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Thursday, 21 June 2001

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

PETITIONS

The Clerk—A petition has been lodged for presentation as follows:

Asylum Seekers: Political

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

Whereas the 1998 Synod of the Anglican Diocese of Melbourne carried without dissent the following Motion:

That this Synod regrets the Government’s adoption of procedures for certain people seeking political asylum in Australia which exclude them from all public income support while withholding permission to work, thereby creating a group of beggars dependent on the Churches and charities for food and the necessities of life;

and calls upon the Federal government to review such procedures immediately and remove all practices which are manifestly inhumane and in some cases in contravention of our national obligations as a signatory of the UN Covenant on Civil and Political Rights.

We, therefore, the individual, undersigned Members of St Paul's Anglican Church, Ringwood, Victoria 3134, petition the Senate in support of the abovementioned Motion.

And we, as in duty bound will every pray.

by Senator Kemp (from 28 citizens)

Petition received.

NOTICES

Presentation

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

That the Senate—

(a) recalls the laudable role of the United Kingdom (UK) leading to a global agreement to ban commercial whaling 15 years ago;

(b) notes speculation that the UK is reviewing that policy to allow for some commercial whale killing; and

(c) calls on the Prime Minister of the UK, Tony Blair, and his government to hold firm to its policy of banning whaling, and to fully support Australia’s plan for a southern hemisphere whale sanctuary at the London meeting of the International Whaling Commission in July 2001.

BUSINESS

Government Business

Motion (by Senator Ian Campbell) agreed to:

That the following government bills be considered from 12.45 pm till not later than 2.00 pm this day:

No. 7—Governor-General Legislation Amendment Bill 2001,

No. 8—Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001 and a related bill;

No. 9—Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001; and

No. 11—Health Legislation Amendment Bill (No. 2) 2001.

General Business

Motion (by Senator Ian Campbell) agreed to:

That the order of general business for consideration today be as follows:

(1) general business notice of motion no. 943 standing in the name of Senator Conroy relating to investor confidence and the roles of the Australian Securities and Investments Commission, and the Australian Prudential Regulation Authority; and

(2) consideration of government documents.

NOTICES

Postponement

Motion (by Senator O’Brien, at the request of Senator Cook)—by leave—agreed to:

That general business notice of motion no. 945 standing in the name of Senator Cook for today, relating to the establishment of a select committee on the impacts of the new tax system, be postponed till the next day of sitting.

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Allison for today, relating to the disallowance of the Sanctions Amendment Principles 2001 (No. 1), made under subsection 96-1(1) of the Aged Care Act 1997, postponed till 22 August 2001.
Business of the Senate notice of motion no. 2 standing in the name of Senator Brown for today, relating to the reference of a matter to the Environment, Communications, Information Technology and the Arts References Committee, postponed till 25 June 2001.

Presentation
Senator Bolkus to move, on the next day of sitting:
That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report by the last sitting day in December 2001:
(a) the processes involved in, and the consequences of, the outsourcing of the Australian Customs Service’s (ACS) information technology;
(b) the benefits and problems associated with the current and proposed ACS communications system, including (but not limited to) Tradegate and the Customs Connect facility;
(c) the needs and capabilities of all sections of industry in respect of ACS information technology and communications systems;
(d) the way in which the ACS has conducted consultation with industry in relation to information technology and communications systems; and
(e) issues associated with the involvement of the ACS in e-commerce.

COMMITTEES
Employment, Workplace Relations, Small Business and Education References Committee

Extension of Time
Motion (by Senator O’Brien, at the request of Senator Jacinta Collins) agreed to:
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.

Scrutiny of Bills Committee

Meeting
Motion (by Senator O’Brien, at the request of Senator Cooney) agreed to:
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.

Superannuation and Financial Services Committee

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

UNITED NATIONS WORLD REFUGEE DAY

Motion (by Senator Brown) put:
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.

The Senate divided. [9.40 a.m.]
(The President—Senator the Hon. Margaret Reid)

Ayes.........  9
Noes..........  45
Majority......  36

AYES
Allison, L.F.  Bartlett, A.J.J.
Bourne, V.W. * Brown, B.J.
Greig, B.  Murray, A.J.M.
Ridgway, A.D.  Stott Despoja, N.
Woodley, J.
Bill received from the House of Representatives.

Motion (by Senator Ian Campbell) agreed to:

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

First Reading

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (9.44 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

Universities are important institutions in Australia’s social, cultural and economic life. Their health, therefore, is a matter of concern to all Australians. I am pleased to report that as a consequent of the less restrictive regulation and well-targeted incentives provided under this Government, universities are enjoying record enrolments, record revenues and record levels of graduate satisfaction.

There are now more opportunities for higher education study than ever before. In 2000 there were 464,000 equivalent full-time students in Australian universities, some 28,000 more than in 1996. This equates to a large new university. Similarly, the number of undergraduate places fully subsidised by the Commonwealth has grown by nearly 16,000 equivalent full-time student places. Universities have projected that enrolments will reach a record level of 582,000 equivalent full-time places in 2003, a 27 percent increase on enrolments in 1995. In 2001 there was a 2.3 per cent increase in the number of university places offered to commencing students and a 14.4% per cent decline in the number of unsuccessful applicants.

University revenues have grown to a record level, estimated at $9.5 billion in 2001, some $1.2 billion more in real terms than in 1995. This achievement demonstrates that universities are building stronger relationships with business and the community.

The most recent Graduate Careers Council of Australia, Course Experience Questionnaire shows that graduate satisfaction is at its highest level ever with 91 per cent of Bachelor degree graduates surveyed expressing overall satisfaction with their courses. Clearly universities are becoming more focussed on student needs such as access, course offerings and quality.

These excellent outcomes are the result of policies that have freed universities from the over-regulation of the past. For example, the Government has assisted universities with the capacity to enrol additional students at marginal cost by providing supplementary funding for any HECS liable undergraduate student places offered above the number of fully subsidised Commonwealth places. The previous Government refused to do this.

We have also given universities the option of enrolling fee-paying undergraduates. This policy is opening up more choices and opportunities for Australians to access higher education. In the past some capable students missed out on a HECS liable place in the course of their first choice because of high demand. If such students are willing to undertake the course on a fee-paying basis, they free up a Commonwealth funded place for another student. There are, of course, safeguards in place to ensure that Commonwealth funded places in all courses are protected.
The Government, however, is not resting on its laurels. We recognise that innovation at all levels is becoming an increasingly important driver of economic growth, and the key to economic prosperity. Our universities produce much of the knowledge and skilled workforce that sustain the innovation system. To remain at the forefront of the knowledge economy we must boost our investment in innovation through universities and other sectors.

In January the Prime Minister made the most significant set of policy and funding announcements in support of innovation that have ever been made in this country. The Government’s Innovation Action Plan, Backing Australia’s Ability, committed an additional $2.9 billion over 5 years for science, research and innovation. It included an additional $1.47 billion to be provided through the university sector. This bill will lock into place the second year of that funding, the funding for 2003.

Backing Australia’s Ability provided an additional $736 million to double the Australian Research Council’s national competitive grant schemes. It provided $583 million to build up the research infrastructure in our universities. And it provided an extra $151 million over five years for additional university places in the priority areas of information and communications technology, mathematics and science.

There is also a new loans scheme available for postgraduate coursework study. The Postgraduate Education Loans Scheme will improve access to postgraduate coursework study by providing interest-free, income-contingent loans similar to HECS. The loans will mean that students will no longer be prevented from participating in postgraduate studies because they are unable to pay the tuition fee upfront. This initiative is a major equity measure that will greatly increase opportunities for people to upgrade their skills or develop expertise in new areas.

As well as delivering on Backing Australia’s Ability, the bill delivers on two new Budget initiatives. The Government is making $38.4 million available over four years to fund 670 new commencing places each year in regional universities and campuses. This will mean around 5200 additional student places delivered by 2005 as students progress through their studies. The additional places will be allocated to respond to demand in areas of rapid population growth and to address the needs of regions with low access to higher education and low rates of participation.

The second Budget measure is part of the Government’s Welfare Reform Package. The measure provides $38 million to expand opportunities in vocational education and training and higher education for people with disabilities. Approximately $8 million of this is additional funding for universities to help support students whose disabilities give rise to very costly educational support requirements. It will ensure that universities that enrol high numbers of these students are not disadvantaged.

The bill updates the funding amounts in the Higher Education Funding Act 1988 (HEFA) to provide supplementation for price movements; to reflect revised estimates for HECS contributions and the Commonwealth’s superannuation liability; and to re-phase a small amount of innovation program funds. In addition, the bill legislates the base level of funding for universities in 2003.

The bill makes several technical changes to the Higher Education Contribution Scheme, Postgraduate Education Loans Scheme and related schemes in relation to the treatment of bankruptcy, guideline making powers on work experience in industry and provides for small repayment credits to offset outstanding tax debts.

The bankruptcy amendments clarify the treatment of accumulated HECS debts in the event of a HECS debtor becoming bankrupt. They allow for pre and post-bankruptcy HECS debts to be separated and for each component of the debt to be treated fairly and appropriately. These amendments will assist people contemplating bankruptcy by giving them certainty about their situation and will protect the public’s asset. These amendments will commence today.

The bill amends the Australian National University Act 1991 to enable a more effective committee structure to be established to advise the University Council. Lastly, the bill makes a minor technical change to HEFA to remove a reference to the now repealed Overseas Students Charge Act 1979.

I commend the bill to the Senate.

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

VOCATIONAL EDUCATION AND TRAINING FUNDING AMENDMENT BILL 2001

First Reading

Bill received from the House of Representatives.

Motion (by Senator Ian Campbell) agreed to:

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

Bill read a first time.
Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (9.45 a.m.)—I move:

That this Bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Bill will amend the Australian National Training Authority Act 1992 to give effect to the proposed new ANTA Agreement which sets out the planning, accountability and funding arrangements for vocational education and training for the three years 2001 to 2003.

It will also amend the Vocational Education and Training Funding Act 1992 which appropriates the funding provided to the Australian National Training Authority (ANTA) for distribution to the States and Territories and for National Projects.

This Bill will increase the amount previously appropriated for 2001 by $21.330 million in line with normal price adjustments. The Bill will also provide up to $50 million additional growth funding in 2001 for those States and Territories that have endorsed the new ANTA Agreement and satisfy the provisions set out in that Agreement, taking total funding for 2001 to $1,002,745,000. This will be the first time that funding under the ANTA Agreement will exceed $1 billion.

The appropriation for 2002 includes up to $75 million in growth funding under the new ANTA Agreement. It also includes some $3,412 million funded as part of the Australians Working Together—Helping People Move Forward package. These funds will go towards providing vocational education and training places for people with disabilities and to support increased participation by unemployed people receiving income support.

The new ANTA Agreement embodied in the proposed amendments is a generous one.

It provides for up to an extra $230 million in growth funding, subject to final indexation, over three years to ensure that Australia’s world-class vocational education and training system continues its vital role in supporting innovation and growth in Australian business and industry. By 2003 total Commonwealth funding in support of the ANTA Agreement is expected to be over $160 million more than in 2000.

It will ensure that Australian ideas and inventiveness are nourished and supported through providing opportunities for more Australians to update their knowledge and skills through vocational education and training.

Of course, all Governments share the responsibility for building a highly skilled workforce and for ensuring that expansion of vocational education and training, including New Apprenticeships, will play an important part in developing the broad skills base needed to keep Australia competitive in the global economy of the twenty first century.

Accordingly, I have asked my State and Territory colleagues to show their commitment to building the nations skill base by matching the Commonwealth’s growth funding on a dollar-for-dollar basis.

Access to the extra funding will be tied to the States’ and Territories’ agreement to expand New Apprenticeships places and to pursue strategies to support innovation. This could include measures to support emerging industries, promoting the take-up of Training Packages in Information Technology and other new technologies and the development of new links between the vocational education sector and industry in cutting-edge industry areas.

The Commonwealth’s offer to the States and Territories for the 2001 to 2003 Agreement also includes more flexibility (up to $30 million a year) for the States and Territories to use previously earmarked capital funds for recurrent purposes and maintenance in real terms of the base level of funding, worth $21.33 million in 2001 and estimated to involve similar increases in the subsequent years.

South Australia, the Northern Territory and the Australian Capital Territory had given in-principle Agreement to the Commonwealth’s previous ANTA Agreement offer. These States will not be disadvantaged and will be able to take up the extra funding if they choose to do so.

On the other hand, the other five States have so far not settled the ANTA Agreement and, in some cases, have refused to acknowledge that they have responsibility for contributing funding for future growth in the training system. I will be meeting with State and Territory Ministers on 8 June to settle the new ANTA Agreement.

The Bill is being introduced now to ensure that there is as little delay as possible in making avail-
able the extra funds under the Agreement following that meeting. The Bill would enable the current Agreement to continue for any State or Territory that does not endorse the new Agreement. They would continue to have their funding maintained in real terms. The benefits of additional growth funding will flow to those States and Territories that endorse the new Agreement.

A key element of the new Agreement will be continued growth in New Apprenticeships.

Over 300,000 Australians are now New Apprentices. Data published by the National Centre for Vocational Education Research showed that there were an estimated 303,390 new apprentices in training as at 31 March 2001. This is a record number and more than twice as many as there were in 1995.

It is vital that this momentum is not lost. The focus on New Apprenticeships under the new Agreement will ensure that it is not.

New Apprenticeships are not the only segment of the vocational education and sector that is experiencing growth.

In 1999 alone it is estimated that well over one and a half million Australians participated in formal vocational education and training. That represents an increase of almost 30% since 1995.

This is a splendid achievement. It is an achievement that has delivered value for money for the taxpayers of Australia. It is estimated that the ANTA Agreement for 1998 to 2000 provided some 268,000 extra places through the very successful ‘growth through efficiencies’ requirement of that Agreement.

It represents additional opportunities, particularly for young Australians, to undertake training that will help them to gain real jobs.

It also represents an important contribution to the efforts of Australian enterprises to develop and maintain the competitive advantage that up-to-date skills provide.

The Commonwealth funding provided to the States and Territories through ANTA will continue to provide increased training opportunities. At the same time, it will enable the Commonwealth to continue to work with the States, Territories and industry to improve quality, enhance national consistency, and encourage greater choice and flexibility in vocational education and training.

We have achieved outstanding success in the vocational education and training sector in the last five years. With the amendments before the House today, and the new ANTA Agreement they embody, we can look forward to an even brighter future in the years to come.

I commend the Bill to the Senate.

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

Ordered that further consideration of this bill be made an order of the day for a later hour.

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (DEBT RECOVERY) ACT 2001

The PRESIDENT (9.46 a.m.)—I have received a message from His Excellency the Governor-General, notifying his assent on 12 June 2001 to the Family and Community Services and Veterans Affairs Legislation Amendment (Debt Recovery) Act 2001 (Act No. 47). This is in place of his purported and cancelled assent on 7 May 2001 to Act No. 38. The bill for this act, which originated in the House of Representatives, was originally sent to the Governor-General by the House for assent with a Senate amendment which had not been agreed to by both houses.

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

IMPORT PROCESSING CHARGES BILL 2000

CUSTOMS DEPOT LICENSING CHARGES AMENDMENT BILL 2000

In Committee

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

Consideration resumed from 20 June.

(Quorum formed)

The TEMPORARY CHAIRMAN (Senator Murphy)—The question is that amendments (4), (7), (10), (12), (18) to (30) and (32) on sheet 2215 revised be agreed to. I think the ayes have it.

Senator BOLKUS (South Australia) (9.49 a.m.)—The Democrats are not here at the moment but they made it clear last night that
they would be not supporting the opposition’s amendments.

The TEMPORARY CHAIRMAN—If I can get an indication from the Democrats that that is the case, I can certainly change the call.

Senator MURRAY (Western Australia) (9.50 a.m.)—I am sorry, Mr Chairman. It is a long way from the other side of the chamber. I give my apologies to the rest of the participants.

Senator Faulkner—We know that, Senator Murray. We are trying to get over it.

Senator MURRAY—I think it is a shorter jump for you than it is for me. I am sorry. We are opposed to those amendments.

Amendments not agreed to.

Senator MURRAY (Western Australia) (9.50 a.m.)—by leave—I think we had this discussion a little earlier in the second reading discussion. I move Democrats amendments (10) and (13) to (15) on sheet 2213:

(10) Schedule 3, item 1, page 41 (lines 1 and 2), omit subsection 126E(4).

(13) Schedule 3, item 62, page 89 (lines 4 and 5), omit subsection (2).

(14) Schedule 3, item 97, page 104 (line 20), omit “(2) or”.

(15) Schedule 3, item 118, page 114 (lines 12 to 15), omit subsections (9) and (10).

These three amendments all relate to taking out the strict liability offence, whilst retaining the offence itself. I think we have had enough discussion on the principles surrounding these matters. It is a question of judgment as to whether these should or should not be strict liability. We are of the opinion that they should not be. If there is support for these amendments, it will be welcome.

Senator BOLKUS (South Australia) (9.51 a.m.)—Senator Murray, in respect to the reference to the Senate legal committee, have the Democrats actually decided to support such a reference? If so, do they have any problems with the terms circulated by Labor?

Senator MURRAY (Western Australia) (9.52 a.m.)—There was a party room meeting this morning of three-quarters of an hour and it had a very full agenda so, although I put it on the agenda, I regret we did not get to it. There were other matters, including Labor notices of motion, which were regarded as more urgent than yours, Senator Bolkus. The Democrats will continue to have a look at that and we will put it to our long party room meeting on Monday and Tuesday next week. Certainly, we will be able to advise you in time for the motion to be put next week.

Amendments agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.53 a.m.)—I move government amendment No. 2 on sheet EZ226:

(2) Schedule 2, item 6, page 34 (after line 18), after section 243X, insert:

243XA Guidelines for serving infringement notices

(1) The CEO must develop written guidelines in respect of the administration of this Division to which he or she must have regard when exercising powers under this Division.

(2) The guidelines are a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

This government amendment deals with the guidelines, which have been the subject of much discussion previously. Without going over it in too much detail, suffice to say that this came about as a result of a recommendation by the Senate Legal and Constitutional Legislation Committee and of course one of the aspects of that is that this should be a disallowable instrument. I think that is desirable in the circumstances if we are to have these guidelines. I think that what the Senate committee had to say was worth while and the government is minded to take on board those comments. I commend this amendment to the Senate, one which I think allays the fears as expressed previously by others and which were expressed during yesterday’s debate. I will not go over that again.

Senator MURRAY (Western Australia) (9.54 a.m.)—The Democrats support the amendment.

Senator BOLKUS (South Australia) (9.54 a.m.)—The opposition also supports the amendment.
Senator COONEY (Victoria) (9.54 a.m.)—May I have a little dissertation on this? I think it is good to see that recommendations from the committees are being picked up. I said earlier—I do not know whether the minister was here when I was giving my speech in the second reading debate on this—that it is good to see that work done by the committees is gaining purchase and leading to the sort of amendment that has occurred here.

What I was talking about yesterday was the fact that the Committee for the Scrutiny of Bills, for which I have great affection, had made certain recommendations to the minister and that had been picked up and referred to in the second reading speech. I take this opportunity to bring to everybody’s mind the work that the committees in this parliament do—particularly the Senate committees and the joint committees. I am not leaving aside the House of Representatives committees but I am not sure that they have as much impact as the Senate ones have. I think it is proper and right that the work of those committees—the committees in general—is recognised and that in this case the Senate Legal and Constitutional Legislation Committee has done work which has resulted in this amendment.

Amendment agreed to.

Senator MURRAY (Western Australia) (9.56 a.m.)—by leave—I move Democrats amendments Nos 7 to 9 on sheet 2213:

(7) Schedule 2, item 6, page 34 (line 6), omit “64AAA(9),”.

(8) Schedule 2, item 6, page 34 (line 7), omit “99(2) or (3), 102A(4), 113(1), 114B(7), 114D(1),”, substitute “99(3), 102A(4), 113(1), 114B(7),”.

(9) Schedule 2, item 6, page 34 (line 9), omit “126E(3), 126F(3), 243SA(1), 243SB(1),”.

I will not speak at length on these. These amendments remove the sections mentioned in other amendments of ours from the divisions of the bill which detail the administrative penalty scheme which would have applied under the strict liability regime.

Senator BOLKUS (South Australia) (9.57 a.m.)—Senator Murray, we have had the big debate about strict liability. I suppose the opposition partially won and also partially lost. Senator Murray, why have you chosen these three amendments? What distinguishes these, for instance, from others that the opposition is trying to remove from strict liability?

Senator MURRAY (Western Australia) (9.57 a.m.)—It is a legitimate question. As Senator Bolkus knows from the debate, we did try to plough through all the strict liability provisions in the bill. The first decision was easy, and that was that any ones which were simply a transfer from the existing legislation to the present legislation we thought we would support—even though, if you really want to dig through them, you might in fact want to reconsider some of those.

The second decision was much harder: where to find the balance of judgment that these matters either did or did not warrant strict liability provisions? Broadly speaking, we distinguished between those which we thought might be critical to community and revenue protection and those offences which we thought should not be the subject of strict liability. I thought, for instance, the discussion yesterday on the identity card issue was actually very helpful because, on the face of it, having strict liability for an identity card is really going over the top because that is just an administrative procedure. When you recognise that the identity card concerned, if left in the hands of a person who is no longer a member of Customs, could allow them—if they were an unscrupulous person—to enter premises and demand compliance with the very rigorous provisions of the Customs Act, you can see that it is dangerous to allow that to happen. In that instance, we thought the strict liability provision applied, and in that we differed with the opposition but we clearly understood each other’s arguments.

With respect to your questions here, amendment No. 7, subsection 64AAA(9), refers to the reporting of stores and prohibited goods. Our view was that that was more of an administrative activity and did not need strict liability. Amendment No. 8 relates to parts of sections 99, 102, 113, 114B and 114D. Once again, we thought that those were areas where not dealing with goods in accordance with export, entry or removing of
goods or areas of failing to communicate information systems, and so on, did not warrant it. It was a judgment we made. If you disagree, I would be interested to hear your reasons for disagreement. But if you do not, it was a judgment we made that it was not necessary in those areas.

Senator COONEY (Victoria) (10.01 a.m.)—I thought that was a grand invitation by Senator Murray and I would like to have a discussion about this because I am interested in why we should have strict liability offences. I am interested because, in a certain sense, I cannot work out in my mind why we should. Senator Murray said it was to protect the revenue. That was one reason. That would seem to promote the protection of the revenue above all other considerations. If we are going to say we should have strict liability offences because the issue involved is a very important one, then we get to the point where we say we ought to have strict liability when somebody assaults somebody else and it does not matter with what intent or it does not matter whether you are defending yourself—as long as you have assaulted somebody else, then you are liable because it is important to stop violence in the community. So it must be some reason other than that this is protecting the revenue. A lot of the taxation offences such as those that defraud the Australian Taxation Office are not strict liability offences, yet they go to protecting the revenue in a big way. So there must be some other reason. I think you have the ability, Senator Murray, to tell us.

Senator Murray—I will try.

Senator COONEY—Now.

Senator MURRAY (Western Australia) (10.02 a.m.)—Senator Cooney is actually being very thoughtful on this. Personally, I think the issues he is raising are deserving of a references inquiry in due course because they attach themselves to fundamental issues of civil liberties, that is, of what rights attach in our society. We know that in law there has been established the three classes of liability: absolute, strict and fault liability. There seems universal acceptance that fault liability is perfectly all right as an offence. The queries are about the other two.

I suspect that when Customs produces its guidelines in this area as a disallowable instrument, it may be a very helpful exercise. My feeling—and I am not as widely read across all the legislation that the Commonwealth indulges in as I might be—is that there are no criteria developed or established within the process of government surrounding these three liabilities and their application to legislation. Senator Cooney is using the opportunity of this bill to highlight the problem that we as legislators have to try to find our way to make these judgments on broad grounds of principle and applicability first and then relative to the specific circumstances second.

In his heart—and he is a trained lawyer both in a practising sense and in a legislative sense—I know what he means: that should there be at any time provisions of strict liability or even of absolute liability, you then enter into a further debate, I think, about the nature of our judicial system and whether rights which attach to persons should also apply when those persons are acting on behalf of corporations. In other words, do those civil liberties, which we all accept in our individual and personal capacities as really fundamental to a civilised society, automatically translate into impersonal artificial entities—non-human entities such as corporations? The difficulty we have there, of course, is that people acting for corporations are individuals and we are caught in this bind as to whether it is a civil liberties matter or not.

The third aspect—and I am being quite philosophical here—relates to the fundamental basis of our legal system, the common law adversarial system, and the way in which charges and prosecutions are brought, the way in which defences are conducted and the way in which judges conduct themselves versus, say, the inquisitorial system such as is employed in Europe, where investigation, prosecution and defence are entirely different and operate to different rules of evidence and so on. Frankly, at the heart of your question, Senator Cooney, is the attention that needs to be paid in this country eventually to a charter of rights and to a review of the inadequacies of our judicial system.
As an aside, I will tell the chamber that, at any one time in this country, we detain people without trial. In southern Africa, that was the most heinous of crimes of the South African apartheid regime. They detained people without trial. They defied habeas corpus. In this country, we think it is legal. We say, ‘We will put you in jail on remand.’ The average term on remand is 10 months in Western Australia, and half the people who go on remand are found innocent. What is that but detention without trial of a person who is found not guilty? It is a process of law, and we understand that magistrates and judges have to take a view on whether letting that person be at liberty would be a threat to the society, and so on. We understand all that, but the net effect for the individual is grotesque.

Somebody who does not know Senator Cooney well would think that his was an innocent question, but at the heart of it is in fact a deep philosophical and legal concern, a deep area of need in our society to continually review and to evaluate issues of liberties, of rights, of responsibilities and whether our judicial system, our common law system, serves us as well as it might. For those who are interested in this topic, I recommend to them the committee of Wayne Martin QC and its review of the legal system in Western Australia, for instance, which in its pattern of recommendations—and there is a huge number—proposes a fundamental overturning of the system. I note Senator Coonan is in the chamber. She has a deep and intellectual interest in these areas as well. In fact, there are three lawyers. I am not sure whether you are a lawyer, Senator Bolkus.

Senator Bolkus—I am.

Senator MURRAY—So there are four lawyers. I am the only non-lawyer here. The fact is that, when we attend to the practicalities and so on of these bills, those of us with an interest and a passion in these matters know that behind our words there is much more. If you want to know, Senator Cooney, whether I am uncomfortable in having to make a decision on strict, or not strict, liability in matters where I am trying to weigh up what I concede might be critical to the community and/or revenue protection, from the perspective of government and the advisers who bring these things before us, yes, I am. I do not make those decisions lightly because I am aware that in somebody’s hands, in some circumstance, that could be a very uncomfortable result. Every time we pass a law and say, ‘Yes, six months imprisonment,’ or ‘So many penalty points’, you have to know what a prison cell looks like and smells like and feels like, and what effect that door slamming shut has. Sometimes we forget all that. Yes, I am sensitive. Might I have made a mistake in some of these judgments? Yes, I might have, but I have come to a view on evaluation, and it is as honest a view as I can come to. So I have knocked off 10 strict liability provisions, some of them with the support of your party. Should there have been a couple more? Quite possibly. The government might argue that there should have been a couple less. It is just not an easy thing for me to deal with.

Senator COONEY (Victoria) (10.10 a.m.)—I thank Senator Murray for that. Senator Murray knows about apartheid and these systems. I know that he suffered under them. So I was very interested to hear his analysis of this. I think it is a proper analysis. I would have thought that the reason why we have strict liability in this instance is that Customs want to be able to get their work done expeditiously and to move people along in the way that Customs think they ought to move along. That is understandable, because Customs is a crucial instrument by which we gather money in the country and by which we protect our borders. The strict liability regime does bring problems. It means that people who are morally innocent are going to be punished for making false and misleading statements. People would say, ‘Yes, it is false and misleading, not in a gross and deep criminal sense but in having a document which itself is false and misleading. Whether that was intended or not does not matter. We need to have accurate documents.’ That is all understandable, but it casts a shadow on people’s reputations—although, I would have thought, not in a big way in this area.

The second thing it does is that, where the department itself is able to issue notices for a penalty, it gives Customs a very big stick
with which to beat citizens who are going about their work in reference to Customs matters. It is a big stick. I think the minister would agree that we give Customs a big stick, and therefore there must be some sort of check on the people in Customs to ensure that they act responsibly and that they do not use this big stick oppressively. We as a parliament have to ensure that that is done. The minister says that the way we are going to do that is to have guidelines and that they will come before the parliament and will be subject to disallowance. I think that does take it a fair way, but the problem you have got is that the guidelines do not get over the difficulty of people in Customs who may have a problem with Customs’ approach, which to some extent may be sinister because it may be motivated not by a desire to get the machine working but by a desire to embarrass or to make things difficult for particular people it does not like.

That is a problem that anybody who makes a decision faces. Even the best of our judges are affected by emotions, and whether they are good or bad judges is, to a large extent, measured by whether they can suppress those emotions. But here we have a system where we have people who are not judges but decision makers and who can inflict these penalties upon people by serving a notice without even having to prove that there was a guilty intention on the part of the person on whom they serve the notice. It is a scheme that can result in lots of injustices to people who otherwise are going about their work in a reasonable fashion. Just as people outside Customs may do the wrong thing, people inside Customs may also do the wrong thing, because we are all made up of the light and the dark, as has been said forever. There does not seem to me to be quite enough protection in this scheme to ensure that people in Customs act fairly.

Amendments agreed to.

Senator BOLKUS (South Australia) (10.16 a.m.)—by leave—I move amendments Nos 13 to 16 and 1, 2 and R3 on sheet 2215 revised 2:

(13) Schedule 3, heading to Part 1, page 39 (lines 4 and 5), omit the heading, substitute:

Part 1—Electronic communications systems

(14) Schedule 3, item 1, page 39 (lines 9 and 10), omit the heading to Part VIA, substitute:

PART VIA—ELECTRONIC COMMUNICATIONS SYSTEMS

(15) Schedule 3, item 1, page 39 (line 16) to page 40 (line 5), omit subsections (2) and (3).

(16) Schedule 3, item 1, page 40 (after line 5), after section 126D, insert:

L26DA Communications standards and operation

(1) After consulting widely with persons likely to be affected, the CEO must determine, and cause to be published in the Gazette:

(a) the information technology requirements that have to be met by persons who wish to communicate with Customs electronically; and

(b) the action that a person has to take in order to verify the receipt of information communicated to Customs electronically; and

(c) the information technology requirements that have to be met to satisfy a requirement that a person’s signature be given to Customs in connection with information when the information is communicated electronically; and

(d) the information technology requirements that have to be met to satisfy a requirement that a document be produced to Customs when the document is produced electronically.

(2) The CEO may:

(a) determine alternative information technology requirements that may be used; and

(b) without limiting paragraph (a), determine different information technology requirements that may be used in different circumstance or by different classes of persons.

(3) A determination under subsection (1) or (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(1) Clause 2, page 2 (line 14), omit “1”.

(2) Clause 2, page 2 (line 15, omit “If”, substitute “Subject to subsection (7), if”.

Senate
(R3) Page 2 (after line 18), at the end of clause 2, add:

(7) Part 1 of Schedule 3 commences on the day after:

(a) the day, or the later of the days, on which the Minister causes to be laid before each House of the Parliament a certificate that the Chief Executive Officer has complied with subsection 126DA(1) of the "Customs Act 1901"; or

(b) the last day on which a notice could be given for the disallowance of the Chief Executive officer’s determination under subsection 126DA(1) of the "Customs Act 1901", or, if such a notice is given, the last day on which the determination could be disallowed by a House of the Parliament in which the notice has been given; or

(c) the last day on which a notice could be given for the disallowance of the business rules made under section 273EB of the "Customs Act 1901", or, if such a notice is given, the last day on which the rules could be disallowed by a House of the Parliament in which the notice has been given; or

(d) the day on which a report is presented to the Senate by a Senate standing committee on the use of electronic communications systems by Customs and related issues; whichever is the latest.

(8) If, on or after 1 October 2001, the Minister causes to be laid before each House of the Parliament a notice from the President of the Senate advising the Minister that the Senate has not, before that date, referred the use of electronic communications systems by Customs, and related issues, to a standing committee for inquiry and report, paragraph (7)(d) is to be disregarded.

These amendments go to the issue of the commencement date of provisions relating to the communications system. Amendment No. 16 separates the requirement on the CEO to maintain information systems with a requirement to determine communications standards and operation. The amendment redrafts subsections (2) and (3) of section 126D and reproduces them as proposed new section 126DA, adding the requirement that Customs consult widely with persons likely to be affected by Customs’ communications standards and operations.

The proposed new 126DA then retains in exactly the same language the requirements that were in subsections (2) and (3) of section 126D, that the CEO must publish in the Gazette a notice setting out: firstly; information technology requirements that have to be met by persons who wish to communicate with Customs electronically; secondly, the action that a person has to take in order to verify the receipt of information communicated to Customs electronically; thirdly, IT requirements that have to be met to satisfy a requirement that a person’s signature be given to Customs in connection with information when the information is communicated electronically; and, fourthly, the IT requirements that have to be met to satisfy the requirement that a document be produced to Customs when the document is produced electronically.

Under proposed new section 126DA—and this is an important distinction from the previous one—all determinations will be disallowable instruments. We are doing that to ensure that there is real consultation between Customs and industry. That, we believe, is necessary, given that there is disquiet in the industry about poor standards of consultation to date. The amendment will not put an onerous or unnecessary burden on Customs, but it will ensure that there is real knowledge in the community. Making the determinations disallowable instruments will also ensure that there is an opportunity for parliament to monitor the process and to ensure that any determinations by Customs are suitable and adequate.

Amendments Nos 1, 2 and R3 defer the date on which the provisions relating to Customs’ communications systems will come into force; that is, part 1 of schedule 3. As the bill currently stands, they will come into force on a day to be fixed by proclamation, but no later than two years after assent. Our amendments will provide that part 1 of schedule 3 will commence on the day after whichever event occurs later, or whichever are the following events: firstly, the day or
the latter of the days on which the minister tables the certificate that the CEO has complied with 126DA(1); secondly, the last day on which notice could be given for the disallowance of the CEO’s determinations under section 126DA(1), or, if such notice is given, the last day on which the determination could be disallowed; or, thirdly, the last day on which the notice could be given for disallowance of the business rules made under section 273EB or, if such a notice is given, the last day on which the rules could be disallowed; or, finally, the day on which a report is presented to the Senate by a Senate committee on the use of electronic communications systems by Customs.

The purpose of these amendments is to remedy the current situation where, in respect of consultation and commencement of legislation, the cart is essentially before the horse—that is, the provisions relating to the communications systems may come into force before adequate consultation has occurred between Customs and industry. As the bill is currently drafted, the amendment will remedy that. Its effect will be that the legislation allowing Customs to replace Tradegate with another system will not come into force until the CEO has consulted with industry, given notice to the public and the parliament about the IT requirements that the CEO has decided upon once those consultations have occurred and the parliament has indeed had an opportunity to consider these requirements.

Our amendments will also prevent the provisions relating to communications systems from coming into force until a Senate committee has conducted and reported on the inquiry. That was part of the previous amendments, but we are not proceeding with that, given that the committee may not take place, depending on what the Democrats decide to do.

In respect of amendments Nos 14 and 15, currently part I and part VIA refer to maintenance of electronic communications systems by Customs. That presupposes that the current Tradegate systems will be replaced by a system run by Customs, which basically means run by its outsourcer EDS. Amending the heading to ‘Electronic communications systems’ would mean that they could apply to any system managed or run by any organisation now or in the future. It is less restrictive, which is important, given the anticipated change to the Customs connect facility, and given that it may not go ahead or ultimately Customs may not be responsible for maintaining the communications systems. The last two amendments give us some flexibility in respect of that. I commend the amendments to the Senate.

Senator MURRAY (Western Australia) (10.21 a.m.)—Let me elicit some further responses. The first three amendments, (1), (2) and (R3), would serve to hold up the implementation of the new bill. I should make it clear, Senator Bolkus, that whilst I am more than happy to put your reference for discussion in our party room—I cannot predict what will happen there—I will not recommend that anything in the bill be held up whilst the inquiry goes on. In other words, if the inquiry was ever to occur, I see it as not being attached to the bill. I am not sure that amendments (1) to (3) really work. I would appreciate the minister’s views on those amendments, especially as they appear to be contingent on a third reading amendment which we would reject if it is moved today simply because we have not yet reviewed the matter in the party room. I would view it as an entirely distinct reference were it to occur. I would appreciate a reaction from the minister on that.

Amendments (13) to (16) seek to remove Customs from the title of the part, and to allow for systems such as Tradegate to continue. As I understand it, Tradegate can continue, except they will not continue with a monopoly. That is my reading of things. The amendments seek to remove the maintenance of information systems from the direct responsibility of Customs. I am not sure that that is wise. However, they do mandate consultation with industry in relation to the development of those information systems to be required by Customs under the bill. I see little wrong with that, provided, obviously, that whether somebody has been consulted or not is not justiciable, otherwise, what does that mean? There are many views on the adequacy of consultation processes. Unfor-
fortunately, some lobbyists think that if they do not get their way in consultation, they will claim that they have not been consulted. In other words, successful consultation is the only kind of consultation that is acceptable. Consultation from the point of view of government is a requirement. They listen to a broad range of people, groups and entities and then make a decision based on their view of the best interests of the community and the pursuit of government policy.

What concerns me here is whether there is a flavour that the consultation is required in a particular direction to satisfy particular lobbyists. It is no secret to anyone in the room that there have been strong lobbyists. If someone is earning $12 million out of the present system and they are going to face more competition for that $12 million, there are 12 million good reasons for muddying the issue and for claiming that they have not been sufficiently consulted. And why shouldn’t they do that? It is in their best interests, quite rightly, to argue that way.

Referring specifically to Tradegate, I understand that they currently have a contract that earns $3.64 for every Customs entry made in Australia which is collected on their behalf by Customs. Connect.com, as the communications service provider to Tradegate, receive a lot of that money through their back-to-back contracts. Tradegate will not be killed off by the legislation, but they will cease to have what I understand are monopoly rights. Therefore, competition will increase. Importers and exporters who wish to communicate electronically with Customs will be able to do so. They will be able to bypass them and save money. Why should I, as a legislator, complain about that? I can understand why Tradegate and Connect.com might complain about it, but it is not my job to do that.

I think that Connect.com are right. They have a contractual relationship with Customs through Tradegate. That will be affected, but I do not think that it will be affected by this legislation in terms of the contract. Contracts have to run their full term and they are as laid out, with unaltered conditions. On the face of the amendments, and particularly amendment (16), the consultation require-ments and the need for Customs to be explicit about what they are doing seem reasonable on the surface. However, I am aware of the undercurrents and some of the allegations that have been made. From the promoter of the amendments and from the government, and starting with the minister, I would like to hear the reactions to amendments (1) to (3) and then the reactions to (13) to (16).

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.27 a.m.)—I endorse the comments made by Senator Murray in relation to the choices available to people providing or accessing information from Customs and dealing with Customs electronically. We are proposing that the current arrangement, which is an exclusive arrangement with Tradegate, can provide more choice to the people who deal with Customs. That is a thoroughly desirable objective. People will still be able to use Tradegate if they want to. They can use other service providers or they can use the Internet. That is a very sensible proposal. I can confirm to Senator Murray that the existing contract with Tradegate will not be affected in any way, and quite appropriately so. However, for the future, there will be increased choice, which the opposition will not acknowledge, but which, of course, the industry does acknowledge.

The combined effect of opposition amendments (1) to (3) would delay the implementation of the bill. To put it simply, they are based on the premise that there will be the inquiry which the opposition is seeking. That would effectively delay the implementation of the bill, and we have heard repeatedly from industry that that is not what it wants in relation to this proposed legislation, which industry believes would be beneficial.

In relation to the subsequent amendments, Nos 13, 14, 15 and 16, from the opposition, we have a new proposed section 126DA. It is interesting to note that the opposition are endorsing to a great extent what the government already have in the bill by virtue of the provisions in 126D. The only real changes the opposition are making are in relation to the commencement of their proposed amendment and to the conclusion. That is in
relation to their new 126DA. Proposed subsection (1) says:

After consulting widely with persons likely to be affected, the CEO must determine, and cause to be published in the Gazette ...

It goes on with a variety of things which are taken from the bill itself. The next point of contention is really proposed subsection (3), which states:

A determination under subsection (1) or (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

They are the two points of difference between the opposition and the government. The problem that the government have with the first point of difference is this: you have a provision that, after consulting widely, the CEO will do certain things. The question is: when will that be effected? What is wide consultation? That is really quite uncertain. It does not provide any certainty or for good administration. In fact, we have already had extensive consultation with Customs. This has been the subject of scrutiny, and I am referring specifically to the IT aspect. The Senate Standing Finance and Public Administration Committee looked at this question with respect to IT outsourcing. It was also looked at by the Senate Standing Legal and Constitutional Committee in its hearings on the bill.

The government is of the view that there have been extensive, independent inquiries in relation to this very issue and that to demand further wide consultation in an ambiguous sense is not good administration. But of course in proposed subsection (3), you do not see good administration at all, because you are saying that the CEO of Customs can make these determinations and then they are disallowable. If this were to be a template for all government departments and agencies, I think you would find a situation where quite technical matters — which is being promulgated in the Gazette, in any event — would then come under the scrutiny of the Senate and we could be tied up looking at and trawling through detail dealing with information technology requirements. Just to look at some of them in (1), we have:

(a) the information technology requirements that have to be met by persons who wish to communicate with Customs electronically; and

(b) the action that a person has to take in order to verify the receipt of information communicated to Customs electronically; and

(c) the information technology requirements that have to be met to satisfy a requirement that a person’s signature be given to Customs in connection with information when the information is communicated electronically ...

Here we have the involvement of the Senate chamber in what are quite technical matters which touch on the running of communications with a government agency or department.

There are a variety of areas where that can be exhaustively examined, and I refer in the first instance to the Senate estimates process, where departments and government agencies are questioned at length in relation to IT requirements and communications generally. I refer in this instance to the scrutiny by the Senate Standing Finance and Public Administration Committee with respect to IT outsourcing, and I would say to the Senate that this is really overstepping the mark. We are proposing to open up the systems of communication with Customs. If any CEO of any agency or any secretary to any department has as a disallowable instrument any determinations made under (1) and (2), you are virtually going to have the running of these departments by the Senate. Quite properly, the parliament must have scrutiny of the administration and the executive. But it is entirely inappropriate under our system to have a hands-on running of the administration by the parliament. If it is going to be a template for the future for all public administration, any determination by that CEO will require hands-on involvement by this chamber in those administrative matters.

There are other areas where this can be examined at length and where, with this bill, this has been examined by other committees. But, if you have the determinations as a disallowable instrument, you take it one step further — that is, you bring the Senate into the running of the administration of government. The Senate should quite properly have scrutiny, and it does. We have seen with this bill
that two Senate committees have made recommendations and the government have taken them on board. The Senate committee process is an excellent one, and this is not the first bill where I as a minister have taken on board the recommendations made by a Senate committee. But I am saying here that in the running of government, where you have a determination which is disallowable by this chamber, as mentioned in 126DA(3) by the opposition, it is going to lead to all sorts of problems. There are other fora where a decision of the CEO or secretary can be challenged and debated. I believe the consultation has been covered. It is too wide and uncertain and, to that extent, would again reduce the efficacy that is being proposed. We are providing more choice to those people who deal with Customs electronically. That is a fact, and the opposition cannot get away from it.

Senator MURRAY (Western Australia) (10.37 a.m.)—Just to provide a bit of extra commentary, and I refer just to amendment (16) at this point, I have real concerns with the word ‘widely’ because as I understand it there are 95,000 members of the industry, importers and exporters, and there are service providers and so on. It would be dreadful if someone were to claim that they were left out, because 2,000 out of 95,000 had been consulted with. Is that widely enough? As I am sure everyone in the chamber is, I am strongly supportive of consultation but it has to be reasonable, practical and possible.

The second area I have major concern with is item (3). Item (3), as the minister correctly outlines, does put the Senate in the position not of being an accountability mechanism, which is the estimates process and so on, but of actually being a decision maker and acting in this sense as the executive, because it is the executive that must decide on systems. It is not in my view the proper role of the Senate to decide on the alternative systems for information technology that are appropriate for Customs. I think it is the role of the Senate to criticise the choice if they do not like the eventual choice, or the criteria or the tendering method or anything else, but we really cannot get down to the situation where we decide in a bill what kinds of tractors are used in road maintenance—or what computer systems, aeroplanes or anything else are used. I do not have a quarrel with the rest of (16), but I do have concerns with that word ‘widely’, and I would not support item (3) on the grounds I have outlined.

Senator BOLKUS (South Australia) (10.39 a.m.)—I wonder if I can suggest a course of action for us to take at this stage. I did seek leave to have all the amendments debated and voted upon jointly. I wonder if I can further seek leave now to have all but amendment (16) treated in one basket, and, with respect to amendment (16), can I indicate that I wish to move that in an amended form by picking up the suggestions of Senator Murray and deleting the word ‘widely’ and deleting subclause (3).

