am the chairman in this country, who gave me enormous opportunity to explore further commercial and trade links. I have been able to follow up a number of those since my return. I would like to thank the Turkish ambassador, His Excellency Umut Arik, who was extremely generous in facilitating my visit.

Turkey and Australia share a unique relationship, of which we are all aware, forged by the great events of Empire and history that made up World War I. We are fortunate indeed to have that relationship, and it is appropriate to recognise the enormous impact Gallipoli has had on modern Turkey as well as modern Australia, with the emergence of Colonel Ataturk, who was the commander of the company who happened to be above Anzac Cove on 25 April 1915. It was he who, eight years later—partly because of his success as a military commander—went on to command the forces that defeated the Greeks, and he became the first president of Turkey in 1923. There were a number of lessons for Australia from Gallipoli. There was no greater lesson to Australians and the Australian Army than the lesson that nobody but Australians should command our troops on the ground. It was an early lesson that we were on our own and we were responsible for our own destiny, and that is as true today as was made clear at that time.

Gallipoli brought home to me a long-standing concern that I have had about the projection of Australia’s national identity, and that concerns our national anthem, *Advance Australia Fair*. The tune is outdated and boring, and the words are banal and meaningless. Nobody knows the second verse, and most of us try our best with the first. Our Gallipoli veterans did not fight under *Advance Australia Fair*, nor did those at Tobruk, nor did those at Long Tan. In our Centenary of Federation year, it is surely time to recognise that we have done our best with *Advance Australia Fair* and that we should consider some alternatives.

At the Gallipoli service, we heard the French national anthem, the *Marseillaise*; the German national anthem; the American national anthem, the *Star-Spangled Banner*; the Indian national anthem—a wonderful national anthem; the Turkish national anthem and the New Zealand national anthem, *God Defend New Zealand*. I am not ashamed to say that it was embarrassing to be represented by *Advance Australia Fair*. To all of us, internationally, *Waltzing Matilda* is Australia. We have the O’Hagan words to it, *God Bless Australia*, but there are other wonderful tunes and words, including Bruce Woodley’s *I am Australian*, sung most wondrously at the Centenary of Federation sitting in Melbourne in May. But whatever change we might make in a country so full of talented musicians as Australia, it will be an improvement on *Advance Australia Fair*. I simply do not believe there is any public attachment to *Advance Australia Fair* in the community. There never was; there never will be. It is not like our flag, which the great majority of Australians love. There should never be a change of the flag, but there should be a change to our national anthem before we all fall asleep singing it.

I commend the role of the Australian embassy in making the Anzac Day ceremony such a success and facilitating the visits of politicians like me and others. I recommend that every Australian who has the opportu-
nity to attend the Anzac Day service in Gallipoli should go. They will understand a little more of their country if they do.

Lindsay Electorate

Senator McGauran (Victoria) (7.35 p.m.)—I rise to speak in defence of Miss Jackie Kelly. We have had yet another attack late in the night in the Senate, from Senator Hutchins. He is obviously the patron senator for Lindsay. He would have to have one of the hardest possible jobs shifted on him: to win back for Labor the seat of Lindsay. That is a very hard task, because the existing member, Jackie Kelly, has held it since 1996. It is a prized possession of the Liberal Party, because Miss Kelly won a blue-ribbon Labor seat in 1996. It represents the greatest prize of 1996—the swing to the Liberal Party of the so-called Howard battlers. This has got under the skin of the Labor Party ever since then. They have sent poor old struggling Senator Hutchins, an inexperienced senator, to try and win that seat back from a person who has won it three times. He does not have a hope.

If he is trying to mount a case against Miss Kelly to the effect that she is a poor member for Lindsay, then look at the record. She won it against all odds in 1996 and she has held it at three elections. He has a most difficult task; I almost feel sorry for him. He has neither the skill nor the wit to take on one of the best local members within the Liberal Party ever since then. They have sent poor old struggling Senator Hutchins, an inexperienced senator, to try and win that seat back from a person who has won it three times. He does not have a hope.