Leave granted.

Senator BOLKUS—I move:

Subsection (1), omit ‘widely’.

Omit subsection (3).

Senator MURRAY (Western Australia) (10.40 a.m.)—I have a question for Senator Bolkus. Doesn’t amendment (16) also replicate many elements in amendment (15) which have been omitted? If you put amendment (15) in with your other block you end up with a problem.

Senator BOLKUS (South Australia) (10.40 a.m.)—If the other block goes down, do we have a problem then? I am referring to what you have been saying, that you will not be voting for the other block.

Senator MURRAY (Western Australia) (10.41 a.m.)—That is correct. I will not vote for (1) to (3). With (13) and (14) I do not have a view one way or the other—I will be guided by the government because it is just a heading issue. But certainly I think (15) and (16) have to live together. On the face of it, without a strong contrary view from the government, I can certainly live with (15) and (16) with the amendments that you have suggested.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.41 a.m.)—I think I can clear up the situation. The government will oppose all opposition amendments, except we have no problem
with the proposal Senator Bolkus has put. But, as to the way to deal with it, I think it is more appropriate that you amend what is in the government’s bill already because (15) takes out, as Senator Murray has correctly said, 126D. So if we put (15) and (16) to one side and we deal with all the rest as a whole, then the opposition can simply amend the current 126D—leave it as it is but make those amendments which Senator Bolkus is talking about. We can abandon (15) and (16) and have a new amendment which simply amends what is there, because (15) takes it out and (16) puts it back in a different form. If you simply amend what is there, I think that would be the easiest course.

Senator BOLKUS (South Australia) (10.43 a.m.)—That may be the easier course if you had a good hour or so to reframe your amendment. Were we to proceed with (15) and (16) as proposed, I think it would probably still have the same effect as what you are trying to achieve, Minister, and that might be the best way to expedite the proceedings. We only have about five minutes left in this debate. That might be the best way to do it: proceed with (15) and (16) separate to the other amendments that were part of the proposed basket.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.43 a.m.)—Let us deal with everything else except (15) and (16) now because that is quite clear, and then we will move on to (15) and (16) separately.

The TEMPORARY CHAIRMAN (Senator Calvert)—Is that agreeable to the committee?

Senator Bolkus—Yes, sure.

The TEMPORARY CHAIRMAN—The question is that amendments (1) to (R3) and (13) and (14) be agreed to.

Question resolved in the negative.

The TEMPORARY CHAIRMAN—The question is that amendments (15) and (16), as amended, be agreed to.

Question resolved in the affirmative.

Senator MURRAY (Western Australia) (10.46 a.m.)—I move Democrats amendment (12) on sheet 2213:

(12) Schedule 3, item 38, page 65 (line 12), at the end of paragraph 71DF(b), add “or such other day of that month as is prescribed”.

This is the issue on which Senator Bolkus and I are in absolute agreement. The reporting systems that business have to endure from government should, wherever practical, be coincided. We know the difficulty is the ABS and their very strong advice to the Treasurer—and, through the Treasurer, to the minister who is his junior, too—as to how they feel about it. We would really prefer the date for BAS and the date for these reports to be coincided. However, in the time available to deal with this bill, that is not possible. This amendment does allow the minister to set another date in the month as the lodgment date for periodic declarations.

As mentioned in the Democrats earlier comments in our supplementary remarks to the committee report and my address in the second reading debate, we would like to see further investigation of the possible alignment of the reporting date for the BAS and Customs periodic declarations. A number of industry representatives have emphasised the benefits of such a proposal. The one thing I would like from the minister is an assurance that in looking at that issue the minister and the minister’s department will not just go through the motions. Businesses have become exceptionally sensitive to and sensitive about the level of compliance and reporting they do, and I think this is a serious issue.

The minister in his second reading speech mentioned he would constitute a working group. I know that, if you came up with a positive recommendation, you would have a fight on your hands, probably, with the ABS and their supporters within the bureaucracy. They are the facts of the matter. I would like
the minister to be able to indicate that he would certainly be a champion for coordinating these two, if it is at all possible, and not simply go through the motions to satisfy us in this debate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.48 a.m.)—I do not know about being a champion, but certainly I will pursue this. I will reiterate what I said in the second reading speech: I have agreed to pursue the establishment of a working group involving industry and relevant government agencies, including the Australian Bureau of Statistics, in pursuit of a commitment to keep the regulations to a minimum. The working group will further explore the alignment of reporting obligations under the Customs Act and any other reporting obligations under other relevant Commonwealth legislation. The opportunity will then exist under the bill, as amended, for any outcome of the working group discussions to be captured in regulations and promulgated under the provision in question.

That comprehensively deals with the concern raised by Senator Murray. Certainly, as the minister, I will take a personal interest in this. Among the things that have been of concern to the government are compliance requirements and reporting. In the Prime Minister’s statement, ‘More Time for Business’, it has been a common thread that we want to have dealings between government and business made easier and not harder. Also with this bill we have the other requirements or IT aspects which comply with our online government policy. We want to provide more choice and make it easier to deal with government in an online fashion.

Senator BOLKUS (South Australia) (10.50 a.m.)—The opposition supports Senator Murray’s amendment.

Amendment agreed to.

IMPORT PROCESSING CHARGES BILL 2000

CUSTOMS DEPOT LICENSING CHARGES AMENDMENT BILL 2000

Bills—by leave—taken together as a whole and agreed to.

Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 reported with amendments; Import Processing Charges Amendment Bill 1999 and Customs Depot Licensing Charges Amendment Bill 2000 reported without request; report adopted.

Third Reading

Bills (on motion by Senator Ellison) read a third time.

INTERACTIVE GAMBLING BILL 2001

Second Reading

Debate resumed from 5 April, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (10.52 a.m.)—Today the Senate is debating a bill that has been used as an instrument of deception by this government; namely, the Interactive Gambling Bill 2001. Last month, the Senate Environment, Communications, Information Technology and the Arts Legislation Committee reported on its inquiry into this bill. Labor senators provided a dissenting report to that inquiry, which set out our position in detail once again. This is the third occasion that a Senate committee has examined the appropriate response to interactive gambling in Australia. Still the government has failed to produce an effective or appropriate response to interactive gambling in this bill, even though it has amended the bill considerably in response to the committee’s findings.

The government’s policy approach to interactive gambling is flawed. There are a number of reasons why the opposition considers the position taken in this bill to be totally inappropriate. Firstly, Australians will still be able to access Internet gambling services if this bill becomes law. Secondly, the easiest sites for Australians to access will be overseas sites, some of which are run by
criminal and Mafia elements. It is nearly impossible to distinguish reputable sites from those of dubious probity. Thirdly, problem gamblers are likely to be the ones who will be desperate enough to circumvent restrictions on accessing Australian and foreign sites and will most likely fall prey to unscrupulous operators who will not limit expenditure. This bill could result in worse gambling problems for Australians than if they were able to access strictly regulated Australian sites. Fourthly, Australia is looking backwards while the rest of the world is looking forward. A number of countries are looking to adopt Australia's regulatory model for Internet gambling.

Fifthly, it is hypocritical to allow Australian Internet gambling service providers to offer services overseas—with Australia receiving the revenue—while other countries will be left with the attendant social problems and no funds to deal with them. Sixthly, the bill will have a negative impact on Australian interactive gambling service providers. Their claims of being well regulated will not be credible if their own government will not allow its citizens to access their services. Finally, the bill still permits Australians access to Internet wagering, and wagering is hardly immune from gambling problems. Additionally, as identified in the Labor senators' minority report to the inquiry, there are a number of specific concerns with the drafting of certain provisions in the bill that render the bill's impact uncertain or unjust. The minister, however, has evinced an intention to amend the bill to address some of these deficiencies identified in the Senate report.

Turning to my first point, that Australians will still be able to access Internet gambling services if this bill becomes law, there are a number of reasons for this. Firstly, the bill does not prohibit Australians from accessing IGSPs, whether they are foreign or Australian. Instead, it seeks to stop Australians from accessing the safest sites in the world but allows them to access the most dangerous sites. If Australians want to access the services of an Australian or foreign IGSP, they will still be able to, even if those IGSPs claim not to accept Australian customers. Australians can still access reputable Australian and foreign IGSPs that refuse to accept Australian customers by deceiving the IGSP. There are a number of ways of concealing their locations from IGSPs. This can be achieved, for example, by circumventing geolocation software or dialling through foreign Internet service providers so that foreign IGSPs identify them as being wherever the foreign Internet service provider is located. The section in the bill for providing interactive gambling services to Australians is not a very persuasive deterrent and is unlikely to be enforced. This would especially be the case if the government fails to provide additional funding for the already underresourced Australian Federal Police.

There are also significant numbers of disreputable foreign sites of dubious probity that Australians will be able to access. Some gamblers, particularly those susceptible to gambling problems, might favour those sites. This leads me to my second point, which is that the easiest sites for Australians to access will be overseas sites, some of which, as I said, are run by criminal and Mafia elements. It is nearly impossible to distinguish reputable sites from those of dubious probity. A ministerial media release on interactive gambling states that there are:

... very disturbing examples of how Internet gambling organisations actually feed the addictions of problem gamblers.

There are no examples of such unscrupulous behaviour by Australian gambling operators; rather, it is offshore operators at whose mercy the government plans to leave Australian gamblers who engage in such activity.

Last year there were approximately 800 unregulated offshore Internet casinos available worldwide, which cannot guarantee personal security or provide the safeguards Australian online operators have in place. That number has almost doubled to some 1,400 sites, with Australian sites comprising less than two per cent of the Internet gambling sites worldwide. It is very difficult to distinguish reputable sites from those that are not. Consequently, Australian gamblers will be at risk when this bill forces them to use offshore sites and prevents them from accessing the strictly regulated sites. This leads
to my third point, which is that problem gamblers are likely to be the ones who are desperate enough to circumvent restrictions on accessing Australian and foreign sites and who will most likely fall prey to unscrupulous operators who will not limit expenditure. The bill could result in worse gambling problems for Australians than if they were able to access strictly regulated Australian sites.

The fourth issue I would like to address today is the failure of the government to properly tackle information technology issues. It seems that the government does not really care to get a hard handle on the complexity of many of these issues. It appears that the Australian government looks backward while the rest of the world moves forward. As I said, a number of countries are looking to adopt Australia’s regulatory model for Internet gambling. The minister is in fact contradicting his own policy guidelines. In July 1997 the minister for communications announced the government’s principles for a national approach to regulate the content of online services such as the Internet. Senator Alston took a very different approach from the one he is advocating in this debate. Senator Alston said:

Material accessed from on-line services should not be subject to a more onerous regulatory framework than “off-line” materials such as books, videos, films and computer games. As a guideline, what is protected behaviour “off-line” should be protected behaviour online. This framework balances the need to address community concerns in relation to content with the need to ensure that regulation does not inhibit industry growth and potential.

Senator Alston has certainly changed his tune since then. He now chooses to contradict his own policy guidelines. It is fair to conclude that Senator Alston is damaging Australia’s international reputation and his actions are contrary to the best interests of Australia and the future of our IT industries. My next and fifth point is that it is hypocritical of the government to allow Australian Internet gambling service providers to offer services overseas, as Australia will receive the revenue while other countries will be left with any attendant social problems and no incoming revenue to deal with them.

My sixth point is that the bill will have a negative impact on the established and strictly regulated Australian IGSPs. Even though their existing customers are almost exclusively overseas, their claims of being well regulated will not be credible if their own government will not allow its citizens to access their services. My seventh point is that the amendments foreshadowed by the government will permit Australians access to Internet wagering. Wagering is hardly immune from causing gambling problems. In fact, it is extremely hypocritical for this government to exclude interactive wagering when wagering is as much a problem in terms of problem gambling as any other form of gambling. The amendment goes to show that the government is both hypocritical and duplicitous in its approach to this particular issue. This government’s primary concern is not to protect problem gamblers. The government and this minister put particular interests first in this debate. This time they are protecting their colleagues in the wagering industry. One could say that this is hardly an effective way to create good public policy.

It is noteworthy that the government has selectively caved in to the intensive lobbying by the wagering industry. It is just further proof of the government’s ad hoc approach to the formulation of policy. The government’s selective approach is the reason why it cannot come up with a sensible, effective and long-term policy for interactive gambling that will minimise interactive gambling to the greatest extent possible. The most notable thing that this bill does is prevent Australians from accessing the world’s best, safest and most consumer friendly interactive gambling sites: the Australian ones currently in existence.

Commenting on the bill, the minister stated that the government ‘only took wagering out under duress because of the necessity to do that to get it through the Senate’. One asks the obvious question: why would the minister take wagering out under duress? Doesn’t the government have any consistent policies in this area that can be adhered to, where backflips are not the routine order of the day? After stating that wagering was taken out of the ban only ‘under
duress’ to get the bill through the Senate, the minister then said that he did not know how the final vote would play out in the Senate and that ‘you can never quite tell until you get in there’. So why did the minister take out wagering? He does not know how the final vote will play out in the Senate. Why would he take the bill beyond being ineffective—which, of course, it already is—to being the likely subject of ridicule?

If you read today’s press, it is already emerging that way. The minister said:

There’s a huge difference between picking up your phone, putting on a few bets at the TAB, and sitting there with a remote control and clicking your head off until you’ve lost all of what you had, and more.

First of all, I would like to make the point that, if gamblers play on Australian Internet gambling sites they could not gamble away all of what they have and more because there are expenditure thresholds imposed. However, if this bill is introduced, Australian gamblers will be able to gamble away all they have and more on many offshore sites still available to them. Secondly, one asks the rhetorical question: what, Minister, is the difference between problem gambling amongst those who gamble on the races and those who gamble at casinos? The minister will be interested to be reminded that the Productivity Commission found that problem gamblers are almost 1½ times more likely to prefer gambling on racing to casino gambling. Wagering is not any safer than any other form of gambling. Wagering is not immune to the social effects of problem gambling. It is impossible to identify any sensible rationale for the government’s exclusion of wagering from the bill.

The opposition have taken a very different approach to the issue of interactive gambling. Our primary concern is to ensure that problem gambling arising from interactive gambling is kept to an absolute minimum. We are concerned that the government’s bill will not control or limit problem gambling in the online environment. Australian IGSPs are leading the world in terms of technology and services and they are subject to the world’s strictest regulation by the states and territories. The opposition have concluded that the most effective way to manage interactive and Internet gambling is, overwhelmingly, to have state and territory cooperation in formulating and implementing a national regulatory regime. We support federal coordination of consistent state based regulatory regimes.

Senator Kemp—Which would do what?

Senator MARK BISHOP—It would limit gambling, it would limit access and it would impose regulation.

Senator Kemp—Very vague. You don’t support this, Senator Bishop.

Senator MARK BISHOP—It would achieve a particular purpose as to a ban that applies only in Australia and not to offshore sites, Senator Kemp. There is no evidence to support the government’s conclusion that its ban will limit problem gambling. Indeed, a considerable number of submissions to the committee’s inquiry suggested that the bill would exacerbate gambling problems arising from interactive gambling by depriving Australians of a strictly regulated service.

The opposition believes that it is not technically or practically feasible to ban interactive gambling. Ill-advised attempts to ban interactive gambling will fail and risk exacerbating a problem that can be avoided if an appropriate regulatory response is put in place now. This bill, if passed, would mislead the community, potentially creating a false sense of security by contending that Internet users would be safe from harmful interactive gambling sites. The opposition cannot support this bill when we know that there is a far more effective way to deal with this issue. It is not in the best interests of Australians that we support this bill. I now formally move the opposition’s second reading amendment:

At the end of the motion, add:

“but the Senate:

(a) condemns the Government for introducing an unworkable, internally inconsistent and hypocritical bill which:

(i) does not provide strong regulation of interactive gambling as the most practical and effective
way of reducing social harm arising from gambling;
(ii) may exacerbate problem gambling in Australia by barring access to regulated on-line gambling services with in-built safeguards but allows access to unregulated offshore on-line gambling sites that do not offer consumer protection or probity;
(iii) does not extend current regulatory and consumer protection requirements applying to off-line and land-based casinos, clubs or wagering venues to on-line casinos and on-line wagering facilities;
(iv) damages Australia's international reputation for effective consumer protection laws and strong, workable gambling regulations;
(v) singles out one form of gambling in an attempt to create the impression of placating community concern about the adverse social consequences of gambling but does not address more prevalent forms of gambling in Australian society; and
(vi) is not technology neutral or technically feasible;
(b) calls on the Government to show national leadership on this issue by:
(i) addressing harm minimisation and consumer protection as well as criminal issues that may arise from on-line gambling;
(ii) ensuring a quality gambling product through financial probity checks on providers and their staff;
(iii) maintaining the integrity of games and the proper working of gaming equipment;
(iv) providing mechanisms to exclude those not eligible to gamble under Australian law;
(v) implementing problem gambling controls, such as exclusion from facilities, expenditure thresholds, no credit betting, and the regular provision of transaction records;
(vi) introducing measures to minimise any criminal activity linked to interactive gambling;
(vii) providing effective privacy protection for on-line gamblers;
(viii) containing social costs by ensuring that adequate ongoing funds are available to assist those with gambling problems;
(ix) addressing revenue issues that impact upon state government decisions relating to interactive gambling;
(x) establishing consistent standards for all interactive gambling operators;
(xi) examining international protocols with the aim of achieving multilateral agreements on sports betting and other forms of interactive gambling;
(xii) ensuring appropriate standards in advertising, in particular, to prevent advertising from targeting minors;
(xiii) investigating mechanisms to ensure that some of the benefits of on-line gambling accrue more directly to the local community;
(xiv) working with State and Territory governments to ensure that on-line and interactive gambling operators meet the highest standards of probity and auditing through licensing agreements;
(xv) seeking co-regulation of interactive gambling by establishing a national regulatory framework that provides consumer safeguards and industry Codes of Practice; and
(xvi) coordinating the development of a co-regulatory regime through the Ministerial Council comprising of relevant State and Federal Ministers".

I would like to make some comments on paragraphs (i) through to (vii). Paragraph (i) condemns the government for failing to adopt the most practical and effective way of reducing social harm arising from gambling by not choosing to strictly regulate the domestic industry.

Paragraph (ii) expresses the opposition's concern, which I discussed earlier, that the impact of this bill may exacerbate problem gambling in Australia by barring access to
regulated online gambling services with in-built safeguards. The bill still allows access to unregulated offshore online gambling sites that do not offer consumer protection or probity, placing those most vulnerable to problem gambling at an alarmingly high risk.

Paragraph (iii) condemns the government for not extending current regulatory and consumer protection requirements applying to offline and land based casinos, clubs or wagering venues to online casinos and online wagering facilities. The opposition supports extension of offline regulatory requirements to online facilities to ensure the probity of operators and consumer protection.

Paragraph (iv) expresses the opposition’s concern that the bill damages Australia’s international reputation for effective consumer protection laws and strong, workable gambling regulation. Australia, to date, has had a fine reputation internationally for its regulation of gambling. By failing to regulate the Australian industry, the Howard government is causing further damage to that reputation. The consequences of this damage will not be seen in the immediate future; however, the damage will be done if the bill is passed in its current form.

Paragraph (v) condemns the government for singling out one form of gambling in an attempt to placate community concern about the adverse social consequences of gambling. The government has singled out a form of gambling that has been around for some time now but has not revealed itself as a significant cause of gambling problems. The bill is indeed a cop-out, and the government is acting in this way to avoid addressing more prevalent forms of gambling in Australian society, which is the real issue that the community is concerned about.

Paragraph (vi) expresses the opposition’s view that the bill is contrary to the best interests of the Australian Internet industry and the development of e-commerce in this country. Interactive gambling has distinct advantages to offer the Australian industry. As a consequence of the existing industry, Australia has acquired and retained technological expertise in our country. Excessive prohibition on the Internet creates an environment of mistrust and fear amongst consumers, inhibits development of an Australian industry and has a detrimental impact on the Australian economy.

Senator WOODLEY (Queensland) (11.10 a.m.)—I want to begin by responding to the previous speaker. I believe that he made a very comprehensive analysis of the debate, but he did not answer the fundamental question. I hope that further in the debate we will get this answer from the opposition—that is, if you are going to say that it is impossible technologically to ban gambling, then why is it possible technologically to regulate it?

The other problem, of course, is that regulation is in the hands of the states, and they have shown themselves to be singularly unable to maintain regulation once it is put in place. If we take the history of the last 30 years or even 50 years of regulation in this country, you will find that tough regulations put in place by the states inevitably are eroded over time. Constantly there is the problem that, where tough regulations are put in place at the opening of some gambling facility by the state, those regulations have been eroded. So what I look for in the debate from the opposition is some response to that part of the debate, because I think those are important questions. So I state those questions while at the same time complimenting Senator Bishop on his comprehensive overview of the debate.

For most of the 212 years of European history in Australia, gambling has been part of that history, as have been concerns about problems associated with gambling. However, those voicing the concerns have been in the minority until quite recently. In recent surveys, a majority of Australians have indicated their opposition to the opening up of further outlets for gambling. The recent Productivity Commission survey found that 70 per cent of Australians believed that gambling did more harm than good and 92 per cent of those surveyed did not want to see the further expansion of gaming machines.

The main reason for this opposition has to do with the harm caused to individuals and families through gambling addiction. Australia has around 300,000 problem gamblers, if we add together the two categories that
were part of the Productivity Commission report. Each problem gambler, I have been told—this comes from a number of different studies—affects, on average, between seven to 10 people. This includes wives, husbands, children, employees, employers, creditors and victims of crime. The Productivity Commission estimates that the cost of problem gambling could be as high as $5 billion per year. It covers such things as the costs of bankruptcies, suicide, loss of productivity, counselling services, divorce and legal costs.

I recommend that everyone interested in this particular issue should read the Productivity Commission report Australia's gambling industries, although it is quite a large read. The key findings present some very stark statistics on Australia's reliance on gambling, in terms of both its social effects and economic effects. The report states that gambling provides enjoyment to most Australians, over 80 per cent of whom gambled in the last year, spending about $11 billion. It states that 40 per cent gamble regularly and that gambling is a big and rapidly growing business in Australia, with the industry currently accounting for an estimated 1.5 per cent of GDP and employing over 100,000 people in more than 7,000 businesses throughout the country.

The other statistic which is very important in this debate is the increasing reliance of state governments on gambling revenue. The capture that reliance on gambling revenue initiates in terms of state governments' ability to regulate is another question which must be addressed in this debate. We ask state governments to regulate and at the same time those governments increasingly rely on gambling revenue. There seems to be a kind of a break in credibility in that proposition.

The statistics provided in relation to the problem are also alarming, with 2.1 per cent of the adult population estimated to have a severe or moderate gambling problem that requires some form of treatment. The report confirms that the prevalence of problem gambling is related to the degree of accessibility, particularly to gaming machines. While problem gamblers account for $3.5 billion in expenditure—that is, of direct gambling expenditure—annually and lose around $12,000 each annually, it is the social cost which is of greatest concern. One in 10 problem gamblers said they have contemplated suicide due to gambling. Nearly half of those in counselling reported losing time from work or study in the past year due to gambling. That also came from the Productivity Commission report.

As I said, there is a growing concern about the increasing dependence of state governments on gambling as a source of revenue. The percentage of gambling revenue as a proportion of general revenue of state governments has risen steadily in recent years. Along with this dependence has gone an increasing relaxation of the regulation of gambling facilities by state governments. No matter how carefully new forms of gambling have been regulated upon their introduction, the history of poker machines, the TAB and casinos shows that over time gambling regulation always gets watered down because governments are always looking for ways to increase their revenues. The other problem associated with state governments and the regulation of gambling was very ably illustrated, as I said last time I made a contribution to this debate, by the GOCORP scandal in Queensland, where the Treasurer awarded a licence to three Labor Party members. That is an indication of the problems we have when we ask state governments to regulate, and at the same time they are dependent upon gambling revenue.

Let me give you another example of gambling regulatory failure: the TAB. This was highlighted by Tim Costello and Royce Millar in their book Wanna bet? They said that, when the TAB started in the 1960s, regulations prohibited seating, promotions, drinks and aided broadcasts. It was intended to take illegal bookmaking off the streets and help reduce crime as well as provide an opportunity for state and territory governments to get their hands on tax revenue. When they first started, TABs looked like post offices and certainly were not near any pub or club. Costello in his book uses the term 'slippage': once the TAB was legalised there was a sanitising effect and arguments soon arose that it should be allowed to advertise. But no-one questions this move. No-one seems to
remember that the condition of making the TAB legal was that it could not be advertised. The current situation with TABs, in pubs in particular, is a far cry from the tight regulatory system established in the 1960s. State and territory governments have allowed this slippage because they have become addicted to gambling revenue and have allowed gambling facilities to become increasingly available over the last 50 years. One can predict that the same slippage will occur if the only regulation of online gambling is left with state governments.

Some social commentators have commented especially on the extension of gambling within Australian homes which would occur if the extension of online gambling goes ahead. Again in his book *Wanna bet?* Tim Costello points out that the demand to extend gambling facilities comes from the industry itself, not from public demand for more outlets. The potential of online gambling is enormous and raises again the problem created by accessibility. It has the potential to turn every home in Australia with a TV set or a computer into a virtual casino. The proposed legislation is the first time since the Second World War that I can find, in limited research, any Australian government proposing legislation to limit gambling rather than to extend gambling.

**Senator Kemp**—It has been opposed by Labor.

**Senator WOODLEY**—I might have some criticisms of the government’s legislation. Senator Kemp, because it does not go far enough, but I commend the government because at least it has made a start.

**Senator Kemp**—And condemn the Labor Party.

**Senator WOODLEY**—I will get to that. Let me say in commending the government that the Democrats—

**Senator Mark Bishop**—All of them?

**Senator WOODLEY**—Yes, I think I can speak for all the Democrats at this point. The Democrats will be looking for further action by the federal government in terms of problem gambling, particularly the gambling created by poker machines. I can say that on behalf of all of the Democrats, although most of my contribution is on my own behalf, I will admit.

**Senator McGauran**—Did you run this speech past your leader?

**Senator WOODLEY**—My leader does not agree with me. You know that already, Senator McGauran; I do not have to tell you that. It is important, as I have said, that this is the first time since the Second World War that any Australian government has proposed legislation that limits gambling.

*Honourable senators interjecting—*

**Senator WOODLEY**—It is important, Senator Kemp and Senator Bishop, to underline this fact because the offer of the states to regulate online gambling is an offer to regulate the extension of gambling outlets. Let us underline that. It is not an offer to limit gambling, to wind back gambling outlets. It is an offer to regulate the extension of gambling in terms of online gambling. I think we need to note that. The only limits the states are proposing are limits on this extension because even they are not prepared to promote the unfettered opening up of online gambling at this stage. However, the history of state government regulation in Australia is a history of incremental increase in gambling through progressive watering down of the tougher regulations of 20 or 30 years ago.

Let me again commend the government on taking a first step. Senator Bishop has said that there is not enough being done to mitigate the effects of problem gambling, and I agree with him absolutely—not by any state government and not by the federal government. But again I think we should commend the federal government that they have taken first steps along this road. In particular, in responding during the last debate we had on the moratorium on Internet gambling, the federal government made a commitment to put funds towards research and also towards an education program warning Australians about the danger of the misuse of gambling. Let me commend the government that in the recent budget $10 million was allocated over four years.

What I would like to see the federal government also doing in terms of the mitigation of problem gambling is taking the lead in
working with the states to increase funding for counselling and rehabilitation programs. There is a strong argument for allocating a percentage of gambling revenue to these programs. There is a direct correlation between the extension of gambling outlets and the increase in problem gambling. While commending the federal government on taking a first step, I think there are many other steps that need to be taken, and that can be taken, in terms of addressing the needs of problem gamblers.

In relation to this, let me briefly turn to the many phone calls and written communications I have had from a friend of mine, the Reverend John Tully, who runs—and has run for the last 15 years on the Gold Coast in Queensland—what is registered as the ‘New Life Ministry at Street Level Inc’. This is a service particularly directed at the counseling and rehabilitation of problem gamblers and gamblers addicted to many other substances, and so on. The work has grown because the problem has grown on the Gold Coast. He particularly underlines the need for rehabilitation and compensation for the victims of gambling, particularly those victims of crimes related to gambling. He says that both the cost of rehabilitation and the cost of compensation should be paid by the gambling industry itself—especially by casinos, because he is very aware of the operation of Jupiter’s Casino on the Gold Coast. He says that it should be the industry rather the taxpayer who funds these kinds of compensation and rehabilitation programs. It should be by levy on the industry.

I am not sure what he means by that but my suggestion is that a percentage of state government revenue from gambling should be applied to these programs so that as the revenue increases so the percentage which goes towards the mitigation of problem gambling would also rise. This is the experience of one person who is directly involved in the programs to help problem gamblers and others and this is his suggestion, which I certainly would endorse very strongly.

I was going to quote from an article by the Reverend Tim Costello in the Age in April this year. He talked about ‘Gambling’s great web of lies’ and commended the Prime Minister and said that it ‘is right to try and ban Internet gambling’. I do not have time to put on the record all that he says but I commend that article to other senators.

Another article in the Weekend Australian of 2 to 3 December 2000 reports a study which was done into gambling in just one town—Bendigo in Victoria. Some of the results of that study showed that in a population of 80,000 the money lost to gambling annually in that town is $32.35 million, or $404 dollars per person. The number of poker machines in Bendigo is 532 and more than 72 per cent of players earn less than $30,000 a year. That gives the lie to the idea that the gambling industry takes most of its money from high rollers. It does not. It takes most of its money from people on low incomes. Bendigo has almost 850 problem gamblers—in just one city in one state of Australia—and it has six full-time gambling counsellors. The net loss—and this is an economic study—to the region’s economy is estimated to be $11.57 million a year, or 237 full-time jobs. While we talk about the size of the industry and the number of people it employs, one study of one town shows that there is actually a net loss in economic terms and a net loss of jobs due to gambling. I see that my time has expired, and no doubt the debate will continue in the committee stage.

**Senator HARRADINE (Tasmania)**

(11.30 a.m.)—Australia is facing a crisis of problem gambling. The question is: what are we to do about it? What are our powers to do something about this tragedy that is affecting not only the problem gamblers but also their families, society and indeed the economy?
The government in this legislation, the Interactive Gambling Bill 2001, is seeking to prevent the spread of gambling on the Internet. However, this bill does not do that because it does not ban the overseas operators.

This legislation will, in fact, play into the hands of Internet gambling operators operating from overseas. These organisations are poised to take the commercial opportunity that this bill offers to them, because it bans access to Australian sites but it does not ban access to overseas sites. Problem gamblers will have ease of access to those sites—no doubt about that. Anybody with any com-
Computer literacy at all, the minimum of computer literacy, can get onto overseas sites.

Furthermore, many of the overseas gambling sites are linked to pornography operators. Even one of the ‘respectable’ organisations, Ladbrokes, one of the largest gambling outfits in the world, has just done a deal, an agreement, with the Playboy empire to link their sites. I believe that these issues raise the question as to whether this legislation is counterproductive or supportable.

We have a very grave problem, a crisis, facing us in Australia. We have the highest number of poker machines per head than anywhere else in the world. In 1997-98, Australians gambled $95 billion and they lost $10.8 billion of that. Around 7,000 businesses provide gambling services, including 2,888 pubs, 2,408 clubs and 13 casinos. There are some 290,000 problem gamblers in Australia and 130,000 of those are severe problem gamblers. That number of 290,000 represents 2.1 per cent of Australian adults. One problem gambler, as Senator Woodley has pointed out, affects on average seven to nine other people. The term ‘problem gambling’ is defined variously. One such definition is the situation where a person’s gambling activity gives rise to harm to the individual player and/or to his or her family and may extend to the community, and another definition is a chronic failure to resist gambling impulses.

Senator Woodley has mentioned the $5 billion cost per year. A big factor in the level of problem gambling is accessibility, especially to gaming machines, which has increased dramatically in Australia. Whereas a few years ago you had to go to New South Wales to put a bet on a pokie, now you only have to stroll down to the end of the road to the nearest pub. In my own state, the number of poker machines in pubs and clubs has grown by 45 per cent in the last 12 months. Australia wide, 15 per cent of gamblers are problem gamblers, and they spend $3.5 billion or one-third of the gambling market. Problem gamblers lose on average $12,000 a year compared with an average loss of $650 for other gamblers. So we are faced with a huge crisis.

The Commonwealth government does not have the requisite power under the Constitution to regulate gambling as such. That is the responsibility of the states and territories. They need to address the problem of problem gamblers. While there are some attempts to limit access, such as a cap on the number of poker machines, there is still a lot to be done. But can we really trust the states and territories to be the gatekeepers, because the states and territories are addicted themselves to gambling? There has been significant growth in most states’ revenue in the 1990s since the licensing of casinos and poker machines. Gambling tax revenue as a percentage of own tax revenue increased on average from 9.8 per cent in 1975 to 11.7 per cent in 1998. Western Australia’s percentage actually dropped from 6.4 per cent to 5.7 per cent. Western Australia has only one poker machine venue. Victoria now leads all states with 15.2 per cent in 1998 and 17.5 per cent in 2001. Tasmania increased its revenue from six per cent to 10.3 per cent. The Tasmanian government revenue was $73.3 million last year—quite a lot less than other states. In Tasmania, gambling on poker machines has increased dramatically since 1997 when poker machines were first permitted outside the casinos. In Victoria, the state government derives 17.5 per cent of its revenue from taxes on gambling. Poker machines make up 65 per cent of the $1.6 billion derived from gambling in Victoria. In New South Wales, 10.2 per cent of the state’s revenue comes from gambling taxes. In Western Australia, which has no poker machines outside the casino, it is six per cent.

Based on the Productivity Commission’s study, up to 42 per cent of state governments’ pokie revenues comes from problem gambling. The Productivity Commission also found evidence of a concentration of gaming machines in areas of low socioeconomic status in Victoria, New South Wales and South Australia. This suggests that more residents in these areas are problem gamblers and the social cost is higher. There is need for urgent action by the states and territories to meet this crisis. They should directly reduce access to gambling. Is it too much to ask them to be the gatekeepers when they are the thieves? They are the ones who are ad-
dicted. They are the ones who are getting the money. Nevertheless, as Senator Woodley said, this is a matter of growing concern amongst the people of Australia and it could become a huge election question in the minds of a lot of voters.

I draw the attention of the Senate to the submissions made by the Fujitsu company and REGIS Controls on smartcard technology. Those submissions were made to the Senate Information Technologies Committee, and they are well worth considering. I suggest that the governments of the states and territories look at this technology to see what can be done with offline gambling. The system allows regulation of gambling on all forms of electronic gaming machines, EGMs, as well as Internet broadband and cable TV. The process was described in the following way. Around 90 per cent of poker machines in Australia are smartcard enabled but not activated. It is a relatively simple task to activate a smartcard reader. The personalised smartcard has 10 features which allow full regulation, including the proposed AUS model. The smartcard is programmed only to operate with cash, not a credit account. Smartcard has a built-in clock so that a player’s limit can be recorded for a week, a month, a year and so on. Even if the player uses physical cash—that is, notes and coins—the smartcard still records the net loss incurred by the player.

There is one limit per player for all venues and all electronic forms of gambling. A player’s card can be banned through self-exclusion, court order or injunction. The security system is defence style encryption and prevents fraud and tampering. All the appropriate features of harm minimisation can be incorporated in the smartcard system, for example, compulsory breaks, limits on playing time and retention of a proportion of significant winnings. This can be customised for each state and territory if there are different harm minimisation features. The minimal failure rate of smartcards and the security system eliminates coin jams, machine malfunction, cash pilfering and the risk of serious crimes. The card can be used anonymously so that the venue does not know who the player is or the amount that they have spent. The card tracks losses per session, per week, per month, per year and displays this information when requested by the player. The card issue process would involve the player requesting a smartcard that is personalised. Most major poker machine venues issue a magnetic stripe card currently so that they can track the player.

The card would be issued to a player based on a 100-point check as for a bank issued card. The player can load cash either directly from a deposit or current account, or via the use of physical cash. Lost cards can be replaced with the amount of e-cash restored. The card can be locked so that no-one else can use it. If venues want to offer a loyalty system, and most currently do, that can be provided via the card with bonus points stored on the card. The loyalty system would be entirely at the individual’s discretion. Overseas visitors can be issued with a temporary card. Players cannot change their limit upward for a 12-month period, but they can reduce their limit at any given time. All cards and the operation of the system would be paid for by the gambling industry. In fact, the industry would save some tens of millions of dollars per annum in machine maintenance, pilfering and security costs. Card issuing and service centres could be located anywhere in regional Australia.

I took the time to place that on record so that the matter can be considered further not only by the states and territories but also by the Commonwealth. There needs to be a tightening of the regulations and the crisis of problem gambling needs to be addressed. The question that the government is faced with is: given that crisis in gambling, do we then extend access to gambling through the Internet? The clear answer is that we should not. As the bill stands, it does not ban gambling on overseas Internet sites. It does attempt to do so on Australian sites, but it does not do so on overseas sites. I intend to move amendments that will prevent gambling on overseas sites.

Just as Australia’s Internet content regulations, although well intentioned, have been unable to effectively restrict access to overseas porn sites, so too will the complaints system proposed in the bill do next to noth-
The bill we are talking about today will do just that. Let me begin by stating at the outset that this Interactive Gambling Bill 2001 is cynical legislation. It is cynical because the legislation will not work and, if the federal government was honest with itself and with the Australian public, it knows that it will not work. As the Labor Party said in its minority report to the inquiry into the Interactive Gambling Bill earlier this year:

The flaws in the Interactive Gambling Bill 2001 are so pervasive that not only will the Bill fail to achieve its stated objectives but it will most likely exacerbate the very harms that it seeks and professes to circumscribe.

The alternative approach advocated by the Labor Party is that of improved regulation. This view is consistent with that propounded by the Productivity Commission in its report into Australia’s gambling industries. A total prohibition on Internet gambling is neither feasible nor desirable, and the cooperation of the states and territories is required to implement a national regulatory framework. The states and territories have indicated that they are more than happy to go along this route. We believe that a legal and regulated industry is the best harm minimisation policy.

This bill will not work. I have spoken to many people in the Territory, and here in Canberra, who have been lobbying about this bill and who are either involved in online gambling or involved in any way with the Internet. They have all said that this legislation is fundamentally flawed. It won’t work. It will send Australian gamblers, as Senator Harradine said, to offshore, unregulated sites
The Australian Casino Association believes that, if the federal government goes ahead with this legislation, it will ban Australians from accessing Australian Internet gambling sites, but it will still permit Australian Internet gambling sites to access overseas markets and it will allow Australians to access overseas sites. The association states:

While the Association welcomes the fact that the Government will not ban Australian Internet gambling sites, including casino sites ... the Association is disappointed that the Government still refuses to understand that the only way that it will meet its objectives of dealing with the issue of problem gambling is through regulation at a national level.

Putting it simply, a ban will just not work.

Why are Australians being refused the opportunity to access Australian regulated sites but they can still access overseas sites that are not subject to the same high regulatory standards as are Australian regulated sites?

Even though this legislation is being referred to as a ban on online gambling, it is really not a ban as such. Under this so-called ban, Australians will continue to have access to almost every gambling site on the Internet. The only change is that Australians will be banned from using their own sites. Some 99.9 per cent of the 1,400 or so gambling sites on the Internet are based offshore. Access to those sites, under this bill, will not change. The only effect the bill will have is to force Australians to gamble offshore on those sites. The only sites Australians will not be able to access are the best regulated sites known internationally, and those that offer the world’s best in harm minimisation.

On 7 July last year, Senator Richard Alston, the minister responsible for this legislation, announced that the government would conduct a study into the feasibility and consequences of banning Internet gambling. This inquiry was undertaken by the National Office for the Information Economy, which released its report in March of this year. I want to highlight two of the recommendations in the report. The report stated:

There are several technical methods that could potentially be used to implement a ban on interactive gambling based on Internet content control.
However, the report stated that ‘all of these methods can potentially degrade general Internet performance’ and ‘none would be 100 per cent effective in preventing Australians’ access to interactive gambling services’. The report also stated:

Economic modelling commissioned for the study indicates that a ban may have modest or small economic benefits for Australia in terms of restricting access to a harmful activity and possible aggregate benefits for State and Territory taxation revenue.

The report concluded:

The determined and skilled users can evade all of the technology options identified as being suitable for supporting a ban on interactive gambling.

The report also concluded:

Given the availability of these evasion options, a ban on interactive gambling will not be 100% effective.

Australia’s regulated online gambling sites provide something that is not provided by the unregulated sites that Australian gamblers may be forced to use: protection from being ripped off on the Internet. A ban will drive Australian online gamblers to unregulated and potentially dubious sites that do not necessarily provide education, harm minimisation, betting limits or consumer protection. The unregulated sites cannot guarantee personal security or provide the safeguards that the Australian online operators currently practise.

In March this year, Senator Alston said the ban would be effective because people would not take the risk of gambling on an unregulated site offshore. However, a number of other countries are looking at approving Internet gaming, such as South Africa and several countries in Europe, including the UK. In the US, the Nevada state legislature has passed legislation that means that land based operators in Nevada will now focus on developing Internet casino sites. It means that consumers looking for regulated sites will soon find them offshore and will go there. Contrary to what the government is suggesting, this bill will do nothing to reduce problem gambling. It does nothing to control or limit problem gambling in the online environment, nor does it overcome any of the problems associated with interactive gambling. The evidence suggests that problem gambling in Australia is almost exclusively associated with land based gaming revenues.

The Australian Casino Association says that the legislation ignores the evidence. The Productivity Commission’s report into Australia’s gambling industries, which was released in November 1999, showed the expenditure shares for problem gamblers, and they were: gaming machines netted 42.3 per cent; wagering netted 33.1 per cent; scratchies netted 19.1 per cent; casino table games netted 10.7 per cent; lotteries netted 5.7 per cent; and other non-raffle games, of the type we are talking about, netted 25 per cent. Importantly, the association says that one-third of gaming machines are now in hotels and six per cent are in casinos. Given these findings, why are Internet casino operators being singled out for special attention under this bill, particularly when it is these operators which have sought and established the highest standards of player protection in the world?

The proposed amendments will still allow people to place bets on races, sporting contests and even casino games on the Internet. Regulation can be effective. As I have said, Labor supports the federal coordination of consistent state and territory based regulatory regimes. Effective regulation of interactive gambling is the only practical way of minimising social and criminal harm. The online gambling industry is currently subject to a high degree of regulation which is oversighted by state and territory governments. On a number of occasions, I have visited Lasseters Casino and its online gambling operations in Alice Springs. From what I have seen, under the strict regulatory framework, Australian licensed online gambling industries have already adopted stringent codes of practice that prohibit credit gaming. They allow members to preset betting limits and provide personal identification numbers to ensure that family members cannot access the gaming sites. They ensure the privacy and security of participants, and they issue winnings via non-negotiable cheques, not credit cards.

In today’s papers we have a number of articles that criticise the government in relation
to this legislation. The *Australian* today has an article entitled ‘Howard’s net gambling ban is born to lose’. It says:

A sensible approach would have recognised that Internet gambling poses big social challenges and that these can best be met by co-operative regulation. Blanket bans on the Internet create more problems than they solve. Online technology offers much potential to identify and protect those at risk from gambling.

A *Sydney Morning Herald* article today says this bill is ‘a ban in name only’. It says:

Not only does it fail to stop Australians using them—

that is, faulty operations offshore—

but the money they spend on offshore casinos will not be subject to Australian taxes.

So it is revenue that this country loses.

In the final minutes of my speech, let me turn to the impact of the bill on the Northern Territory and what has been happening in the Northern Territory, particularly in the last week or so. Australia’s only Internet casino at this stage is the site of Lasseters in Alice Springs. Last year it turned over $100 million. Lasseters have already said that, if the ban comes into play, they will be looking at relocating to Vanuatu, meaning the loss of 45 jobs from Alice Springs. I have already identified in my speech what I believe to be a significant loss for the Territory, which is of course a loss in intellectual property—through technology and the use of the computer and e-commerce—which is generated by developing these sites and keeping them regulated.

I want to turn to the events of this week which have seen the Northern Territory media focus on the efforts of my colleague Senator Grant Tambling. Labor’s concerns about this legislation are shared by the Territory government. The Country Liberal Party up there knows that this ban is ill considered and would have a very negative impact on the Territory. Jobs would be lost, and technological expertise would be lost as a result of this ill-conceived and ineffective legislation. For once, I have to say reluctantly that it is probably something upon which I would agree with my Territory Country Liberal Party counterpart, Senator Grant Tambling, who has been advised by his party to oppose this legislation and the effect that it will have on Territorians. I will provide for the Senate a copy of an article that was in Tuesday’s paper, where the CLP tells Senator Tambling to toe the gaming line.

In fact, it has been a source of nothing but discussion on the radio this week. The Chief Minister on Tuesday in an interview on ABC radio said about Senator Tambling:

He knows absolutely clear the government’s—

that is, the Northern Territory government’s—position. Unequivocally we think this legislation is nonsense. We think it’s a populist politics at the least, and we believe it will have no effect on gaming or gambling.

He goes on to say that he believes:

It’s an issue that he stands on wearing the badge of the CLP.

That is, Senator Tambling. It continues:

The CLP government has a firm position, the CLP as a Party through its management committee who spoke to him and gave him a unanimous point of view the other night has a very strong position.

I am led to believe that in fact Senator Tambling was preselected on the undertaking that he would be advised by and stand by the results of the central council who oppose this legislation outright. Susan Cavanagh, the president of the CLP in the Northern Territory, went on to say in an interview on Monday on ABC radio:

We had a full management committee meeting last week and unanimously with the exception of Grant obviously didn’t agree, but the rest of management committee to a person told Grant that he had to cross the floor irrespective of whether the legislation was amended or not.

Senator Tambling, perhaps I can just put your name on the seat next to me. I say to you, Senator Tambling: come on over; there’s a spare seat here next to me with your name on it already.

Senator Harradine—I rise on a point of order, Mr Acting Deputy President. The action of Senator Crossin is not within the standing orders, as I understand it.

The ACTING DEPUTY PRESIDENT (Senator McKiernan)—I would be prepared
to take further advice on your point of order, Senator Harradine.

*Senator Heffernan interjecting—*

**The ACTING DEPUTY PRESIDENT**—Order! I would be prepared to take further advice from you, Senator Harradine, on your point of order, as to where the senator’s comments are in conflict with the standing orders.

*Senator Harradine*—I was not referring to her comments, although I would have thought that the courtesy in that regard would be to notify the person to whom she is referring. I was referring to her actions.

**The ACTING DEPUTY PRESIDENT**—I am going to rule that there is no point of order. I am not sure whether Senator Crossin has indeed informed Senator Tambling of what her actions were going to be, but usually the matter is done privately between senators. It is a practice that I invariably follow myself when I am engaged in such as that. But I am ruling that there is no point of order.

*Senator Harradine*—On a further point of order, is it therefore permissible for any senator to come in here and put a banner up, for example, over their seat?

**The ACTING DEPUTY PRESIDENT**—You are now asking me a question, Senator Harradine, and I do not believe that I am in a position to answer the question. It is a question that should be properly directed to the President, I believe, and I will ensure that your question is directed to the President.

*Senator Heffernan*—I rise on a point of order. Mr Acting Deputy President, I rise on a point of order to support Senator Harradine’s question.

**The ACTING DEPUTY PRESIDENT**—I have already ruled on that matter, and I do not think I will engage in further dialogue on that matter. I do appreciate the action that Senator Crossin has undertaken just now.

*Senator CROSSIN*—I have made my point, and I am happy to remove Senator Tambling’s name from the seat.

*Senator Harris*—Mr Acting Deputy President, I rise on a point of order to support Senator Harradine’s question.

**The ACTING DEPUTY PRESIDENT**—I have already ruled on that matter, and I do not think I will engage in further dialogue on that matter. I do appreciate the action that Senator Crossin has undertaken just now.

*Senator CROSSIN*—In doing so, I would like to remind my colleague that, when we do in fact take a vote on this bill next week—reluctantly as I might on behalf of the Northern Territory Chief Minister and the president of the Country Liberal Party in the Northern Territory—perhaps I might invite Senator Tambling to come across and sit next
to me in a seat that we will no doubt leave vacant here. He knows it has already had his name on it. He is more than welcome to cross the floor and support the Territory next week when this legislation is voted upon. He knows full well that the subject of discussion on ABC radio this week has been that the Chief Minister and the party president have indicated that they will move that the Country Liberal Party in the Northern Territory reconsider his Senate preselection. Senator Tambling is in a very serious situation this week, I believe. He can throw off that shirt and show us the Superman cloak and fly over here and sit next to us next week and redeem his soul and his position.

Senator Stott Despoja—There’s an image!

Senator CROSSIN—There is an image, Senator Stott Despoja. It is probably not an image that many would be able to envisage. I hasten to add that I would not like to think that my colleague’s parliamentary privilege or right to vote under his office were being threatened. If he knows full well that that is what he ought to do, he should come across the floor. I believe he has no option but to oppose the legislation.

In conclusion, this bill prevents Australian Internet gambling operators from providing services to customers in Australia, but it does not prevent operators from providing the same service to overseas residents. As a senator for the Northern Territory, I am concerned about the impact this ban will have on the Territory’s economy. It will cost the Territory jobs, investment and technological expertise. No-one really considers that this ban will achieve its stated objectives. It will do nothing to reduce the real problems related to gambling in Australia. It will simply force online gamblers offshore to the 1,400 or so unregulated gambling sites. (Time expired)

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (12.15 p.m.)—I begin my remarks on the Interactive Gambling Bill 2001 by commending Senator Crossin on highlighting the right to vote according to conscience. It is something that my party, the Australian Democrats, practices. It is a right that we hold dear. While exercised rarely, when it is exercised it tends to be on matters that involve particular social, ethical and clearly personal positions. Most of the media coverage about the interactive gambling legislation has concentrated not so much on the merits of the legislation but on whether or not this government has the numbers to pass it. Subsequently, media coverage of the Democrats position has concentrated on whether or not the Australian Democrat senators will vote differently from each other on the bill. Yes, we are going to do that, and Senator Woodley and others have indicated their reasons in their contributions. Certainly, Senator Woodley has spoken and I expect other colleagues to follow, including the portfolio holder, Senator Brian Greig, who will speak on behalf of the majority of party room.

We believe on this issue of gambling that individuals may feel the need to vote according to their conscience rather than the majority position. That is why, as leader, I have declared this very much a free vote. However, in relation to this debate about gambling there are more elements that Democrat senators agree on than on which they disagree. We agree that— and I suspect any computer literate commentator also agrees on this point—it is technically difficult to stop access to Internet sites at Australian borders. We certainly endorse the IIA comments that were made available to the chamber in Senator Crossin’s contribution earlier. My personal position is that the legislation before us is neither desirable nor technically feasible. The Democrats also share a very common concern that the real issues of problem gambling in Australia are not fundamentally being addressed by the legislation before us. We are united in our belief that the impact of problem gambling hits hardest in communities that can least afford it.

We know that one of the biggest sources of problem gambling in Australia right now is poker machines. This bill does not touch on this issue. Amendments are being moved to make sure that the inadvertent capturing of poker machines in this legislation does not happen. The Democrats agree that a regulatory approach is to be recommended, as did
the Senate report *Netbets: A review of online gambling in Australia* as well as the 1999 Productivity Commission report on Australia’s gambling industries. We agree that the states’ and territories’ reliance on gambling revenue has been a major impediment to reform.

One way of genuinely addressing problem gambling would be through the Ministerial Council on Gambling. Subsequently, it was on behalf of my party that yesterday I wrote to the Prime Minister and asked him to assume responsibilities over the Ministerial Council on Gambling in conjunction with the premiers and the chief ministers of the states and territories. The establishment of a Ministerial Council on Gambling aimed at achieving a national approach to the challenge of problem gambling was a key recommendation of the 1999 Productivity Commission report. The aim of the ministerial council was to establish a national approach to the negative impacts of problem gambling by exchanging information on responsible gambling strategies and providing a forum for discussing common issues, with the objective of developing suitable regulatory approaches. The ministerial council was meant to be a conduit for the exchange of information and approaches to gambling issues, and yet the Commonwealth did not even consult with the council in the formation of this legislation. It was raised with the council for the first time after this bill had been written.

In 1999, when the Productivity Commission report, with its frightening picture of the devastating cost of gambling, was released, the Prime Minister put out a press release acknowledging that gambling regulation is primarily a state responsibility. He said:

*We need, however, a national response to what is clearly a national problem.*

That national response has not been forthcoming. The Prime Minister has repeatedly called gambling a ‘significant social evil’. The Australian Democrats—as do, I suspect, all members in the chamber—agree that problem gambling has serious and debilitating social consequences. We welcome a commitment from the government to the Democrats that it will commit funds towards research into the social and economic effects of gambling and towards an education program warning Australians about the dangers of the misuse of gambling, as we recommended in our amendments during the moratorium legislation. We are glad to see that the government has picked up some of those recommendations, although not all. We urge the government to continue to work with the states to increase funding for counselling and rehabilitation programs.

The Prime Minister has not addressed the core of the problem. If we are to minimise the scope for problem gambling among Australians, as the explanatory memorandum of this bill suggests, we are not going to do it through this bill. This is, at best, a well-intentioned, perhaps, but unenforceable exercise in fiddling at the margins, because interactive gambling accounts for less than one per cent of gambling activities. We know one thing, though: a significant problem is poker machines or electronic gaming machines, best known as the pokies. Even Lloyd Williams, the founder of Crown Casino, has admitted that there are too many poker machines in Australia. Of all the poker machines in the world, one in five is in our country.

Reverend Tim Costello describes them as ‘the most aggressive form of gambling’. They are, perhaps, the least skilled gambling activity we have. It is hardly surprising that, according to the Productivity Commission’s report, 92 per cent of Australians do not want to see further expansion of gambling machines. Action needs to be taken to reduce the number of pokies and to minimise their accessibility to Australians with a gambling problem. In my letter yesterday on behalf of the party to the Prime Minister, I urged him to use Commonwealth powers to prevent linked poker machine jackpots, to control misleading advertising and to reduce the number of poker machines, particularly in communities with a high incidence of problem gambling.

The Democrats have had long-held concerns—and these concerns are reflected in other parliaments in which we have representations—about the impact of problem gambling, particularly the impact of poker
machines on the Australian community. We do not need another delaying tactic to avoid the real issue, or ineffective legislation designed to distract the electorate from the problem. We need decisive political force to reduce the number of poker machines in this country, but a reduction does not mean pulling them out of low risk, high income areas and leaving them in the low income, high risk areas, where the social consequences have been particularly disastrous.

The 1999 Productivity Commission report was the first comprehensive investigation into gambling in this country. It gives a picture not only of the regulatory structure of the gambling industries and the economics but also of the social consequences of the rapidly expanding gambling market. The Productivity Commission’s report found that Australians gamble $11 billion per annum, more than half on poker machines—I think Senator Harradine has already put that on record—but the real issue of concern is problem gamblers, as it should be. The report found that around 290,000 Australians are problem gamblers, and problem gambling accounts for more than $3 billion in losses annually. To put that in perspective, compare the losses of more than $3 billion annually through problem gambling with, say, Commonwealth expenditure on vocational education, which is $1 billion. Problem gambling losses are more than three times what this government spends on vocational education.

These figures do not give us a feel for the human cost of problem gambling. This is disastrous not only for these problem gamblers but also for the estimated 1.5 million they directly affect as a result of bankruptcy, divorce, suicide and lost time at work. One in 10 problem gamblers said that they had contemplated suicide, and nearly half of those in counselling reported losing time from work or study in the past year due to gambling. Problem gambling is a serious issue with social and disastrous consequences for individuals, their families and their communities. Moreover, we are most concerned that problem gambling has particularly severe consequences in low socioeconomic communities.

The current regulatory environment is deficient. Regulations are complex, fragmented and often inconsistent. This has arisen primarily because of the inadequate policy making process and the strong incentives for governments to derive revenue from gambling. There are two levels to the problem of gambling that are relevant here: firstly, the individuals who are addicted to gambling; and, secondly, the states and territories who are addicted to gambling revenue.

The Ministerial Council on Gambling is the obvious starting point to initiate a national approach to the winding back of electronic gaming machines, or pokies, in this country. However, there are some problems with the council. The majority of members on that council are racing or revenue ministers. The only exceptions are the Commonwealth Minister for Family and Community Services, the Chief Minister of the Australian Capital Territory, the Deputy Premier of Tasmania and Norfolk Island’s Minister for Health and Environment. They are outnumbered by six other ministers with interests in protecting gaming and raising revenue. I am not suggesting that they do not have an interest in the social and other consequences, but clearly their portfolios are in relation to gaming and racing interests.

There is a metaphor in the fact that in Brisbane they converted the old Treasury building into a casino. States’ and territories’ reliance on gambling revenues means that they have another focus. The Western Australian government runs its own lottery, with no shareholders, and the profits go directly to the Western Australian community. After prizes are paid to the winners, 40 per cent of the revenue is allocated to public hospitals. The rest goes to funding for the arts, to sports and to hundreds of community groups. Western Australia, however, is the state that has best resisted the temptation to allow proliferation of the pokies and, correspondingly, has a significantly lower incidence of problem gambling.

The Democrats believe it is now time for the Prime Minister, the premiers and the chief ministers of each jurisdiction to get involved. There is a popular song by the Australian band The Whitlams—which played here last night, apparently—called Blow up the pokies. One lyric says:
They are taking the food off the table so they can say the trains run on time.

There are vested interests in our states and territories in relation to this area, and that is why we need a leadership role from the Prime Minister, from the premiers and from the chief ministers. We should be pursuing regulatory measures as advocated in the Productivity Commission’s report. Reverend Tim Costello, in his book Wanna bet, points to state governments’ progressive watering down of the tougher regulations of 20 to 30 years ago. The Senate committee’s report Netbets: A review of online gambling in Australia, as well as the Productivity Commission’s report, recommended a regulatory approach over prohibition, so we are at a loss as to why the findings of the earlier Senate inquiry and the Productivity Commission’s report should be disregarded.

There has been significant public discussion of the proposed ban on interactive gambling. While it is positive in that it has meant increased discussion of the broader problem of gambling, unfortunately that has seemingly led a number of the members of the public to believe that the government is doing something to address this problem. In fact, the real problem is worsening, and this bill will do very little, if anything, to address it. This bill will not even solve problem gambling in the narrow field of Internet gambling. The bill does not make it illegal for a person physically located in Australia to access offshore interactive gambling providers. As the National Office for the Information Economy has pointed out, the technical and commercial difficulties with quarantining access to offshore sites cannot be reasonably achieved. I believe that the Interactive Gambling Bill 2001 is unworkable. It is crazy to pass laws that cannot be enforced.

The bill does not and cannot prohibit online gambling. It can only hope to prevent online gambling through Australian sites. In effect, it is just handing over Australians who gamble to overseas gambling sites, with the click of a mouse. The result is that Australian money and jobs go overseas and Internet gambling is still accessible to any Australian who seeks it. Further, we will have no power to protect those Australians through regulation. Again and again this government has proven that it does not understand the technological, cultural and practical workings of the Internet. The Internet offers significant advantages to Australians, particularly those who are geographically isolated or isolated because of limited mobility. The benefits offered by the Internet also apply to gambling, as they do to other areas of the Internet. As the Northern Territory Department of Industries and Business pointed out:

This Bill ... will deny the 98% recreational gamblers the benefits of using Australian sites but will not prevent the 2% of problem gamblers from accessing almost all of the gambling sites on the Internet. As offshore sites do not have the harm minimisation features required by Australian regulations, this will exacerbate problem gambling.

The Northern Territory Department of Industries and Business also pointed out:

... many of the features that COAG and the Ministerial Council on Gambling would like to see implemented in the physical world are inspired by or easily achievable on the Internet technological platform.

Mechanisms to ensure harm minimisation are actually more readily available for Internet gambling than for other forms of gambling. I acknowledge that progress has been made in states and territories in furthering some kind of regulatory network. But, just as we were starting to see those efforts through the Darwin Summit and other meetings, the government has come in over the top of it, ignoring all the good advice we have had about regulation, why it works and why it should be promoted, with a prohibition that is both unworkable and undesirable, in my opinion.

One thing we cannot deny in this chamber is that Australia has long had a culture of gambling but a short history of failed attempts at prohibition. We have the diggers playing two-up in the back alley, the chook raffle, the meat tray and the bingo. This is gambling as it can be: entertainment, not obsession—games of chance and the chance to be game, if you like. Many charity events and fundraisers are based on gambling. We would be fools to deny it. Thousands of Australians buy books of tickets in lotteries and art unions, and not just in the remote
hope of winning that trip to the Gold Coast or the car or whatever but because they want to support a worthy charity. I am not condemning those events. My small ‘l’ liberal politics would not allow me to condemn those events, and I do not. I do not believe that these are the kinds of things that we should be worried about. I do not think we need to worry about them. These are community activities. If you like, they have in-built limits. It is a lot to do with the fact, I think, that some of these endeavours are communal; they are not lonely activities. They are out in the open, and not isolated. There are limits on how much can be bet and there are limits on when you can bet. They are, in effect, regulated. Proper regulation is what is needed to address the problems that have come from the dominant and still growing sectors of gambling—of casinos and pokies—as well as the emerging mode of gambling through the Internet.

But what is being proposed here is that we just continue to ignore one of the biggest existing problems—that is, poker machines—and concentrate all efforts on trying to stop something we cannot stop, not in this form and not practically—that is, Internet gambling. All this bill will do is move it overseas. The problem will stay in Australia but the profits will go overseas. The regulation of gambling has traditionally been a state responsibility. However, the Commonwealth has a direct responsibility in relation to the use of the Internet for gambling. So, in order to be seen to be doing something, the government is charging ahead with this ineffective bill instead of focusing on regulation as it should be.

When the moratorium legislation was discussed in its committee stage at the end of last year, I challenged the government—indeed, I did the first time round as well—to actually tackle land based and other gambling ventures. That challenge still stands because, again, there is still a distinction between the progress we have seen the Internet gaming industry make in relation to regulation versus the regulations that exist for land based and other gambling ventures. So that challenge still stands, and my party extends that challenge again to the Prime Minister today, as we did yesterday in the form of a letter on behalf of our entire party room.

The Democrats are united in calling for the Prime Minister, the premiers and the chief ministers to immediately take a role in, and take responsibility for, the Ministerial Council on Gambling. I hope the government will hear that challenge and respond to it. I hope the government, instead of seeking headlines in order to be seen to be doing something about interactive gambling through this bill, will actually start reading some of the literature that is available, the literature that many of us who have been involved in the Netbets inquiry have read in detail and understand—that is, in short, that we should have a stringent regulatory national approach to this particular issue and not a technically unworkable and undesirable approach, as I believe is encapsulated in the legislation before us.

Senator HARRIS (Queensland) (12.35 p.m.)—I rise to speak on the Interactive Gambling Bill 2001. When the government first announced the reason for the introduction of a bill to permit the difficulties arising from problem gambling to be addressed, I was quite relieved. However, that relief was short-lived. When I read the details of the proposed moratorium bill, the futility and inadequacy of this whole project dawned on me. The original focus of the exercise was aimed at stopping any further expansion of problem gambling in Australia, alleviating the associated problems on both families in the wider community and consumer protection. These are all highly admirable qualities and ideals and I hope they are attainable. However, living in the real world, I was soon brought back to reality, firstly, by the feasibility. In 1998 a Productivity Commission report brought to light some interesting figures, mainly the fact that most Australians—that is, over 80 per cent—partake in some form of gambling, with 40 per cent of them gambling regularly. The problem factor in these figures amounts to 2.1 per cent, ranging across various levels of concern.

The most interesting factor arising from this report related to the particular concerns being raised in relation to the readily avail-
able access of poker machines across the length and breadth of this country. The commission concluded that there was not sufficient evidence to support the banning of any existing form of gambling and supported a better policy course of improving the range of strategies to alleviate the resulting gambling risks. Netbets 2000 approached the issue from a more regional state basis and recommended the development of uniform regulations be negotiated between the states.

This exercise has been further developed with the compilation of the AUSMODEL draft, which recommends putting in place uniform and consistent standards focusing on player protection, operator probity and system integrity. This model puts in place very stringent controls on Australian Internet gambling companies, incorporating such measures as licensing controls, advertising, player registration, exclusion provisions and close monitoring of financial transactions. This model is setting world best practice standards in the Internet gambling industry, second to none in the rest of the world. As the present licensing of Internet gaming applicants rests with the provisions of the states, and each of the states presently has a very different perspective towards gambling, I maintain that the states should continue to implement their agendas without meddling by the federal government.

The technological feasibility of the full implementation of this bill remains a concern. Any attempt to monitor or censor the Internet—and we are actually talking about the World Wide Web—would appear to be extremely difficult, if not impossible. I realise the proposed intention of this bill is to impose threats to any overseas Internet gambling provider should they step ashore in Australia, but it remains to be seen whether these people will be greatly deterred or hindered by this provision. NOIE concludes in its report that none of the methods would be 100 per cent effective. The claim that this bill is both illogical and counterproductive does bear some credence; hence the futility of the bill.

Present Australian Internet gaming businesses have, up to this point in time, invested millions of dollars within Australia and employ thousands of people—some of them highly skilled IT workers on very good salaries. The present Australian industry brings much needed export dollars into our coffers and hence generates the flow-on economic benefits. While I understand the argument that this industry is cheating the local stores and supermarkets of shopping dollars and jobs, I can see the equivalent diversionary argument that this industry—that is, the IT industry—also produces many dollars and generates many jobs, particularly in regions and less populous states, such as the Northern Territory and Tasmania. These states desperately need this investment and these jobs and, unfortunately, they will pay disproportionately to the other states.

Nowhere in the bill have I seen—or have I heard in any discussions on the bill—any responsibility taken on the part of the government for the financial losses and hardships that are to be borne by present providers and their employees. I would think this government would owe a duty of care to those people so affected and should be required to pay compensation for these victims of the provisions in the bill. The uncertainty that this bill has generated has resulted in many of the large companies planning not to close down but to move offshore to places such as Quebec, the United Kingdom and New Zealand and countries that offer far less regulatory stringency. Australia will gain nothing from this bill, but will lose much.

The censorship demands and costs are to be imposed on the ISPs. The inconsistency with this lies with the lack of the same censorship demands on the communications companies that provide the very same lines—not to mention the distinctions being assumed between those very same lines being used for direct phone betting as against Internet betting usage. In my private home, for example, my PC is connected to the same phone line, and it would be a choice between picking up the phone or clicking on the Internet. The bill makes no distinction between those lines.

This bill sets about banning Internet gambling services to anyone physically present within Australia from providers both within and outside Australia. While I commend the
general parochial intent of the bill to protect Australians from themselves, I find it highly unlikely that this would be achieved; hence I tend to err on the side of the lesser of the two evils. Should someone wish to avail themselves of Internet gambling facilities, I would much prefer to have them access a highly regulated and guaranteed payments site than an unregulated and highly risky overseas venue.

I have repeatedly heard the counterargument that they will ‘only do it once’. This argument does not stand up to scrutiny when these overseas reputable sites emanate from the likes of the US. Companies such as the Nevada based casinos—which have seen the realities of the future and are hence on their way—and the United Kingdom’s Ladbrokes and Sporting Bet Online.com are going to cash in on our citizens. These large conglomerates are highly successful businesses with equally successful reputations. This effectively results in the production of a new export industry for Australia—that is, our own Internet gambling business. I totally support the government’s intention to exclude the wagering provisions in the bill covering horse racing and sports, as these industries, particularly horse racing, have a long, colourful and exciting history in this country.

The ACTING DEPUTY PRESIDENT (Senator Bartlett) — Order! It being 12.45 p.m., the debate on this matter is now adjourned.

GOVERNOR-GENERAL LEGISLATION AMENDMENT BILL 2001

Second Reading

Debate resumed from 20 June, on motion by Senator Boswell:

That this bill be now read a second time.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.45 p.m.)—Let me commence my remarks in the second reading debate of the Governor-General Legislation Amendment Bill 2001 by indicating that the bill deals with the salary, taxation and superannuation arrangements for the Governor-General. The bill has four main purposes. They are: firstly, to set the official salary of the next Governor-General, Archbishop Peter Hollingworth; secondly, to remove the income tax exemptions which currently apply to vice-regal representatives; thirdly, to ensure that the superannuation surcharge on retirement allowance payable to governors-general will apply in the same way that it applies to the rest of the community; and fourthly, to provide the governors-general and their widowed spouses with the option to commute part of their retirement pension to meet any surcharge assessments received after retirement or death.

The bill sets the Governor-General’s before tax salary at $310,000. This figure has been calculated according to the convention that has applied since 1974 and takes into account the removal of the tax exemption. The existing tax exemptions for the Governor-General date from the time when vice-regal representatives were invariably drawn from the United Kingdom. It is worth noting that even Her Majesty Queen Elizabeth II has paid income tax since 1993. The continuation of the tax exemption for the Governor-General is anachronistic. It is inappropriate. It is perhaps somewhat like having a foreign citizen as our head of state, which is anachronistic in the same way.

The opposition considers the proposed measures in the bill to be fair and reasonable. We support the Governor-General Legislation Amendment Bill 2001. Nevertheless, let me complete this fine oration by saying that I look forward to the day when the Senate will consider the necessary remuneration for an Australian head of state.

Senator HUTCHINS (New South Wales) (12.48 p.m.)—I do not want to take up too much time of the Senate this afternoon speaking on the Governor-General Legislation Amendment Bill 2001. The opposition leader has already enunciated exactly what the bill is about, which is to bring the Governor-General’s benefits, for want of a better word, in line with the rest of the community. As Senator Faulkner said, it is anachronism that goes back to the 1920s when the Governor-General was regarded as a non-diplomatic foreign citizen, because most of them were. As Senator Faulkner said, most
of them were retired British aristocrats. In fact, we had one prince.

Senator Schacht—One was a drunk.

Senator Hutchins—I do not know whether he was a drunk, a libertine or whatever. What I wanted to talk about was the situation with our new incoming Governor-General. In doing so, I am sure that if I am out of order I will be called into order. I believe that the retiring Governor-General, Sir William Deane, probably felt that he was going to be our last Governor-General and may have requested that his appointment terminate in January 2001 on that basis. I find it ironic that an ordained Bishop of the established Church of England Dr Hollingworth is probably going to be our last Governor-General. That is the irony of all ironies.

I think we need to be well aware on our side of politics of Dr Hollingworth’s statements and views over the years, because from those I can assume that he may take advantage of the role of Governor-General, as I am sure those people on the Right believed that Sir William Deane did. Over the years, the incoming Governor-General has been, as I said, outspoken on a number of issues that we on the Left of politics might be uncomfortable with. In fact, in an ABC interview in 1993, Dr Hollingworth was asked, in relation to the view of the then opposition, about industrial relations.

Well, I think we’ve got to be open-minded about it and, again, avoid the whole business of slipping into rhetoric. It does seem to me that we’ve got a very cumbersome centralised system, which everybody agrees is now posing problems. And I think there’s a general principle that most of us can accept, and that is the best way to negotiate satisfactory working conditions is at the grass roots level, at the shop front level.

We on the Left of politics would be very concerned about that sort of statement which strikes at what we believe are the fundamentals of industrial relations: a centralised system which gives more power to employees to bargain centrally and thus get more fairness and justice. Again, in that period, Mr Richard Palfreyman reported:

The Anglican Archbishop of Brisbane, Archbishop Peter Hollingworth, has suggested that a form of non-military national service would provide opportunities for unemployed youth and, at the same time, tackle some underlying environmental and community problems.

Once again, we on this side might find that sort of compulsion repugnant. It certainly has been a view that has been expressed by our incoming Governor-General. I am also aware that the incoming Governor-General has applauded the Howard government’s increased funding to private schools, which once again we might find difficult to stomach.

But on the bright side of things for the Governor-General, people on the left might be critical of him but certainly he has got a stringent critic in a very radical right-winger, Christopher Pearson. If you read Mr Pearson’s piece in the Financial Review of 30 April of this year, you will see that he is a scathing critic of our incoming Governor-General. He talks about his activities in relation to his candidature for Primate of the Church of England in Australia, his views about the resurrection and the fact that he is an avowed republican yet is now taking up the post of Governor-General. It is not a one-way street about what the incoming Governor-General may or may not stand for.

It probably is ironic that an ordained bishop in the established Church of England is going to be our last Governor-General. As you may be aware, probably the last time this sort of title was fiddled with was by Gough Whitlam in 1973, when we had a strange situation whereby the title of the Queen of Australia was Queen of the United Kingdom, et cetera, but one of her titles was ‘Defender of the Faith’. Irony of ironies, that was a title given to Henry VIII by the Pope at the time because of a treatise he had written criticising Martin Luther. As we all know, he decided he needed another wife and he established his own church.

We in the left of politics are going to have to expect and tolerate that Dr Hollingworth, our new Governor-General, may be outspoken on issues that he believes in and we, probably like the Right have had to, are going to have to accept that. I welcome his appointment, as the opposition has, and I be-
lieve that he will do an excellent job. I wish him luck and, as is appropriate, that he will be our last Governor-General.

Senator MURRAY (Western Australia) (12.55 p.m.)—I want to take this opportunity to express the high regard I have for Sir William Deane. I also want express my thanks, primarily as a citizen of Australia and secondly as a senator, to Governor-General Deane for the great work he has done for Australia in that role. He has set a high standard for his successors, and I wish Bishop Hollingworth well as his successor.

This bill proposes to put the Governor-General on the same footing as other Australian citizens in relation to superannuation and income tax laws. Most notably, it removes the immunity from income taxation of governors-general and state governors. For centuries, the monarch of the United Kingdom had been immune from income taxation. While this immunity was withdrawn in the United Kingdom in 1993—eight years ago—the Queen’s vice-regal representatives in Australia have continued to enjoy it. This bill rectifies that anomaly.

The Democrats support this bill but will be moving an amendment, which we will take on the voices. The amendment goes to the issue of superannuation and reflects a longstanding Democrat position. I refer to the Democrat amendment 2220, which has been circulated. The Democrats are moving similar amendments to every relevant piece of legislation concerning superannuation. In our view, it is essential that the legislation for superannuation is modernised in every bill that it affects.

Existing superannuation laws permit the inheritance of a spouse’s superannuation interest by the surviving spouse. Spouse is a defined status. The simple rationale for this is that each of two individuals who are married with a mutual commitment to a shared life should be entitled to take the benefits of their partner’s superannuation if that partner dies. We suggest the same should apply if they are not married. Interdependent people rely on superannuation benefits and other investments to sustain their standards of living on retirement. This reliance is made secure by the ability to inherit the investments and superannuation benefits of a deceased partner. The Democrats’ problem with the current law is that it does not reflect the principle behind it. The law is limited in scope to spousal relationships, whereas the principle demands that all people who have a mutual commitment to a shared life be entitled to inherit superannuation interests in the same way that spouses presently do. People who are not married, whether of the opposite sex or the same sex, are treated differently in law from married people in similar relationships. On what possible basis can this discrimination be accepted?

There is an element of symbolism about this bill. There are only six governors and one Governor-General at any given time. Rather than alter the current taxation provisions by legislation, it would probably be easier to simply continue the exemption from income taxation and factor that into the salary payments. The change is prompted not by economic necessity—indeed, some of the premiers have complained that it is going to cost them a few bob—but by a desire to see our head of state and state governors treated in accordance with principles of equality and equity when it comes to their superannuation and taxation rights and liabilities. We applaud that principle. In this sense, it is an ideologically driven change—a change driven by principle. It is no longer appropriate for the incomes of vice-regal representatives to be tax free, so the government will amend that and has our support in doing so.

But the government should also recognise that a variety of relationships presenting a mutual commitment to a shared life exist in contemporary Australia. Our laws need to be modernised to reflect our society. These relationships should be recognised in law, for superannuation purposes. Just as it is now inappropriate for the representative of our head of state to be immune from income taxation, despite over a century of the practice, it is also inappropriate to unduly restrict the class of relationships the representative of our head of state can have while still enjoying joint superannuation benefits.

Consider, for example, what would happen if one of our governors or governors-general did not have a spouse. Very fre-
quently these days, I hear those in interdependent relationships described as partners. Why should the partner or interdependent person in that relationship not be entitled to the same superannuation benefits a spouse would receive? While perhaps at present an unlikely scenario for the incoming Governor-General, we are legislating for the future. We are updating legislation which is archaic and, as I have said, there is an element of meaningful symbolism and principle about this bill.

This is a bill about structuring the Governor-General’s taxation and superannuation liabilities in accordance with principles of equity and equality. It should not prohibit any future Governor-General—or even the incoming one—from sharing those superannuation rights and liabilities with an interdependent partner, as opposed to a spouse. On that basis, the arrangements established by this bill should reflect the diversity of families and relationships in modern Australia. Unamended, I suggest this bill will remain out of touch and archaic in content with regard to superannuation.

Senator SCHACHT (South Australia)
(1.01 p.m.)—I rise to speak on the Governor-General Legislation Amendment Bill 2001. My colleague, Senator Faulkner, has explained the financial reasons for this bill. I want to associate myself with the remarks made by my colleague Senator Hutchins. He, I think quite rightly and appropriately, pointed out some concerns about the background of the new, incoming Governor-General.

I want to make a different point and talk about the appropriateness of appointing an ordained religious figure to be Governor-General of Australia for all Australians. I have drawn much of the material for my comments from a well-researched article written by Gerard Henderson and published in the Melbourne Age of 24 April 2001. I would point out that Mr Henderson is not a mad left-winger by any stretch of the imagination. I do not know which church he belongs to, if any, but I do know that at one stage in the 1980s he was a speechwriter for the present Prime Minister when he was Leader of the Opposition. By no definition can he be seen as a card-carrying member of, nor fellow traveller or sympathiser with, the Labor Party. I will quote some of his article, because I think he sums up more articulately than I can some of the issues that have to be addressed. He says:

He is the first ordained cleric of any faith to become governor-general. And, it is to be hoped, the last.

He then quotes John Howard who said, when Bill Hayden, a republican at that time, was appointed Governor-General, that this would be:

“a bit like appointing an atheist as Archbishop of Canterbury”.

What I think is most telling is that he then points out that during the Constitutional Convention, of which Dr Hollingworth was a member, Dr Hollingworth:

... raised the issue that he was “someone ... who swore an oath of allegiance to Queen Elizabeth II, her heirs and successors”. The archbishop added that he “did so before [he] was consecrated bishop, before [he] was ordained a priest and on many other occasions ...” And he asked fellow delegates “whether or not those oaths continue to be legally binding”. His tentative conclusion was that this was “something that will have to be addressed”.

It has to be addressed now, because he is now the Governor-General, and he has said that the issue of the oath he swore to become a consecrated member of the Church of England is now the case in point.

Mr Howard defended his appointment of Dr Hollingworth by saying that Mr Deane, the present Governor-General, is a devout practising Catholic, the Governor-General before him, Mr Hayden, is a self-declared atheist and, of course, the Governor-General before him, Sir Zelman Cowan, is Jewish. As Mr Henderson points out, that misses the point. William Deane is not an ordained cleric and Sir Zelman Cowan is not a rabbi. Both are citizens of Australia, no more and no less, just like Bill Hayden and all other previous Australian governors-general. However, Dr Hollingworth is both ordained and consecrated. Moreover, as he himself has publicly acknowledged, the implications of this issue have yet to be addressed.
This point was made even by members of Dr Hollingworth's own church. At the time of the appointment, George Browning, the Anglican Bishop of Canberra and Goulburn, told ABC radio about his concern that this decision might blur the distinction between church and state. In Browning's words:

It is certainly not appropriate for the church to be inappropriately connected with the seat of power. It matters not that Hollingworth happens to be a member of the Anglican communion, which has a connection with the Church of England headed by Queen Elizabeth II, although as archbishops and others have acknowledged some complications arise from the fact that those in Anglican orders swear certain oaths. It would also be inappropriate if a prominent and well-qualified member of the Catholic Church, such as George Pell, or of the Uniting Church, such as Dorothy McRae McMahon, or of the Baptist Church, such as Tim Costello, were appointed as the Queen's representative in Australia, or indeed if a rabbi, a mullah, a lama or whoever were.

I draw that to the Senate's attention because I think it raises the point that, although Dr Hollingworth is a distinguished citizen of Australia and has contributed to Australia being a civilised society, the issue of separation of state and church is fundamental to the operation of freedom of religion and democracy. If at times we err in blurring that distinction, it will be to the detriment of our democracy not to strengthen it. Mr Henderson finishes his article by saying:

The Most Reverend Peter Hollingworth deserves the best wishes of all Australians. It's just that the Prime Minister should not have made the offer. And the Archbishop should not have accepted it.

I agree with those remarks as a person who is a non-believer of any faith. I want a head of state who is not in any way ordained to any organised religion, a person that we can all know represents the community of Australia without taking an oath to support a particular form of religion.

I want to conclude my remarks, like Senator Murray, by paying a tribute to the outgoing Governor-General. It is a tragedy for me and many others that he is not the last Governor-General, to be succeeded by the first president of Australia and an Australian citizen. I have to say, in view of his performance as Governor-General, he would have been a fantastic first president of the Australian republic. I have had the opportunity as shadow minister for veterans' affairs to attend a number of functions where Bill Deane has spoken as Governor-General, and I have to say I know of no Governor-General that has made more compelling remarks, more moving remarks, than the present Governor-General.

First of all, though it was not a veterans function I was at, I want to draw attention to the remarks that he made at a place called Interlaken in Switzerland a year or so ago after a number of young Australians were killed in that tragic accident in the river in Switzerland. That was where Bill Deane and his wife went to the commemorative service and took with them wattle sprigs and gave them to each of the relatives to throw into the river as a commemoration on the death of their children. I just want to quote from the speech because it is much better than anything I could say. He said:

Yesterday, my wife and I, together with family members and friends of the Australian victims, visited the canyon where the accident occurred. There, in memory of each of the 14 young people who came from our homeland, we cast into the Saxetenbach 14 sprigs of wattle, our national floral emblem, which we had brought with us from Government House in Canberra. Somehow, we felt that was bringing a little of Australia to them.

He then concluded with a peroration that I find extremely moving:

It is still winter at home. But the golden wattles are coming into bloom. Just as these young men and women were in the flower of their youth. And when we are back in Australia we will remember how the flowers and the perfume and the pollen of their and our homeland were carried down the river where they died to Lake Brienz in this beautiful country on the far side of the world.

I cannot think of a more appropriate set of words for a ceremony such as that to remember a group of young Australians who died so tragically.

As far as veterans affairs is concerned and commemoration of veterans, I had, as it turned out to be, the honour to be present.
when the Governor-General, Sir William Deane, spoke twice at Gallipoli in 1999 on Anzac Day. First of all at the dawn service he made a speech, which I will not read in full but which I would draw to the attention of every senator, and also later he spoke at Lone Pine. He said in that speech first of all at Gallipoli as the sun came up at Anzac Cove:

And we express our thanks for the fact that this Peninsula, which the Turkish authorities on the initiative of President Demirel are developing as the Gallipoli Peace Park, is a sanctuary of peace and a constant reminder of the power of reconciliation.

He referred to the reconciliation that we have reached with the Turkish people. We all know he has used and spoken of the need for reconciliation in Australia between Australians and our original inhabitants in this country. He also went on in that speech to talk about the attempt to grow wattle at Anzac Cove. He said:

The wattles didn’t survive. But his desire—the padre, Mr Walter Dexter—was fulfilled in any event. For not only ‘a bit’, but an essential part, of Australia will always be here with the graves, the bodies, the memories and the spirits of the young Anzacs who were left behind. Here in this sacred site in the annals of our nation.

He used a phrase that has become important to indigenous people—that there are places in Australia for them that are sacred sites and he saw Anzac Cove, as we all would agree as Australians, as the ultimate sacred site. He then concluded his remarks at Anzac Cove with the following:

Let us all, as we walk among these graves on this 84th Anzac Day, listening to the wind in the pine trees, looking across the scarlet-poppied slopes to the ‘heights of thyme and rosemary’, remember the extent of our debt to our fellow countrymen who died here so many years ago. And, on this our national day of honour, let us recall not only those young Australians who gave their lives in our nation’s service here at Gallipoli, so far away from their and our homeland, but also all who have died for our country on other battle fields of the First World War, in the Second World War, in Korea, in Vietnam and in other places. And let us all be conscious of the whisper of things ‘too deep for words’ that can be heard here in this place by all who have true love of our people and our country in their hearts.

I have to say, amongst several thousand mainly young Australians, that was a moment which moved most of us to tears. At midday at Lone Pine on a beautiful sunny day he spoke again amongst the 2,000 Australians who were buried there in this very small place, where seven Victoria Crosses were won in a matter of a couple of days in the battle around Lone Pine. He concluded his words with:

No one can express all that this day means to us Australians and New Zealanders. It is, said Australia’s great historian Manning Clark, ‘about something too deep for words.’ But in the stillness of the early dawn, and in the silence that will settle once more along this shoreline, we feel it in the quiet of our hearts. The sense of great sadness. Of loss. Of gratitude. Of honour. Of national identity. Of our past. Of the spirit, the depth, the meaning, the very essence of our nations. And of the human values which those first Anzacs—and those who came after them—embodied and which we, their heirs, must cherish and pass to the future.

At the end of those remarks there was silence before the applause, because he so moved the crowd of about 8,000 people. At that moment we all reflected on what he said. Later, when he moved from the site to go to the next service, the several thousand young Australians all stood and applauded Sir William Deane all the way back to his car in appreciation that he had so tellingly and effectively expressed something that most of us hope that we would have the ability to express but do not have the eloquence of his words. Sir William Deane is a very great Australian. His words that Anzac Day, to me, were the equivalent of Pericles’ address to the Athenians 2,500 years ago, or Lincoln’s address at Gettysburg, dedicating the cemetery to those who fell in the Civil War, or Prime Minister Keating’s address on the return of the Unknown Soldier in 1993 to our War Memorial. These remarks of Sir William Deane demonstrate that he is a truly great Australian and he will be always remembered by all of us as probably the best Governor-General this country ever had. I only wish he could be our first president.

Senator HARRIS (Queensland) (1.16 p.m.)—I rise to speak on the Governor-General Legislation Amendment Bill 2001.
Unlike the three previous speakers, I would clearly express my support for the continuation of the role of Governor-General in this Commonwealth of Australia. I certainly expect to see many governors-general of equal calibre to that correctly perceived of Sir William Deane. There is a separation in the government of this country that we all normally recognise as being on three levels—that is, the legislative section, the executive government and the judiciary. Today I would like to speak briefly on the fourth level, which very clearly sets out the benefits between having a constitutional monarchy and a republic and the role of the Governor-General. Her Majesty Queen Elizabeth, at her coronation, swore an oath to uphold the rights of the citizens of Australia, and I stress the word ‘citizens’. She, as our monarch, swore to uphold my rights, your rights, Mr Acting Deputy President, the rights of everybody in this room and those of every Australian. The Governor-General, as her representative in Australia, is duty bound to carry out that activity and it is that activity that I wish to focus on today.

Our founding fathers, when they drafted our Constitution, did so in such a way that they did not replicate the British process; they did not replicate the American process. They created one that was uniquely Australian. We have benefited from that over the last 100 years. Sadly, to some degree the role of the Governor-General, I believe, has slipped from what it was originally intended to be, and that is, as I said in my opening remarks, to represent the people of Australia. The Governor-General, whoever he or she may be, both now and in the future, is the level of approach that the citizens of Australia—that is, the people of Australia—have when at some time they are aggrieved by a decision of the government. It is with great reverence that I call upon Bishop Hollingworth to take up this role. It is not an additional role; it is part of his duties to be accessible to the people of Australia and not to be constrained or to take directions totally from the executive government. All approaches that I have made to the existing Governor-General, Sir William Deane, have been responded to by reflecting that he only takes his direction from the executive government. I believe that is contrary to the original intent of our founding fathers and I look to the day when we have a continuation of governors-general in Australia and a return to the process where they clearly are there to listen to and to take into account that the citizens of Australia may be aggrieved by their government, whatever government that may be.

Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (1.22 p.m.)—I would like to thank senators for their contributions and their generous remarks in terms of the retiring Governor-General, Bill Deane, who, suffice to say, for me, is a good Joeys boy and the person that I mentioned in my maiden speech, when I first rose in this place, in regard to his commitment, the generosity of his spirit and his life that far.

In summary, the Governor-General Legislation Amendment Bill will do three things. The bill will set a salary of $310,000 per annum for the office of Governor-General during the term of the Right Reverend Doctor Peter Hollingworth. The bill will also update income tax arrangements for the Office of Governor-General and for state governors appointed after 29 June 2001 by removing outdated income tax exemptions. Lastly, the bill will ensure that superannuation surcharge provisions for the Office of Governor-General are in line with community standards.

In proposing a taxable salary of $310,000 per annum, the government has maintained a convention followed by successive governments since 1974. In line with convention Archbishop Hollingworth’s official salary is expected to be moderately above the average salary of the Chief Justice of the High Court over his notional five-year term. At present, the Governor-General and the state governors are exempted from paying income tax on their official salaries and income from outside Australia. This exemption is a legacy of an earlier era in Australian history. The amendments will update the Income Tax Assessment Act by removing the exemptions, thereby bringing the tax arrangements for vice-regal representatives into line with the rest of the community. The bill will also bring the Governor-General’s superannuation
surcharge provision in line with community standards. The main effect of the superannuation amendments will be to cap liability at the 15 per cent maximum surcharge rate and to deal with circumstances in which a notional surcharge assessment is issued after the Governor-General leaves office.