She is never complacent, and the odds of her losing that seat are very long indeed. Senator Hutchins comes in here and tries to mount a case that Miss Kelly has not spoken about her electorate in this parliament. That is typical of a Labor Right senator, because they have no connection with the electorate at all. They seem to place all the emphasis on being up here in parliament. In the short time that he has been in the parliament, he has been totally Canberra-ised. He places so much importance on what he says in the parliament. I can give him a little bit of advice from someone who has been in the parliament longer than him: it does not amount to much compared with what you say back in your electorate, as Miss Kelly knows. He is certainly overrating the speeches that we all make in the parliament. That is no way to mount a case. I rise to defend Miss Kelly, because we are on broadcast and there will be those from her seat in Lindsay listening to the accusations made, under the protection of this parliament, by Senator Hutchins. He accused Miss Kelly of electoral rorting: that is utterly false.
wrong and as slanderous as it is. But you have the weak Senator Hutchins in to do the job.

It seems to be a day of slur. Typically, the Labor Party, as we continually say and will say right up to the election, will not present a policy to this parliament. Today you have really outdone yourselves. Today you have delivered a personal attack on Mr Downer, we have just had a personal attack on Miss Kelly, the lead question at question time was a personal attack on Mr Truss and you even dredged up a personal attack on the former Senator Parer. That is what you get when you have a leadership in the Senate here which is chemically deficient and chemically unbalanced: you enter the slur stakes and you personally attack the other side.

The President—Senator McGauran, withdraw that remark, please.

Senator McGauran—I withdraw that remark. Sooner or later, as we loom closer and closer to the election, the Labor Party are going to have to pull back from these personal attacks. That is what the electorate will demand, and they are going to have to put some policies on the table.

Senate adjourned at 7.42 p.m.

DOCUMENTS
Tabling
The following government documents were tabled:
Advance to the Finance Minister—Statements and supporting applications for issues—
   April 2001.
Tabling
The following documents were tabled by the Clerk:
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Transport and Regional Services Portfolio: Contracts to PricewaterhouseCoopers
(Question No. 3287)

Senator Robert Ray asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 24 January 2001:

1. What contracts has the department or any agency of the department provided to the firm PricewaterhouseCoopers in the 1999-2000 financial year.

2. In each instance what was the purpose of the work undertaken by PricewaterhouseCoopers.

3. In each instance what has been the cost to the department of the contract.

4. In each instance what selection process was used to select PricewaterhouseCoopers (open tender, short list or some other process).

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1. I am advised by my Department and agencies within my portfolio that they have entered into 16 contracts with PricewaterhouseCoopers in the 1999-2000 financial year.

The answers to parts (2) to (4) of the question are set out in the table below:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Cost</th>
<th>Selection process</th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide an Internal Audit service review of rural services programs</td>
<td>$18,000.00</td>
<td>Restricted Tender from amongst prequalified panellists</td>
</tr>
<tr>
<td>To provide an Internal Audit service review of People Plus</td>
<td>$29,700.00</td>
<td>Restricted Tender from amongst prequalified panellists</td>
</tr>
<tr>
<td>To provide a complete audit of Norfolk Island Infrastructure and Assets</td>
<td>$30,000.00</td>
<td>Restricted Tender</td>
</tr>
<tr>
<td>To provide a strategic asset management program</td>
<td>$184,544.50</td>
<td>Restricted Tender</td>
</tr>
<tr>
<td>Develop and implement methodology for measuring customer expectations and satisfaction</td>
<td>$71,855.00</td>
<td>Restricted Tender</td>
</tr>
<tr>
<td>Assist the development and implementation of business information management systems</td>
<td>$325,012.00</td>
<td>Restricted Tender</td>
</tr>
<tr>
<td>Progress assessment of November 1998 restructure</td>
<td>$105,813.00</td>
<td>Restricted Tender</td>
</tr>
<tr>
<td>End of year audit of Noise Levy</td>
<td>$3,000.00</td>
<td>Restricted Tender</td>
</tr>
<tr>
<td>Review of assets and asset acquisition</td>
<td>$7,960.00</td>
<td>Preferred Supplier</td>
</tr>
<tr>
<td>Review of costs of The Advanced Australian Air Traffic Control System</td>
<td>$70,000.00</td>
<td>Restricted Quotation</td>
</tr>
<tr>
<td>Develop risk management framework</td>
<td>$25,000.00</td>
<td>Single source</td>
</tr>
<tr>
<td>Review of business unit resourcing options</td>
<td>$26,587.95</td>
<td>Single source</td>
</tr>
<tr>
<td>Assessment of risk associated with internal audit activities</td>
<td>$34,000.00</td>
<td>Restricted Quotation</td>
</tr>
<tr>
<td>Undertake a strategic ‘best practice’ review of CASA's core business</td>
<td>$105,430.00</td>
<td>Restricted tender</td>
</tr>
<tr>
<td>Enhancements to the Human Resource Management System (HRMS)</td>
<td>$13,650.00</td>
<td>Restricted tender</td>
</tr>
<tr>
<td>Conduct of an audit and assist with development of a fraud control plan and a risk management strategy</td>
<td>$15,000.00</td>
<td>Single source</td>
</tr>
</tbody>
</table>
Employment, Workplace Relations and Small Business Portfolio: Value of Market Research
(Question No. 3387)

Senator Robert Ray asked the Minister representing the Minister for Employment, Workplace Relations and Small Business, upon notice, on 29 January 2001:

(1) What was the total value of market research sought by the department and any agencies of the department for the 1999-2000 financial year.

(2) What was the purpose of each contract let.

(3) In each instance: (a) how many firms were invited to submit proposals; and (b) how many tender proposals were received.

(4) In each instance, which firm was selected to conduct the research.

(5) In each instance: (a) what was the estimated or contract price of the research work; and (b) what was the actual amount expended by the department or any agency of the department.

Senator Alston—The Minister for Employment, Workplace Relations and Small Business has provided the following answer to the honourable senator’s question:

(1) The total cost of market research conducted by the department during 1999-2000 was $573,914 and by its agencies $182,720.

Details relevant to (2), (3), (4) & (5) are summarised in the following table:

<table>
<thead>
<tr>
<th>2. Purpose of contract let</th>
<th>3. (a) No of firms invited to submit proposals</th>
<th>3. (b) No of tender proposals received</th>
<th>4. Firm selected</th>
<th>5. (a) Contract price (b) Amount expended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research the current market for Business Entry Point Services and the potential for customisation of the Business Entry Point website.</td>
<td>Five</td>
<td>Andrews Marketing Group</td>
<td>$65,358</td>
<td>$50,374</td>
</tr>
<tr>
<td>Undertake research and development in relation to the redevelopment of the department’s internet site.</td>
<td>Six</td>
<td>Queensland University of Technology, in partnership with Marketshare Pty Ltd and IS Web Architects</td>
<td>$115,000 (with travel and accommodation expenses to be reimbursed). $127,423 (including $12,423 for travel and accommodation expenses).</td>
<td>$127,423</td>
</tr>
<tr>
<td>Survey small business regarding the Wage Assistance element of the IEP.</td>
<td>One</td>
<td>Taringa Waters Pty Ltd</td>
<td>$3384</td>
<td>$3384</td>
</tr>
<tr>
<td>Promotion of the Indigenous Employment Policy (IEP) to Small Businesses.</td>
<td>One</td>
<td>Taringa Waters Pty Ltd</td>
<td>$13,536</td>
<td>$13,536</td>
</tr>
<tr>
<td>Survey attitudes of un-</td>
<td>Five</td>
<td>Environmetrics Pty</td>
<td>$23,660</td>
<td></td>
</tr>
<tr>
<td>2. Purpose of contract let</td>
<td>3. (a) No of firms were invited to submit proposals</td>
<td>4. Firm selected</td>
<td>5. (a) Contract price (b) Amount expended</td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------------------------------</td>
<td>-----------------</td>
<td>---------------------------------</td>
<td></td>
</tr>
<tr>
<td>employed job seekers to Harvest Work.</td>
<td>Three Firms</td>
<td>Worthington Di Marzio Pty Ltd</td>
<td>$23,660</td>
<td></td>
</tr>
<tr>
<td>Market research of employers, job seekers and Job Network members to assist in the development and implementation of advertising and marketing material for Job Network.</td>
<td>Five Firms</td>
<td>$160,287</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work for the Dole baseline research</td>
<td>Four Firms</td>
<td>Wallis Consultancy Group Pty Ltd</td>
<td>$140,000</td>
<td></td>
</tr>
<tr>
<td>Gauge public reaction to the suitability of the Multimedia Payphone for the delivery of a number of online government services in rural and remote locations.</td>
<td>Five Firms</td>
<td>MMP evaluation market research</td>
<td>$59,000 to be shared equally between three agencies – DEWRSB, Centrelink and the Health Insurance Commission. $19,350 was expended by DEWRSB.</td>
<td></td>
</tr>
<tr>
<td>Test the content, usability and accessibility of the NOHSC website for small business owner/operators and to provide best practice advice for online delivery of OHS information based on the findings of literature review.</td>
<td>Nine Firms</td>
<td>Performance Technologies Group Pty Ltd</td>
<td>$45,030 plus relevant GST. In the event that the work was undertaken in the financial year 2000/2001. $50,782.13 including $11,900 for additional goods and services and $4,562.01 for GST. The commencement of the contract was delayed by NOHSC with bulk of it being undertaken in that year. $63,000</td>
<td></td>
</tr>
<tr>
<td>To develop a greater recognition of the role of safe design in improving OHS performance in the workplace</td>
<td>Seven Firms</td>
<td>McGregor Tan Research</td>
<td>$64,500 including $1,500 for additional face-to-face interviews.</td>
<td></td>
</tr>
<tr>
<td>Evaluate the effectiveness of the 1999 advertising campaign on AWAs and freedom of association.</td>
<td>One Firm</td>
<td>Brian Sweeney and Associates.</td>
<td>$70,000 (with travel and accommodation expenses to be reimbursed). $72,000 (including $2,000 for travel and accommodation expenses).</td>
<td></td>
</tr>
</tbody>
</table>
Taxation: School Fees
(Question No. 3555)

Senator Brown asked the Assistant Treasurer, upon notice, on 2 April 2001:

(1) For each of the 1997-98, 1998-99 and 1999-2000 financial years, what was the tax revenue forgone by the Commonwealth resulting from salary sacrificing for school fees.

(2) For each of the 1997-98, 1998-99 and 1999-2000 financial years, what was the tax revenue forgone by the Commonwealth resulting from donations and payments to building funds and other similar funds in private schools.

(3) What other tax benefits are available to parents and guardians in respect of children in private schools.

(4) For each of the benefits described in (3), what was the resulting tax revenue forgone by the Commonwealth in each of the 1997-98, 1998-99 and 1999-2000 financial years.

Senator Kemp—The answer to the honourable senator’s question is as follows:

(1) The Commissioner of Taxation advises that such detailed information in relation to salary sacrifice arrangements is not available for any of the years in question. However, it should be noted that salary sacrifice for school fees and other school related expenses will generally create a fringe benefit tax liability for the employer – which is equal to or greater than the income tax that the parent would otherwise have paid. While concessional FBT arrangements apply to parents who are employees of hospitals, public benevolent institutions and FBT re-batable organisations, these have recently been reduced as part of the new tax system.

(2) The individual tax return form contains a deduction label for gifts or donations. No further break up of the total claims is available because such information is not requested from taxpayers under current arrangements.

(3) and (4) There are no other benefits available to parents or guardians of private school students through the taxation system.