Honourable senators will have noted that the government is interested in vice-regal entitlements which reflect and are consistent with community standards. The amendments proposed by the Democrats go beyond what is generally available in the community. It may be the Democrats’ view that the provisions available to the wider community should be changed. However, a debate about the Governor-General Act is not the appropriate context in which to initiate such changes, particularly when the current superannuation provisions of the act adequately accommodate the needs of the person who is expected to occupy the office of Governor-General for the next five years. For these reasons, the government will not be supporting the Democrats amendments, and I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The CHAIRMAN (1.25 p.m.)—Order! I would draw the attention of the Senate to the fact that this bill, in schedule 2, contains provisions which impose taxation. Income tax is newly imposed on the salaries of the Governor-General and state governors, and normally the Senate would treat such a bill as a non-amendable bill, but schedule 1 contains provisions relating to salary and superannuation which would normally be regarded as amendable. I suggest that the Senate treat as amendments any proposed changes to schedule 1 and as requests any proposed changes to schedule 2.

The bill.

Senator MURRAY (Western Australia) (1.25 p.m.)—by leave—I move Democrat amendments Nos 1 to 3:

(1) Schedule 1, page 5 (after line 15), after item 8, insert:

8A Subsection 2B(2), (3) and (4)

Repeal the subsections, substitute:

(2) For the purposes of this Act, a person had a partnership relationship with a deceased person at a particular time if the relationship met the requirements of subsections (3) and (4) at that time.

(3) A partnership relationship means a relationship that is genuine and continuing between 2 people:

(a) who live together, or do not live apart on a permanent basis; and
(b) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

(4) For the purposes of paragraph (3)(b), relevant evidence of a mutual commitment to a shared life includes, but is not limited to:

(a) any joint ownership of real estate or other major assets; and
(b) any joint liabilities; and
(c) the extent of any pooling of financial resources, particularly in relation to major financial commitments; and
(d) any joint responsibility for the care and support of children, if any; and
(e) the period of time for which the two persons have been living together as partners to the exclusion of any other partnership relationship; and
(f) the persons’ living arrangements.

Note: The heading to section 2B is altered by omitting “Marital” and substituting “Partnership”.

8B Section 2C

Repeal the section, substitute:

2C Spouse or partner of a deceased person

(1) For the purposes of this Act, a person is a spouse of a deceased person if the person was legally married to the deceased person at the time of the deceased person’s death.

(2) For the purposes of this Act, a person is a partner of a deceased person if:

(a) the person had a partnership relationship with the deceased person at the time of the deceased person’s death; or
(b) the person:
(i) had previously had a partnership relationship with the deceased person; and
(ii) in the Commissioner’s opinion, was wholly or substantially interdependent with the deceased person at the time of the death.

8C Subsection 4(2)
After “spouse” (wherever occurring), insert “or partner”.

(2) Schedule 1, item 11, page 6 (line 14) to page 7 (line 5), after “spouse” (wherever occurring), insert “or partner”.

(3) Schedule 1, page 8 (after line 28), after item 13, insert:

13A Section 4A
After “spouse” (wherever occurring), insert “or partner”.

Note: The heading to section 4A is altered by inserting “or partner” after “spouse”.

I have motivated amendment 2220 in my second reading speech quite adequately. I would remark to the parliamentary secretary that of course he would be aware, as I am, that bills amending the Governor-General Act are extremely rare and I suspect do not appear more than perhaps once in every five-year cycle, or perhaps even longer. We took advantage of our general superannuation campaign to deal with this act at this time.

Senator GREIG (Western Australia) (1.26 p.m.)—I rise to speak in favour of Senator Murray’s amendments and commend him for the initiative. I would like to make a few points to refute some of the claims I have heard here today and to expand a little on the issue. The Parliamentary Secretary, Senator Heffernan, said words to the effect that the amendments moved by Senator Murray are out of step with the general superannuation structure that we have in the Commonwealth, and that the Prime Minister’s idea was to try to have this initiative in keeping with the majority of superannuants. The principle reasons for that is because my colleague retired MLC the Hon. Helen Hodgson successfully moved through that state’s upper house a sexuality discrimination bill with the support of Labor and Greens which saw, for the first time, this reform pass an upper house in my home state, and under which the new government has proposed to introduce. At a state level, we already have a system where the majority of citizens are covered by this non-discriminatory policy. I understand that moves are being made with Democrats colleagues in South Australia to do similarly.

If we are going to argue that the Prime Minister’s purpose for not addressing the issue of discrimination against same sex couples is to modernise and to bring us into line, then you have an inherent contradiction. The reality is that the majority either have, or will have, addressed this issue. The difficulty for the Commonwealth, and particularly Commonwealth employees, is that there is a discrete difficulty in terms of the discrimination experience. That really relies on the reversionary pension. For example, if you have a senior Commonwealth figure, whether a member of parliament or an Attorney-General, who is in receipt of the appropriate pension and who then dies, if that person is married and the definition of that is heterosexist in the act, then the surviving wife or husband continues to receive that reversionary pension. That is specifically and deliberately denied to a surviving same sex partner.
But there is also difficulty in the generic attempt to leave a superannuation contribution, a superannuation death benefit, to a surviving same sex partner. From the research I have done, I have yet to find a specific instance where that has been specifically denied. In every case of which I am aware, a same sex partner has been able to access the superannuation contribution, if not the death benefit, but there are often penalties that apply to that, specifically a tax impost that does not apply to a heterosexual de facto person or a married person. When I spoke in this debate previously, there was an interjection from I think Senator McGauran who said, ‘Well, why not just leave it in your will? Why not just leave it to your estate?’ It is a remonstration I am familiar with whenever this issue crops up, but it illustrates a particular ignorance on the part of some people who seem to think that that is either acceptable or possible. In reality, if a person in a same sex relationship does leave their superannuation in their will to their estate, it can be open to challenge. That is, even if you nominate a particular partner, it is still open to challenge, for example from a previous heterosexual partner, so it is vulnerable to a lack of reliability. It is also open to creditors. If that person should owe money, then creditors have first dibs on what is left in your estate before it goes to the person nominated in your estate. That is a particular financial impost not imposed on married or de facto couples.

It is often argued from those who oppose the recognition of same sex couples that there is a particular purpose for doing this, and the purpose is often framed in terms of protecting the family or strengthening marriage. I make two particular points about that. When you are dealing with the issue of a reversionary pension or a death benefit from superannuation, you could hardly argue that the purpose for leaving the money was to protect the marriage. The marriage has, of course, ended with the death of the spouse. Nor could you reasonably argue that the purpose was for the protection or enhancement of children because, in the vast majority of these cases, you are dealing with late middle-aged or elderly people for whom, if they have children at all, they are financially independent and adult children.

In essence, then, I recap by saying that the majority of states and territories—and I understand here in the ACT this discrimination has also been eradicated—have already dealt with this discrimination and abolished it. The Commonwealth is lagging far behind, and it is unacceptable. We Democrats have attempted to address this through a range of amendments through a number of pieces of superannuation legislation, but each and every time we are told by opponents that now is not the right time and this is not the right bill. I am waiting with bated breath for the gay and lesbian human rights bill to appear on the Howard government’s legislative agenda. It is not going to, of course, and the reality is, despite all the rhetoric we hear from those in the coalition opposing these forms of amendment, the coalition is hostile to the notion that gay and lesbian people have equal rights at a federal level, if not in all cases at a state level. But we also hear the same rhetoric from Labor.

I am aware of the fact that Mr Albanese has produced in the House of Representatives a private member’s bill to address the issue of discrimination in superannuation. That is commendable. That bill has been introduced in the Senate. But I make the point that the bill is fundamentally flawed in at least one aspect—that is, it does not cover Commonwealth employees. We Democrats will amend that bill to make it adequate if and when that bill ever sees the light of day. But I also make the more important point that the so-called Albanese bill is simply one part of one section of the Democrats’ sexuality and gender status discrimination bill which precedes Labor’s bill by four years. Again, if that bill were to pass, we would have comprehensive anti-discrimination laws in this country to protect lesbian and gay citizens in same sex relationships, but that bill would require Labor support and to date that support has not been forthcoming.

Finally, Senator Harris made the point in a part of his speech that the Queen had taken an oath to uphold the rights of all citizens, and he feels strongly and passionately about that. I would argue, however, that if that is
the case, if Her Majesty has taken an oath to uphold the rights of all citizens, then she has failed because the fact that gay and lesbian citizens suffer this discrimination is not denounced by the Queen. I would argue that only a charter of rights or a bill of rights as advocated by the Australian Democrats, and worked on considerably by my colleague Senator Murray, offers the best protection to ensure that all citizens do in fact have access to their human rights—something which they do not have at the present.

To summarise briefly, the principle of Senator Murray’s amendments is very clear. It is, I understand, quarantined just to this particular piece of legislation dealing with the Governor-General, but it is important to make the note that, in terms of Commonwealth discrimination, it is continuing, unacceptable and must be changed. By moving this amendment Senator Murray has again highlighted why this is the case.

Senator HARRIS (Queensland) (1.35 p.m.)—I would like to briefly respond to the Democrats’ amendments. If the purpose is to provide for either same sex couples, lesbians or gays to be the Governor-General, I find that totally unacceptable and offensive, and record Pauline Hanson’s One Nation opposition to the amendment.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.36 p.m.)—I think Senator Harris might have got it wrong, but I do not think I will engage in the explanation for him. I will leave that to the Australian Democrats if they wish to. I will confine my remarks to a very brief statement in relation to the amendments before the chair. Of course, we are dealing with what I think have become pretty standard Democrat amendments to broaden the legal definition of marital relationships to include same sex relationships. I am advised by my colleagues that the position the opposition will be taking in relation to these amendments is consistent with how we have approached these types of amendments previously: that the current definition of marital relationships has been supported by the opposition. I must say we do not actually regard this bill as an appropriate vehicle for the consideration of this issue, so I indicate to the committee that the amendments before the chair do not find favour with the opposition and we will not be supporting them.

Senator GREIG (Western Australia) (1.37 p.m.)—I will just respond briefly to the comment from Senator Harris. There was a time, perhaps, in Australia when someone might have said how appalling and how offensive it would be if we had an Aboriginal as Governor-General. Times have moved on. Obviously I find it difficult that anyone says if the Governor-General were to be gay or lesbian that that is somehow repugnant. I do not understand that thinking in this day and age, but I accept that some people share that view. I will make the point, though, that historically and statistically there were several state governors who were gay. One of them, I am aware, was Governor Cairns from your own electorate—from whom a town in your electorate is named. At least I recall that he was a governor: he was certainly a senior public official. I think he was a governor. I encourage you to look at the history books and at the interesting difficulties he had, particularly in leaving his property and finances to his male partner on his death.

Amendments not agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

BUSINESS

Days and Hours of Meeting

Motion (by Senator Heffernan)—by leave—proposed:

That, on Monday, 25 June 2001, if the President notifies senators before 12.30 pm that the Senate will meet at 2.30 pm, the Senate shall meet at 2.30 pm accordingly.

Senator Faulkner—Is that it?

The ACTING DEPUTY PRESIDENT (Senator Calvert)—That is it.

Senator Faulkner—But we don’t know if it’s happening.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for For-
eign Affairs) (1.40 p.m.)—by leave—Could we not move another motion if there is a change?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.40 p.m.)—by leave—I have not sighted the motion and I think the opposition is probably willing to support it. I am just questioning the use of the word ‘if’. I assume that means there must be some uncertainty. That is all I am asking. It seems reasonable to ask that.

The ACTING DEPUTY PRESIDENT—Does the parliamentary secretary have anything further to add to this to alleviate the opposition’s concern?

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.41 p.m.)—by leave—We do have three bills we are trying to get through and we do have a host of public servants outside. I think it was discussed with the whips. I would appreciate it, Senator Faulkner, if we could move on to the other bills. I think you might understand the wording of the motion.

Senator Faulkner—It is the uncertainty I am objecting to.

The ACTING DEPUTY PRESIDENT—I think what the parliamentary secretary was saying was that the matter will be withdrawn until a later time today. Is leave granted to withdraw the motion?

Leave granted.

DRIED VINE FRUITS (RATE OF PRIMARY INDUSTRY (CUSTOMS) CHARGE) VALIDATION BILL 2001

DRIED VINE FRUITS (RATE OF PRIMARY INDUSTRY (EXCISE) LEVY) VALIDATION BILL 2001

Second Reading

Debate resumed from 18 June, on motion by Senator Patterson:

That these bills be now read a second time.

Senator FORSHAW (New South Wales) (1.42 p.m.)—This is not as lofty a matter as the previous debate on the appointment of the new Governor-General. The Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001 and the Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001 deal with the regulations regarding the dried vine fruit industry. Whilst listening to the previous debate I was thinking about the separation of church and state some 2,000 or more years ago when a certain noted religious figure was very familiar with the dried vine fruit industry. Anyway, these bills will retrospectively validate regulations made on 29 August last year to reduce the rate of the levy and export charge on dried vine fruits from $10 to $7 per tonne as of 1 January 2000.

The bills are necessary because of a technical difficulty that has arisen. Apparently, according to advice from the Attorney-General’s Department, there is some possibility that the regulation may be invalid due to the operation of subsection 48(2) of the Acts Interpretation Act 1901. We are happy to support the legislation on the basis that it corrects an anomaly. We are advised that it is not envisaged that anyone in the industry who pays the levy has actually suffered any adverse impact as a result of the implementation of the regulation as it was gazetted previously. This legislation will nevertheless ensure that any adverse impact that might occur will still be covered. So we support the legislation. In view of the time, I will not make any further comments, but I do invite honourable senators, and indeed the public, to read the excellent speech of the shadow minister, Mr O’Connor, delivered in the House on 24 May 2001. It is a very informative speech, and particularly draws attention to the lax attitude, once again, of this minister and this government in terms of getting the legislation right in the first place. The opposition does not oppose the bills.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.45 p.m.)—in reply—The second reading speech clearly outlines the objectives of the bills. I thank Senator Forshaw for his contribution and 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.

MIGRATION LEGISLATION AMENDMENT (ELECTRONIC TRANSACTIONS AND METHODS OF NOTIFICATION) BILL 2001
Second Reading
Debate resumed from 18 June, on motion by Senator Patterson:
That this bill be now read a second time.

Senator FORSHAW (New South Wales) (1.46 p.m.)—I had a very erudite speech for the Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001 but, in view of the time, I will indicate that the opposition does not oppose the passage of the bill.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.46 p.m.)—in reply—I thank Senator Forshaw for being so succinct. In recognition of that, I commend the Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001 to the Senate. The intention of the bill is clearly outlined in the second reading speech and in the explanatory memorandum.

Question resolved in the affirmative.

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

BUSINESS

Days and Hours of Meeting
Motion (by Senator Patterson)—by leave—agreed to:
That, on Monday, 25 June 2001, if the President notifies senators before 12.30pm that the Senate will meet at 2.30 pm, the Senate shall meet at 2.30 pm accordingly.

Sitting suspended from 1.50 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Women's Emergency Services Network

Senator CROSSIN (2.00 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Can the minister confirm that the Women’s Emergency Services Network, a national organisation representing more than 400 women’s refuges, lost the last of its funding from this government yesterday? How does this government plan to ensure that its strategies on domestic violence are effective without the support of the Women’s Emergency Services Network and its member organisations?

Senator VANSTONE—I can give quite a long answer to this question because there is a number of things to say. Firstly, let me deal directly with the WESNET issue and then, to the extent that time permits and Senator Crossin is interested in the subject and happy to ask a supplementary, I will give her some information on the government’s very extensive role in respect of domestic violence and the partnerships that we have established. This program was started by my predecessor, Senator Newman, and is continuing with significant funding.

I might also touch on the question of indigenous family violence, which this government is playing a significant role in attempting to reduce. I might raise the Walking into Doors program as just one example of that. It has been extremely successful and I believe, senator, that your Territory has had
some benefit from that. That program was organised with advice from the indigenous community. The key players, Archie Roach and Ruby Hunter, are indigenous themselves and they are visiting a number of towns, holding forums and arguing the case for domestic violence to be brought out into the open and to be discussed. The theme of it is walking into doors. I do not know whether you have heard that song—it is a very good one—basically arguing the case that she is sick of walking into doors.

The situation in relation to WESNET is this: the government is not defunding WESNET. Any funding received by WESNET which finishes on 30 June is doing just that—it is simply finishing. Their funding has never been recurrent funding, nor has it been cut. Funding through the department has been based on WESNET being contracted as a consultant to perform a range of activities with the government’s Partnerships Against Domestic Violence initiative. These activities were intended from the outset to run between 1998 and June 2001. WESNET knew when it accepted that funding that it was what I describe as program funding, not recurrent funding.

WESNET’s status relating to peak organisations stems from its membership of the Australian Federation of Homelessness Organisations, AFHO. AFHO is currently funded by FACS under the National Secretariat Program. So, of course, WESNET, as a subsidiary of AFHO, is not also going to be funded as the key peak organisation, because AFHO is that organisation and WESNET is a member of AFHO.

WESNET is not the only organisation that contributes to government policy on domestic violence. There are a range of organisations, including the National Association of Services Against Sexual Violence and the No to Violence organisation. Others include Women with Disabilities Australia, the Older Women’s Network and, frankly, a wide variety of individuals from organisations with expertise, as well as academics, business people, researchers and service providers.

So the bottom line, Senator Crossin, is that WESNET were funded for particular tasks and those tasks have nearly come to an end. As is often the case, those people would like to be funded permanently. There is no lobby group in the world that would not like permanent funding from the government. But they are not the only people involved in this area. Prior to this matter becoming public, my office and the Office of the Status of Women have been in negotiations with WESNET to see what future tasks we could give them. As I see it, that is the basis on which, if they get any further funding, they will be funded—that is, for particular tasks. They are not a peak body. AFHO is the peak body in that area.

**Senator CROSSIN**—Madam President, I ask a supplementary question. How can the government call its main program for addressing domestic violence issues a partnership? Where is the partnership element when this government has cut funding to the organisation that represents those providing services to women who are the victims of domestic violence?

**The PRESIDENT**—Order! It is for the minister to answer this question, not other senators.

**Senator CROSSIN**—Thank you, Madam President. Or is this government’s idea of a partnership simply the relationship between this government and its advertising agencies?

**Senator VANSTONE**—Senator, sadly for you, it is very clear to people involved in this area—by your question—that you have no real interest and involvement in it, otherwise you would understand the wide range of partnerships in which the government has been involved and has funded. But if your proposition is that, if the government goes into partnership with people for a limited time to do a particular task, it should then be tagged forever and a day to fund that group to do whatsoever it chooses, you are mistaken. This government has committed a total of $50 million to Partnerships Against Domestic Violence, which the previous government, of which you were not a part, did not do. Labor left the area inadequately developed. Furthermore, the national Indigenous Family Violence Grants Program, announced in 1999, had a budget of $6 million
over four years to deal with this problem. Under that area, there are 30 successful projects being run. WESNET may not be a part of any of them, but there are plenty of projects going on. WESNET is not the only provider in the world. (Time expired)

Centenary House

Senator MASON (2.07 p.m.)—My question is to the Acting Minister for Finance and Administration, Senator Abetz. Given the Howard government’s commitment to the principle of obtaining the best value for money for taxpayers when renting property, is the minister aware of any examples where the Commonwealth is not getting value for money? What does the government propose to do about this?

Senator ABETZ—I thank Senator Mason for the question. On Monday of this week I unfortunately misinformed the Senate when I said that the Labor Party were ripping off taxpayers for $25 million for the rental of Centenary House. I apologise. In fact, over the life of the contract, the amount is closer to $36 million. That is not the total value of the lease. That is the amount above market rates that the taxpayers of Australia will have to pay over the 15 years of the lease. This is just a Labor rip-off, and they will do nothing about it. Yet, according to figures used by Mr Beazley himself, for $36 million you could get 2,160 heart bypass operations or 2,880 hip replacements or 432 new portable classrooms. Wouldn’t this be a better use of taxpayers’ money than Labor feathering their own nest? Where is their affected concern now? Where is their social conscience on this one? Where is their compassion? In this year alone, Labor will get an extra $2.2 million because of their rent rip-off—that is, 176 hip operations. Mr Beazley refuses to address the immorality and indecency of this Labor rort. Where is his social conscience on this one? Where is Labor’s compassion? The only bypass Labor are interested in is bypassing public scrutiny and probity. The feigned concern for classrooms has given way to concern for Labor headquarters. And concern for hip replacements has given way to hypocrisy and Labor’s own hip pocket.

Senator Mason asked what can be done about this. Mr Beazley and Labor could show some courage and leadership, some integrity, some decency. I have here a 50c piece, and I am willing to donate that to Mr Beazley so that he can make a phone call. Indeed, it might even be cheaper than that, courtesy of the local neighbourhood call, or indeed with Senator Bolkus’s assistance it might even be a free call. I can even give Mr Beazley the telephone number, which is 6273 3133. All it takes is one telephone call from Mr Beazley and this Labor rort could be stopped and the lease could be renegotiated. The Labor Party has a history of feathering its own nest. We have it with Centenary House. We have seen it exposed by the McKell Foundation—the funny money for Mr Brereton. We have seen it with Markson Sparks. The Australian public should remember this: when Mr Beazley was last in power, Labor used every possible means to rort money out of taxpayers for their own benefits. Mr Beazley can put an end to the $36 million Centenary House rort by one simple phone call. But, as we all know, he does not have the ticker to do it. He cannot run his own party: he cannot run the country.

Department of Family and Community Services: Peak Community Organisations

Senator MACKAY (2.11 p.m.)—My question is to Senator Vanstone, Minister for Family and Community Services. Can the minister confirm whether negotiations—Senator Ian Macdonald interjecting—Senator MACKAY—It is hard to hear with Senator Macdonald screeching across the chamber.

Senator Conroy interjecting—

The PRESIDENT—Order! Senator Conroy! Senator Mackay, your question.

Senator MACKAY—My question is to Senator Vanstone, Minister for Family and Community Services.

Honourable senators interjecting—

The PRESIDENT—Order! Senator Vanstone is entitled to hear the question she is being asked to answer.

Senator MACKAY—Senator Macdonald, please be quiet. I implore you. Thank you, Madam President. Can the minister confirm
whether negotiations on contracts between her department and peak community organisations have been concluded? Has the minister maintained the requirement that funded peak organisations provide her office with press releases 24 hours in advance of their release?

Senator VANSTONE—I thank the senator for the question because it gives me the opportunity to clear up some misunderstandings that were quite deliberately generated by some in the community in relation to this matter. Peak bodies have funding at the moment on the basis that they give the government early warning, not of any press releases that they put out but of ones that are initiated by them—that is, they have thought about it, there is something they want to say that relates to the area that they are meant to be lobbying the government about. So the government should have some early warning of that. That is in the interests of proper public debate because, inevitably, as they put the press release out, the relevant minister will be rung and asked, ‘Well, what do you think of this?’

Opposition senators interjecting—

Senator VANSTONE—I hear interjections of ‘censorship’. That is just rubbish. I have always said that the voice of dissent is the bell of freedom. If you want to have both views aired, then you need to give some advance warning of what you are doing.

Honourable senators interjecting—

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

Senator VANSTONE—In relation to these bodies there are two things that I think are relevant. They want funding because they want to lobby—

Honourable senators interjecting—

The PRESIDENT—Order! There are senators who, after my previous warning, are still shouting across the chamber. It is disorderly. Senator Vanstone has the call.

Senator VANSTONE—They want funding because they want to lobby the government. Isn’t it somehow extraordinary that those people who want to lobby the government should somehow have a view that it would be improper for them to let the government know what they want to say? The net result of a group that wants to be lobbied but does not want to give the government any early warning at all is that they want to be funded by taxpayers to simply play through the media as opposed to lobby sensibly and actively the government. Having made that point, Senator, it was not I who suggested that early warning be changed to 24 hours. In fact, the—

Honourable senators interjecting—

Senator VANSTONE—Madam President, I raise a point of order. Time and again in this place when people are answering questions, we are made to be quiet so we can listen to the question, and time and again there are interjections from the other side from senators who apparently do not want to listen to the answers.

Honourable senators interjecting—

The PRESIDENT—Order! There have been persistent interjections during this answer, and those participating in that behaviour know that it is disorderly.

Senator VANSTONE—As I understand it, the departmental officials involved in dealing with this area believe that it would be helpful to both sides if early warning were clarified.

Senator Mackay—Oh, the department!

Senator VANSTONE—Senator, you say, ‘Oh, the department,’ in a sneering tone.

Senator Mackay—Blame the department!

Senator VANSTONE—‘Blame the department,’ you say. If you think I am wrong, you find an officer. I give you an open invitation to speak to the department and ask them whether this was my idea. You want to sit there sneering—that is all you ever do, actually. All you ever do is sit there sneering. You ask a question and you will not even take the answer in good faith. Somehow, Senator, you think you know best. I am sure that, in your own mind, you do know best. The simple fact, Senator, is that you do not know the truth of the matter, and in this case I do. Negotiations have been continuing—

Honourable senators interjecting—
The PRESIDENT—Order!

Senator VANSTONE—She does not appear interested—why bother?

Honourable senators interjecting—

The PRESIDENT—Order! Question time is a time for questions to be asked and answers to be given. It is not an interactive display across the chamber, as has been going on during this answer and in others recently. The Senate will come to order.

Senator Bolkus interjecting—

The PRESIDENT—Senator Bolkus, that was absolutely out of order.

Senator VANSTONE—The advice that I have received, although I have not received it in writing—it has come to me verbally; it may be in writing in my office—is that the negotiations on this matter have gone quite well and are settled. But bear this in mind, Senator: if anybody comes to the government and says, ‘I want to be funded, I want to have a job using other taxpayers’ money to lobby you,’ other taxpayers, the people out there, the parents of these kids, expect the money to be spent properly. They expect us to say to lobby groups, ‘If you want to lobby the government, you had better do a good job of it and lobby the government. If you want to lobby just to be a political commentator, go and get your money from someone else.’

Senator MACKAY—Madam President, I ask a supplementary question. I thank the minister for that absolutely extraordinary answer and I remind her that she is the minister.

The PRESIDENT—Your question, Senator?

Senator MACKAY—Has the minister sought legal advice from her department to enable her to use the breach of an early warning clause by a peak organisation as grounds for defunding that organisation? Will the minister use such a legal power to defund an organisation for speaking out? If she claims she will not, why does the clause continue to be included in current contracts?

Senator VANSTONE—My advice is that this clause has been there for some time in terms of early warning. You encourage me, Senator, to go back and check just how far it has been there.

Senator Mackay—Have you sought legal advice?

Senator VANSTONE—Have I asked for legal advice? No. But I do not expect you to accept that answer, just like you did not accept the earlier answer I gave you, because you are one of those people who sit conveniently in opposition thinking that you know everything when you do not. Senator, if you had a smattering of some legal understanding you would get the difference—

Honourable senators interjecting—

Senator VANSTONE—A smattering is all that would be required. You would understand the difference between a condition and a warranty. Have I asked whether this clause is a condition or a warranty? No, I have not. Have I turned my mind to that? No, I have not.

Science and Innovation

Senator GIBSON (2.19 p.m.)—Will the Minister for Industry, Science and Resources advise the Senate how the government is supporting innovation and increasing investment in science and technology to create internationally competitive industry, new jobs and exports? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Gibson for his question and acknowledge his very keen interest in innovation. As Senator Gibson well knows, our government’s top priority is policies that create an economy that is good for innovation and job creation. As evidence of that, we have just increased the budget support for science and innovation by seven per cent this year to a record $4.7 billion—more than has ever been spent on this matter. Of course, our $3 billion Backing Australia’s Ability package is a visionary five-year plan that will generate knowledge, stimulate innovation and create jobs.

Unlike those opposite, we understand that, on its own, knowledge is absolutely useless. You have to have an economy that is converting knowledge into businesses and creating jobs. That is something that Mr Beazley clearly does not understand, as evi-
enced by another of his infamously long and tedious speeches that he made last week, with no detail, no costings and no policies, as usual. His speech not only ignored all the reports showing how we are creating knowledge based industries, but also ignored what his own commission reported said.

I heard Mr Crean talking about own goals the other day. This report of Mr Beazley’s is a classic own goal, because his Chifley Institute report clearly shows how Labor has neglected Australian investment in knowledge. The report shows that at the end of Labor’s 13 years in government in 1995, Australia had the second worst performance of the 12 OECD countries studied in terms of investment in knowledge. At the end of 1995, just before Labor lost office, according to Mr Beazley’s report, Australia’s investment in knowledge as a share of GDP was 40 per cent below Sweden, 33 per cent below Finland, 28 per cent below Denmark and France, and 25 per cent below the USA.

Labor left us with one of the lowest investments in knowledge in the OECD, plus a $96 billion debt and an ongoing annual deficit of $10,000 million dollars. They wound down our investment in knowledge and left us with no budgetary capacity to restore the investment. We have had to go about fixing the economy so that we can invest in knowledge creation and converting it into jobs, and that is what we have done through Backing Australia’s Ability. It is five months since we released that plan, and what have we heard from Labor about it? Nothing much at all, except that he has left open the option of cutting our science and innovation initiatives.

Of course, we know that science has never really mattered to Labor. Mr Barry Jones has said, on record, that being Labor’s science minister was regarded as the second worst job in government, just above Aboriginal affairs, which of course we know from one ALP insider was regarded inside the Labor Party as equivalent to the job of toilet cleaner on the Titanic. Labor does not take science seriously and it never has, as revealed by its threats not to replace our obsolete nuclear research reactor, costing 800 jobs in science in this country. (Time expired)

Veterans’ Records: Outsourcing

Senator SCHACHT (2.24 p.m.)—My question is to Senator Minchin, representing the Minister for Veterans’ Affairs. Can the minister confirm that the Howard government is planning to outsource the management of veterans’ records? Is it true that, if this outsourcing goes ahead, up to 80 departmental jobs will be axed? How does the government propose to guarantee the privacy and security of veterans’ medical records when they are placed in the hands of a private company?

Senator MINCHIN—My brief from Minister Scott, the Minister for Veterans’ Affairs, does not have reference to that matter, but I am more than happy to take that question on notice and get Senator Schacht an answer as soon as I can.

Senator SCHACHT—Madam President, I ask a supplementary question. I suppose you could say that he did not get it wrong so far. While the minister is taking it on notice to the Minister for Veterans’ Affairs, does not have reference to that matter, but I am more than happy to take that question on notice and get Senator Schacht an answer as soon as I can.

Senator MINCHIN—My brief from Minister Scott, the Minister for Veterans’ Affairs, does not have reference to that matter, but I am more than happy to take that question on notice and get Senator Schacht an answer as soon as I can.
achieved? And I ask again, to emphasise this point which is of great concern in the veterans’ community: by what means will the government guarantee the privacy and security of veterans’ records?

Senator MINCHIN—I am more than happy to take that on notice as well, and in so doing, say that I think that Minister Scott is renowned in the veterans community as being one of the most outstanding Ministers for Veterans’ Affairs this country has ever had. He has worked tirelessly to look after the interests of veterans, much more so than his predecessors ever did.

Asylum Seekers: Detention

Senator STOTT DESPOJA (2.25 p.m.)—My question is addressed to the minister representing the Prime Minister. What is the minister’s response to the comments made today by former Prime Minister Mr Malcolm Fraser, who claimed that the government and the opposition are ‘behaving as if they are frightened of the rednecks’? That was in relation to the continuing detention of asylum seekers. Does the minister agree with Mr Fraser’s comments? Does he agree with the statement by Mr Fraser that a number of very decent Australians have been persuaded that these asylum seekers are queuejumpers and that some of them may be prostitutes, drug traffickers or even terrorists? Will the minister take the opportunity now to reassure the Australian people that this is not the case? Will he repudiate any notion that this government is giving in to so-called redneck influences?

Senator HILL—I have not seen the article attributed to Mr Fraser and, assuming that it has been correctly reported, I do not agree with it. I remind the Senate that Australia’s system of mandatory detention for unauthorised arrivals is a consequence of bipartisan support for an orderly migration program that gives us, as Australians, the opportunity to determine which people have a right to remain in this country. Detention by operation of law is designed to ensure that applicants for protection are available while their claims are assessed and to ensure that they remain available for removal from Australia should they prove not to be eligible for the grant of a visa. It is also designed to facilitate identification, health, character and security assessments.

These people are in Australia unlawfully and we have not previously had the opportunity to check their identity and assess their claims. Australia’s mandatory detention policy is not punitive, nor is it implemented as a deterrent or a disciplinary measure. Mandatory detention is the result of being in Australia unlawfully, not the seeking of asylum. The majority of asylum seekers have entered Australia with a valid visa and are free in the community while they pursue their claims. Detention of unauthorised arrivals is clearly prescribed in legislation and is subject to full parliamentary scrutiny and accountability. It is also subject to external scrutiny, including by the Commonwealth Ombudsman, HREOC, and the Immigration Detention Advisory Group, and the UNHCR is also given access, on request, to all Australian immigration detention centres.

Under the refugee convention, we are required to admit people who arrive in our territory in an unauthorised fashion where there is a question about them needing protection. Australia does this. We are not, however, required to permit full access to the Australian community until we know who they are and we have undertaken health, character and security checking. The policies reflect Australia’s sovereign right under international law to determine which non-citizens may enter the country. Immigration detention in Australia is consistent with UNHCR’s detention guidelines and Excom’s conclusions on this matter. The United Nations Human Rights Committee has considered Australia’s policy of detaining unauthorised arrivals. In the case of A v. Australia and the decision given on 30 April 1997, the UNHCR concluded that the policy did not per se breach the International Covenant on Civil and Political Rights.

Senator STOTT DESPOJA—Madam President, I ask a supplementary question. I thank the minister for his answer and ask that he consider reporting to the Senate when he has seen the remarks made by Mr Fraser on ABC radio. I ask that he take that on notice and respond in more detail to Mr Fraser’s assertions. Can I also ask the minister if this
government is willing to consider, as suggested by Mr Fraser, a total review of the policy of detaining asylum seekers in Australia? Will you consider Mr Fraser’s suggestion that there should be a total review of that policy?

Senator HILL—I am certainly not planning to respond further to the Senate on what Mr Fraser may or may not have said. I do not know of any plan for any total review.

Aged Care: Nursing Staff

Senator WEST (2.30 p.m.)—My question is to Senator Vanstone, representing the Minister for Aged Care. Can the minister confirm that the wages differential between nurses and the care staff in public hospitals in the aged care sector has grown over the last three years? Hasn’t this contributed to the exodus of skilled staff from the aged care sector, a fact noted in the government’s own two-year review of aged care, at a time when residents are getting frailer and are in need of more intensive care? Isn’t it a fact that over the last three years, while the wages growth in the health sector has equalled 2.9 per cent per year, the Commonwealth has increased funding to aged care by only 1.6 per cent? Hasn’t this left nursing homes unable to keep up with the wage increases available in the public health sector?

Senator VANSTONE—I thank the senator for the question. I have some information in relation to staffing issues in nursing homes. They relate to nurses in particular, but there might be some more when I have a close look at your question. If there are more, I will go to Mrs Bishop and see what else I can get you. As you will understand, Senator, the Aged Care Act 1997 and the quality of care principles and accreditation standards require that residential aged care homes provide quality care. They have to ensure that they have adequate staffing and other resources to meet the care that is required. The act requires homes to have in place a skills mix appropriate to the care needs of the residents they have and arrangements for the ongoing development of staff skills to ensure that that quality of care continues to be delivered.

There is a national shortage of nurses generally, and aged care has particular issues in attracting nurses to the industry. The causes are quite varied. The Commonwealth government does not, as you know, Senator, set wages for nursing staff through either the award or enterprise bargaining structures. The industry does not appear to have grasped the opportunities provided by the enterprise bargaining framework to address that problem. The Australian Nursing Federation acknowledges that the industry seems reluctant to seriously address the problems around wages, recruitment and retention. Wages require attention at the industry management level, and many providers are managing their operations effectively. The industry itself also needs to attend to issues such as workloads and career opportunities, which of course impact on the attractiveness of working as a nurse in aged care. Under 1.6, ‘Human resource management’, the accreditation standards require that managers take a professional approach to the staffing process to attract and retain staff.

Aged care offers a diverse range of work for nurses. There are opportunities from developments such as community care packages and extended aged care at home, for example, that came because of those policy changes. The Commonwealth are assisting in providing leadership in a number of ways to support the industry meeting its responsibilities. We have committed $1 million for initiatives to help promote the aged care nursing work force to lift its profile and professionalism, to assist with the retention of the existing work force and to attract new entrants.

The aged care work force committee has been established to look at those issues. There are reference groups of industry, consumer and work force representatives. A nurse returners consultancy is being undertaken by La Trobe University. That is going to try to seek to identify the number of nurses who have left nursing and why nurses are working in professions other than nursing and to develop some strategies to encourage them to return. The inaugural excellence awards recognised and rewarded the pursuit of a culture of professional excellence in the
aged care industry. That is really a search for the best of the best, and we hope that will become an ongoing feature of aged care and a driver for excellence. Under the aged care accreditation forum, the working group on aged care worker qualifications is exploring options to enhance the role of aged care workers, especially around safe medication administration practices.

Senator, I think you can see by what I have said to you so far that the government are not responsible for setting nurses’ wages but nonetheless recognise the problem of the shortage of nurses and in particular what that does for aged care. We recognise the problems faced by the industry in attracting people. We have put some money into that and we are working on it to the extent that we can, but your argument really is with state governments.

Senator WEST—Madam President, I ask a supplementary question. The minister is therefore not prepared to admit that the wages growth in the health sector has equalled 2.9 per cent per year and that the Commonwealth has increased funding to aged care by only 1.6 per cent. What is the Commonwealth going to do to reduce that differential in salary or costs to the employers? What is the government doing to reduce the risks to residents because it is failing to reduce the differential in salaries and grants?

Senator VANSTONE—I did indicate at the beginning that aspects of your question might not be answered in the brief that has been provided to me by Mrs Bishop. I said to you that, to the extent that that was the case, I would ask Mrs Bishop to comment, and I will.

Pensioners: Deeming Rates

Senator FERGUSON (2.36 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister inform the Senate of the benefits to pensioners of the decision to lower deeming rates? What other benefit has the government provided to senior Australians? Minister, are you aware of any other policy approaches to deeming?

Senator VANSTONE—I thank the senator for his question. South Australia is often described as a state that has an ageing population, and it was not helped, incidentally, by a Labor government not providing appropriate beds in aged care. But Senator Ferguson and I well understand the problems faced by ageing Australians.

The reduction in deeming rates is a significant boost for more than half a million pensioners who will, as a consequence, we believe, receive increases in their payments. For single customers, financial investments up to $31,600 are currently deemed to be earning 3.5 per cent. From 1 July those investments will be deemed to earn an income at three per cent. In fact, the threshold will also shift up to $33,400. For pensioner couples at the moment the threshold is $52,600 and that threshold will shift up to $55,800. For investments above those levels, singles and couples are currently deemed to have income of 5.5 per cent. From 1 July that will reduce to 4.5 per cent. As I said, that is a significant boost to more than half a million pensioners who will, as a consequence, we believe, get increases in their payments. No one will have a reduction in their payments as a result of reducing the deeming rates. A reduction in the deeming rates reduces the amount of income we assume pensioners got from other investments and therefore allows an increase in the pension. Increased payments including Veterans’ Affairs income support pension payments will automatically be paid from 1 July in line with those changes.

I have reduced the deeming rates because of the interest rate reductions and the general decreases in the returns available from financial investments. Those interest rate reductions do mean that pensioners would not be earning increased income off investments.

Mr Swan today acknowledged that setting the deeming rates is a difficult issue. This issue must be determined on a fair and reasonable basis, and that is what has happened on this occasion. Many part-rate pensioners have written or spoken to me recently seeking an immediate fall in the deeming rates because of drops in interest rates and I consider that the deeming rates needed to be changed at this time.
While we are on the topic of aged Australians, I am delighted to inform the Senate that the one-off $300 payment announced in the budget will today be paid to nearly 1.5 million pensioners. That is, 80 per cent of pensioners and part pensioners who are paid on Thursdays will get an additional $300 today. The remaining 20 per cent will get that money before the end of this financial year. My office has already been taking calls and receiving letters from senior Australians who are grateful that the role they have played in building Australia has been acknowledged.

Senator Cook—Read a few!

Senator VANSTONE—Senator Cook suggests that some be read. It might be instructive and helpful to read parts of a few. This lady, I think, knows me because she says ‘Dear Amanda, Thanks for the $300. It sure helps out when you have to buy two pairs of glasses.’ Another reads, ‘Dear Madam, Thank you very much for the $300.’ And another, ‘Dear Madam, My husband and I would like to say thank you for the $300 each. We sure appreciate it.’ The government does not mind giving this money—it is other taxpayers’ money and taxpayers are happy to pay it to older Australians who deserve recognition for the role that they have played in building this country. Another letter reads, ‘Dear Senator Vanstone,’ and again thanks us for the $300. Another, ‘Dear Amanda, Thank you for the letter regarding the $300 payment.’ (Time expired)

Australian Taxation Office: Instalment Activity Statement

Senator HUTCHINS (2.41 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware of serious problems with the Australian Taxation Office’s administration of the new so-called simplified tax instalment activity statement? Can the minister confirm that approximately 80,000 self-funded retirees, mum and dad investors, and pensioners have received multiple letters from the ATO containing patently conflicting demands for payment? Is it true that by paying one notice over the other, even though both relate to the same period, a taxpayer risks being slugged with a significant penalty interest charge of 13.86 per cent? Is this just another aspect of this so-called new simplified tax system?

Senator KEMP—I make the point to Senator Hutchins that the simplified tax system and the changes we have made have been very widely welcomed. I will check on the comments that you have made and provide you with a response as soon as possible.

Senator HUTCHINS—Madam President, I ask a supplementary question. I appreciate the minister is going to take that on notice, but I have come to the conclusion that it is botched up anyway. In light of these revelations, Minister, about the administration of the IAS system, does the minister stand by the comments of the small business minister, Ian Macfarlane, made back in March that the simplification of the BAS and instalment activity statement would reduce the paperwork to business and people to a five-second operation?

Senator KEMP—Let me make the point that the changes we have made were very widely welcomed. I am not surprised that the Labor Party, desperately in search of a policy on something, has decided that the only thing they can do is attack what the government have done and attempt to scare people. That is the policy of the Labor Party at the moment. Let me assure you that what we have done in this area has been very widely welcomed. We have listened to the community. This is a consultative government and we do listen to what people say. We made some changes and let me point out to you, Senator, that if you do not approve of those changes you are completely out of step with the rest of the community, and this will not be the first time.

Bananas: Importation

Senator WOODLEY (2.44 p.m.)—My question is addressed to Senator Hill, the Minister for the Environment and Heritage. Minister, given Environment Australia’s important and timely intervention in the debate about Biosecurity’s draft import risk analysis on the importation of New Zealand apples, has Environment Australia been contacted by Biosecurity in relation to the import risk analysis for the importation of bananas from the Philippines? Will Environment Australia
be making vigorous comment on the banana IRA, given the probability of an even greater environmental impact than fire blight in apples should diseases such as black sigatoka and moko be imported into Australia with bananas from the Philippines?

Senator HILL—As Senator Woodley knows, under the 1999 amendments to the Quarantine Act, if an importation was likely to have a significant environmental consequence, Biosecurity Australia is obliged to give notice to the environment minister, which will enable the environment minister to provide advice on the impact risk analysis process. Again, the authority is required to seek the advice of the environment minister in relation to the final determination. That process did not occur in the first example given by Senator Woodley relating to apples, but Environment Australia’s response to that particular matter appeared in a public submission to Biosecurity Australia’s apple importation draft IRA. In relation to the proposal to import bananas, I do not know whether such notice has yet been given. I will seek advice on that. In the event that it has not been given, I will also seek advice on what EA believes is the environmental significance of the importation and, if it is necessary, pass that advice on to the quarantine authorities.

Senator WOODLEY—Madam President, I ask a supplementary question. Thank you, Minister, that is reassuring, because one of the things that prompted my question—and I ask if it is true—is that the department of agriculture of the Philippines government has stated that it already has an agreement with the Australian government to allow imports of bananas from the Philippines. Is the government aware of the Dow Jones commodity service advice, dated 7 June, which contains this claim? Is this an example of trade imperatives allowing Australia’s environment to be put at risk?

Senator HILL—I am not aware of that. I am aware of the fact that the Philippine authority apparently donated some $25,000 to the New South Wales Labor Party, which is interesting. As for the authority seeking to import bananas into Australia—

Senator Woodley—That is interesting.

Senator HILL—Apparently, the Labor Party authorities in New South Wales have been unwilling to provide further details, Senator Woodley. In relation to the specific question you asked, I will get advice and provide an answer.

Minister for Foreign Affairs: Comments

Senator FAULKNER (2.47 p.m.)—My question is also directed to Senator Hill, the Minister representing the Minister for Foreign Affairs. Given that Minister Downer was satisfied that the aims and objectives of his visit to Chile were achieved, why did his staff opt to mislead the media over a simple recreational activity when the truth would surely have sufficed? Why did a spokesman for the minister inform the media that the afternoon game of tennis was an important way of building contacts when the minister was going to play with a staff member? Why did the spokesman for the minister attempt to deceive the media, thus leaving the minister himself open to complete ridicule?

Government senators—Look behind you!

Senator HILL—No, he would not want to look behind, because Senator Cook might think I am going to remind him of his 10 commandments. Do we remember when Senator Cook was trade minister and, through the secretary of his department, Michael Costello—who I think is chief of staff for Mr Beazley at the moment—he issued 10 commandments on how he was to be treated on overseas travel? Senator Cook remembers them.

Senator Faulkner—Answer the question.

Government senators interjecting—

Senator HILL—It is an answer to the question.

The PRESIDENT—Order! Senator Faulkner and senators on my right will come to order. Senator Hill has the call and no other senator.

Senator HILL—The first thing is that he needed to have his program prepared two weeks in advance. The second is no more than four calls in any one day. The third is that time should be allowed for a briefing with the embassy and a cup of tea. He was
also not to be expected to leave the hotel before 9.30 a.m. except for the occasional breakfast meeting, which must not be before 8 a.m. He was not to have a breakfast meeting if he was to have a dinner meeting on the same day. This brings me to commandment number 4, which stipulates that Senator Cook requires accommodation where he can swim or work out. He asks that this part of his routine be respected. If it is good enough for Senator Cook, it is good enough for Mr Downer.

Senator Faulkner—Madam President, I ask a supplementary question. Given the minister has not answered the question I asked about Mr Downer but answered a question that someone else apparently asked about Senator Cook, I ask: given that Mr Downer played tennis with a staff member during the private ministerial retreat of the Forum for East Asia-Latin America Cooperation, what items of business did Mr Downer miss, was Minister Downer briefed on outcomes by any of the 26 foreign ministers who did deign to attend the private ministerial retreat and can he point to any Labor minister that did miss a private ministerial retreat to go and play tennis with a staff member?

Senator Hill—There was another bit of Senator Cook’s briefing that I thought would be of interest.

Senator Faulkner—Madam President, I rise on a point of order. You have allowed Senator Hill to talk about Senator Cook for three or four minutes in answer to my primary question. I have asked a question in relation to Mr Downer’s activities.

Government senators interjecting—

The President—Order! Senators on my right are making far too much noise.

Senator Faulkner—I am not surprised that Senator Hill does not want to answer this question about Downer, but aren’t we entitled to an answer to questions asked about the behaviour of the current Minister for Foreign Affairs, Mr Downer, in relation to these important matters about a private ministerial Forum for the East Asia-Latin America Cooperation that Mr Downer skived off from to go and play tennis with a staff member? That is what my question is about, Madam President, and I think I am entitled to an answer on that.

Senator Alston—Madam President, on the point of order: Senator Faulkner seems to think that his supplementary question, which he says related to Mr Downer’s activities, should not be answered by reference to Senator Cook’s appalling performances of yesteryear, when he sat there for four minutes and allowed a question about Mr Downer’s activities to be dealt with on the same subject matter. How on earth can he sit there mute and not object over a four-minute period and then suddenly decide that he has had enough? The answer is: he cannot take it. It is hurting and he wants to cut it short.

The President—Senator, you are debating the issue.

Senator Alston—but, Madam President, it is not a valid point of order.

Honourable senators interjecting—

The President—Order! We will have a ruling. There is no point of order. The supplementary question was valid, and the answer of the minister will be relevant to the question.

Senator Hill—What I was saying was that Mr Costello also said that it was important that Senator Cook’s speeches were given in a way that ensured the maximum opportunity for publicity—

Senator Alston—Madam President, on the point of order: I distinctly recall Senator Faulkner asking Senator Hill if he knew of any other Labor ministers who had behaved
in similar fashion. Unfortunately for you, you opened the door very widely indeed. Instead of allowing Senator Faulkner to intimidate the chair, you should simply draw his attention to the fact that it is all his own work. He has invited Senator Hill to proceed down this path, and you ought to allow him to continue to do so.

**The President**—Order! I am not able to direct the minister as to how he answers your question. I can make sure that he gives an answer that is relevant to the question that he has been asked. Up until now, he has had some seconds to do that. He has 44 more seconds to do so.

**Senator Hill**—On the day of which Senator Faulkner complains, Mr Downer commenced with a business breakfast at 8 a.m. The day included meetings with the Chilean President and a number of foreign ministers, participation in the conference itself and a ministerial retreat, and attendance at an official dinner concluding at 10.30 p.m. So Mr Downer can do breakfast and dinner in the same day, which is more than we could ever expect of Senator Cook.

*Honourable senators interjecting—*

**The President**—Order! The Senate will come to order! We are wasting time.

**Howard Government: Economic Policies**

**Senator McGauran** (2.57 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Will the minister inform the Senate of the benefits to the Australian community from the government’s practice of clearly and consistently outlining its economic policies? Is the minister aware of any recent comments concerning the formulation of policies in relation to taxation and superannuation?

**Senator Kemp**—Thank you to my good friend Senator McGauran for that extremely important question. Senator McGauran is certainly a man who is constantly on the ball in this chamber. This is a very important question. Clearly and consistently outlining policies is very important to the government.

*Government senators interjecting—*

**The President**—Order! Senators in the vicinity of Senator Kemp should give him an opportunity to answer and to be heard.

**Senator Kemp**—One thing we can certainly say about the Howard government is that we have been very clear on our policies when we have gone to an election, and we have been very clear in the implementation of those policies. There was a question about alternative policies. What we have seen from the Labor Party is absolute policy confusion.

**Senator Conroy interjecting—**

**Senator Kemp**—Their own candidates—even some of their shadow ministers, Senator Conroy—do not seem to know what is going on. I can say that there is one Labor shadow minister who is prepared—

*Honourable senators interjecting—*

**The President**—Senators shouting in the chamber are disorderly, and I told you that earlier today. You should not need to be reminded—on both sides.

**Senator Kemp**—There is at least one Labor shadow minister who is prepared to speak the truth. I refer to Senator Stephen ‘truth in policy’ Conroy. He may be in a small faction of the Labor Party but he has been joined by one other person. I refer to the Labor endorsed candidate for Leichhardt, Mr Matt ‘truth in policy’ Tresize, who called up a radio station to finally let them know what was going on with roll-back. As you can recall, I have stood up on numerous occasions in this chamber and asked the Labor Party to join me in a debate on roll-back, and no-one has ever appeared. Mr Matt Tresize, the Labor Party candidate, said about roll-back:

One of the things I found out is that we still don’t have as much detail as I would like

...........

You know, if the Labor Party is successful in forming government after the election, we’ll then be able to start a consultative process with the community that will decide exactly what we are going to do.

This is another member of the ‘truth in policy’ faction. We have had to wait in this chamber for at least 12 months until Mr Matt Tresize was prepared to get up and tell us what the Labor Party policy is. But there have been other very important contributions
to truth in policy. Yesterday, Senator Sherry stood up in this chamber and tried to attack the Labor Party over the superannuation surcharge, which he described as ‘infamous’, although keeping the Labor Party surcharge is Labor Party policy. Naturally, I became curious as to what the Labor Party policy on superannuation is. I found out that the shadow assistant treasurer, Mr Kelvin Thomson, had delivered an address to the National Press Club. As my time is running out, Senator Julian McGauran, I would welcome a supplementary question asking me about the matters that were raised in this important speech.

Senator McGauran—Minister, you did not have to ask; I was attentive to what you were going to say. I would seek for you to finish your answer by way of a supplementary question. Would the minister outline further his concerns regarding taxation and superannuation policies?

Senator Kemp—I did search through Mr Kelvin Thomson’s speech to find out what the Labor Party policy is on superannuation. This is what the shadow assistant treasurer said:

This is a very important area and the Labor Party has been working five years on this policy with the major research coming from Senator Sherry. This is what the Labor Party superannuation policy is:

Superannuation is a very complex area and, in my view, to pull off anything in the way of a detailed change from opposition without the assistance of Treasury and the Tax Office really is a triple somersault with pike.

No policies until after the next election—five years of research. All Senator Sherry’s bright work over the years has come to nothing. Like roll-back and everything else, we have to wait until after the election. No wonder the Treasurer called the ALP the Australian lazy party.

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

RULING FROM THE CHAIR

The President (3.03 p.m.)—Earlier today, during debate on the Interactive Gambling Bill 2001, Senator Crossin displayed a piece of paper with Senator Tambling’s name on it and attached it to a seat in the chamber to illustrate her invitation to Senator Tambling to vote with her on the bill.

Objection was taken by way of a point of order to Senator Crossin’s action. The Temporary Chairman of Committees, Senator McKiernan, held that there was no point of order but encouraged Senator Crossin to remove the item. He indicated that, if Senator Crossin had held up a banner, it would be out of order. Senator McKiernan undertook to refer the matter to me.

Several past rulings of Presidents have indicated that it is not in order for senators to hold up newspapers or placards in the chamber or display items such as badges with slogans.

I consider that Senator Crossin’s action fell into the same category as the actions covered by these rulings and should not be permitted. It is not in order for senators to display or hold up newspapers, placards, badges, coins or the like.

Senator Faulkner—I raise a point of order about your ruling, Madam President. Why didn’t you call Senator Abetz to order during question time when, on two separate occasions, he held up a 50c piece? Why didn’t you call him to order?

The President—At the time, I considered the matter and decided to add a statement to this statement that he ought not do that so that it was totally complete.

Senator Alston interjecting—

Senator Faulkner interjecting—

The Deputy President—Senator Faulkner and Senator Alston, would you please hold your conversation outside. I wish to call Senator Vanstone.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Pharmaceutical Benefits: Funding

Senator Vanstone (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.05 p.m.)—Senator, you have been told to be quiet by the Deputy President, perhaps you could try to at least obey the Deputy President if you
least obey the Deputy President if you won’t obey the President.

The DEPUTY PRESIDENT—Order! Minister, would you address the chair and ignore Senator Alston and Senator Faulkner, please.

Senator VANSTONE—Thank you, Madam Deputy President. I must say that I did not find Senator Alston at all disturbing.

Yesterday Senator Forshaw asked me a question about some budget estimates and I have an answer for him. I seek leave to have the answer incorporated in Hansard.

Leave granted.

The answer read as follows—

Senator FORSHAW—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 she 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 FORSHAW—Madam President, I ask a supplementary question of the minister, whose luck and time is 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—The Minister for Health and Aged Care has provided the following answer to the honourable senator’s question:

I can confirm that an estimate of the impact of the extension of the Seniors’ Health Card on the Department of Health and Aged Care’s estimates has been included in the Contingency Reserve. While provision in the Contingency Reserve does not constitute appropriation, the expected impact will predominantly be on the Pharmaceutical Benefits Scheme, which is a special appropriation. The funding for extension of eligibility for the Seniors’ Health Card is therefore guaranteed.

The impact will be included in the Department of Health and Aged Care’s estimates in the Additional Estimates context.

Centrelink: Client Privacy

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.05 p.m.)—On 5 April, Senator Cooney asked me a question in relation to a Centrelink matter. I have an answer for him. I seek leave to have the answer incorporated into Hansard.

Leave granted.

The answer read as follows—

Senator Cooney asked the Minister for Family and Community Services on 5 April 2001:

(a) Can the Minister confirm that Centrelink recently provided copies of video footage of fraud investigations to commercial television?

(b) Did the television program broadcast images of this operation with the target individuals’ faces protected by pixellation, but with no other persons on the footage given such privacy protection?

(c) Can the Minister confirm that Centrelink’s provision of this material in is breach of the Privacy Commissioner’s guidelines regarding disclosure of information collected by government agencies?

(d) Is the Minister concerned about this breach of the privacy of non-target individuals (and target individuals) by Centrelink?

(e) Has section 204 of the Social Security Administration Act been breached?

Answer:

(a) Centrelink did provide copies of video footage of fraud investigations to A Current Affair (ACA).

(b) The Centrelink video tapes were carefully examined and pixellated appropriately to protect the identity of individuals filmed.

(c) Centrelink ensures that it complies with the Information Privacy Principles as contained in the Privacy Act 1988.

(d) No breach of privacy occurred as Centrelink ensured that individuals were not identifiable
in the tapes that were given to ACA by Centrelink. However, it should be noted that ACA also put to air a video tape of a person whom they believed to be defrauding Centrelink which was provided to ACA by a third party, not by Centrelink or an agent of Centrelink.

(e) Section 204 of the Social Security Administration Act 1999 has not been breached.

Department of Family and Community Services: Peak Community Organisations

Senator MACKAY (Tasmania) (3.06 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Vanstone) to questions without notice asked today.

I would like to start with the response that Senator Vanstone gave to me in relation to what can only be described as the most appalling act of censorship that I think we have seen from a government that seeks to emulate, amongst others, Stalinist Russia and Nazi Germany in the way that it approaches censorship and censoring groups.

Before I get to the substantive question, I wish to put on the record an interaction that happened once Senator Vanstone had sat down. My supplementary question was:

Has the minister sought legal advice from her department to enable her to use the breach of an early warning clause by a peak organisation as a ground for defunding that organisation?

The second part of my supplementary was:

Will the minister use such a legal power to defund an organisation for speaking out? If she claims she will not, why does the clause continue to be included in current contracts?

What Minister Vanstone said while she was actually on her feet was: ‘No, I won’t.’

Senator O’Brien—‘No, I haven’t.’

Senator MACKAY—Thank you, Senator O’Brien. She said, ‘No, I haven’t. There has been no seeking of such information by me.’ Then when she sat down she said, ‘But I will.’ At that point, I said to Senator Vanstone, ‘Well, I hope that gets on the Hansard,’ and she said, ‘It won’t, because I had already sat down.’ Well, it is now. I challenge Senator Vanstone to come in here and correct the record and apologise to the Senate for misleading the Senate, which she clearly did by initially saying that she had not sought legal advice and then sitting down and saying that she would. I think that was most telling.

Senator Patterson—She said she would think about it.

Senator MACKAY—No, she did not, Senator Patterson.

Senator Patterson—Go back and have a look at the Hansard.

Senator MACKAY—Madam Deputy President, Senator Patterson is incorrect. I was very interested in Senator Vanstone’s contribution. When she sat down, she said, ‘But I will.’

Senator Patterson—She said she would think about it. Tell the truth! Go back and have a look at the Hansard.

Senator MACKAY—Senator Patterson, a number of us over here heard that. I think Senator Vanstone let the cat out of the bag because she indicated that she had not but that she would. I invite Senator Patterson to invite Minister Vanstone to come in here and correct the record. But I clearly heard it and a number of my colleagues heard it.

Senator O’Brien—Absolutely.

Senator MACKAY—We heard it absolutely clearly. I am not sure what the intention was there, but she definitely did say it. I see Senator Patterson on the phone to Minister Vanstone’s office. I would like Minister Vanstone to come in here. If she claims that she did not say it, then there will be a number of us on our feet indicating that we heard it.

Senator O’Brien—She would be misleading if she does.

Senator MACKAY—Senator O’Brien is correct: if she did come in here and deny it, she would be misleading the Senate, which is extremely serious. But let me get back to the substantive point. The point that she did not talk about was the fact that the clause still remains in relation to Senator Vanstone’s negotiations with various peak groups in terms of her portfolio. We heard a very pathetic defence today: ‘It wasn’t her idea.’ I assumed that she had something a little bit more interesting to say in terms of whose
idea it was, but we got the usual response from this government: when in doubt kick the department, kick the public servants—‘It’s all their fault.’

We say to Senator Vanstone, as we said to her predecessor: you are the minister. If you have a will to stop this type of outrageous censorship—from a Wet in a party that is supposed to be promoting the rights of the individual and genuine democracy in our country—you can do it. We say to Senator Vanstone that this is an outrageous attack on civil liberties. It is genuinely outrageous that a group in this community has to go to the minister and clear press releases 24 hours before they put them out to ensure that there is no criticism of the federal government.

This is not the first time this has happened. This is routine now in relation to this government. If time permitted me—it does not, unfortunately—I would like to go through the conversations I have had in relation to this type of outrageous censorship with people in regional Australia who have indicated similar levels of censorship and contact from government ministers—an ABC journalist’s job had been threatened by government ministers and members of the coalition. It is all right for people like Senator Mason to get up and rabbit on about Stalinist Russia.

Senator Mason—It is coming.

Senator MACKAY—Do you know where Stalinist Russia is, Senator Mason? It is in the country today. (Time expired)

The DEPUTY PRESIDENT—Senator Mason, are you seeking the call? If you don’t jump, you won’t get it.

Senator O’Brien—Just keep those hands down.

Senator MASON (Queensland) (3.11 p.m.)—I will do my best, Senator O’Brien. Senator Mackay, you would be pleased to know that no-one has ever described me as a Wet.

Senator Mackay interjecting—

Senator MASON—Indeed. You will be pleased to know that I will address this issue directly. You spoke about civil liberties and this government’s reaction and its capacity to implement and its dedication to civil liberties. If you had heard my speech in the adjournment debate last night, which I will not repeat now, you would realise that this government—indeed, the Liberal Party—of all the political parties in this nation, has had the greatest commitment to human rights across the board.

Senator O’Brien interjecting—

Senator MASON—Did anyone cough? I was hoping someone had coughed, but no-one did, so I will not launch into an attack on the Labor Party’s record on civil liberties. You raised an interesting point, Senator Mackay, and that was the relationship between non-government organisations and the government and the executive. You are quite right that it is very important that government consult with peak bodies. I accept what Senator Mackay says, but so has this government. The Liberal Party, as opposed to the Labor Party, has always had a very strong sense of civil society. We understand the difference between the private and the public and the need to bridge the private and public and the need to bridge family life and government life with civil society and peak bodies.

Senator Crossin interjecting—

Senator MASON—Oh, Senator Crossin laughs! Unlike the Labor Party, we know that the state cannot love you. The Liberal Party has always been the strongest proponents of non-government organisations and community organisations in this nation.

Senator Crossin interjecting—

Senator MASON—No, we fund organisations whether they agree with us or not, Senator Crossin. That has always been the case—because we actually believe in it. The Labor Party thinks that the only thing that really matters is government, the state. We actually believe that community organisations count, and that has been the fundamental, political and ideological difference—

Senator O’Brien interjecting—

Senator MASON—Senator O’Brien, you can interject, but the problem with your side of politics—and I would have thought that, after the experience of the 20th century, this message would have come home, and it ap-
plies directly to what Senator Mackay said—is that your side of politics believes that individual Australian citizens are simply a means to an end. The Liberal Party believes that they are an end in themselves. Because the Left has never understood that, you simply think that Australian citizens are the playthings of government, the playthings of the state. That is why we fund organisations whether they agree with us or not.

Senator Crossin—Why did you defund the women’s organisations?

Senator Mason—You demand, because you think individual Australians—

The DEPUTY PRESIDENT—Senator Mason, address the chair, please. I ask Senator Crossin to cease interjecting, and I would appreciate it if Senator Mason would stop using the word ‘you’ because that refers to the chair. Address the chair, please.

Senator Mason—I apologise, Madam Deputy President. But that is the fallacy in the entire argument of the Australian Labor Party. If any non-government organisation does not agree with them, they will defund them.

Senator Crossin—Why did you take the money away?

Senator Mason—Sorry, Senator Crossin?

Senator Crossin—Why did you take the money away?

The DEPUTY PRESIDENT—Order! Interjections are disorderly. I would ask Senator Crossin to desist from making them. And I would ask you to ignore them and address the chair, Senator Mason.

Senator Mason—Unlike the Labor Party, the coalition does not believe that non-government organisations are the playthings of government or the state.

Senator Carr—Here we go!

Senator Mason—The pastor from Pyong-yang! Here we go—

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

Senator Mason—I withdraw.

Senator Carr—Tell us about Bob Menzies and his support for fascism and for Adolf Hitler as well.

The DEPUTY PRESIDENT—Order! Senator Carr, can I have some order in this place! I ask you to cease interjecting. I do not want to hear another word from you for one minute and five seconds, thank you.

Senator Mason—I am just wondering whether I should answer the interjection or look at WESNET. I will send you a copy of my adjournment debate from last night, Senator Carr.

Senator Carr—What a load of drivel that was!

Senator Mason—Here we go. Here is the Left—the losers of the last century sitting over there laughing. The best that you can do now, Senator Carr, is to be management consultants for us. It is absolutely pathetic. You are standing for nothing again. Everything you believed in the 20th century was wrong. You sit there and you laugh. Socialism is out. It is pathetic. And now they have this thing called ‘the third way’. That is the Labor Party—the third way. It is some pathetic facsimile of what we believe in. They are reduced to the role of management consultants, and do you know what? They are not even very good at that. So do not trust them.

Senator Crossin (Northern Territory) (3.17 p.m.)—I also rise to take note of Senator Vanstone’s answers today, although I would probably like to spend my five minutes responding to Senator Mason but that would be clearly wasting my time.

Senator Carr—And a waste of breath.

Senator Crossin—And irrelevant as well. I want to respond to Senator Vanstone’s answers today. I asked her why this government are not going to continue to fund WESNET. For the record, let me give an explanation of what WESNET is. It is the Women Services Network which, contrary to what Senator Vanstone said today in answer to the question, is in fact Australia’s national women’s peak advocacy body that tackles domestic and family violence issues. Senator Vanstone in her answers today referred to AFHO, the Australian Federation of Homelessness Organisations, and she referred to
the fact that they were going to continue dealing with and funding that peak body. But there is a slight difference. WESNET is the peak body to do with domestic and family violence issues, and it is one of the three constituent organisations of AFHO. So she is quite wrong in suggesting that WESNET is not a peak body—in fact it is. It is Australia’s peak body when it comes to the Women Services Network for family and domestic violence.

Senator Vanstone went to great pains today to say that WESNET were not being defunded, that their money was not being cut and that they were not having money simply taken away from them. In one sense she is correct: they were contracted by this government for $330,000 over a three-year funding deal. They were getting $110,000 of annual funding.

What is very interesting this week is that the Deputy Prime Minister, John Anderson, yesterday launched a booklet, Domestic violence: case studies of domestic violence programs in regional Australia. What the Senate ought to be aware of is that the work done by WESNET, in terms of their research and case studies, was the work that was used in, and was part of, the booklet that the government launched yesterday.

Senator McGauran—No, they were not.

Senator CROSSIN—Yes, they were. Perhaps you need to do some research about that, Senator McGauran. WESNET say in their press release that that is correct: they were part of that work that was released yesterday in the booklet that was launched by the government. They do research on family violence. They promote community awareness of violence against women and they advise the government on their policy and programs. WESNET’s chairwoman, Julie Oberin, said that she highlighted that to Mr Anderson yesterday. And I will refer to an article in the Sydney Morning Herald this morning, which said:

... that positive case studies on domestic violence programs in regional Australia which were highlighted by Mr Anderson yesterday had their origins in work by WESNET.

So, Senator McGauran, you are quite wrong in saying that they were not part of that work; quite clearly, they were. You have to ask yourself this question: why then, if the government places so much emphasis on the work and funding that it has done in relation to domestic violence, is it not prepared to provide WESNET with continuing funds after 1 July? WESNET were provided with some of the money out of the $25 million, part of the Partnerships Against Domestic Violence program, phase 1—a project that lasted for three years of funding. A further $25 million has been allocated as part of phase 2. But, of course, WESNET are being left out of the plans for any sort of assistance by this federal government over the next three years.

This is the reason why. Senator Vanstone said it today and Senator Mason has reiterated this. The Chief Executive Officer of Anglicare in Victoria, the Reverend Ray Cleary, hit the nail right on the head when he said that it sounded to him like another example of funding being removed because an organisation was not in agreement with this government’s agenda. That is the core of this and it has gone to the very core of why peak women’s organisations around this country—such as the Women’s Electoral Lobby—have not continued to be funded under this government. If you do not agree with what this government has got to say, you do not get funding. You do not get assistance to provide advice to this government, despite the fact that it might not be the advice that this government wants to hear. This government puts clauses in the women’s contracts to make them comply with their policies.
ting her civil liberties mixed up with the accountability.

We know the opposition when in government were not tuned into accountability. We know that when they were in government their favourite lobby groups were the unions, and over $140 million over a decade were directed in one form or another to their favourite and most powerful lobby groups, the unions. They of course hate bringing accountability to government funds. But this government has a record of accountability and transparency and when we say that lobby groups that are funded by the government must respect some form of accountability, we do not back off from that. To claim it is anything to do with Stalinist Russia is absurd.

To quote the minister, Amanda Vanstone, she said, ‘There are no plans to silence the community sector. There are no plans to veto or edit what they say.’ But of course that is not good enough for the opposition. In fact, all we are asking the lobby groups for is to give the government some early warning of their statements via a press release: not statements to the media or over the phone or in an interview but just the printed material. That is not unusual. That is quite normal and most of them have signed up for it.

In regard to Senator Crossin’s criticism of the government withdrawing funding from the WESNET lobby group, that funding was three-year funding and it was up on 30 June. It is finishing. They knew from the start it was for three years. When the time comes up—when that contract finishes—it does not mean that it is rolled over necessarily. It is assessed by the government and we are under no obligation to roll it over, particularly when there are other respectable groups dealing with the same issue in regard to domestic violence—groups like the National Association of Services Against Sexual Violence, the No to Violence organisation, Women With Disabilities Australia and the Older Women’s Network. There is an array of groups. You can hardly say the government is neglecting this particular area when only yesterday the Leader of the National Party, the Deputy Prime Minister, produced this wonderful document with regard to domestic violence—*Case studies of domestic violence programs in regional Australia*. Quite frankly, this government is putting more money in that area than the previous government.

But the real point I want to make about the debate today is, as we reach the end of the week and with only one more week of real solid parliament before we enter the real time zone of the election—

**Senator George Campbell**—Is he going early? Is this the last sitting week?

**Senator McGauran**—It really must be coming clear to the hardheads of the Labor Party—we have got one over there in Senator Campbell: one of the hardheads of the opposition—as the election looms nearer that you are just not presenting yourself as an alternative government. If this is the best debate you can bring to this chamber, it must be a terrible worry to the political strategists. The lack of policy is really now starting to hit home in the electorates. If you saw the Newspoll this week, didn’t you wonder where the turnaround came from? The turnaround came from the fact that we started to focus on you, on Mr Beazley and the future Treasurer, Mr Crean. You hardheads know that.

**The DEPUTY PRESIDENT**—Senator McGauran, please address the chair.

**Senator McGauran**—You know that, Senator Campbell. You know only too well. That started the real claw back. Your big generalisations of policy are not going to do—

**The DEPUTY PRESIDENT**—Senator McGauran, would you like to address the chair, please?

**Senator McGauran**—Madam Deputy President, as you would well know, because you have been in the Labor Party a long time—

**The DEPUTY PRESIDENT**—The chair has not been in any political party.

**Senator McGauran**—That surprises me! The big generalisations that they bring into this chamber on policies as we are six months at most out from an election are just not going to do anymore. We have had the launch of their centrepiece, the education
policy: it fell over within 24 hours. Those strategists really must be worried because their whole policy of discrediting this government’s economic performance fell over with the national accounts but a week ago.

But what must really worry those hard-head strategists like Senator Campbell, who is so desperate to get on this side of a house, is the frontbench that is going to enter the next election. They are just not up to the task. They are not an alternative government. You must know that. You have got Senator Conroy, Senator Cook and Mr Crean, one of the most unpopular politicians out there in the community. This is the real worry for you. (Time expired)

Senator McLUCAS (Queensland) (3.27 p.m.)—I also rise to take note of the answers from Senator Vanstone to your question, Madam Deputy President, about the difficulties faced by the aged care sector in attracting and keeping quality staff. Before I do, let me confirm that I also heard Senator Vanstone agree with Senator Mackay earlier today when she confirmed that she would—

the words were in fact ‘but I will’—in reference to whether she would get legal advice about the requirement that community organisations have to show the government their press releases prior to release.

But to return to Senator Vanstone’s response about staffing in aged care, I would like to remind the house that Senator Vanstone essentially said that the federal government has no responsibility at all for the crisis in aged care staffing—the lack of numbers of staff and also the way in which they are moving from the aged care sector into the public hospital sector.

I remind the Senate also that Senator Vanstone said that industry has not engaged in the enterprise bargaining process. That is code for ‘blame the sector’. I ask: how many aged care facilities can undertake true enterprise bargaining processes when the quantum of funding is in fact not variable? It is very difficult to undertake an enterprise bargaining process when you know that you cannot change the amount of funding that is in the pot to give to wages.

Senator Vanstone also said that the federal government is not responsible for setting wages. I am afraid that shows a lack of understanding of the whole sector of aged care. Does the minister not understand that wages make up at least three-quarters of costs of an aged care facility, growing as the aged care facility cares for higher and higher need patients? Does she not understand that capital maintenance, consumables in aged care, rates and charges are sums that are not able to be reduced without a long-term negative effect either on the facility itself or on the patients’ care?

Senator Vanstone also said that the sector requires a professional approach to staffing in one of the conditions of their funding. I suggest to Senator Vanstone that directors of nursing or aged care managers reading her remarks would rightly feel offended at the imputation she is making that it is their fault that wages are lower in the aged care sector than in the public hospital system. I refer to a survey recently conducted by the Australian Nursing Federation which shows that in each state and territory wages are lower in the aged care sector than in the public nursing sector. Just for the record, it is important that these figures are enumerated: in the ACT, wages in aged care are lower by 12.2 per cent; in New South Wales, two per cent; in the Northern Territory, 9.7 per cent; in Queensland, the wages are 11.9 per cent lower than for their colleagues in the public hospital sector; in South Australia, it varies between 9.7 per cent and 13½ per cent, depending on the employer organisation; in Tasmania, it is 14.3 per cent; in Victoria, 17½ per cent; and, in Western Australia, they are 15 per cent lower.

Maybe Senator Vanstone needs to take advantage of the requests for support that aged care services are giving to many of us who are their representatives. Recently, I visited the Mary Potter Nursing Home, which is an aged care facility providing care for category 1 and 2 residents in the Cairns region. They told me two things: the first issue is that payments from health and aged care are too little to cover the costs of quality care; and the second issue is that, whilst they operate inservice training and training for
assistant nurses to upgrade their skills, they simply cannot afford to pay the staff what they would like to. The staff that I met there were compassionate, committed people—people who were committed to a professional approach to caring for these residents. They know they are undervalued compared with their sisters who work in the public health sector but they do it because they care. *(Time expired)*

Question resolved in the affirmative.

COMMITTEES
Finance and Public Administration
References Committee

Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (3.33 p.m.)—I present the government’s response to the report of the Senate Finance and Public Administration References Committee relating to Australian workplace agreements, and I seek leave to incorporate the document in *(Hansard)*.

Leave granted.

The response read as follows—

Senate Finance and Public Administration
References Committee

Inquiry into Australian Public Service Employment Matters

First Report - Australian Workplace Agreements

Government Response

**Recommendation 1** – The Government, as the ultimate employer, should direct agency heads that:

- AWAs with SES and APS employees are not to be kept confidential; and
- APS agencies are to make AWAs available on request, allowing appropriate deletion of personal information but retaining remuneration details in the published document.

**Recommendation 2** – The committee recommends that all agency heads authorise the Office of the Employment Advocate, under the provisions of the Workplace Relations Act, to release copies of their AWAs to DEWRSB and the PSMPC.

**Response**: Disagree.

Under section 170VG(2) of the Workplace Relations Act 1996 (the WR Act) Australian Workplace Agreements (AWAs) must not prohibit or restrict the disclosure of details of the AWA by either party to another person. Implicit in this requirement is that disclosure is a matter for the parties to an AWA. A Government direction that mandates disclosure of Australian Public Service (APS) AWAs would therefore be contrary to the clear statutory intent of the Parliament that any disclosure is a matter for the parties themselves.

Unilateral disclosure by the employer of the details of an AWA, even where personal information is deleted is likely to result in employee concerns about confidentiality and privacy.

It would be open under the WR Act for APS agencies and employees to mutually agree to disclose information regarding their AWA. However, the Government believes that disclosure of the details of the remuneration of individual public servants should not be made public although the framework within which remuneration is paid needs to be public, as it is in the case of the APS (see response to Recommendations 3 and 6 below). Consistent with the then Government’s response to the Committee’s 1993 Report on performance pay, the Government believes that “the remuneration ranges of public servants in the APS be public knowledge but that the precise remuneration (involving any performance elements) paid to individuals, and the reasons for this, should remain confidential.”

With regard to Recommendation 2, s.83BS of the WR Act precludes the Employment Advocate from disclosing protected information which may identify a person as being, or having been, a party to an AWA unless disclosure is authorised in writing by that person. As indicated above, the decision to disclose information regarding an AWA rests with the parties to the AWA.

**Recommendation 3** – The committee recommends that:

- DEWRSB undertake a more rigorous program of information gathering in relation to APS AWAs;
- service-wide reporting on agreement-making and remuneration be conducted annually and on a financial year basis by DEWRSB, with compulsory participation by all agencies covered by the Public Service Act; and
- DEWRSB’s service-wide reports be tabled in Parliament on the same cycle as the Public Service Commissioner’s reports on the state of the APS.

**Response**: Disagree.

The Government believes that existing arrangements meet the thrust of this recommendation.

For instance in respect of remuneration issues, the Department of Employment, Workplace Relations
and Small Business (DEWRSB) currently coordinates and/or undertakes surveys of remuneration arrangements in APS agencies. The outcomes of these surveys are published on the DEWRSB internet home page, and are used by DEWRSB in analysing broader APS developments.

Specifically, the 1999 and 2000 non-SES pay surveys covered all APS agencies, while the 1999 and 2000 SES Remuneration Surveys respectively covered 97% and up to 99% of APS SES staff. Against that background, the Government sees no reason for participation in these remuneration surveys to be made compulsory.

However, to further enhance the quality of information available regarding non-SES remuneration, DEWRSB intends revising the non-SES pay survey so that in future it will provide data regarding non-SES similar to that available in respect of SES remuneration. This survey will encompass staff working under a collective or an individual agreement.

This data regarding remuneration is complemented by:

- the Review of Agreement Making in the Australian Public Service undertaken by DEWRSB in 1999, with a further review to be conducted later this year;
- the information contained in the Public Service Commissioner’s State of the Service Report on service-wide agreement making and remuneration; and
- the Auditor-General’s recent report on Certified Agreements in the Australian Public Service.

In addition, the Requirements for Departmental Annual Reports – May 2000 state that annual reports must include an assessment of a department’s effectiveness in managing and developing its staff to achieve its objectives. This may include consideration of features of certified agreements and AWAs, and their impact.

In these circumstances, the Government sees no reason to significantly modify the existing approach to information gathering and reporting in relation to APS agreement making.

**Recommendation 4** – The committee recommends that the Public Service Commissioner considers AWAs as a distinct category when exercising her statutory functions, in particular, to develop, promote, review and evaluate APS employment policies and practices and in her evaluation of the extent to which agencies incorporate and uphold the APS Values.

**Response:** Disagree, as the proposed action is unnecessary.

Under the Public Service Act 1999, agency heads are required to promote and uphold the Values and act in accordance with the Code of Conduct. Through the State of the Service reporting process, the Public Service Commissioner addresses issues relating to the Values and the Code of Conduct, including progress made by agencies in their organisational and management approaches. This includes the role of, and developments in, agreement making. In this particular area, the Commissioner’s judgement may be informed by agency responses to particular questions, including questions that may be directed to staff on the request of the Commissioner through staff surveys. DEWRSB reports regularly on SES remuneration arrangements which provides further information to inform judgements in this area.

In relation to agreement making generally, information available from certified agreements is supplemented by reports such as the DEWRSB remuneration and agreement making surveys and the ANAO’s Performance Audit of Certified Agreements in the APS. Together this provides a broad base of information for the Public Service Commissioner’s consideration of agreement-making.

In her consideration of the state of the APS from a Values perspective, the Commissioner must necessarily address a broad range of organisational, management and cultural approaches which, in aggregate, reflect on the promotion and application of the Values across the APS and within agencies.

**Recommendation 5** – The committee recommends that the OEA should make the full range of AWAs available to researchers, retaining the current confidentiality protections.

**Response:** Agree.

The Employment Advocate already allows access to AWAs in a number of different ways. General research into AWAs has always been via the “first AWA” sampling method. However, if a researcher requests more specific information requiring a different method of selecting AWAs, the OEA has always provided other samples which are more appropriate to the purpose of the research. If a researcher wishes access to particular information, they simply need to ask. Such requests would, however, need to be considered on a case by case basis, taking into account matters such as practicality and cost.

**Recommendation 6** – The committee recommends that the annual and financial reporting requirements for the Australian Public Service be at least as rigorous as those applying to the private sector.
Response: Agree with qualification.

The Government believes that the overall reporting requirements for the APS, which derive from a wide range of sources, including the requirements for financial statements, are at least as rigorous as those applying to the private sector. It agrees that this situation should be maintained as private and public sector reporting requirements continue to evolve.

The Committee’s recommendation was made in the context of discussion of section 300A of the Corporations Law, which requires one type of private sector entity – listed companies - to disclose in their directors’ reports the nature and amount of each element of the emolument of each director and each of the five named officers of the company receiving the highest emolument. While this particular disclosure requirement does not apply to APS executives, the conditions that led to its introduction for listed companies do not exist in the APS.

Further, extensive disclosure requirements of other types, some not applicable to the private sector, make the overall requirements on APS departments and agencies to disclose remuneration more rigorous than those applying in the private sector. For instance, in addition to the continuing and one-off, whole-of-government reports listed in the response to recommendation 3, information on APS remuneration systems is accessible by request under the Freedom of Information Act 1982 (FOI Act) and in response to parliamentary questions and the inquiries of parliamentary committees, including Senate estimates committees. The FOI Act and parliamentary scrutiny elements exceed the level of disclosure normally required of any entity in the private sector.

Full details of the remuneration framework applicable to departmental Secretaries and APS agency heads are publicly available in the various determinations which set these conditions. The only element of the remuneration packages of Secretaries and agency heads not required to be disclosed or accessible on inquiry is the amount of performance bonus, if any, paid in a particular year. Even there, the framework of the performance bonus system is public, for example, that performance bonuses to departmental Secretaries are payable at the rates of 10 per cent or 15 per cent.

The objective of the section 300A approach of complete disclosure of the actual remuneration of the five highest paid officers involved in management is to ensure that shareholders are aware of and can respond to decisions by those officers that may influence the level of their remuneration.

This objective would not be advanced by providing for full disclosure of top executive remuneration in the APS because the remuneration framework of departmental Secretaries and agency heads has always been public and their remuneration is determined outside the departments and agencies they head.

Requiring disclosure of full details of remuneration, while adding little to the transparency of decision making, would also have privacy implications. As noted in the response to recommendations 1 and 2, successive governments have considered publication of information on actual bonuses paid to be inconsistent with the operation of an appraisal-based performance pay system.

The reporting of directors’ and executives’ remuneration, including in Australian public sector entities, is currently under consideration by the Australian Accounting Standards Board (AASB) which is expected to issue an exposure draft of a new accounting standard on this issue later in 2001. For the reasons outlined above, the Government is opposed to extending the section 300A approach to the APS and will be putting that view to the AASB.

The Government acknowledges in this context that, although the APS is subject to very rigorous disclosure requirements, information is disclosed in a variety of forms and in a way which may make comparisons difficult on occasion. In considering its response to the AASB exposure draft, the Government will also consider possible revisions to the annual reporting guidelines to improve accessibility to the information required to be disclosed.

Recommendation 7 – The committee recommends that the reporting of remuneration above a threshold of $100,000 should not be limited to SES managers. In addition to reporting on SES managers as a group, the same details should be provided in the financial statements for other staff whose remuneration exceeds $100,000.

Response: Disagree.

The Finance Minister’s Orders (FMOs) set out the reporting requirements that apply to Commonwealth agencies and authorities regarding Director/Manager remuneration.

The current FMO requirements regarding Director/Manager remuneration reflect the private sector reporting arrangements as set out in Accounting Standard AASB 1034 regarding Financial Report Presentation and Disclosures (which deals with Executives) and AASB 1017 regarding Related Party Disclosures (which focuses on Directors).
Specifically, AASB 1034 requires “disclosing entities” to report on remuneration above $100,000 for “executive officers” of the entity. In defining an executive officer, AASB 1034 calls up the definition used in the Corporations Law, i.e. a person “who is concerned in, or takes part in, the management of the body (regardless of the person’s designation and whether or not the person is a director of the body)”. In the private sector, executive officers are considered to be those members of the senior management team involved in the strategic and operational management of the business. In the public sector, managers (the terminology used in the FMOs) are defined more broadly as “executives of an agency, i.e. SES or their equivalents”.

Against that background, the Government sees no current need to widen the FMO reporting requirement to include other staff whose remuneration exceeds $100,000 per annum. As mentioned in the response to Recommendation 6, the AASB is expected to issue later this year an exposure draft of a new accounting standard on the reporting of directors’ and executives’ remuneration. Following the release of the draft accounting standard, the Government will consider the implications of the draft standard, if any, for the FMO requirements on reporting remuneration above $100,000.

Further, the Government considers that the information provided by reporting on this issue could be further improved if separation and redundancy payments were to be shown separately. This will avoid distortion of the data in circumstances where a long serving senior executive is made redundant. The Government will amend the FMOs to require agencies to report on this basis and include information regarding the aggregate amount of such bonus payments. This new requirement will commence with the 2001-2002 reporting period.

**Recommendation 8** – The committee recommends that individual performance bonus payments be discontinued in the Australian Public Service.

**Recommendation 9** – The committee recommends that if performance bonuses continue to be paid, they must be for outstanding individual or team service, not for achieving the minimum expected of all APS employees, that is, competent performance.

**Recommendation 11** – The committee recommends that if performance bonuses continue to be paid, these should be capped. Uncapped bonuses should not be allowed.

**Response**: Disagree.

The Government’s APS reform agenda is aimed at promoting a high performance APS capable of operating in an increasingly competitive environment that emphasises contestability, value for money and a focus on client service.

To achieve these objectives, APS agencies not only need to be able to attract and retain suitably qualified staff, but also need to be able to appropriately reward employees, particularly high performing staff and those who deliver results in exceptionally difficult circumstances. Performance related payments are one means through which agencies are endeavouring to attract, retain and reward high performing staff. Any decision to remove scope for individual performance bonuses may therefore result in the APS being unable to retain some highly skilled staff.

With almost all APS agencies now covered by agreements, it is clear that agencies are taking advantage of the flexibilities available to them to tailor their terms and conditions of employment to their particular needs and those of their employees. The diversity of arrangements adopted in agencies in respect of performance-linked remuneration systems, which include different performance rating systems and payment levels and in some instances team based rewards, provide evidence of the success of the Government’s policy stance.

It would be inconsistent with the Government’s policy of devolving responsibility for workplace relations issues to APS agencies for a prescriptive, “one size fits all” approach to be imposed in respect of performance related payments.

Further, the Government’s APS remuneration policy provides that improvements in pay and conditions be linked to productivity gains and are to be funded from within agency appropriations. In this context, there is no cap on the quantum of pay increases that may be agreed at the agency level. A cap on performance bonuses would therefore be inconsistent with this policy setting.

**Recommendation 10** – If performance bonuses continue to be paid, the committee also recommends that there should be complete disclosure of all payments in annual reports, including the following:

- the number of APS employees at each classification level who received one-off bonus payments;
- the aggregate amount of such bonus payments at each classification level;
- the average bonus payment and the range of such payments at each classification level; and
the aggregate bonus payment for the agency as a whole.

If such a disclosure were, in the case of a small agency, or a small number of SES officers, to identify payments to individuals, the committee would be prepared to accept the information grouped by SES and non-SES officers.

Response: Agree.

The Requirements for Departmental Annual Reports will be amended, subject to the approval of the Joint Committee of Public Accounts and Audit, so that annual reports for 2000-2001 will incorporate information regarding performance related payments but in a form that protects the privacy of individuals.

Senator GEORGE CAMPBELL (New South Wales) (3.33 p.m.)—by leave—I move:

That the Senate take note of the document.

In the government’s response, in the main the government has disagreed with the series of recommendations made by the Senate Finance and Public Administration References Committee. It has, for example, disagreed with recommendation 1, which was:

The Government, as the ultimate employer, should direct agency heads that:

AW As with SES and APS employees are not to be kept confidential; and

APS agencies are to make AW As available on request, allowing appropriate deletion of personal information but retaining remuneration details in a published document.

The government’s response claims that a government direction of this nature would be inconsistent with the statutory intent of the parliament, presumably in passing the Workplace Relations Act. It ignores the finding in the Senate Finance and Public Administration References Committee report that the Commonwealth is one of the parties to APS AW As. In the Workplace Relations Act 1996, section 170WK deals with AW As with Commonwealth employees. It says that ‘a secretary acts on behalf of the Commonwealth’.