Kikori Integrated Conservation and Development Project
(Question No. 3572)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 1 May 2001:

(1) Has the Minister been approached by the World Wildlife Fund for Nature (WWF) to support in any way or visit the Kikori Integrated Conservation and Development Project run by WWF in Papua New Guinea: if so, when was the Minister approached.

(2) Did the Minister agree to support the project in any way; if so, what; if not, why not.

(3) Is the Minister aware that the Papua New Guinea Forestry Authority recently stated that the eco-forestry project established by WWF does not have legal approval to be logging mangroves.

(4) In view of WWF’s involvement in the logging of mangroves without the approval of the Papua New Guinea Forest Authority, does the Minister stand by his endorsement of WWF as an organisation that advocates ‘sound proposals for environmental reform based on good science’ that currently appears on the WWF website.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) When in Papua New Guinea in September last year, I visited the operations base of the Chevron Gas Pipeline project at Moro at the invitation of Chevron, where I was also briefed on the WWF project. I later flew over the Lake Kutubu area which lies within the project area. To my knowledge, there has been no approach by the WWF either to my office or to my Department for financial or other support for this project.

(2) To my knowledge, WWF has never sought my support for the project.

(3) I am aware of press reports on the issue.
(4) WWF is an organisation dedicated to promoting better environmental outcomes. In my experience, the policies of the WWF are based on good science and its practical efforts to deliver on-ground benefits for the environment are appreciated.

**Snowy Mountains Hydro-Electric Authority: Corporatisation**

(Question No. 3573)

Senator Sherry asked the Minister representing the Minister for Finance and Administration, upon notice, on 4 May 2001:

(1) (a) What cash amounts are included in the 2000-01 financial year and each of the forward estimates years for the repayment of Commonwealth debt arising from the corporatisation of the Snowy Mountains Hydro-electric Authority and the creation of Snowy Hydro Limited (SHL); and

(b) of these amounts, what is the expected split of payments and/or equity injections into SHL (for ultimate repayment of the Commonwealth’s debt) from New South Wales and Victoria for each year mentioned.

(2) If the answer to question (1)(a) is none: (a) what amounts are expected to be included in the Budget and each of the forward estimates years; (b) when will these amounts be incorporated; and (c) of these amounts, what is the expected split of payments and/or equity injections into SHL (for ultimate repayment of the Commonwealth’s debt) from NSW and Victoria for each year mentioned.

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

(1) (a) The 2001-02 estimates for the Department of Industry, Science and Resources (in the 2001-02 Budget) include cash receipts from the repayment of the Commonwealth debt owed by Snowy Hydro Limited (SHL) arising from the expected corporatisation of the Snowy Mountains Hydro-electric Authority (SMHEA). No amounts appear in the forward estimates years. The Statement of Risks in Budget Paper No 1 refers to the repayment of debt as part of the Corporatisation process.

(b) Any equity injections and/or payments from shareholders would be expected to be in proportion to their initial shareholdings ie NSW 58%, Victoria 29%, and the Commonwealth 13%.

(2) (a)N/A

(b) N/A

(c) N/A.

**Customs: Importation of Bear Bile**

(Question No. 3580)

Senator Bartlett asked the Minister for Justice and Customs, upon notice, on 11 May 2001:

(1) What is the volume of bear bile imported into Australia.

(2) What is the volume of products containing bear bile imported into Australia.

(3) What measures are in place to stop the importation of bear bile into Australia.

(4) What measures are in place to stop the importation of products containing bear bile into Australia.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) and (2) Environment Australia (EA) has advised that since 1996 a total of 103 seizures of medicines derived from bear products (predominantly containing bile) have been reported. EA has also advised that the government is working with traditional medical practitioners to identify alternatives to bear bile.
and (4) Customs maintains electronic systems for processing passengers and to control the lodging and clearance of import cargo. These systems are utilised to assist in the detection of breaches of the Customs Act and/or Regulations by specifically targeting prohibited imports such as bear bile and products containing bear bile.

Follow-up examinations of passenger baggage and importations of commercial cargo are then conducted to ensure compliance with Custom’s legislative controls.