Therefore, there is nothing inappropriate or inconsistent with the statutory intent of the parliament in the recommendation. If it chose to do so, the government, as the ultimate employer, could issue a direction to agency heads that APS AW As are not to be kept confidential. In fact, the government has already done so in relation to agreement making, when it issued its parameters setting out that agreements have to be consistent with the government’s workplace relations policy, remuneration policy and industry development policy and be funded within agency appropriations. The response goes on to state:

... disclosure ... even where personal information is deleted is likely to result in employee concerns about confidentiality and privacy.

The committee sees such privacy concerns are only an issue if staff are led to believe that they are entitled to this level of privacy, and the introduction of AW As into the private sector has mistakenly implied this. Public servants, parliamentarians and other public officials are paid by the taxpayer and are accountable to the public for the expenditure of this money and for what is bought with that money and what is not available because those funds are not available for other purposes. This is where the public interest in payments made to public servants derives. The secrecy of AW As is inconsistent with the level of transparency applying to all forms of agreement making in the APS. It also fails to follow the requirements for tabling or gazetral of Remuneration Tribunal determinations and the Prime Minister’s determinations for secretaries.

The government has also disagreed with recommendation 2. The contents of that recommendation are:

The committee recommends that all agency heads authorise the OEA, under the provisions of the WR Act, to release copies of their AW As to DEWSRB and the PSMPC.

The response states:

... the WR Act precludes the EA from disclosing protected information which may identify a person as being, or having been, a party to an AWA unless disclosure is authorised in writing by that person.

This position does not take into account the committee’s view that the Commonwealth is a party to the AWA and that the secretary is acting on its behalf. Therefore, it is open to the government to authorise the Employment Advocate to release copies of AW As to DEWSRB and the PSMPC, without further
delay. The committee feels it is unacceptable that information held by the OEA is not available to other arms of the APS, particularly DEWSRB and the PSMPC, to enable the department to provide a more rigorous information program about devolved agreement making in the APS and to improve the quality of reporting on remuneration. It would also enhance the Public Service Commissioner’s ability to perform her statutory reporting role and open the way for monitoring AWAs as a distinct management tool.

Recommendation 3, which again is disagreed with, states:

DEWSRB undertake a more rigorous program of information gathering in relation to APS AWAs; service-wide reporting on agreement-making and remuneration be conducted annually and on a financial year basis by DEWSRB, with compulsory participation by all agencies covered by the Public Service Act; and DEWRSB service-wide reports be tabled in parliament of the same cycle as the Public Service Commissioner’s reports on the state of the APS.

The response states that the department:

... currently coordinates and/or undertakes surveys of remuneration arrangements in APS.

It is noted, however, that the initiative to undertake these surveys comes from various sources and that a strategic approach for comprehensive service-wide information is needed. The committee reported that the non-SES survey completed by DEWRSB did not include AWA information for every agency. Voluntary surveys and random inclusions are not an acceptable basis for gathering and reporting on remuneration in the public sector. I draw the attention of the Senate to paragraph 6.10 of the report.

The committee welcomes the revision of this non-SES pay survey so that in future it will provide data similar to that available in respect of SES remuneration and to include both certified agreements and AWAs. It also urges the publication of the survey results in a timely manner. Even though the response noted high levels of participation, the committee sees no reason why participation should not be made compulsory, enhancing the quality of information available. The response states that, in addition to the surveys, the agencies’ annual reports:

... may include consideration of features of certified agreements and AWAs, and their impact.

However, the inclusion of this information is non-mandatory and highly aggregated.

Recommendation 4, which again was disagreed with, states:

The committee recommends that the PS Commissioner considers AWAs as a distinct category when exercising her statutory functions, in particular, to develop, promote, review and evaluate APS employment policies and practices and in her evaluation of the extent to which agencies incorporate and uphold the APS values.

The main purpose of this recommendation was the committee’s concern that there is no means of measuring or monitoring the impact of public sector AWAs on EEO target groups. For example, as AWAs are used throughout all levels now, can we be confident that the pay increases for those who must negotiate individually for an AWA are being treated fairly and receive fair and equitable pay outcomes? The Public Service Commissioner’s responsibilities include evaluating the extent to which agencies incorporate and uphold the APS values and to develop, promote, review and evaluate APS employment policies and practices. Information about the negotiation and use of AWAs would be an important element in the scrutiny of these processes, yet the commissioner has no direct access to AWAs and no specific information on AWAs in the state of the APS report to the parliament. I draw the Senate’s attention to paragraph 4.48 in the committee’s report.

Recommendation 5 states:

The committee recommends that the OEA should make the full range of AWAs available to researchers, retaining the current confidentiality protections.

The government has agreed with this recommendation. Even though the government agrees with the thrust of the recommendation, it has not specifically addressed concerns of the committee—in particular, the evidence to the committee pointed to difficulties in gaining representative samples through the first AWA sampling method. Even though the response notes that particu-
lar information required by a researcher needs to be requested and would be dealt with on a case-by-case basis, taking into account matters such as practicality and cost, evidence from a researcher found that access was ‘far from ideal and does not allow full pictures of AWAs to be drawn by anyone’.

In respect of recommendation 6 there is agreement by the government, with qualification. The recommendation states:

The committee recommends that the annual and financial reporting requirements for the Australian Public Service be at least as rigorous as those applying to the private sector.

There is no specific requirement in relation to reporting the remuneration of staff on AWAs. The annual reporting requirements only suggest that agencies include in their annual reports an explanation of how the nature and amount of remuneration for SES is determined. Reporting on non-monetary rewards, performance pay and any other remuneration outside requirements for the financial statements is left to agencies to determine.

The response notes a number of other options available to parliament, besides the annual and financial reports, which make the overall disclosure requirements on APS departments and agencies to disclose remuneration more rigorous than those applying in the private sector—for example, FOI requests, parliamentary questions, and inquiries of parliamentary committees, including Senate estimates. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

CENTENARY OF THE FIRST MEETINGS OF THE HOUSES OF THE COMMONWEALTH PARLIAMENT

The DEPUTY PRESIDENT (3.44 p.m.)—On behalf of the President, I present letters relating to the centenary of the first meetings of the houses of the Commonwealth parliament from the Speaker of the New Zealand House of Representatives, the Rt Hon, Jonathan Hunt, and the President of the National Council of the Republic of Slovenia, Tone Hrovat.

FINANCIAL REGULATION

Senator CONROY (Victoria) (3.45 p.m.)—I move:

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.

I speak today on the bungling by Mr Joe Hockey, the Minister for Financial Services and Regulation, of his responsibility to oversee the operations of ASIC and APRA. Investor confidence is on the decline, following recent corporate collapses. Questions have been raised as to how these collapses occurred and what the regulators could have done to avoid the collapses. What has the minister been doing to prevent these collapses?

The Australian Securities and Investments Commission is Australia’s corporate regulator. Its new chairman, since his appointment, has acted to counter many of the criticisms made of ASIC. He has been required to respond to newspaper headlines of ‘toothless tiger’ and ‘ASIC: no bark, no bite’. ASIC must also respond to the thousands of investors and creditors who have lost money in HIH, Harris Scarfe and OneTel. There are also the investigations into the solicitors’ mortgage investments schemes; Commercial Nominees; the failure of the Satellite Group Ltd; dealings by Water Wheel; one of my old favourites, John Elliott; and trading in Qantas securities. Yet how is ASIC being supported by the minister? The annual report for ASIC for the year 1998-99 said:

The extra funding we received this year of some $18 million was for our new work only. Achieving timely enforcement has put unacceptable pressure on our staff, to which they have re-
responded very well. But we may now have too few staff on the ground to achieve the outcomes we and the government want.

Despite that being one of the most public and extraordinary pleas for assistance, following the May 2000 budget ASIC was forced to slash $7 million from its budget. That saw a loss of 70 jobs and the closure of the small business unit. Some of those functions have been absorbed into other areas of ASIC, but the Insolvency Practitioners Association have raised concerns about the loss of that unit, which must come more urgent with the recent increase in insolvencies. This year’s budget did not assist ASIC any further, either. When you subtract the money granted for specific purposes, ASIC’s appropriation for the coming year is only a mere $1 million increase in nominal terms. ASIC has been provided with only $1 million extra in nominal terms to deal with all of its other, and extensive, regulatory functions. In real terms, ASIC has suffered another cut in funding, yet the government is happy to spend $20 million a month on advertising in the six months to October to promote its policies.

The minister is not interested in the effective regulation and enforcement of Australia’s corporations laws. The government is not interested in protecting the rights of small investors, creditors, employees and customers. We have a government that is prepared to squander money on blatant self-promotion to try to get itself re-elected, when one-tenth of that money would go a long way to addressing some of the corporate spivs who are loose in this country, who are getting away with murder and whom this government is not interested in dealing with. If the minister were interested, he would have addressed by now the public questions raised about auditor independence and the independence of brokers. Both actual independence and the perception of independence of auditors are essential if investors are to be confident that the accounts of a company present a true and fair view of its financial position.

Labor, in its corporate governance policy, has made a commitment to ensure the independence of auditors. That commitment was made prior to HIH, which many commenta-

tors have suggested raises serious questions over auditor independence. Mr Henry Bosch, the former head of the NCSC, recently said:

I’m personally a bit concerned about the widespread Australian practice of audit firms acting as consultants for the companies that they audit. Now in some cases I suppose that may be defensible; it certainly is economic, but it does I think unquestionably undermine the independence of auditors, make them less independent, because they are beholden on management for profitable business, which is likely to mean that on the margin they will be less critical than they might be, and might not wish to embarrass the management or the board.

But even before HIH, there were reports of a loss of perception of independence. Australian Financial Review journalist Lachlan Johnson, in December last year, surveyed 106 floats over the previous two years and found a number of cases where accounting firms acted as auditor, adviser and independent expert. Only one of the 106 company floats surveyed employed different firms to do an investigating accountant’s report, an independent review of directors’ forecast, and audit work.

The Australian Shareholders Association have also raised the danger in providing additional services for the independence of the auditor. Yesterday, we also learnt about Arthur Andersen’s audit of Waste Management Inc. in the US. Arthur Andersen has agreed to pay $US7 million to settle federal charges for filing false and misleading accounts. The relationship between Arthur Andersen and Waste Management Inc. highlights the urgency for the matter of auditor independence to be dealt with.

According to the Securities Exchange Commission press release, until 1997 every chief financial officer and chief accounting officer in Waste Management’s history as a public company had previously worked as an auditor at Andersen. Further, between 1991 and 1997, Andersen billed Waste Management corporate headquarters approximately $7.5 million in audit fees and, significantly, $11.8 million in other fees. The US has moved on this issue. Last year, the SEC announced a new rule to secure auditor independence. That rule identifies nine non-audit services that are deemed to be inconsistent
with an auditor’s independence and either prohibit or restrict the supply of those services to an audit client. The minister—Global Joe, or Hindenburg Hockey, as he is affectionately known—travels the world, but is yet to even remark on the US SEC rule.

The DEPUTY PRESIDENT—Order! Senator Conroy, would you please use the appropriate title?

Senator Calvert interjecting—

The DEPUTY PRESIDENT—Order! First of all, Senator Conroy can withdraw; and, secondly, Senator Calvert, you can withdraw.

Senator Calvert—I withdraw. I have heard that once already today in Senator Conroy’s speech.

Senator CONROY—I withdraw.

The DEPUTY PRESIDENT—Thank you. Use the appropriate names for honourable members.

Senator CONROY—The minister is yet to respond to calls to even review auditor independence in Australia on a wider basis than just HIH. Another topic on which the minister has been silent is the issue of broker reports. The Prime Minister thumps his chest with the achievement that Australia ranks first among similar economies worldwide in terms of the proportion of the population that owns shares, yet little is being done by the government to promote and protect their interests. Investors rely heavily on broker reports to make their investment decisions. They need to be assured that the advice contained in those reports is accurate and has not been biased because of work being done in other sections of the financial institution for which the broker works.

Laura Unger, the acting chairperson of the SEC, said in a speech recently:

One of the most important sources of information has always been analysts. Unlike others, they put their name on their work-product and professional reputations are at stake. But, for a variety of reasons, including recent market events, there is scepticism of the objectivity of analysts’ recommendations lately. One survey showed that in 2000, 99.1% of brokerage-house analysts’ recommendations were ‘strong buy’, ‘buy’ or ‘hold’ recommendations. Investors are also becoming circumspect about research emanating from brokerage firms where analysts don’t change their recommendations until after a stock begins to slide or after an accounting problem surfaces. Last year, while the NASDAQ composite index was dropping by 60%, less than 1% of analysts’ recommendations were ‘sell’ or ‘strong sell’ recommendations.

The US is so aware of, and interested in, this issue that the US House of Representatives Committee on Financial Services is holding an inquiry into this issue. I see that Senator Chapman is in the chamber. I urge him, as chairman of our equivalent committee, to take similar action.

The problem in Australia has not been quantified, but there is anecdotal evidence to support some suspicions. There is a story of an analyst who made an accurate, but unpopular, sell recommendation on one of Australia’s largest blue-chip companies being driven out of the research industry after being ostracised by the company. There are other reports of firms having tendered for, or having obtained, corporate advisory work and producing favourable broker reports. This issue needs to be addressed. It has been reported in the newspapers and the US is looking at it, but where is our minister? He is silent and asleep at the wheel, as usual.

The minister, sadly, is not just responsible for ASIC; he also has responsibility for the Australian Prudential Regulation Authority, or APRA. In the past two years under this minister, and while APRA has been under his stewardship, we have seen such debacles as: GIO, which he has more than a passing knowledge of and interest in; EPAS; REAC; HIH; and CNAL. APRA is charged with the prudential supervision of banks and other ADIs, life insurance companies, general insurance companies, superannuation funds and retirement savings accounts. Prudential supervision aims to protect depositors and other investors by ensuring that financial institutions adopt prudent risk management practices designed to ensure their continuing solvency and liquidity.

I want to refer in greater detail to several areas which are under APRA’s supervision. In a Senate estimates committee on 5 June, an APRA officer said:
APRA has a large number of institutions potentially to inspect. What we have done is to take a far more risk based approach... Basically we try to go to those institutions where the issues or risks appear to be the highest. In those cases where risk profiles do not appear to have changed all that much from one year to another, we put those down the order of priority.

However, the recent report of the Auditor-General into bank prudential supervision raised serious concerns about APRA’s risk rating process. Page 49 of the report states:

... there is insufficient differentiation in the available risk ratings as the vast majority (86%) of banks representing 95 percent of total assets were rated as a ‘low’ risk, a small number of banks were rated ‘medium’ risk and only one bank was rated ‘high’ risk. In these circumstances, the ratings provide an insufficient basis for prioritising supervisory activities for entities within the banking sector.

Accordingly, and not surprisingly, the Auditor-General has recommended that APRA review its risk rating process to ensure that ratings provide sufficient basis for prioritising supervisory activities.

The report from the Auditor-General also expressed concerns that APRA has adopted a ‘light touch’ regulatory approach to banking and did not conduct in-depth bank examinations. Page 67 of the Auditor-General’s report states:

APRA has not undertaken regular onsite visits to all banks and so it is unable to meet the Basle Committee best practice recommendation that it periodically verify that banks are adhering to their risk management processes, capital requirements, credit policies and liquidity guidelines. ANAO noted that APRA has not specified a minimum visit frequency for all banks, whereas the Reserve Bank of Australia (APRA’s predecessor supervisor of banks) had a target of conducting visits to each bank at least once in every two years. ANAO considers that an improved risk-based approach would be for all banks to receive periodic visits in accordance with a specified minimum revisit frequency with the level of assessed risk determining whether visits should be more frequent and/or more intense.

The Basle Committee on Banking Supervision is a committee of banking supervisory authorities which was established by the central bank governors of the Group of Ten countries in 1975. The committee adopted a set of core principles in 1997 which were subsequently adopted by the G10 and many non-G10 countries. These are contained in the document *Core principles for effective banking supervision*. Principle 16 of the core principles states:

An effective banking supervisory system should consist of some form of both on site and off site supervision.

However, it is obvious that APRA, under this minister’s stewardship, has decided that this core principle is somehow flawed.

The Auditor-General also found:

Unlike a number of European and North American supervisors who visit the Australian operations of their banks, APRA does not have a structured program of visits to the offshore operations of Australian banks with none of the... banks in ANAO’s sample having been visited since 1997.

What are the reasons for the infrequency in visits? Apart from the new risk based methodology adopted by APRA, which I have already referred to, the Auditor-General found that the on-site visit teams are yet to be fully staffed, and that is affecting the ability of APRA to conduct on-site visits. The Auditor-General found that, at the time of their audit fieldwork, the three visit teams were understaffed by 25 percent.

The Auditor-General’s report also raises concerns about APRA’s reliance on the internal audit work of banks. His reports says at page 59:

The Basle Committee’s *Core Principles for Effective Banking Supervision* require supervisors to assess the scope and effectiveness of each bank’s internal audit unit’s operations, policies and procedures. In this context, ANAO noted that, when the Reserve Bank held responsibility for prudential supervision of banks, the Bank reviewed banks’ internal audit functions. In comparison, APRA does not periodically review banks’ internal audit functions to assess what (if any) reliance can be placed upon this work. APRA also does not seek advice from banks’ external auditors on the extent to which they rely on the work of internal audit and, where the external auditors rely on internal audit, details of the external auditor’s assessment of the internal audit function.

While APRA informed the Auditor-General that the internal audit function was reviewed
as part of its new methodology, the Auditor-General’s report states:

... such assessments were often not documented and ANAO considers explicit regard should also be had to: the nature and extent of the assignments undertaken by the internal auditors; the technical training and proficiency of the internal auditors; and whether internal audits are properly planned, supervised, reviewed and documented.

Minister, it is time to explain what questions you have asked about APRA’s supervision. Why has the minister accepted this method of supervision? Did the minister know that the new risk based methodology would lead to a decline in visits and, in the words of the Auditor-General, the ability to:

... provide APRA with an increased understanding of banks’ risk management systems and an insight into their risk management culture as well as enabling material issues identified through off-site supervision to be pursued.

Did the minister know about APRA’s reliance on the internal audit function of the banks but then was not properly assessing whether that reliance was appropriate?

It is time to ask what oversight the minister is exercising with APRA. Maybe the reason lies in the comment of one financial institution recorded in the report of the Auditor-General. Page 52 of the report reads:

ANAO notes that there is evidence that APRA’s approach has not been universally successful. APRA’s records state that one of the banks in ANAO’s sample has breached various Prudential Standards and has a culture that appears to treat ongoing compliance with the Prudential Standards as a burdensome imposition that may be dispensed with if it interferes with the bank’s primary function of developing business.

Banks do not want to be regulated, and they appear to be winning.

I will turn to the regulation of superannuation by APRA. The Governor of the Reserve Bank has recently expressed concerns about the supervision of small superannuation funds. We have also seen the collapse of CNAL and EPAS, which my colleague Senator Sherry will say more on. Turning to the prudential supervision of insurance, I have only three letters for the minister: HIH. The royal commission is inquiring into the cause of the collapse of HIH. The recommendations of the royal commission will be closely reviewed. However, I hope the royal commission will also inquire into the reasons for APRA’s apparent hesitation to act on HIH. A lot more can be said on HIH, and I am sure my colleagues will have much more to say.

Unfortunately, I cannot say that HIH is an isolated incident. APRA and the minister have form in the collapse of REAC. The competence and performance of APRA must be reviewed. I and, I am sure, many others have lost confidence in APRA. The minister has failed in his job of ensuring that APRA and Australia meet world’s best practice. The minister has failed to provide to investors a world’s best prudential system. The minister has failed miserably in the implementation of the Wallis reforms. Like ASIC, APRA has also been found to have been penny-pinching. The Senate Select Committee on Superannuation and Financial Services heard last week that APRA had, in order to save $60,000, asked the Government Actuary to stop producing regular reports on insurance companies after 1998. So $60,000 has been saved at a cost of $4 billion, and thousands, if not tens of thousands, of Australians have been massively hurt by this collapse. APRA also has staffing problems. I have referred to the number of staff already, but others have raised questions as to the expertise of the staff of APRA. An officer of AMP giving evidence—(Time expired)

**Senator CHAPMAN (South Australia)**

(4.05 p.m.)—In the general business notice of motion moved by Senator Conroy this afternoon, he has identified:

(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)...

They are the three issues that he seeks, through this motion, to express concern about. He says there is ‘a decline in investor confidence’ flowing from those three matters. Of course, the ultimate claim of this motion is that it:
(b) condemns the Minister for Financial Services and Regulation for his mishandled oversight of ASIC and APRA.

That is Minister Hockey. It is very clear from listening to Senator Conroy this afternoon that he does not really have his heart in this motion. He does not believe it himself. Usually when Senator Conroy gets up here in the chamber he is a young firebrand, eating and breathing fire. But we just saw a very subdued read speech from Senator Conroy this afternoon, which clearly indicates that he does not have his heart in this motion. He does not really believe the points that are expressed in this motion. Of course, we know why he does not believe the points; because Senator Conroy himself has said what a good job Minister Hockey has been doing. On 4 April in this very chamber, according to the *Hansard* record, Senator Conroy said:

Mr Hockey is a very good minister, I have to say.

He is joined in that assessment of Mr Hockey by his state colleagues in New South Wales—the Treasurer, Mr Egan, and none other than Mr Della Bosca, who also said in a debate in the New South Wales parliament that Mr Hockey is ‘doing a commendable job with great enthusiasm and great effectiveness’. It is no wonder that Senator Conroy had absolutely no enthusiasm for the motion that he moved this afternoon in this general business debate. The reason he has no enthusiasm for it is that he knows it is not true, his allegations against the minister are not true and his allegations in relation to the issues referred to in this motion are, equally, not true.

It is important to note that what is now the Australian Securities and Investments Commission started operation as the Australian Securities Commission back in 1991 as our national corporate regulator. This followed agreement reached between the Commonwealth government of the time and the state governments to establish a national companies and securities scheme in place of the previous scheme that operated on the basis of voluntary cooperation between the states. Constitutionally, company law had always been the responsibility of the states, but it was recognised in the early 1990s—directly as a consequence of the deficiencies in company disclosure and corporate governance that were disclosed as a result of the events of the 1980s—that a national scheme of management and supervision of our corporations was required.

The Australian Securities Commission was established and operated under that title until 1998 when, as a result of the reforms initiated by this government, the Howard government, it became the Australian Securities and Investments Commission. In addition to its corporate regulation responsibilities, it took on the responsibilities of investor protection at the retail level—in effect, consumer protection of investors—as well as its corporate supervision responsibilities. That was as a result of the recommendations of the Wallis committee, in particular, which recommended a twin peak structure, if you like: the establishment of a single prudential regulator across all financial products, which we now have in the Australian Prudential Regulation Authority—which I will come to in a minute, but which was also the subject of Senator Conroy’s address—and the separate market integrity regulator, the Australian Securities and Investments Commission. It was this government that set up that improved structure, partly as a result of the recommendations of the Wallis inquiry and partly as a result of its determination to update and modernise the administration of the Corporations Law and financial services regulation in Australia. The newly established ASIC, as it has been known since 1998, consolidated actions to restore confidence in Australia’s corporate regulation following those excesses of the late 1980s.

If you look around the world—as I have as chairman of the Joint Statutory Committee on Corporations and Securities, which has the statutory oversight of the Securities and Investments Commission—and examine the corporate regulation structures of other countries, there is absolutely no doubt that Australia has established world’s best practice, as far as corporate regulation is concerned, under this national structure—this national administration under the aegis of the Australian Securities and Investments Commission. It is certainly one of the institutional
strengths that Australia had that enabled us to avoid the worst effects of the Asian financial crisis in 1997-98. That was a direct result of having this world’s best practice structure. I have examined the situation in the United States, where they have the Securities and Exchange Commission, which is very much hampered in its effectiveness because a lot of corporate law and administration in America is still handled at the state level. Similarly, if you look at the United Kingdom, they have been trying for the last four or five years to establish a structure that is similar to what we have in Australia, and they have yet to succeed in finalising that structure. So Australia does lead the world as far as corporate regulation and supervision is concerned.

That was certainly recognised back in May of last year when the Australian Securities and Investments Commission was the host for the 25th annual conference of IOSCO, the International Organisation of Securities Commissions. That was hosted in Sydney in May last year. It was attended by some 400 delegates from 91 countries around the world. At that conference ASIC’s competence was strongly recognised in comments made during the conference. Importantly, apart from its role here in Australia, its competence and our world’s best practice structure are recognised in the way in which ASIC is assisting other countries in the region to establish a more effective corporate regulation structure. China is one example. As it emerges into a more market economy structure and into an economy that allows private investment and private companies to operate, it has relied very heavily on the advice and support of the Australian Securities and Investments Commission to set up its regulatory structure.

There is absolutely no doubt that ASIC has the competence, which is recognised internationally, to undertake its role as a corporate regulator. Part of that role is to address regulatory issues across the board in the private sector. It played a significant role in supervising the demutualisation of the Australian Stock Exchange and the separation of the Stock Exchange’s commercial and regulatory functions. In that sense we have a two-tier regulatory structure. The Securities and Investments Commission is responsible for the regulation of our Corporations Law but it delegates to the Stock Exchange the regulation of individual companies in terms of its listing rules. We have very close joint supervision of listed companies through that process to protect investors.

One of the significant developments in the financial services sector is major technological change, which continues to affect the supply of financial products, and that requires flexibility with regard to regulatory response and increased cooperation across international borders. I have already mentioned the esteem in which ASIC is held in other countries and in particular in our region. It is important that that cooperation between countries is engendered as we move into the electronic age in which transactions, in particular with regard to investments and financial services, happen across borders over the Internet. That is a real challenge for regulators to supervise effectively. But, again, ASIC has been effective in dealing with that technological change.

There is no doubt that ASIC has brought greater integrity to Australia’s financial markets. It has achieved the first convictions ever on a number of contested charges of insider trading. It was successful in bringing a civil action against Nomura International for its market manipulation. It recovered some $100 million for AustWide investors when that particular company failed. It also secured the first conviction and jail term for the manipulation of stock prices over the Internet, again demonstrating ASIC’s effectiveness. Importantly, ASIC has quite a significant role in educating retail investors and consumers. Over the last couple of years since it had added to its role this protection of retail investors and consumers, it has been active in cracking down on bad financial advisers, with some 120 banning orders having been issued against investment advisers, preventing them from being further involved in the financial services industry, and 20 jail terms having been achieved through court action as a result of its activity.

One of its main successes in terms of educating the public was the running of Austra-
lia’s longest April Fools’ Day joke, the millennium bug insurance campaign. This was to show investors the way in which scams can arise, how they need to beware when contemplating investments, that they should take good, sound advice and that they should ensure the company which they are considering investing in is acting within the law. That particular mock scam that was put onto the Internet by ASIC to educate investors, the millennium bug insurance campaign, actually ‘raised’ $4 million from 233 people. In other words, this proposed investment that ASIC itself had put on the Internet as a means of educating investors was a complete scam, and yet it attracted 233 potential investors, who indicated a willingness to invest $4 million. That became well recognised as a very effective way in which ASIC had educated investors about the importance of undertaking proper due diligence before any investment activity. There is absolutely no doubt that ASIC is effectively performing its role to protect retail investors.

Senator Conroy also raised the issue of audit independence. It is important to understand that the independence of auditors is a requirement of Australian Corporations Law. That requirement for independence is contained not only within the Corporations Law but also within professional standard F1 of the code of professional conduct, which is issued jointly by the Institute of Chartered Accountants in Australia and CPA Australia, and Statement of Auditing Practice AUP32 on audit independence, also issued by those two accounting bodies. Under section 324(2) of the Corporations Law, it is required that:

... a firm shall not:

(a) consent to be appointed as auditor of a company;
(b) act as auditor of a company; or
(c) prepare a report required by this Law to be prepared by a registered company auditor or by an auditor of a company

… … …

(unless) no member of the firm, and no body corporate in which a member of the firm has a substantial holding, owes more than $5,000 to the company, to a related body corporate or to an entity that the company controls.

It is also required that a member of the firm is not:

(i) an officer of the company;
(ii) a partner, employer or employee of an officer of the company; or
(iii) a partner or employee of an employee of an officer of the company—
or does not receive any remuneration from the firm for acting as a consultant to it on accounting or auditing matters. So the Corporations Law is very explicit in laying down provisions to avoid conflicts of interest with regard to the auditors and to ensuring audit independence. It is also required that amounts paid or payable to the auditor for services and to any related entity of the auditor for non-audit services—in other words, other services that that particular firm that is undertaking the audit might provide—also have to be publicly disclosed.

That is the provision of the law, but there are also the professional standards which ensure audit independence. They reinforce the requirements of the Corporations Law. In fact, they impose additional requirements—for example, that an auditor: shall not audit a company in which any person in the practice is a beneficial owner of shares or has a material part of their assets in the company; will not provide valuation services; should not participate in the executive function of an audit client; and does not participate in the preparation of the books of a public company audit client, except in exceptional circumstances.

I also referred to Statement of Auditing Practice AUP32. That reinforces the independence requirements of standard F1. Those standards are constantly being reviewed to make sure that they are appropriate to ensure that auditing independence is maintained. Indeed, the accounting bodies issued an International Federation of Accountants exposure draft in April 2001, for comment by the end of this month, with regard to current auditing standards. Again, the provisions are in place, administered by Minister Hockey as the responsible minister, to ensure proper independence of auditors.

Senator Conroy also referred to brokers. He based his concerns about brokers not on
the Australian equities market but on a comment that he had picked up somewhere that brokers in the United States did not recommend to their clients that they should sell shares when the NASDAQ market was falling. I am not much of an equity investor; I would be a great amateur as an equity investor, I suspect. I always understood that a falling market—and Senator McGauran will probably know a lot more than me about investment strategies—is usually the time to buy, and you sell into a rising market. You take your profits on a rising market and purchase on a falling market, so that you then take profits when the market recovers and rises in the future. I thought it was a very bad strategy to sell in a falling market, because that is when you are likely to take losses. But as I said, I am only an amateur, so I would not claim any expertise. To take to task brokers in the United States because of their failure to make certain recommendations is drawing a very long bow in terms of what the competencies and the independence of Australian sharebrokers and financial advisers might be.

Senator Conroy also raised the issue of the Australian Prudential Regulation Authority. As I said earlier, APRA was established as part of the twin peaks policy arising out of the Wallis recommendations in 1998, when the ASC became ASIC, and APRA was created to be the prudential regulator. It was basically established as a combination of the previous Insurance and Superannuation Commission and the banking supervision section of the Reserve Bank of Australia. This body supervises some 11,000 separate institutions: about 300 deposit takers, including banks, credit unions and building societies, 40 life insurers, 160 general insurers, 50 friendly societies and approximately 10,000 superannuation funds. So it has a very wide ranging responsibility.

It is significant that, since it commenced operations just two or so years ago, APRA has introduced a comprehensive framework for supervising conglomerate groups, which includes banks. It has introduced a single set of flexible prudential standards for all deposit takers. It has been working on a major project to overhaul the supervision arrangements that it inherited in relation to general insurance companies, and that overhaul is almost complete. It has established a group to consider various operational risks incurred by financial institutions and it has also commenced a review of supervisory arrangements for superannuation under the Life Insurance Act. So, in the relatively short period of time since it was established, APRA has undertaken a number of major initiatives in light of its new responsibilities.

The motion that has been moved by Senator Conroy today does not have any legs. I said at the outset that he does not believe in it. That was clear from the lack of enthusiasm with which he presented his case today. It is also clear from his comments in earlier days in this chamber, when he said, ‘Mr Hockey is a very good minister.’ So the case has not been established by the opposition with regard to this motion, and it should fail.

Senator Sherry (Tasmania) (4.25 p.m.)—In commencing my remarks, I will reflect very briefly on some of Senator Chapman’s contribution. He claims that APRA and ASIC, our prudential regulators, are world’s best practice and that they lead the world as far as financial prudential supervision of financial services is concerned. He referred to an international conference of financial regulators, held last year, which lauded those two organisations as amongst the best in the world. I will make one prediction, Senator Chapman. When that conference is held again, there will be a paper delivered analysing just what went wrong in Australia with the supposed world’s best practice prudential system and analysing why, in the Australian environment, we have had the collapses of HIH, One.Tel and numerous other corporate collapses in recent times.

I would like to concentrate my remarks on HIH. HIH was one of Australia’s largest insurance companies. Its recent collapse—and a dramatic collapse at that—has moved like a tidal wave through the Australian community, impacting on hundreds of thousands of policy holders. The impact on hundreds of thousands of policy holders—in the main, battling Australians—has meant that their
sickness and accident payments, their salary continuance, their outstanding claims for fire, theft and flood insurance, their outstanding workers compensation claims and their outstanding indemnity insurance claims will not be met. The collapse has also had a dramatic impact on current businesses that require insurance in order to continue to operate, and this is well illustrated by the building industry.

The collapse has been so dramatic that the potential company losses are likely to be in the order of some $4 billion. This tidal wave has not just ripped through the Australian community; it has rippled right around the globe. It is interesting that HIH were the indemnity insurers for the United States North Pacific fishing fleet. They were also the indemnity insurers for the Hong Kong Stockbrokers Association. The ripple effects have been so dramatic that, when I was looking at a copy of the Financial Times—one of the world’s leading financial publications—they commented some two weeks ago, very adversely, about prudential regulation and the performance of our prudential regulators in Australia.

Also, recently Mr Hoskins, who heads up the task force appointed by this government to turn Australia—and Sydney in particular—into a world financial centre, admitted in evidence at Senate estimates two weeks ago that the collapse of HIH, and the so-called prudential regulation of APRA and ASIC, had caused great concern in the international financial community. Quite properly and necessarily, we now have to have a public bailout of the victims of HIH. We do know that that bill is likely to be in the order of $600 million plus.

I would like to touch on what I see as three critical causes for the collapse of HIH, and these are only three of a number of critical causes. The first is the actions of the prudential regulator: the Australian Prudential Regulation Authority, known as APRA. The second is the legislative framework, the Insurance Act 1973. The third is aspects of actuarial valuations. Let me commence with the creation of APRA. APRA and ASIC were creations of the Liberal-National Party government. They were created following a review of prudential regulation in 1997—the so-called Wallis inquiry. This had been foreshadowed by the now Treasurer, Mr Costello, prior to the 1996 election.

APRA and ASIC are very much the creations of the Liberal-National Party; they are very much the personal baby of the Treasurer, Mr Costello. He is the one who claimed the credit for their creation in 1998. It is interesting to reflect on Mr Costello’s boasting at that time. Mr Costello boasted that this would give Australia ‘a stronger regulatory regime designed to better respond to developments in the financial sector’. There are also numerous references and boasting by Mr Costello about what he had created with APRA and ASIC and how they would assist Australia, and in particular Sydney, to become a ‘world financial centre of best practice’. My colleague the current shadow Assistant Treasurer, Mr Kelvin Thomson, was, rightly, a little more circumspect in his comments when APRA and ASIC were created. Mr Thomson, in a speech to parliament, said: APRA is also being created at a time of major change to market regulation. That these two bodies are being created during a time of such great regulatory change is of concern to the opposition

...                 ....                      ...

Unless the government is vigilant, some things are bound to fall through the cracks as the regulators change and the regulations change at the same time. That is just about a rolled gold certainty.

How prophetic was my colleague the shadow Assistant Treasurer, Mr Thomson, in his comments! How prophetic was he in terms of what occurred! When APRA and ASIC were created there was an extensive restructuring. The Treasurer, Mr Costello, deemed it appropriate that the headquarters should be moved from Canberra to Sydney. This was supposedly so that it could stay more in touch with the financial services sector. Well, if they were more in touch in Sydney, what on earth were they doing? Part of the problem that the forced removal of APRA and ASIC from Canberra to Sydney created was that APRA and ASIC—and they admitted this themselves; it is on the record in an annual report—lost many experienced staff whom they have not been able to replace.
On top of this, the staff in APRA and ASIC at the present time are rotated from one industry sector to another. So, if you are an APRA inspector, you deal with insurance one week, banks the next week and superannuation the following week. That is hardly a way to ensure that you have consistent and reliable prudential regulation and checking. Also, of course, the budgeting of APRA and ASIC has been severely constrained. But in addition to the creation of what Mr Costello alleges are ‘world best practice financial regulators’, the government failed to arm the regulators with sufficient legislation in order to carry out their role. As I said earlier, we have the Insurance Act 1973. This is one vital area that the Wallis inquiry of 1997, which was set up by Mr Costello, failed to inquire into.

There is very little comment about the Insurance Act of 1973. Old and outdated legislation has failed to keep pace with the changing nature of the financial services industry and, in this case, particularly the insurance industry. The proposed timetable for new industry standards in insurance were to commence on 1 July 2003 and to be finally phased in by 2007. I think it was well put in a recent article in the Business Review Weekly that referred to APRA as being ‘armed with a bow and arrow when it needed an AK-47’. The chief executive of APRA also confirmed in that article the failure to arm APRA with adequate statutory requirements when he said:

It was conforming with existing statutory requirements, both in its June accounts and the accounts it provided us at the end of September. The triggers were there but they weren’t set at the right level. It made it difficult for us to do anything ...

I would now like to turn to the issue of actuarial assessment, because the role of an actuarial assessor in an insurance company is absolutely essential in determining the financial viability of an insurance company. An actuary’s role is to assess risk. An actuary’s role is to examine the economic and social characteristics of policyholders and, on the basis of historical claims made in respect of insurance, to project what future claims are likely to be over the outgoing years and to match that against premium and income. The actuary’s role is to each year carry out an appropriate evaluation of a business—the assets and liabilities—and report that to the regulator; in this case, APRA. So an actuary’s role is essential to the financial assessment of an insurance company and, for that matter, defined benefits superannuation funds.

An insurance company operates very differently from a normal business in that its expenses, if you like, its claims at a future date, are difficult at times to assess properly. That is why insurance companies are required to carry out an actuarial assessment of their future liabilities and report it to the regulator, APRA. On top of this, the insurance industry has had catastrophic returns on shareholders funds in recent years. In 1998 they were minus 11 per cent and in 1999 they were minus 55 per cent.

As I said earlier, APRA receives reports from insurance companies, and they are required to examine the actuarial assessment carried out by the actuary working, either directly or on a contract basis, for the insurance company. It was certainly my belief, and the belief of my colleagues on the Senate Select Committee on Superannuation and Financial Services, that APRA was properly investigating the actuarial assessments of insurance companies on a yearly basis. However, it is not what we thought. When the committee was in Sydney recently, we had APRA appear before us. My colleague Senator Conroy and I asked APRA a number of questions, specifically to Mr Thorburn, who was the former Chief Government Actuary. I asked Mr Thorburn:

When was the last time APRA carried out an actuarial assessment of HIH?

Mr Thorburn replied:

I am not sure that I can provide you with the precise date. I will have to look it up and take it on notice.

The story changes, but I will get to that shortly. I then asked Mr Thorburn a series of questions, which went:

Senator SHERRY—Approximately?

Mr Thorburn—The process was that, as a matter of course, outstanding claims provisions would be assessed by the Government Actuary. That process changed at the then Government
Actuary’s instigation to attempt to focus on exceptions rather than on all cases.

Senator SHERRY—When did that change occur?

Mr Thorburn—My recollection is that that would have been in 1998, but I would have to check. Primarily the reason for that was to say that, if a company’s position, on the basis of some broader run-the-ruler-over sort of ratio analysis, does not justify the effort, then that effort would not be undertaken.

Senator SHERRY—Is this when the Government Actuary was working for APRA—within the same organisation?

Mr Thorburn—Yes. So, subsequent to that, there was a system put in place to look at these ratios and consider referrals.

Bear in mind that we were asking about the last time the actuary working for APRA, the regulator, actually carried out an assessment of HIH. I persisted in my questioning of Mr Thorburn:

Am I right in assuming that 1998 was the last time a Government Actuary looked at HIH?

Mr Thorburn replied:

I would have to check the year, but that is in keeping with my answer, yes. There was a time when that process stopped altogether.

In other words, contrary to his earlier comments, he was admitting that the last time APRA carried out a proper actuarial assessment of HIH was in 1998. The questioning continued:

Senator SHERRY—I note that you say that it was the Government Actuary’s initiative. What was APRA’s attitude to this change of policy on actuarial assessment?

Mr Thorburn—This was at the time of the previous structure.

Senator SHERRY—The old ISC?

Mr Thorburn—Yes. The then general insurance group from the ISC, which was still part of APRA at that stage, was comfortable with that change.

Senator SHERRY—Do you think, in hindsight, that it was a mistake?

Mr Thorburn—I do not think it affected the position with respect to HIH.

Senator SHERRY—Why not? An actuarial assessment by the Government Actuary might have picked up some of the problems.

Mr Thorburn—Well, it may have. But I am not saying that—

Senator SHERRY—If it was not done, you were never going to pick it up.

Mr Thorburn—I am not saying it was not done because of anything to do with HIH. I am saying the process changed for all companies.

Senator SHERRY—But, consequently, HIH has not had an actuarial assessment carried out by the Government Actuary since 1998?

Mr Thorburn—That is right, yes.

Finally, we got Mr Thorburn, in charge of actuarial checking in APRA, to admit on the record that APRA, the government regulator, had not carried out an actuarial assessment since 1998. Just for the record, we came back to this later when my colleague Senator Allison asked why APRA cut back its actuarial checking of insurance companies, and Mr Thorburn admitted that it was to save money—it was to save $60,000. The amount of $60,000 was saved by cutting back the actuarial checking by the regulator, APRA, of HIH.

What I subsequently discovered was even worse. Earlier, Mr Thorburn had referred to then Government Actuary advising that this change in actuarial assessment should be made—that the cutback should occur—and I then discovered that Mr Thorburn was the then Government Actuary. I put this to him:

You were the Government Actuary?

Mr Thorburn replied:

Yes.

Earlier in the evidence he referred to the Government Actuary without admitting that he was the one who had, in fact, recommended the change. This is quite appalling regulatory practice. Here we have APRA, the regulator of insurance companies in this country, required to check the actuarial assessment which is critical to determining the financial health of an insurance company, ceasing to do its job with respect to HIH in 1998 in order to save money. In this case, $60,000 was saved as a consequence of this change. And this government allowed that to happen.

But it gets worse. I went to the Senate Economics Legislation Committee. The government itself has an actuarial unit in Treas-
I noticed that the revenue budgeted for the Government Actuary within Treasury had been cut back from $1.4 million to $1.3 million. I asked Mr Martin, the Acting Government Actuary, a series of questions:

... Why is that?

Mr Martin—We projected this year’s revenue on the basis of one less staff member than we had last year.

Senator SHERRY—How many staff members did you have last year?

Mr Martin—We have had eight and now we are at seven.

Senator SHERRY—Eight going to seven. What did you have five years ago? Do you recall, approximately?

Mr Martin—It may have been as many as 13.

I went on to ask why there was a cutback in government actuarial services. Apparently it is a cost-cutting initiative of the Liberal-National government. This is quite appalling evidence. It shows that the government, in penny-pinching and subcontracting—saving $60,000 in the case of APRA and a few hundred thousand dollars in the case of Treasury—has totally contracted its actuarial checks which are critical to identifying the health or the ill health of financial institutions in this country. I put it to the Senate that, given the material that I and our shadow minister for financial services, Senator Conroy, have presented, this government, through its short-sighted policy of subcontracting and cutting back on costs in the area of actuarial prudential regulation, has indirectly contributed to the sorts of problems we have seen with HIH.

We have had no grandiose or smug claims by the Treasurer, Mr Costello, in recent times about how great our prudential system is. He set it up. He was the one responsible for establishing APRA and ASIC. He was the one who boasted about what a great financial prudential regulator it was. He was the one who failed to update the Insurance Act. He was the one who moved it from Canberra to Sydney. He was the one who allowed the cutback in actuarial assessments to take place. And, finally, he was the one to give the task of running it on an everyday basis to that dud minister, Mr Hockey—and look at the disaster that has occurred in Australian financial services!

Senator WATSON (Tasmania) (4.45 p.m.)—There are really four separate issues for debate before the Senate this afternoon: Australian investor confidence, the role of ASIC, the role of APRA—both regulators—and the role of the Minister for Financial Services and Regulation, Mr Joe Hockey, which I believe has been quite exemplary. While members and investors have genuine complaints where they have been personally disadvantaged because of fraud or corporate failure or some other misdemeanour, I think it is true to say that, while there are some pockets of concern, across the Australian investment community there is a high level of confidence in the investment market around Australia. That is a general proposition. One has only to look at the stock exchange market to see the confidence there.

From the perspective of superannuation, we are not seeing any exodus out of superannuation, despite certain highly publicised failures. On the contrary, investment in superannuation is a concessional taxed product. It continues to rise, and this is a demonstration of consumer confidence just as the rise in prices on the Stock Exchange is a reflection of confidence in Australia and the companies operating in this country.

As chair of the Senate Select Committee on Superannuation and Financial Services, I was a little disappointed at some recent remarks by the Reserve Bank Governor which in some quarters may have raised questions about the safety of superannuation assets. I say no more than it was unnecessary and perhaps an uninformed or even a throwaway line.

With $500 billion in assets covering 200,000 funds it is imperative that there be a high level stewardship for all players, be they investment managers, custodians, regulators, trustees, or whatever role they might have. One of the best forms of oversight actually comes from the members themselves. Given that nowadays they have more frequent and improved means of communication, members are actually taking an increasing interest in their superannuation. Naturally, with the growing quantum of money in their ac-
counts, more frequent inquiry is not unexpected. This progressive accessing of information, I believe, will increase exponentially with the greater use of the Internet and with personal use of computers. But I keep coming back to the central point: investor confidence is absolutely essential for confidence and the continued growth of superannuation.

I have to say to this Senate that the superannuation framework in this country is sound. There is appropriate division of responsibility with one person or group handling separate responsibilities such as a separate custodian for the custodian function, separate from the investment manager. In fact, it is this framework that is very much admired around the world and is held up as a model for the future in terms of a solid financial framework for the basis of superannuation.

Our Liberal-National Party coalition government continues to tighten the rules to provide an even higher level of protection to members’ investments in superannuation. During last year, for example, our government introduced criminal penalties to assist the regulator to act quickly and effectively against delinquent trustees and administrators. For example, where trustees are late with their returns or late in writing up their records, including accurate minutes, etc., the regulator can now lodge criminal penalties, the consequence of which is that he does not have to prove intent. An example from another area may crystallise the significance of the change. For example, when a motorist runs a red light and is caught in the act, a prosecutor does not have to prove intent, which in law is not easy and often leads to protracted litigation, particularly in the corporate area. Earlier still, our Liberal-National Party coalition government made a very responsible decision in that it moved to single entity responsibility. When funds did run into trouble there was difficulty working out where the responsibility lay. Did it lie essentially with the investment manager or did it lie with the trustee?

I also have to point out to the Senate that, in terms of security of superannuation assets, scale of operation is also a matter that I think investors should look at. As a rule of thumb, prudential soundness generally improves with size. But there is also another problem that potential investors should look at. They should also look at movements in the market. But with size, of course, there is always the opportunity for another part of that entity to bail out an unhappy situation.

I have been careful to address my remarks to the importance of superannuation in terms of maintaining confidence. But there is another issue in relation to One.Tel and HIH—they have another set of problems. The old adage does apply: watch out for substantially cheap products, products substantially lower than the market or discounted to the market. Also, look at how the market is viewing that particular firm or corporation that is discounting beyond what is regarded as the norm. For example, generally reputable insurance companies do not constantly discount their premiums below market rates. Generally, these reputable companies have a quick claims settlement record, factors which I would have thought prudent clients would look at.

I believe that in relation to HIH there are some questions that certainly directors and even the auditors need to answer. The Senate Select Committee on Superannuation and Financial Services recently wrote to the Institute of Chartered Accountants congratulating that institute on distributing reminders to directors in relation to their range of responsibilities in about five or six major areas. Also in the letter we sought contact with the institute about standards relating to the roles of auditors because, in this whole equation, you cannot blame just the regulators because the regulators also rely on reports issued by auditors.

But in Australia we have twin roles applying to regulators. We have two principle ones, APRA and ASIC. Under the Superannuation Industry Supervision Act 1993, APRA has the prime responsibility in terms of trustee directors, prudential management and administration of superannuation. It also looks at inappropriate decisions by trustees and administrators and not-at-arms-length transactions: all these come under the APRA umbrella. On the other hand, the ASIC role is
certainly much more limited. It is confined, but not exclusively, to disclosure type issues.

I think we should try and get something positive out of a debate like this in order to improve on the current system. Let us not just use a debate such as this is to knock everybody—APRA and whoever you might like to think it is popular at the time to knock. So, I raise a matter that I also raised in the adjournment debate last Monday following a recent visit to Canada, where my role was to contribute to the international debate about tightening financial laws and practices in developing countries so that there is a strong message sent out to the lending community that they can have a higher degree of confidence in making loans, et cetera.

What was the Canadian precedent? The Canadian securities regulators have recently recommended tighter disclosure guidelines for companies in order to provide a smoother playing field for all investors. In the past, analysts and other investment professionals have had an upper hand over the average man in the street investor, with better access to key executives at publicly traded companies. This has meant that important information has been filtered through these specialists. In Canada, they intend to remove that filter. This means that everybody in the marketplace, both professional analysts and the small private investor, will have the same information at the same time. I believe this is a very constructive issue. I would like the regulators to pick it up and issue similar instructions here in Australia. There is the challenge. There is something for APRA to pick up and run with, because I believe that is a very constructive role.

I now turn to the respective roles of both APRA and ASIC. APRA have had a difficult time of late and they have been on the receiving end of a lot of criticism from the Senate Select Committee on Superannuation and Financial Services in relation to a number of small fund failures and also their problems in relation to their handling of HIH. The point is: where do we go from there? Again, in a more constructive role, in terms of the administration, the management or the charter of responsibility in relation to APRA, instead of so many positions going right across the spectrum, perhaps they should be aiming more for specialists in areas such as banking, credit unions, superannuation and so on, rather than giving a lot of people roving commissions across a range of areas. Certainly, this will be a matter that will be addressed by the royal commissioner in his inquiries.

Yes, I must say that the performance of APRA has not been uniformly good across the spectrum. At the higher end in terms of superannuation they are spending a lot of time with the better regulated companies. They are certainly using that as a learning experience. That is part of the process. But when we get to the medium sized and smaller operations, I think some of the way in which they have managed their roles has not been good. I have also got to be critical in that their response to correspondence in relation to fund management has been abysmal, and I think this goes from the chief executive officer right through the operation.

APRA have to operate with a lot more teeth. I think they have been too gentle—a too softly, softly approach. But they are looking to the future. I think they can rightly expect better information to be provided to them. I think they have got to have a role in terms of stricter guidelines on funds’ investment portfolios. These are matters that Graeme Thompson has acknowledged. There need to be wider powers for APRA to seek information from third parties, broader licensing arrangements and a reassessment of certain capital needs.

I now turn to the role of the Australian Securities and Investments Commission. I believe they have performed very well. Obviously, in any organisation with such responsibilities as ASIC there are always going to be one or two problems, but I put them down perhaps to management problems. If you go to their last report—the 1999-2000 report—and go through some of what they have done, I do not think we have had a regulator as proactive as the chairman, David Knott, in this area at all in Australia. I have to salute him for the expeditious way in which he has taken action in relation to HIH, in particular, to One.Tel and also to a number of other ar-
The latest one being GIO. He has done a great job. If some of the other regulators had acted as quickly, we would not have had some of the corporate collapses in the 1980s that we saw when the corporate cowboys really had a field day and the regulators of the day felt that there was not a court in Australia that would convict them.

Let us look at some of the activities, going back to their report. They caused listed companies to make corrections to their financial statements to better inform their shareholders, which in aggregate represented corrections of $2.4 billion. They banned 50 unsuitable people from giving investment advice. They have succeeded in 84 per cent of the 461 court cases concluded in 1999-2000 and, as a result of that, 25 people were jailed. They have concluded the long and very difficult Yannon investigation after the Director of Public Prosecutions decided to lay no charges—good luck to them. They have inspected how major banks offered investment advice, and generally I think their performance has been good. There are currently over 80 criminal proceedings under way and 35 civil actions, while almost 200 active investigations are being resourced.

What about the solicitors’ mortgage schemes that came under the attention of the Senate Select Committee on Superannuation and Financial Services? As a result of what we did, Mr Knott has announced a major investigation into the financial status of Australia’s unlisted solicitors’ mortgage and investment schemes. The initial focus of the investigation is on runoff mortgage schemes that are being managed by solicitors and finance brokers. Basically I say, ‘Well done, Mr Knott, and well done, ASIC’—so no condemnation there.

We now turn to the fourth item in relation to the attention that has been directed to Minister Hockey. I find this surprising actually because, less than 12 months ago, it was the mover of this motion who on the Senate record heaped praise upon praise about the performance of Joe Hockey, particularly in the global area. Certainly, Joe Hockey’s performance has been exceedingly good, so good that I think I must share with you a letter sent to Mr Hockey on Wednesday, 20 June. It reads:

As you may recall I am one of the salary continuance policy holders who has been caught up in the HIH collapse.

On behalf of myself and my family, I am writing to thank you and your staff for the way in which the HIH matter was handled. I am sure I also speak for all the other salary continuance policy holders when I say that we deeply appreciate the fact that the Government acted so quickly to find an equitable solution to this complicated situation.

During the past weeks I have found your staff very helpful updating me on various developments and taking time out of their busy schedule to discuss, in a sympathetic manner, the merits of my case and the pros and cons of various solutions that I raised in my correspondence. I am sure that the responsible and compassionate way in which you and your Government have dealt with this crisis will be reflected favourably in the coming election.

Once again thank you for your strong representation.

Under these circumstances, I find it extraordinary that we should have the final complaint made in this motion about what Mr Hockey has done. Mr Hockey has indeed been very proactive. In fairness, I must also say that he proactively sought advice from APRA on several occasions from September 2000 until the collapse of HIH on 14 March. It is interesting to see that APRA has advised the government that it did not receive any information from HIH that showed that HIH was insolvent prior to when HIH was placed in provisional liquidation and that this was consistent with reports that the ratings agency Standard and Poor’s was not aware of the problems, and so on.

The government has been in constant discussion with the provisional liquidator, the insurance industry, Centrelink management and the corporate and prudential regulators since HIH was placed in liquidation. We have also facilitated briefings from APRA to the Australian Labor Party to put them in the loop. This is how helpful Minister Hockey has been. There is very little consideration or acknowledgement of that in this terrible motion that has been put before the chamber.

The minister’s record in this area has been absolutely marvellous. Let us look at the
government’s package in relation to HIH and see how proactively he has moved. There is financial support of $500 million from the federal government budget to people who have suffered hardship. The government will provide the corporate regulator ASIC with an additional $5 million to obtain the best available support in Australia for their investigation. The government is fast-tracking its legislative reforms in the general insurance area and will work with industry to bring forward the start of the new regime.

The Prime Minister announced on 21 May that the government will set up a royal commission into HIH. The Prime Minister has contacted premiers and chief ministers seeking their cooperation in relation to state and territory regulation, with a view to having single national insurance schemes in compulsory third party insurance, workers compensation and building warranty insurance as well as having a national approach to flood insurance and accelerated access to Centrelink. All these are very positive reforms that are all the initiative of Minister Hockey, who has worked very hard. Let us look at what the government have done: we have ensured, for example, that travellers with HIH travel insurance were not left stranded overseas—immediate action. How much quicker could the minister have acted? He acted promptly, he acted with discretion, he acted with valour and he acted in the best interests of policy holders and members. I take my hat off to you, Joe Hockey. Continue the good work.

Senator GEORGE CAMPBELL (New South Wales) (5.05 p.m.)—I would like to start my remarks by commending Senator Conroy on moving this motion today. Something positive clearly needs to be done about financial regulation in Australia, because the government’s inconsistent piecemeal approach is only making matters worse. There are many undeniable inequities emerging between corporate Australia, the work force of Australia and, for that matter, those even less fortunate—the unemployed. The collapse of One.Tel and of HIH and the regulatory role played by ASIC and APRA only serve to highlight this emerging division.

Amidst these corporate collapses, money is being transferred between subsidiaries to stay solvent, is transferred to families of failed corporate directors to hide from administrators or is simply disappearing, while employees struggle to get access to pay entitlements. Meanwhile, executive salaries just keep increasing to the point where one newspaper described the trend as a new ‘inflationary form of comparative wage justice’—but only for the top end of town. The average CEO now earns as much in a week as the average Australian earns in an entire year. In June 2000 the average CEO earned $36,000 a week.

In the case of One.Tel, Mr Rich and Mr Keeling paid themselves $6.9 million each in bonuses on top of their $500,000-plus salary packages. This sort of remuneration is not bad for failing to run their company properly. What would they have valued themselves at if they had been running the company at a profit? This was for running a company into the ground. If they had been running it well, what value would they have put on the role they were playing in those circumstances? Compare this with some of the lowest paid employees in Australia who have to fight to tooth and nail to get a living wage increase of just $17 a week. In Prime Minister Howard’s Australia, those outside the work force have to show mutual obligation to access basic welfare payments. The HIH collapse involves an enormous amount of public money, both state and federal, to bail out Adler’s mistakes, yet the mutual obligation principle applies only to the poorest of our society. HIH’s directors and senior managers have managed to turn HIH into a billion dollar disaster and, in the process, cost Australian taxpayers at least $500 million by forcing us to pick up their tab. Where is the mutual obligation that the Howard government is so fond of? The government goes to the most extraordinary lengths to force the unemployed to work for the dole but will not lift a finger to force the directors of HIH to contribute to their $500 million mistake.

The latest high profile round of corporate collapses shows there is no mutual obligation for corporate executives. The Minister for Financial Services and Regulation, the Hon.
Joe Hockey, is a minister with L plates on—‘L’ for learner and ‘L’ for lenient, but only if you are corporate Australia. However, this leniency affects everyone. It undermines confidence in the regulator, the associated corporations and of course their employees. These collapses then have chain reactions both in terms of loss of business for the companies trading with the collapsed firms and overall confidence in Australia’s financial regulatory system. Minister Hockey’s handling of the HIH collapse is something akin to the crash of the Hindenburg. How many more disasters must we endure and have taxpayers fund so that Hindenburg Hockey can continue to deregulate the financial sector? To show just how much things have deteriorated under this government, I quote from Pierpoint in last Friday’s Financial Review. He said:

For weeks headlines have been dominated by the financial cataclysms of Brad Keeling, Jodee Rich, Harris Scarfe, Ray Williams and the HIH gang. While these luminaries have been hogging the headlines, the lesser achievers have been ignored. Other smaller companies striving for catastrophe ... have been neglected.

The purpose of today’s column is to recognise the efforts of smaller companies that have not managed total financial disaster yet but have done their best ... readers will agree they are doing their utmost to maintain the ASX’s status as an accident black spot.

While written in jest, the Pierpont column shows just how much the situation has deteriorated under this government. APRA and ASIC under this government have begun to penny pinch and in the process have failed to monitor corporations’ performances adequately. During the Senate’s inquiry into superannuation and financial services, Labor found out the other day that APRA has stopped producing regular reports on insurance companies because it is not ‘adding value’. It is this hands-off approach that is leading to a lack of confidence.

The collapse of One.Tel provides an excellent case study into the double standards that exist for corporations and the standards that exist for their employees. It is also a crystal clear example of this government’s piecemeal and ad hoc treatment of corporate collapses. Upon its collapse, the Prime Min-
The situation gets worse than that. Mr Murdoch found out from News’s in-house legal adviser, Ian Phillip, that the company had not only lost $70 million but also had been losing $5 million to $10 million a month. They also discovered that that One.Tel had plundered its European operations to pay for its Australian operations. As yesterday’s Australian Financial Review reported, there was a $30 million cash transfer from the UK operations to prop up the Australian group’s finances. The transfer took money from the UK operations, despite the fact that the UK operations were facing payments to creditors of $20 million. The transfer was authorised by Jodee Rich and Mark Silbermann in late March.

At this point, we need to be careful—there is a lot of finger pointing going on between the directors of One.Tel and between the Murdochs and the Packers. But it highlights a few problems that go to the heart of Labor’s motion here today: first, the problem was not picked up by ASIC soon enough; secondly, ASIC is way underfunded by this government, and that limits its ability to do the job properly; thirdly, it is ultimately the employees, the creditors and the shareholders who will lose out in this saga, not the individuals who are responsible for the mess that has been created. The people who will suffer the consequences had no warning and were unaware of what was occurring, yet this government has done little or nothing to shore up employee entitlements or firm up the regulatory structures. That, combined with the HIH fiasco, shows up a regulatory crisis in corporate Australia that this government’s softly, softly approach has created. We need to stop this mad drive for deregulation at all costs. We need to ensure that the few regulatory bodies that do remain are given a boost to their resources, and we need legislation to protect employees’ entitlements.

It is One.Tel’s employees who have really suffered in these circumstances. Not only will the employees lose their entitlements, but working in a company in such financial stress has meant that it tried to get too much from its employees. Generally, if a company is trading well, it does not abuse its workers’ conditions. However, One.Tel’s working conditions were some of the worst in the business. Its call centres have been described in the media as ‘One Hell’. That description was in the Sunday Age of 28 January 2001.

One Hell’s conditions include phone operators being paid $27,000 a year for a 38-hour working week, and no penalty rates for shift work that includes afternoon and night duties. The company had poor staff facilities, with uncomfortable chairs and badly designed desks. Employees were put onto the phones without any structured training. Operators were also constantly monitored by supervisors to reach productivity targets. The average time an employee stayed at their One Hell call centre was three months, in an industry in which the average is 16 months. Call centres are never great places to work, but those were some of the worst conditions that existed in the business anywhere in the country. Good luck to those employees when it comes to getting their entitlements. They may have to ask Maxine Rich to cough up some of the money that she has accumulated in recent times to help meet some of the deficiencies in terms of payments that are available to them.

But let us stay with the bonus recovery law. Only after the collapse of One.Tel did Treasurer Costello admit that there are serious problems with bonus recovery law in Australia. The question remains: why didn’t the Howard government sort out the bonus recovery problem before this? Arguing in favour of a recovery system for bonuses in the way Treasurer Costello has is a bit like crying wolf once half the flock has been mauled. Employee entitlements need to be systematically dealt with and guaranteed. The government’s approach is half-baked and it does not guarantee all the workers their entitlements.

Why is it that the Prime Minister and the Treasurer involved themselves in only two cases of employee entitlements? I refer to the National Textiles case, which we are all aware of, and we are all aware of the reasons for their direct involvement; and the One.Tel case. The reality is that the government is not serious about and has never been serious about guaranteeing workers’ rights to their entitlements in such circumstances. It has
been a case of ‘if you can get away with it without too much political flak, you will let it through, but if the political flak is too uncomfortable to cope with, you will do something about meeting the payments in those circumstances’. If they had been serious, they would have involved themselves in the 100 per cent recovery of entitlements in the more than 120 cases across Australia in which employees have lost their entitlements.

That brings me back to my original point: the treatment of these corporate collapses reveals a gross inequity—we treat corporate Australia differently from Australian workers. People are fed up with the big end of town getting away with running companies into the ground and still taking away bonuses exceeding millions of dollars. That has happened not just in these cases but in many other well documented cases over the past few years. If the government were serious, they would beef up both APRA and ASIC, which are in danger of becoming pussy cats in terms of their financial regulatory roles. They would also take steps to scrap their pathetic federal employee entitlements scheme and implement a comprehensive employer funded system that guaranteed absolutely every employee’s right to the entitlements that they accrue while in employment.

Senator Coonan—Just like Labor did when they were in office—just like you did!

Senator GEORGE CAMPBELL—We did not have the collapses under a Labor government that have occurred under the Howard government. We did not have the sorts of schemes that Corrigan and others engaged in to deliberately rip off workers’ entitlements. Corrigan and others deliberately set out to put in place schemes to do just that, and you were accomplices in it. You have done nothing to try to correct those circumstances since that happened. The scheme that you have in place does not deal with the capacity of companies to still rip off workers in circumstances such as One.Tel, HIH or others that we see occurring on a regular basis.

Finally, I want to address the issue that this whole saga reveals, and that is the need for better scrutiny of the auditing process. It is important to note that Tony Harris in the Australian Financial Review of 22 May argued for auditors to be answerable to ASIC. What One.Tel, HIH and Harris Scarfe all have in common is the serious discrepancies in their financial management over a number of years which were all suddenly discovered just after they collapsed, but too late for investors and employees. That brings into question the role of auditors in this process. There is a tension between a duty to shareholders and the fact that auditors are often in commercial arrangements with, or close commercial proximity to, the same company directors whose performance they are auditing. There are obvious conflicts of interest that should not be allowed.

The reality is that, in relation to these circumstances, it is quite clear that Minister Hockey is not across the magnitude of these problems and he certainly does not know how to deal with them. The government’s response to what has been happening in the corporate world and at the big end of town, which is clearly demonstrated by what has occurred in HIH and One.Tel, shows that the government’s policies are totally inadequate to alert the community to what is happening in the business community or to ensure that there is adequate pre-warning to investors of what is happening in companies like One.Tel and HIH.

Prime Minister Howard has clearly shown himself to be inconsistent on these issues and, in many instances, to be nothing more than opportunistic in dealing with the problems when they arise. The government’s role for APRA and for ASIC is undermining business confidence. We need to strengthen the role and the independence of the regulators in the financial sector, due to the way this government treats the top end of town: it has one set of rules for them and another set for everyone else. Try telling the employees who are waiting for their entitlements that the sort of deregulation that now exists in our financial sector is fair. We need compliance rules in that sector to ensure that the employees, creditors and shareholders of these companies cannot be ripped off, as they were in respect of the One.Tel and HIH collapses.
Senator GIBSON (Tasmania) (5.25 p.m.)—I rise to speak on behalf of the Liberal Party members and senators on this issue which has been brought forward today by Senator Conroy. We Liberals believe in economic freedom. We believe that the Western world has grown immensely over the last 200 years due to economic freedom, but subject to the rule of law and to property rights.

Senator George Campbell interjecting—

Senator GIBSON—The people opposite do not believe in that. Economic growth derives from economic freedom and people’s right to start businesses, to grow businesses and also to fail in their businesses. That is part of the system. Those changes are why we are part of the affluent society of today. We have to expect some businesses to fail.

We have a good system of law in Australia. Back in 1977, after examining what was happening in other countries, the Wallis inquiry into the regulation of financial systems made strong recommendations for a twin peaks model. We then adopted the twin peaks model of ASIC and APRA. ASIC was derived from the Australian Securities Commission to which was added consumer matters. APRA comprised the integration of 11 separate Commonwealth and state agencies between 1998 and 1999. It was a very difficult process for that organisation to pull all those state and Commonwealth agencies together, over a relatively short period of time, and make it work.

Senator George Campbell says we have to blame the particular companies and reach conclusions about what is happening. First of all, ASIC is investigating the major collapses that have affected certain firms. The government is sympathetic to the people who have been hurt and we have announced, particularly with regard to HIH, that the Commonwealth has over $600 million on offer to help people, and that money is being matched by the states. ASIC has assiduously pursued the Corporations Law and is currently investigating whether directors and officers of the companies concerned have disobeyed the law. Personally, I suspect that that will be the end result, but we have to allow the law to function. We cannot go jumping to conclusions. With regard to HIH, we have to allow the royal commission to do its job. So again, we have to be patient and not jump to conclusions.

Because there has been a lot of criticism about APRA from the other side, I want to bring to the Senate’s attention some statements made by Mr Graeme Thompson, the Chief Executive Officer of APRA, before the senate estimates committee on 5 June.

Senator Kemp—A very well chaired committee too, I might say.

Senator GIBSON—Thank you, Minister. Mr Thompson said that APRA had three basic roles:

The first role is to devise policies and standards that provide a set of operating rules for well managed financial institutions ...

The second role is to monitor compliance with financial sector legislation and those prudential standards that I referred to, and this monitoring involves both offsite analysis and onsite observation. The third role is to take action to protect the interests of customers ...

They are the three roles. Now I will quote him from the *Hansard*, page E165, of 5 June:

With these roles, prudential supervisors like APRA promote the health of financial institutions and reduce the likelihood of institutional failure. I say ‘reduce the likelihood’ because no prudential supervisory system has ever provided or can ever provide an absolute guarantee against failures of private financial companies. It is impossible to achieve that. Indeed, because of the regulatory costs that would be involved for the community, it would be undesirable even to try to achieve it. If supervisory systems were to be judged as failures every time a private financial company went broke, then every supervisory system in the world has failed more than once in the past few years.

I now turn to the topic of HIH. Mr Thompson was being very careful as to what he would say about the HIH issue. He said:

I think it is inappropriate and unnecessary to canvass HIH’s failure in any detail, given the ASIC investigation that is under way and the imminent royal commission, but I think a couple of comments are in order for the record. I have said publicly that, with the benefit of hindsight, APRA could have been more aggressive with HIH and dug more into its financial condition once we had identified concerns with its operations in the middle of 2000.
A bit later he said:

... APRA inherited a flawed and out-of-date system of prudential regulation for general insurers. We recognised this early and we have worked very hard to get a better system in place, and that will happen next year. It will significantly reduce the likelihood of another HIH type disaster. I am not suggesting that, if our new system had been in place six months or even a year earlier, HIH’s failure could have been averted. We will not know for sure until ASIC and the royal commission have done their work, but comments by the provisional liquidator about the timing of losses point to the likelihood that APRA inherited a company in HIH whose financial position was already seriously weakened when it was handed over from the former Insurance and Superannuation Commission ...

He also made another important comment:

I would like to respond briefly to the accusation that, ‘Everyone else knew that HIH was insolvent, so why didn’t APRA?’ I would have to say that there is a lot of hindsight humbug of this kind going around. It is certainly true that market sentiment about HIH was very negative through the past nine months. APRA was as aware of that as anybody, but negative market sentiment does not mean that a company is insolvent. I am not aware of anyone at the time who was saying publicly that this company was broke. The Standard and Poors rating of HIH up to November 2000 was A minus.

I think they are very important points that the Senate must take note of. Mr Thompson’s final comment, which I want to put on the record again today, was:

My final comment is on Australia’s regulatory structure, or the organisation of the regulatory agencies. Following HIH’s failure, some people, including APRA, have questioned the structure that the government put in place following the Wallis committee. I see absolutely no logical connection here. I am totally confident that Australia has the right supervisory structure. In a relatively short time it has, in fact, become something of a model for the rest of the world.

Lots of other countries have sent their officers to Australia to study both APRA and ASIC, and they are in the process of adopting the twin regulators model.

I would now like to turn to another matter which is to do with the auditors. Senator Campbell was being very critical of this, and I know Senator Conroy was also very critical earlier this afternoon. Again, I would like to refer to a Hansard from the hearings of the Joint Committee on Corporations and Securities in Sydney last week, on Thursday, 14 June. The chairman of ASIC appeared before the committee. I was present, and there was discussion about the role of auditors. I would like to quote Mr Knott’s comments, particularly with regard to the comment which Senator Campbell made about a suggestion Tony Harris made in the Financial Review recently that ASIC should be appointing the auditors. Mr Knott said:

... I am not persuaded, at this stage, by the solution that ASIC should appoint auditors. Indeed, I go further and say that, whilst independence is a key issue and we should look at it, independence is a means to an end. Independence is a means to try to ensure that we get the best quality audit that we can.

A bit later he said:

You will know that the audit requirements themselves are not part of the law. Unlike accounting standards, which are part of the law, the requirements that extend to the scope of the audit and the role of the auditor are in the separate auditing standard and that is a professional standard.

If you want to examine that, you have to look at the professional standards which are basically behind the law. On the next page, page CS67, Mr Knott goes on:

The appointment issue is exactly the issue that I would want to raise as the primary question. There would be a huge moral hazard to ASIC and therefore to the system if we were appointing auditors and an audit failed. The question would be somehow that ASIC had got it wrong. It can never be that we could be responsible for the conduct of auditors.

I support Mr Knott’s comments in those regards. They were the main comments I wanted to make. I think it was ridiculous that Senator Conroy raised these issues today and criticised our regulators and the minister. After all, the regulators are set up under statute which has been through this parliament.

I support Mr Knott’s comments in those regards. They were the main comments I wanted to make. I think it was ridiculous that Senator Conroy raised these issues today and criticised our regulators and the minister. After all, the regulators are set up under statute which has been through this parliament.

Senator Coonan—Which they voted for.

Senator Kemp—They voted for it.

Senator Gibbon—That is right. They are independent statutory authorities. They make their own decisions and pursue what they have to do according to the law that has gone through this parliament. As Senator
Watson said earlier, ASIC is doing an excellent job, and I congratulate the previous chairman, the current chairman and all the staff for the work they are doing. I have considerable sympathy for APRA and its staff in bringing the organisation together and getting it to work. We have to await the outcome of the investigations of ASIC and the royal commission to see what really happened.

Senator LUDWIG (Queensland) (5.37 p.m.)—It might be worth while at this juncture in the debate this afternoon to at least go back to where we started from. The motion moved by Senator Conroy reads:

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.

At the end of the day, ministers in our system of government have a role to play, and it is not an arms-length position of saying that they do not have an oversight role and they do not have an ability to act.

What I want to centre on is really summed up in a 1997 book by Clarke, Dean and Oliver entitled Corporate collapse: regulatory, accounting and ethical failure. It seems quite relevant to the debate this afternoon. The book is about regulatory accounting and ethical failure. Without going into any detail, the authors do suggest some reform in that 1997 book about financial accounting standards, particularly about how you would address consolidation of accounts to effect a better outcome. These are matters which this government could and should look at in a more holistic fashion rather than, as the previous senator seemed to imply, making the statutory authorities deal with all this as best they can. The book is about corporate collapses, and it says:

When financial statements paint a rosy picture of a company one day and the same company announces massive losses the next, it can only be assumed that fortunes have not actually changed overnight.

That might still be apt to describe HIH and One.Tel if there were not also a trail that leads to both those corporations that is there for the discovery.

Regarding the recent corporate collapses, and given the time available, I wish to concentrate on a couple of aspects, particularly the role of ASIC and the failure of this government to adequately address this area. Underpinning the operations of companies in Australia is the Corporations Law. Clearly the results are on the table, as the corporate collapses highlight. To quote an old expression, the dead cat is on the table and who is going to take it off? This is not a joke. There is now a royal commission to look into the collapse of HIH, and APRA has been effectively put to one side while the royal commission examines the issues and where the blame—if any—might stand.

The government has put together a rescue package. Some have misgivings, even from the Liberal side, about whether a corporate package should have been put together. As I understand it, a Liberal backbencher today raised misgivings about the federal government’s $640 million bailout for failed insurer HIH, warning that the rescue package may damage the market in the long term. I do not want to be drawn into the debate about whether we should or should not, but it is not about, as the article goes on to say, the weeding out of poor performers. We do not know whether that is in fact the case. The jury is still out on that. We have not heard the royal commission’s findings yet. We have not heard from APRA. We have not heard from ASIC. When we do hear from them, when we do get their report and the commission’s findings, we might be able to then go back and have a look at what the Liberal backbencher has said to test whether it was poor performance in the marketplace which led to this or whether the blame should be apportioned elsewhere—whether
the blame should be apportioned to those directors who may have performed badly, whether there are perhaps other causes, or whether the blame should rest in other quarters.

What we do know is that the collapse of HIH was a shock, and it should not have been. I understand that an American report in the 1990s attributed insurance company failures to rapid expansion, unsupervised delegation of authority, extensive and complex reinsurance arrangements, underpricing, reserve problems and reckless management. By 1997 a US based insurance research house observed a rise in insurance industry insolvencies particularly due to inadequate reserves for claims. I quote:

It seems incredible but according to HIH's actuarial adviser, HIH chose to lay off some of its risk by buying reinsurance from other insurance companies.

Clearly it was a disaster, and many people have suffered and are suffering. Hopefully, a royal commission will shed some light on it. You have to then put that in the frame of understanding that there was and has been a trail that leads to this that needs to be examined, explored and not left. Who was about when HIH looked at buying reinsurance from other insurance companies? The questions will, I hope, be fully answered by the commission. It should flush out those responsible and fairly apportion blame if there is a need to.

Let us look at the role of the regulators up to this point, ASIC's particularly. Their job is to oversight the Corporations Law. ASIC can investigate many activities of companies. It has a wide range of powers, particularly if it believes the Corporations Act has been breached. It can examine directors' share trading activities, insolvent trading, inside trading and accuracy of financial statements. ASIC is not alone in the insurance industry. APRA, as I have earlier referred to, also has a role, which is to monitor insurance companies under the Insurance Act 1973. Questions must be asked about what APRA was doing while the bells were ringing around HIH. The actuarial advisers certainly were trying to ring a bell.

The story of this government’s stewardship of the corporate world does not stop here: One.Tel suddenly hit the wall. As the Liberal backbencher states, corporations do fail. The true issue is about ensuring, as far as the government is concerned, that investors in the marketplace are not deprived of accurate, timely information about the state of corporations in the marketplace. Without confidence in the role of the regulators, the market becomes a very different place. Investor confidence is crucial for a strong, healthy market. Otherwise, corporations can entertain strategies that are simply unsound and unwise, and that lead to a snowballing effect and perhaps to what we have seen—corporate collapses. Clearly, a cursory examination of HIH and One.Tel might lead a person to another conclusion.

The conclusion I am suggesting is that the minister has mishandled the oversight role of ASIC and APRA in this sorry saga. In fact, now we are told by the Financial Review of Monday, 4 June 2001 that:

... the regulator’s level of resourcing was minimal. ASIC had a much greater range of responsibilities than when it was formed, but its level of recurrent funding had been eroded. It does not stop at that point. You also have to look at what they have been doing over time. We have heard today from some Liberal backbenchers in this house that they have been proactive. It appears that the chairman, Mr Knott, has. The amount of media attention that he has managed to obtain does demonstrate, if that is the gauge, that he has started the ball rolling. He can be congratulated for that.

As the book I earlier referred to suggests, corporate collapses do not occur suddenly—they have lead times. They are complex organisations with complex transactions, which do not fail overnight. The key role for ASIC and APRA is about consumer protection. Without a well directed, reasonably resourced and legislatively backed regulator with government support and encouragement, there is always the potential that the outcome of HIH and One.Tel will occur. As the Liberal backbencher Mr Thomson says, poor management can be blamed. It is not always the case. Sometimes it is a handy scapegoat
to blame poor management—to say, ‘Perhaps I just managed it badly’—rather than to look at some of the root causes. But we are talking about millions of dollars, with expert advice on call. To say poor management is the only fault cause is a nonsense. The Financial Review of 8 June 2001 says:

But according to former HIH and One.Tel non-executive director Mr Rodney Adler, poor management should bear much of the blame for the collapses.

I guess he would say that, wouldn’t he. However, the article makes the point that directors have five duties arising out of the Corporations Law. They are:

... to act with reasonable care; to act in the best interests of the company; to avoid a conflict of personal interest; to not misuse their position or information received as a consequence of their position; and to avoid trading while insolvent.

So it is not only a case of saying ‘poor management’ but also a case of ensuring that you abide by, in this case, the regulations that are put forward, and that you have corporate watchdogs that can examine and ensure that the market is a safe place for investors and that the market does provide confidence.

Will there be a wild scrabble by these corporate giants to find an umbrella to avoid the fallout of HIH and One.Tel? It will be quite interesting to watch. We can already see some of this occurring. The Financial Review of Friday, 15 June 2000 highlights this very point. It says:

The Australian Securities and Investments Commission has broadened its inquiries into former One.Tel executives and is now investigating possible insolvent trading ... whether the former executives failed to act with care and diligence and in good faith, used their positions as directors for an improper purpose and made false or misleading statements to the public about the company's financial position.

ASIC has Mr Rich and Mr Keeling, who were the founders of One.Tel, in their sights. But there are also some others in the background as well: Messrs James Packer and Lachlan Murdoch, who have claimed—surprise, surprise—that they were profoundly misled about the financial status of the company prior to the decision to appoint administrators. Again I go back to the book Corporate collapses. They do not suddenly happen; they do not happen overnight. As the book clearly makes the point, there are lead times. The administrators will hopefully be able to uncover some of the trail. You can almost hear the lawyers shuffling in the background, getting their defences up for Messrs Murdoch and Packer, but where is the Minister for Financial Services and Regulation?

Phrases such as ‘better corporate governance’, ‘new directions for ASIC’, ‘visible enforcement’, ‘credibility for ASIC’ and ‘effectiveness of ASIC’ are tired phrases. They are bandied about and utilised but, at the end of the day, they are only phrases. We need direction from this government; however, the corporate watchdog may find its task somewhat complex now with the announcement of the HIH royal commission. The ability of ASIC or APRA to properly enforce the law is now looking dubious in some respects. It does not stop the regulator, though. It reflects on the government’s inability to ensure that regulators can perform their functions under the law in an effective and efficient manner.

This is where the government needs to stand up and be counted. In a paper entitled Industry self-regulation in consumer markets, in August 2000, the government stepped in to this area and talked about self-regulation in consumer markets. It provided terms of reference which said that the government has an objective of lowering regulatory costs on business, improving market outcomes for consumers and encouraging self-regulation. It also said in the terms of reference that the government also has the objective that industry should take increased ownership and responsibility for developing efficient and effective self-regulation where it is the most appropriate regulatory response.

ASIC made responses to the inquiry in a positive vein. Perhaps they should have been more concerned with their responsibilities than with looking at a government sponsored task force into self-regulation. This government has at its feet the results of this drive to relax the proper scrutiny of corporations. The message, in my view, has been plain for business to understand. It has been said in some quarters that, under this direction, the government has an even more important role
of monitoring where self-regulation has been mooted. This is not to argue against self-regulation, but if you create the environment where you say, ‘My hand is off the tiller,’ you also have to look at what you have put in its place to ensure that corporate collapses are not your responsibility. ASIC made some very insightful comments to the task force. In the Grey-Letter Law report, it said:

Government should not, however, be directly involved in the monitoring and review of schemes which are self-regulatory.

ASIC, in response, said that there is a role for government in some cases to monitor compliance with the codes and to assist in the process of reviewing the operations of self-regulatory schemes, which may lead to alterations to the schemes.

ASIC argued that the capacity for timely regulatory intervention is especially important in the case of financial services because the industry is heavily dependent on consumer confidence. If the regulator does not possess the power to intervene in a timely fashion in the case of market failure, consumer confidence in the integrity of the Australian financial market may be compromised. Similarly, Powertel commented that any effective self-regulatory regime needs to recognise that black spots will emerge and government regulators must be empowered to take remedial action quickly. Quite prophetic words, really, but it does not appear that this government listened to its own regulator. It does not even seem that the government took on board the comments in its own task force from its own regulator—that, if you take your hand off the tiller, expect corporate collapses and expect lack of consumer confidence. Expect these things to occur. (Time expired)

Senator COONAN (New South Wales) (5.57 p.m.)—In the couple of minutes left in this debate, I want to make the point that the motion brought forward by Senator Conroy dealing with investor confidence, concerns and condemnation arising out of recent corporate collapses is both misconceived in substance and in timing. The debate this afternoon has been nothing short of sterile. There is no doubt that Australia’s second largest general insurer, HIH, has failed—as has One.Tel, Harris Scarfe and other companies—with profound consequences for investors, the directors and management, consumers, superannuants, the regulators and Australia’s reputation for prudential supervision. However, a royal commission has been set up, with a broad and inclusive terms of reference, to investigate the causes of the HIH collapse. An investigation is under way by the Australian Securities and Investments Commission. Clearly both these investigations, while having slightly different emphases and scope, are directed at the central issues of the reasons and responsibility for the collapse of HIH.

The royal commissioner will examine the performance of the regulatory agencies ASIC and APRA in the context of this collapse. Until the commission carries out its investigation, it is more than premature to pre-empt the result and condemn the government, especially Minister Joe Hockey, for mishandling anything. Moreover, until ASIC can complete its investigations, it would be premature to form any judgment at all as to the adequacy of ASIC or how well or how badly it is resourced. The royal commission will deal with the broader issues relating to HIH and corporate governance whereas ASIC will get on with the tough investigation and evidence gathering that could and probably will result in legal proceedings designed to recover funds for the liquidators and to return to creditors. Although attention has been focused on the supervisory roles of ASIC and APRA in recent collapses, it is easy to overlook the ongoing and successful work that ASIC is currently undertaking.

Debate interrupted.

DOCUMENTS

Consideration

The following orders of the day relating to government documents were considered:


Regional forest agreement for south-west forest region of Western Australia—Report
for 1999-2000. Motion of Senator Bartlett to take note of document agreed to.

Centrelink—Compliance activity for Family and Community Services—Report for the period 1 July to 31 December 2000. Motion of Senator Bartlett to take note of the document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

General business orders of the day nos 2-6 relating to government documents were called on but no motion was moved.

NOTICES

Presentation

Senator KEMP (Victoria—Assistant Treasurer) (6.01 p.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That on Tuesday, 26 June 2001:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm, and 7.30 pm to 11.10 pm;

(b) the routine of business from 12.30 pm to 2 pm and from 7.30 pm to 10.30 pm, shall be government business only; and

(c) the question for the adjournment of the Senate shall be proposed at 10.30 pm.

Senator CARR (Victoria—Manager of Opposition Business in the Senate) (6.02 p.m.)—by leave—We will obviously be debating this matter on Monday. In the interim I would seek that the expression in section (b) of this notice of motion that the routine of business ‘shall be government business only’ be clarified so that we all understand that it is on the basis of no quorums and no divisions and that it relates to the appropriation bills only.

Senator KEMP (Victoria—Assistant Treasurer) (6.03 p.m.)—by leave—Senator Carr, I have not got any advice on this matter. Normally, I am exceedingly well informed, and I think I have a reputation for being well informed. I think it may be wise if you take this up with my colleague Senator Ian Campbell at the appropriate time when this matter is discussed on Monday.

COMMITTEES

Migration Committee

Report

Debate resumed from 18 June 2001, on motion by Senator McKiernan:

That the Senate take note of the report.

Senator BARTLETT (Queensland) (6.03 p.m.)—I would like to speak briefly on this matter. I was not able to speak to the report when it was tabled in the chamber earlier this week. This is a report of the Joint Standing Committee on Migration, of which I am a member. Firstly, as is normal and is always appropriate, I would like to thank the secretariat for their work and assistance in the review of this issue. This matter goes back some four years now, with the introduction of a $1,000 fee for unsuccessful applicants to the Refugee Review Tribunal—that is, asylum seekers wishing to have their application reviewed by the Refugee Review Tribunal and being unsuccessful now have to pay a $1,000 fee. The minister has the power to waive that fee but, obviously, in many circumstances, does not.

I think it was I, on behalf of the Democrats, who sought unsuccessfully to disallow that fee from being introduced. There was an agreement instead, reached by others in the Senate, to have a sunset clause and a review of it. That occurred initially a couple of years ago and, again, it was decided to put in another sunset clause to extend its operation until the end of this month. That time is obviously fast upon us and the review has happened again, which is what this report represents. The totality of the committee, excluding me, has decided to recommend once again that the fee be retained with another sunset clause and review for a few years hence. I have put in a lone dissenting report, and I guess that is a bit of a sad indication because the last time we reviewed it I think three other members of the committee dissented along with me. I am stuck on my own these days.

Senator McKiernan—Not only within the party. I thought that Natasha was with you.

Senator BARTLETT—I have the total support of my entire party but am stuck on my own within the committee in relation to this issue. But I am sure that, if Mr Theophanous were still on the committee, he would support me as well.

Senator Sherry—He’s all alone, too.
Senator BARTLETT—He is definitely on his own in the House of Representatives and, unfortunately, he is not on the committee anymore. The basic point is that the department is saying that it is not preventing genuine people from applying for asylum, and certainly there was no huge amount of evidence that that was the case. Clearly there is an implication, by virtue of charging people, that their claims are unmeritorious. The Democrats believe that, simply because someone’s claim for asylum is rejected, it does not mean they are trying to rort the system. They may well not be a genuine refugee; nonetheless, they may well have genuine grounds for believing that they were or are and also have other reasons for fleeing persecution. Indeed, if people know they are not able to fit the grounds of refugee status but have other serious humanitarian reasons why they do not wish to be returned, they are sometimes allowed to stay by virtue of ministerial discretion. But the only way they can have that ministerial discretion exercised is if they apply to the Refugee Review Tribunal. So there is a catch-22 in there as well.

The Democrats have a philosophical problem with the application of the $1,000 fee for people who apply to the Refugee Review Tribunal, particularly if—as the Department of Immigration and Multicultural Affairs have said—the regulation is primarily designed to address the growing misuse of the protection visa process by people lawfully in the community. The Democrats dispute whether or not that is a growing misuse, but we do not deny that there is always some degree of misuse. But, as I have stated in my dissenting report, on the evidence presented to the committee, it is not obvious that there is significant abuse. More to the point, there is no evidence that the fee has operated in any way as a deterrent to such misuse. The take-up rates show that the so-called positive effects of the fee, which the department suggested were expected to be seen most clearly in the low refugee producing nationalities, have not occurred. So there is no particular evidence that the so-called purpose of the fee—preventing or reducing misuse—is having that effect, and this is after four years of operation. If that is the primary purpose of it and it is not working, then we believe that it should be scrapped forthwith.

On behalf of the Democrats, I would like to emphasise my recommendation and view that the regulation should cease to operate at the end of this month rather than be extended and have another review in a few years time. We oppose the regulation being introduced. After four years of operation, there is no evidence that it is working in any effective way to meet its supposed goal. I am sure it is meeting the goal of the department in raising a bit of extra money and generally reinforcing some of the rhetoric that likes to suggest to the community that there is widespread abuse and that people who are unsuccessful in the RRT are all trying to rort the system. That is clearly not the case. I am certainly not suggesting that members of the committee who thought differently to what I thought are suggesting that that is the case, but it is an inference that has been implied through the whole existence of this fee. The Democrats believe that, particularly seeing there is little or no evidence that it is working to achieve its reputed primary goal as stated by the department of immigration, there is no need to continue it for any longer. If nothing else, it would save the committee having to review the situation again in a couple of years time, and it would mean that we could have time to spend on some of the many other important matters in the area—not just refugee issues but migration issues more broadly.

Question resolved in the affirmative.

Foreign Affairs, Defence and Trade Committee: Joint Report

Debate resumed from 18 June, on motion by Senator Ferguson:

That the Senate take note of the report.

Senator McKIERNAN (Western Australia) (6.11 p.m.)—I rise to address the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on visits to immigration detention centres. I am very pleased to receive it, and I commend the members of the committee who worked so hard and so diligently to bring the report into
this chamber on Monday and into the other place.

In commending the members of the committee, I do have some criticisms of the report. It is a valuable report, and I think it will be an interesting report, but in many areas it is a very dangerous report. I think there are problems in having committees of the parliament going out and doing work in what might be termed ‘specialist areas’ and not understanding the subject matter they are addressing. It comes through in this report that there are a number of inadequacies contained in the report which might misdirect the uninformed person reading the report.

My first criticism is not a major one. I was a member of the subcommittee and indeed a member of the Joint Foreign Affairs, Defence and Trade Committee at the beginning of the year when the subcommittee visited the various detention centres from the north-west of Western Australia to Perth, to Woomera in South Australia and then on to Villawood. The only detention facility I did not visit was Maribyrnong in Victoria. But, regrettably, there is no mention of my name in the membership of either the committee or the subcommittee. That is, to say the least, a little bit sloppy on the part of the committee, particularly when you take into account that persons who are no longer in this place—and nearly two years ago out of this place—are named in the report.

I would also like to take note of the point made at 4.3, which says:

As a general comment, some members were shocked by the harsh picture presented by the exterior of some of the centres: double gates, large spaces between high fences topped with barbed or razor wire. The physical impact of the centres, and their psychological impact on the detainees, are among the lasting impressions of the visits. Others will be set out later in this chapter.

I have been into these centres on a number of occasions—probably more than any other member of the Australian parliament—and I must say that I endorse those remarks. I, too, am shocked by this. I have seen the detention centre—as is quoted in the report—at Villawood in Sydney, where there were no fences at all, move to a position where it is getting very much like a prison.

However, had the Human Rights Subcommittee travelled a few extra miles, particularly out of Derby in Western Australia and Port Hedland in Western Australia, to some of the regional centres in Western Australia—indeed, they would not have to move very far from Woomera in South Australia—and looked at the conditions that our indigenous people are living in, I would suggest that that would leave far more lasting impressions on the members of the committee than their very brief visits to Australia’s detention centres. I would hope that, at some time, the Human Rights Subcommittee will undertake visits to indigenous communities around Australia and then provide the parliament and the Australian community with views on what they find.

My problems with the report—and I will deal with the matter of the 14 weeks at recommendation 10 later on—starts with the background section. It is a very brief background which makes no references to very significant legal decisions that have been made over the years on the matter of immigration detention. It also distorts things when at 2.26 it talks about a Vietnamese wave and a Cambodian wave, and it says:

The term ‘boat people’ has been used since the mid-1970s to describe those who seek refuge in Australia, and often arriving by boat ...

To my knowledge, it means everybody who arrived by boat. On the next page it goes on to talk about a Vietnamese wave and a Cambodian wave, and it says:

The next wave of ‘boat people’, mainly from Cambodian, China and Vietnam ...

But the section is headed ‘Cambodians’. There is another section headed ‘Chinese’. But the majority of the Chinese people who were making applications for protection visas in Australia from 1989 were actually students who were in this country; they were not boat people at all. It makes no mention in the background section of the various parliamentary committee reports into the matter of detention. I refer specifically to three reports from the Joint Standing Committee on Migration—two reports specifically examined detention facilities, Not the Hilton mark
I and mark 2, and one report in 1994 specifically examined detention, *Asylum, border control and detention*—and there were a number of other significant Human Rights and Equal Opportunities Commission reports into the matter.

I am moving through these reasonably quickly because I do want to talk about recommendation 10. There are some matters that really concern me—medical facilities and health issues—that are detailed on page 55. To my reading of the report, claims are made but not tested. This happens a number of times within the report. I think it is a very dangerous principle. Certainly you get stories when you are on parliamentary committees. You get a viewpoint from one person, but you test it with somebody else and then the committee makes a conclusion. However, those views are put in this report and left to stand. For example, paragraph 4.171 says:

> It was claimed and confirmed by the woman, that a detainee’s wife had contracted hepatitis at the Centre. The family had been there for 21 months.

As I recall, listening to the woman, she actually made that claim herself. There is a very serious allegation at 4.189, the section dealing with Maribyrnong. It says:

> A detainee commented that she thought it was unhealthy to mix boys with older people because ‘it was pretty easy to get involved in drugs here’.

Another detainee alleged that drugs were smuggled into the Centre, and that he had seen people taking drugs there.

The report makes no mention of them challenging DIMA or ACM about the allegations of drugs within detention centres. I think the subcommittee should be condemned for not doing that. Certainly, had I been a member of the subcommittee, it would have been one of the matters that I would have raised with them.

Chapter 5 is headed ‘Processing and related issues’. It goes on—and I pass over a number of points that I want to make—at page 79 to talk about the role of other agencies. It says at paragraph 5.51:

> During the committee’s discussions with DIMA, and with detainees, there were many references to the role of other agencies in the process of examining applications for visas.

At paragraph 5.52 it goes on:

> The agency most frequently mentioned for its involvement in DIMA’s process was the RRT.

The RRT is not involved in DIMA’s processing. It is an independent review body that looks at a decision after DIMA has made one. I would have expected the Human Rights Committee to understand the meaning of ‘deportation’ at 5.74.

I now move to recommendation 10—the one that has attracted the most debate in the community. The second dot point talks about the release of people after 14 weeks. I am sure this recommendation has been made by uninformed individuals because currently the processing time for primary decisions is in the region of 10 weeks. Delays can happen. But what do you do with a person who first makes application if they know that at the end of 14 weeks they are going to be released? The person will merely sit on their hands and do nothing because they know that they are going to be released. The third dot point of recommendation 10 says:

> • similarly appropriate time limits should be established for the consideration of applications by the Refugee Review Tribunal.

If people have followed the second dot point in recommendation 10, they are out in the community anyway, so why go on to make the third dot point? If you do make the secondary recommendation, are you not then in conflict with an independent agency like the Refugee Review Tribunal? In any case, the RRT are actually processing applications within seven weeks in some cases.

Recommendations 12 and 14 cause me concern because the committee did not, during the course of its inquiry, talk to any community organisations. I think that they should have done that before making recommendations about appropriate community groups to bring in sponsorships. And, furthermore, I would like to know what is involved in recommendation 15 where they talk about ‘Memoranda of Understanding with relevant States and Territories about the detention of asylum seekers in their jails’. It talks about people being in jail who are subject to criminal deportation, which can mean persons who have been in the community for many years. (Time expired)
Senator O’BRIEN (Tasmania) (6.21 p.m.)—I likewise would like to take note of the report simply by seeking leave to continue my remarks later.

Leave granted; debate adjourned.

Superannuation and Financial Services Select Committee Report

Debate resumed from 24 May, on motion by Senator Watson:

That the Senate take note of the report.

Senator SHERRY (Tasmania) (6.21 p.m.)—This is the second report by the Senate Select Committee on Superannuation and Financial Services on the Taxation Laws Amendment (Superannuation Contributions) Bill 2000. I might note in passing that it is a committee of which I am deputy chair and my Tasmanian colleague the esteemed Senator Watson—who is in the chamber—is the chair. It is a very hardworking committee that has been in existence for almost 10 years.

The substance of the report relates to the crackdown on tax minimisation and evasion involving certain superannuation arrangements, both in Australia and overseas. It involves the attempt by some high wealth individuals in the Australian community to avoid paying any tax. When I say ‘any tax’, I mean income tax, superannuation taxes—including the superannuation surcharge tax—and fringe benefits tax on moneys placed in those superannuation funds. The level of moneys placed in these particular arrangements between 1997 and 1999 is approximately $1.5 billion. At risk is approximately $500 million in government tax revenue, including interest penalties.

When this legislation came before the Senate some months ago, on behalf of the Labor opposition I dealt with the bill and Labor was successful in moving that this legislation be backdated. On that occasion we enjoyed the support of the Australian Democrats. The legislation is yet to come back before the Senate. I understand the Liberal-National Party government has refused to accept Labor’s backdating of this particular legislation.

The particular concerns of Labor senators are as follows: the policy process leading up to the introduction of the bill, the explanation and evidence provided by the government and the tax office concerning aspects of the bill, the lack of legislative action by the government against other employee benefit arrangements which involve tax avoidance, and the lack of cooperation with the committee by promoters of these schemes—none of whom would appear before the Senate committee. I suppose some would regard that as unsurprising but if people want to justify these particular tax dodging arrangements, I invite them publicly to front up and explain themselves. The committee was given a totally unrealistic reporting date; this was forced on us by the government. There were limited opportunities to examine witnesses on the issues covered by the bill and that has raised serious questions regarding the widespread tax avoidance practices. Another concern was the inactivity of the Liberal-National Party in curbing the practices.

In addition, Labor senators were concerned that the ATO consistently did not make available the witnesses specifically requested by Labor. Fortunately—and I pay credit to the tax office—they came back before the committee and they gave us an extremely comprehensive and, I might say, eye-opening rundown and update about what has been going on in this area. That was a confidential update and I cannot go into detail, but I do thank them for that return visit.

In addition, material in the possession of the Labor opposition appears to conflict with some of the evidence provided by some witnesses and accordingly Labor requested the committee hold a further hearing, which we have done. Some of the practice before the committee from the government and the ATO regarding tax avoidance was seeking to deny or minimise the extent of revenue at risk—including claiming that the bill would have a negligible financial impact when we know that at risk is approximately $500 million—and pretending that resources and strategies are adequate to deal with these issues when it is obviously not the case.

What concerns me and the Labor opposition is the obvious indication of the Liberal-
National Party’s total lack of commitment to provide the ATO with the necessary resources to collect these tax moneys, which should be collected on behalf of the Australian community. The position of the government contains fundamental contradictions. It claims that the two major tax avoidance schemes covered by the bill—namely, control of superannuation schemes and non-complying superannuation schemes—are not effective at law. Despite this claim, the bill amends the law to make it consistent with the intention of parliament. Claiming that there is no revenue flowing from the bill is simply not credible.

It is alarming that the ATO has given numerous rulings, including to tax scheme promoters, that clearly indicate an ATO policy on matters covered in the bill that are a direct contradiction of the ATO’s current claims. For example, a Mr Thomas told the committee:

Looking at the marketing of offshore superannuation arrangements, when the government announced these changes, it indicated that it is amending the law because of the continued marketing of these arrangements by some promoters despite clear public advice from the ATO that they fail both at law and in their implementation.

In our view, these offshore superannuation arrangements are a blatant abuse of tax laws and an attack on the integrity of the tax system and the retirement income system.

Yet evidence to the committee shows that precisely these schemes were provided to taxpayers and promoters through private binding rulings, of which we have heard a great deal of late in other tax avoidance areas, in which the ATO conceded the legality of these arrangements. Mr Fitzpatrick sought to explain these inconsistencies as follows:

...we have certainly issued what we believe to be some incorrect advices, particularly over 1998 and 1999, in relation to controlling industry regulation arrangements.

Here is a quite appalling case of the tax office issuing some limited number of private binding rulings which allow this outrageous activity to occur.

Labor agrees that these schemes are blatant tax avoidance schemes and are therefore at odds with the intention of the parliament. It is very clear that it was not the intention of the parliament, when encouraging the accumulation of retirement savings in superannuation funds, that certain high wealth individuals in this country—well known to the Carlton Football Club, as I understand—could avoid paying any income tax, any superannuation taxes and any fringe benefits taxes, and launder money back into the country and still not pay any tax on it.

Accordingly, in order to ensure that the parliament’s intention is achieved, Labor has successfully moved amendments that the provisions for these two types of schemes contained in the bill operate retrospectively. In recent months, I have had half a dozen letters or so from a number of individuals complaining bitterly about Labor’s retrospective amendments in this area. I ask the Senate and, via the broadcast, the Australian community: is it fair and reasonable when millions of Australians are paying their tax— income tax, superannuation surcharge tax, superannuation taxes—that about 2,000 people can get away without paying any tax whatsoever? There could not be a more blatant example of tax evasion, involving, as I said earlier, up to half a billion dollars in tax revenue. Why should these individuals get away with not paying any tax, when millions of Australians are paying tax in the correct manner and in accordance with the law and the law’s intention? If there is any problem with the law, it should be amended retrospectively to ensure these few thousand high wealth individuals pay the same taxes that everyone else is paying. Retrospective legislation is only rarely considered, and it is in accordance with the principle I have outlined. The outrageous practice of some of these individuals is the reason that Labor has strongly argued this legislation should be retrospective.

Senator Hogg—They knew precisely what they were doing.

Senator SHERRY—that is right, Senator Hogg. It is absolutely appalling behaviour. I might say it is not coincidence that this practice started in 1997. What came in in 1997? The infamous superannuation surcharge tax. So a number of high wealth indi-
individuals decided to avoid this tax by shifting their income offshore through these superannuation funds. We have not yet heard from the government. As a matter of urgency, we want to know whether they are going to accept our retrospective legislation, our amendment to crack down and recoup this half a billion dollars in government revenue.

Senator Watson (Tasmania) (6.31 p.m.)—I wish to take the opportunity to raise several issues occasioned by this debate tonight. Firstly, I want to put on the public record my concern about private rulings that have been misconstrued in the public domain and used by promoters in promoting and selling mass marketing schemes that are avoiding tax. Private binding rulings apply to a particular taxpayer that had sought that ruling. The conditions that are outlined must be strictly adhered to and then there is generally a time limit applied to that ruling. For those private binding rulings to be used in the public arena by promoters to promote mass marketing schemes needs to be condemned in the most severe terms. It is appropriate for this parliament to look at appropriate measures to crack down on and to prosecute effectively those people who misconstrue deliberately the private binding rulings system for their own selfish ends, which often results in thousands of taxpayers having to pay an unnecessary amount of tax. This is something that the Senate has to direct its attention to.

We are working in an environment of self-assessment and part of that self-assessment regime requires rulings to be given of a private nature applicable to particular transactions and also public binding rulings. We also now have a concept of product rulings. The theory is that it should work quite well. A few years ago, unfortunately a number of promoters went around seeking favourable private binding rulings as a result of what I might term 'shopping around' to get the best possible result from applications to a number of tax offices. The tax office has now hopefully rectified that situation with a more centralised overview of the whole system. Nevertheless, it is a sad feature that we still today, despite the legislation that Senator Sherry referred to, have promoters misconstruing the whole purpose and intent of a self-assessment system by using private binding rulings and applying those as if they were a public ruling applicable to the community at large and applicable to all sorts of operations and not necessarily the confines of the original request by a taxpayer in seeking a private binding ruling.

In a sense, we also have to look at whether the tax office always acts expeditiously enough. I think there could well be a case that, where the tax office has taken an unduly long time in bringing taxpayers to account or in denying deductions and seeking penalties, perhaps there should be room for a lower rate of interest tax that should apply. I must say it is to the tax commissioner’s credit that, in terms of the Budplan scheme, he has applied that concept of reducing the penalty interest rate to no more than five per cent. But, if you go back over five or 10 years, any penalty interest is going to have a major impact on the cash flow of a business and could well put that business at risk. We really need to have more effective legislation to cover the misdeeds of the promoters.

It also worries me that the tax office has not taken action against these promoters in terms of misrepresentation. A lot of the promoters are highly paid accountants and lawyers who know the law. There are other promoters who sell these schemes, but the people who put them together are usually pretty knowledgeable. They know and understand the law and the implications of private binding rulings, public binding rulings, product rulings and so on. So I think that the tax office should look very closely at the possibility of raising this issue in relation to people who use misrepresentation in their professional capacities. I cannot believe that people who are wise to the effects and implications of, say, putting in a variation application—I think it is 221D—for reduced instalment deductions are not aware of the concept or framework of self-assessment, of which the private binding rulings are an integral part.

There are challenges for the tax office in picking up on this issue and in moving smartly in relation to issues of professional misrepresentation and lower automatic rates, where the tax office is quite slow in bringing
taxpayers to account in respect of a tax avoidance situation, particularly where it can be argued that the taxpayer was an innocent party. We have to distinguish between the innocent parties who get drawn into these schemes by overzealous promoters and where the guilt really lies, which is with the vendors, who should and do know a lot better.

Senator HOGG (Queensland) (6.38 p.m.)—I rise to speak briefly on the Superannuation and Financial Services Select Committee report on the Taxation Laws Amendment (Superannuation Contributions) Bill 2000. It has been covered fairly well by my colleagues Senator Sherry and Senator Watson, as the chair of the committee. I want to touch on the issue of retrospectivity, which is very important in this matter. As a member of the committee, I was privy to the evidence given by the Australian Taxation Office. As our hearing proceeded on this matter, it became clear that, in spite of the Australian Taxation Office trying to make the promoters of these schemes aware that they were in breach of the then existing law, the promoters continued to promote these schemes. Not only was there an awareness on the part of the promoters that these schemes were not valid under the then existing law but they tried to flout the law as best they could. We were told, in effect, that the need for the amending legislation was to confirm the existing law. It seemed strange at the time. I recall on one occasion asking why we had to go down the path of passing the amending legislation, if the legislation already in place was valid, purely and simply as a means to highlight the force and effect of the original legislation, thereby giving the Australian Taxation Office another club with which to hit the promoters of these schemes.

I believe that under those circumstances retrospectivity was firmly warranted—in fact, an absolute necessity—because the promoters of these schemes were firmly aware of the intent and nature of the then existing law. It seemed superfluous to us to have to go through the stage of passing an amendment to the original legislation, but we did so on the basis that there was retrospectivity applying in the amending legislation. That exercise was important for the committee to undertake, and hopefully those schemes have now been taken off the lists of the promoters and the marketers. The committee at the end of its report of May 2001 comments:

The Committee greatly appreciated the high degree of cooperation it received from the ATO during this inquiry.

I want to reconfirm the statement of my colleague Senator Sherry that officers of the ATO were very frank and open with us in coming to grips with the issues that were confronting the committee. When the committee started out, the issues on how many marketers and promoters were involved in the scheme were quite blurred. As time went on, we got a great deal of very good cooperation from the Australian Taxation Office. I think that was very useful and very helpful to the committee in dealing with the renegades that this piece of legislation is intended to deal with. I commend the report to the Senate.

Question resolved in the affirmative.

Superannuation and Financial Services Select Committee Report

Debate resumed from 5 April, on motion by Senator Watson:

That the Senate take note of the report.

Senator WATSON (Tasmania) (6.44 p.m.)—I commend the government on its positive reaction to a key recommendation in the A reasonable and secure retirement? report from the Senate Select Committee on Superannuation and Financial Services in relation to those retired public servants who currently have their pensions adjusted once a year but who will in future, as a result of the budget initiative, have their pensions adjusted twice a year. This was a central recommendation of our superannuation report. The government’s prompt response indicates its very positive approach to the matters raised by the select committee. I commend the government, because I know that there are a lot of retired public servants who will be very appreciative of that recent budget decision. I also thank the Senate.
Senator HOGG (Queensland) (6.45 p.m.)—Whilst Senator Watson is completely correct in respect of public servants, one area that has been missed out—it is an important area that I am interested in—is people who are on defence pensions. They were not picked up in the move from an annual to twice-yearly indexation of their pensions. I understand that that matter is currently being taken up by defence personnel. One would hope that the government acts quickly to ensure that retired defence personnel who are subject to pensions receive exactly the same benefit and the same entitlements as public servants who have now picked up the annual benefits. I just wanted to add that to the comments made by my colleague Senator Watson.

Senator SHERRY (Tasmania) (6.46 p.m.)—Further to the comments of Senator Watson and those of Senator Hogg, who is a colleague on the Senate Select Committee on Superannuation and Financial Services, it is quite outrageous that defence personnel should miss out on twice-yearly indexation. They put their lives on the line for the country. I am very puzzled and surprised at why they were not included in the government decision in the budget.

A number of states do not apply twice-yearly indexation. I know that that is outside the Commonwealth's power, but if we can impose the superannuation surcharge tax on state superannuation funds I certainly do not think that it is unreasonable to impose that arrangement on state governments that are not indexing their pension arrangements twice a year. If we can impose the super surcharge tax on them, we can insist on fair treatment, or fairer treatment, for those state public servants who have missed out as well.

Question resolved in the affirmative.

Consideration

The following orders of the day relating to committee reports and government responses were considered:


Employment, Workplace Relations, Small Business and Education References Committee—Report—Aspiring to excellence: Quality of vocational education and training in Australia—Government response. Motion of Senator Carr to take note of document agreed to.

Finance and Public Administration References Committee—Interim report—Government’s information technology outsourcing initiative: Accountability in a commercial environment—emerging issues. Motion of the chair of the committee (Senator George Campbell) to take note of report agreed to.

Rural and Regional Affairs and Transport References Committee—Report—Airspace 2000 and related issues. Motion of the chair of the committee (Senator Woodley) to take note of report agreed to.

DOCUMENTS

Auditor-General’s Reports

Report No. 32 of 2000-01

Senator HOGG (Queensland) (6.47 p.m.)—I move:

That the Senate take note of the document.

I recently spoke about this matter at the Defence estimates. It is worth while to keep plugging away at it because the issue of accountability in Defence is sometimes lacking. I must say that, in many ways, they have started to improve their game, but this report, which is one of a number of reports on defence that surface from time to time, highlights the issue of defence cooperation. That involves the provision of assistance by our security forces to other security forces in South-East Asia and the South Pacific through the program known as the Defence Cooperation Program.

The report highlights the fact that the activities that are conducted under the program include training, study visits, personnel ex-
changes and combined exercises with elements of various regional armed forces. There are not substantial amounts of money on an individual nation basis involved in some of these exercises and exchanges. Nonetheless, overall there is a substantial amount of money, which totals about $60 million per annum. Defence has a large budget and therefore should be subject to the scrutiny that it deserves. In noting the conclusions and the background by the Audit Office, at point 8 on page 10, they say:

Several improvements could be made to the management of DC finances and activities. Financial data could not be exchanged adequately between Defence and its overseas posts and with the Department of Foreign Affairs and Trade. That is an underlying weakness that needs to be picked up. They say:

DC systems and practices were not effective in preventing, nor in detecting misallocations and overspending on individual DC activities. That is a criticism of the administrative processes that are operating within Defence, not only within Australia but also within overseas posts and within the Department of Foreign Affairs and Trade. At point 16 of the key findings, the Audit Office point out:

The systems, procedures and practices used to administer DC were not effective in preventing and detecting misallocations— as I have said previously— and budget overspends in program administration nor in the execution of projects.

At point 17 they went on to say:

There were many instances where internal good practice guidelines regarding documentation of details in approving, implementing and concluding projects were not followed. That is one of the weaknesses of the Department of Defence. They have many procedures and guidelines—of course, they are invariably good procedures and good guidelines—but they do not follow them. The report highlights once again an area where there is a defect—not that it is a major defect, nonetheless it is a defect that needs to be addressed by the Department of Defence. The Audit Office also went on to say:

Projects also lacked effective monitoring systems and procedures.

One hopes that, arising out of this report by the Australian National Audit Office, the Department of Defence will tighten up its practices and procedures and put in place effective monitoring systems so that the Australian public can be assured that there is reasonable transparency and accountability in the expenditure of $60 million in fostering good relations with our South-East Asia and South Pacific neighbours.

One must recall that this is an important exercise for us. In many instances, it brings about better working relations with many of these nations, which are very small nations, and it serves a useful purpose in developing our defence personnel in understanding the region in which we live. The Audit Office made seven recommendations. The Department of Defence agreed with all bar one of them, and they agreed to the other recommendation with qualifications. Whilst it is always good to see the Department of Defence, or any department, agree with the recommendations of the Audit Office, it is another thing to ensure that those recommendations are put into force. In particular, I want to highlight recommendation 3, which states:

The ANAO recommends that Defence review its public reporting on DC program performance indicators and targets, with a view to disclosing information sufficient to discharge its accountability for public funds spent on DC and enabling an informed assessment of DC program performance.

I have looked at that in trying to assess the performance of our defence cooperation programs, which include assisting some of our smaller South-East Asian and South Pacific neighbours with a Pacific patrol boat project. I have tried to assess the effectiveness of these programs in the annual report and the accountability of the expenditure of public funds, which is not always necessarily transparent in the annual report. If Defence take note of that recommendation, I think they will improve and lift their game in a big way.

Question resolved in the affirmative.

Report No. 33 of 2000-01

Senator HOGG (Queensland) (6.55 p.m.)—I move:

That the Senate take note of the document.
This report is in respect of the Australian Defence Force reserves. Last year, the government released the white paper for 2000. Part of the white paper states—and this is cited in the report:

The strategic role for reserves has now changed from mobilisation to meet remote threats to that of supporting and sustaining the types of contemporary military operations in which the ADF may be increasingly engaged.

There is a recognised need, as there always has been, for the reserves. The reserves have always played a significant role in our defence forces over a long period of time. Of course, this was reinforced in the recent white paper. Unfortunately, there are some difficulties within the reserves. There are difficulties in terms of recruitment to the reserves; in terms of resources for the reserves; and there were particular difficulties in respect of the Army in terms of training because of a changed training regime brought in by the defence forces two to three years ago.

Over that time, Defence have recognised the error of their ways in terms of the training for the Army Reserves and they have moved from a six-week program to a shorter period of two three-week periods to accommodate reserves who, undoubtedly, have difficulty fitting a large training block into their private lives in terms of their jobs. All reserves need to seek leave from their jobs to undergo any training or to attend parades.

The significance of the reserve forces was highlighted with our involvement in East Timor. There was a large tapping into the reserve forces to fill some of the gaps and holes that occurred so that we could sustain a viable force in East Timor. The report highlighted the major gaps in the Defence Force, and the Army, in particular, was singled out—although that does not mean that there are no problems with Navy or, to a lesser degree, with the Air Force. It is interesting to note in the report that the ANAO concluded:

Previous efforts to revitalise the reserve have not been successful, largely because roles have not been clearly defined and resources allocated to the Army Reserve from the Defence budget have been insufficient to achieve the capability required by the Army. There is a body of evidence indicating that the Army Reserve is not providing a level of collective capability commensurate with the resources being expended. It is indeed an issue of major concern that, in spite of the money that is being spent through the budget, our Defence Forces—and, in particular, the Army Reserve—are not at the level of capability such that they can be used effectively in times of need.

The report itself then goes on to make a number of recommendations. In particular, the ANAO found that the direct cost of maintaining full-time personnel in reserve units is more than one-third of the total direct cost of the reserve units. We have a real difficulty there in that much of the money that is allocated to reserve units is chewed up directly by the use of full-time personnel. That is a necessary evil in one way, but it is an unfortunate thing in another way. At the end of the day, it minimises the resources available for parade, for exercises and for a whole range of things under the defence reserves.

There are some other issues in the report that I will just raise briefly. The report noted: Having regard to the costs associated with initial recruitment and employment training, the payment of a suitable proficiency bonus to retain trained and competent Reservists should prove to be cost effective.

The report then went on to make a number of recommendations. Again, interestingly, they were agreed to by Defence. In particular, I want to draw attention to part (b) of recommendation 11, where the ANAO recommended that, with a view to improving recruitment opportunities, Defence should:

... closely monitor the results of the recruiting initiatives developed by individual units and adopt those measures that prove to be particularly successful ...

That will be of interest. I know that in the coming weeks the Senate Standing Foreign Affairs, Defence and Trade References Committee is conducting an inquiry into recruitment and retention within the Defence Force. Undoubtedly we will address the issue of what is happening in the reserves. We put the Defence Force on notice now that, when they come before us over the next few weeks, we will want some information on what initiatives they are taking in terms of individual units. We will want information on initiatives not only to improve recruitment
into the reserves but also to ensure the retention of those people that quite a substantial amount has been outlaid upon, so that they can be brought up to the skills and proficiency of the permanent forces and at reasonable notice be slotted in to operate with the permanent forces in operations such as those that have taken place in East Timor.

I am going to pull up there. I think the report is very valuable. As a result of this report I hope we will see a concerted effort made to improve the level of funding, the level of proficiency, the level of recruitment and the level of retention in our reserves so that we have a viable Defence Force operating in this nation, comprising not only full-time ADF personnel but reserves as well. I commend the report to the Senate.

Question resolved in the affirmative.

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

Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (7.04 p.m.)—by leave—On behalf of the Minister for Justice and Customs, Senator Ellison, I wish to clarify a reference in the revised explanatory memorandum to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001. The explanatory memorandum contains the following paragraphs:

The first set of powers are necessary because both Customs and the ATO have identified that goods under Customs control that are said to be bound for export are instead going into Australian commerce, with the net result that tax and duty that is properly payable is not being paid.

The ATO believes diversion in Australia is comparable to levels overseas, which are in the order of 30%. Customs has also identified that this diversion activity is widely undertaken at various stages of the underbond process.

I table a letter from the chief executive officer of Customs to the Commissioner of Taxation on this matter, which clarifies the use of this reference, and I seek leave to incorporate the letter in Hansard.

Leave granted.

The document read as follows—

AUSTRALIAN CUSTOMS SERVICE
Chief Executive Officer
Customs House
Canberra City ACT 2601
Mr Michael Carmody
Commissioner 2001
Australian Taxation Office
2 Constitution Avenue
CANBERRA ACT 2601
Dear Michael

I refer to your conversation with John Jeffery earlier today concerning the inclusion of a reference to the Australian Taxation Office (ATO) in the Explanatory Memorandum (EM) prepared for the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000.

The EM included the following,

“The first set of powers are necessary because both Customs and the ATO have identified that goods under Customs control that are said to be bound for export are instead going into Australian commerce, with the net result that tax and duty that is properly payable is not being paid.

The ATO believes diversion in Australia is comparable to levels overseas, which are in the order of 30%. Customs has also identified that this diversion activity is widely undertaken at various stages of the underbond process.”

The reference in the EM to an ATO view did not have prior and necessary clearance from the ATO.

I apologise for this.

Yours sincerely
(L B WOODWARD)
21 June 2001

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Hogg)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Seahorse Farms: Tasmania

Senator WATSON (Tasmania) (7.05 p.m.)—I rise to speak tonight about two innovative businesses located at Beauty Point on the River Tamar in northern Tasmania. These businesses have one thing in common: seahorses. The first is Seahorse Australia and the second is Seahorse World. Seahorse Australia’s business is to breed seahorses for the lucrative Asian market, while Seahorse World provides a range of tourism experiences, including viewing the working sea-
horse farm, other exhibits and a range of visitor facilities.

As a working seahorse farm, Seahorse Australia has been recognised throughout the world for its scientific breakthroughs. The farm was established in 1998 with aquaculture expert Professor Nigel Forteath, the 1997 Tasmanian of the Year, heading up a team of young aquaculturalists. The initial stages of the program involved collecting brood fish from the wild. Initially 50 fish were collected and, when they were sure there were no problems with the first batch, further batches of up to 100 fish were collected. Over an 18-month period the brood fish numbers were gradually built up to 600, the total number that was allowed to be collected from the wild. All through this time the scientists acted in an extremely careful and responsible way while conservationists watched them closely. From the outset, the ongoing program of research and development has been with a keen eye on the commercial potential of the product. Over the last three years, Professor Forteath has guided the program from the laboratory to commercial reality. With the original 600 brood fish from the wild, Seahorse Australia has now bred more than a quarter of a million seahorses and is working with third and fourth generation fish. Now they are not at all reliant on the wild stock for stock. This is one aspect of the uniqueness of the project.

Another unique aspect is concerned with the seahorses themselves, and that is the role reversal that takes place in the breeding cycle. The male seahorse takes on the maternal role. Instead of the male bringing the sperm to the female, the female puts her eggs into a pouch on the male, where the fertilisation process takes place. The male’s pregnancy takes 30 days. The average brood size is about 300, but on one occasion a nameless sire gave birth to 1,113 babies—a record others around the world are trying to beat. When the babies are born they weigh 0.2 grams. At the Beauty Point facility the babies grow to over one gram in a little over a month and are ready for the aquarium market at 15 centimetres long in five months. In the wild they take over nine months to reach this size. In other words, the growth rate has been doubled or tripled. In the wild there is an extremely low survival rate, but at Seahorse Australia the survival rate is 90 per cent. Seahorse World now employs a PhD student from the University of Tasmania, and others, to work for Seahorse Australia. This student is working on methods to further enhance this amazing growth rate. In fact, far from the dour claims made by many conservationists, this is a fantastic conservation program.

Recently, Professor Forteath and Seahorse Australia Beauty Point manager Karl Maier returned from a successful trip to the high calibre exhibition Aquarama held in Singapore. Mr Maier reported that 55 aquarium wholesale companies had registered interest during the four-day show in buying seahorses. Professor Forteath indicated they could have sold the 25 seahorses they had with them 100 times over. They sold them all to one buyer, who put in a further order for 200 the next day. It is conservatively estimated that the venture might sell 50,000 a year at $10 each, which would quickly bring the company to a break-even point. While in Singapore, Professor Forteath was approached by the Singaporean, Thai and Malaysian fisheries organisations, who all showed a keen interest in the success being achieved in Tasmania.

The new tourism facility opened its doors in early November 2000, providing 1½-hour tours of Seahorse World, giving an insight into the intriguing world of these magical creatures. The tour includes the cave of the seahorse, which houses five tanks, exhibiting several different members of the seahorse family, the farm and a boutique aquarium featuring a touch pool for children. There is also a theatrette, an interpretation centre and a marine environment centre.

Since the beginning of November, nearly 50,000 people have visited the seahorse venture. This is far in excess of the predicted number for the first year. In fact, the success of the visitor numbers has completely overwhelmed the original budget predictions for the tourism venture. It is estimated that 70 to 75 per cent of visitors are from interstate. Bookings already in place for the coming season include some 2,500 pre-booked coach
tour groups and, beginning in November, some 1,600 Singaporeans are expected to visit. Added to this, three cruise liners will be visiting Beauty Point on 19, 20 and 26 February next year.

So from the humble seahorse a whole industry has developed. There is a state-of-the-art fish farm, producing wonderful results in reproduction and growth, and there is the new tourism facility catering to an expanding number of visitors. All of these facets of the operation mean employment for academics and locals, and the entire operation is a drawcard to, and an example of forward thinking in, the region.

Member for Grey

Senator BUCKLAND (South Australia) (7.12 p.m.)—I want to speak tonight on a matter which was raised in the House of Representatives on Monday this week. It is an issue which was raised by the member for Grey, Mr Barry Wakelin. I want to raise the matter because what Mr Wakelin has done is to bring into question the integrity, honesty and reputations of officers of the Australian Electoral Commission. I will quote from the Hansard. It was one of the most offensive statements that could have been made when Mr Wakelin said:

In the Pitjantjatjara lands something like 2,000 people are eligible to vote at each election. Of those 2,000 Aboriginal people, over 90 per cent have their ballot paper filled in by an AEC official. To add to that, that region has the lowest informal rate of voting in Australia. Of course, I should add very quickly that 90 per cent of those eligible votes go to the Labor Party. The question has to be asked: are those people casting a very genuine and sincere vote when 90 per cent of those ballot papers are filled in by the AEC officials and they just about all go to the Labor Party? There is a serious issue around dependency, around an honest assessment and an independent frame of mind which makes a free and democratic vote.

So that it is not thought that I am quoting that out of context, I will read the previous paragraph to introduce it. Prior to that, Mr Wakelin was flapping his gums about a number of issues, such as the GST and the taxation system and the old Medibank-cum-Medicare. He started his attack on the AEC by saying:

Another area where I think Labor would not like to see too much transparency is in the area of Aboriginal welfare. One of the tragedies in this country is that we have not been able to deal with many of these issues as well as we should have and could have. Much of it comes back, I believe, to a dependency approach. There are some within the Aboriginal community now who are challenging that approach to welfare. I will give you just one very good example. It is quite remarkable to me how the whole system, once you get into this dependency welfare approach, does not give a fair result—I do not think that most Australians would judge that it was giving a fair result.

Then he launches into his attack on the AEC officers and the Aboriginal community.

Rather than attack these officers of the AEC, the member for Grey should attempt to attack the issues that confront his constituents—things like unemployment. That might look good for the member for Grey on first viewing, but it is not so good when you really get down to it. Using the March figures for this year, country South Australia might be seen as reasonable. Unemployment is down from 7.9 per cent to 6.7 per cent over a year. But when you look at the major centres of Ceduna, Port Augusta, Port Pirie and Whyalla, you have nothing under 10 per cent unemployment. In the major centres in Barry Wakelin’s vast electorate you have 14.1 per cent, 10.8 per cent, 10.3 per cent and 11.5 per cent—nothing to be very proud of. There is nothing this government has done, along with its member in the electorate of Grey, to rectify it.

It reminds me of a grand statement made by the member for Grey at the time that the rail workshops in Port Augusta were closing. They were a very important and large industry in that area. Of course, people were to be made redundant. What was the member for Grey’s attitude towards that? ‘The redundancies will bring a great boost to the economy of Port Augusta. People will invest in houses; people will be able to buy things that they couldn’t have before.’ What a troglodyte attitude it is towards people who are faced with redundancies to suggest for one moment that redundancies boost the economy. What happens after they have spent their money? Of course, people did not do those things. They had to leave the communities to find
other work. These are two areas in which, in my view, the member for Grey has shown he is dumb—dumb and dumber. I think there was a movie at one stage—

The ACTING DEPUTY PRESIDENT
(Senator Hogg)—Senator Buckland, withdraw that.

Senator BUCKLAND—I withdraw that and take your ruling wisely. Barry Wakelin thinks the AEC officers are biased—that is what he is trying to say. He is casting aspersions upon the Aboriginal communities in the Pitjantjatjara and other remote areas. That is the first thing he is doing. He is casting this great aspersion on the good officers of the AEC, suggesting in what he said that they are showing bias towards the Labor Party. Ten per cent voted for the Liberal Party or some other party. Are we to suggest from what Barry Wakelin has been saying in this vicious attack upon the AEC that they got it wrong too—that they really meant to vote for the Labor Party? Barry Wakelin needs to spend more time dealing with the real issues that are facing the Pitjantjatjara people—things like education, health care, housing and the common welfare needs of those communities. He is not addressing the issues; rather, he is attacking those who are trying to help.

Labor have no fear of transparency in their attitude towards the Aboriginal community—none at all. We would like the system made transparent so that we can see what is really going on. Barry Wakelin, in his attitudes, needs to face the realities that we have there and the very real problems we have with unemployment, aged care, health care and young people leaving the communities in droves because there is no future for them.

Comments in the Advertiser on 2 March 2001 from members of the Youth Roundtable clearly show that there are problems in South Australia. That report in the Advertiser says:

YOUNG people suffer most from the decline of rural communities “forgotten” by the Federal Government, youth advocates believe.

South Australian delegates to the National Youth Roundtable called for greater government commitment to rebuilding isolated communities.

“Rural and regional affairs have been all but forgotten in Australian politics,” said Will Rayner, 22.

Young people left rural towns because of limited opportunities.

Those limited opportunities are not being addressed by this government and not being addressed by the member for Grey. The report goes on to say:

“There needs to be a future for Australian agriculture,” he said.

This is young Mr Rayner. (Time expired)

Detention Centres: Joint Committee on Foreign Affairs, Defence and Trade Report

Senator McKIERNAN (Western Australia) (7.22 p.m.)—Earlier this afternoon I was speaking on the report of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade on visits to immigration detention centres. I should make the explanation at the outset that, whilst I was a member of the committee during the course of the inspections to the first five detention centres, I was not a member of the committee when the subcommittee met and deliberated upon the contents of the report. I do not have a problem about making that statement. I wish that other members of the subcommittee would also come out now and make statements to the effect that, although they are speaking as if they are experts on detention centres, many of them did not actually visit the detention centres. I think for the sake of honesty in debate that should be done. I have previously outlined a number of concerns that I have with the report, and I have a few more now that I want to add to the record.

In chapter 7, which is entitled ‘The effects of detention’, at page 104 there is a heading of ‘Immigration detention syndrome’. That details in a number of paragraphs what a particular detainee in one of the detention centres told the subcommittee. My great problem with this is that what the detainee said has not been tested anywhere. No other medical evidence was sought against this. It is printed in the report. It will now be quoted ad infinitum by individuals as gospel, and we will hear about immigration detention syndrome. I understand that there is a lot in-
volved in determining a syndrome. I commend the committee for paragraph 7.30, which says, in part:

It is true that illegal arrivals can be seen as ‘queue jumpers’, and that many other people remain in unhappy, difficult or dangerous situations while they follow the appropriate procedures for legal entry.

Many people just do not know what the size of the queue is; indeed, there are others in our community who say there is no queue at all. During the last round of Senate estimates committees, on Tuesday, 29 May I asked questions to find out and elucidate the information in regard to that. I was told that there are actually 52,000 people who are making applications for protection in Australia. How long does it take to process those people’s applications? Can we relate that to what the subcommittee has recommended here in recommendation 10?

I spoke on behalf of some constituents who were trying to sponsor relatives to Australia under the special humanitarian program of the refugee program out of Greece. The response I got to my question of how long the processing and waiting times are was, quoting Mr Giuca:

'It depends on which humanitarian category we are looking at, but 50 per cent of cases in Athens are done within 72 weeks.

I then commented that 72 weeks is a year and five months. I asked about other constituents from Nairobi whom I am acting on behalf of. For special humanitarian purpose visas, 50 per cent of the cases are processed within 83 weeks; for refugees, it is much quicker—50 per cent are processed within 27 weeks. In Islamabad, which is another area that my office attends to quite a deal, 50 per cent of refugee cases are processed within 53 weeks; for special humanitarian cases it can take up to 86 weeks. I ask the Senate to compare that with the recommendation that is contained in the report about processing within 14 weeks for those who arrive unlawfully on our shores. Paragraph 7.32 of the report states:

Some members were concerned about the ability of parents to look after their children. That is not something I want to associate myself with. In the short time that I was in the various detention centres I was never going to be in a position to assess the ability of a parent to look after their child. I am insulted by that remark, and I do not know how the members of the subcommittee can come to that conclusion. I am very concerned about paragraph 8.4, which says, in part:

While it does not believe—‘it’ being the committee—that people smugglers should be tolerated neither does the Committee believe that genuine refugees should be discouraged in their wish to settle here.

I wonder how that will be interpreted. At paragraph 8.5 the report makes the comment:

There is also a wide range of community concerns about these matters.

I made the point earlier that the subcommittee did not go out and collect information in the public arena. Chapter 6 states at paragraph 6.2 that at subsequent meetings we met with senior ACM officers and ACM and departmental officers to test the theories. The point is made at paragraph 6.77:

This Report devotes much attention to the claims, valid and unreasonable, of the detainees of their treatment by ACM staff and tries to provide some balance by stating ACM policies or in giving ACM staff the right of reply.

Paragraph 6.78 states:

Even allowing for distortions and exaggerations from the detainees, the Committee was frequently unable to reconcile ACM’s statements with the accounts of the behaviour of ACM staff.

Not all the claims that are made by the detainees are tested in the report. I regret that, and I wish the subcommittee had done so, because I think the report is lacking because that has not been done. There is grave mention in this chapter about the Juliet block in Port Hedland. I cannot speak about the Juliet block because I, as a member of the subcommittee, went into Port Hedland to talk to detainees. I and the then chairman of the subcommittee, the late Mr Peter Nugent, were talking to the detainees while other members of the subcommittee went and looked at the Juliet block. At this time I will pay tribute to the work of Mr Nugent and extend my and my spouse’s condolences to his family.
Recently there was a demonstration around Australian capital cities where banners were flown that said, ‘Free the refugees’. I agree with that; I support that. I do not believe any refugee should be detained in this country. But just as I do not believe a refugee should be detained, I do not believe that anybody who arrives unlawfully on our shores and who claims refugee status is automatically a refugee. Many of them are refused, and I think that something like 1,000 people have had their claims for protection refused and are now awaiting removal from Australia.

In my capacity as Chair of the Senate Legal and Constitutional References Committee, I have had many opportunities to look at individual cases through the course of our inquiries. I want to draw reference to one particular applicant for refugee status who was the focus of an inquiry, among other things, of the Senate Legal and Constitutional References Committee and whose case was featured in a report of committee called A sanctuary under review: an examination of Australia’s refugee and humanitarian determination processes, which was tabled at about this time last year. There is a full chapter, chapter 7, that deals with Mr SE’s case, and there is a chronology of events dealing with Mr SE at appendix 6. We called him Mr SE because he was an applicant for protection and we were respecting his privacy.

He is not an applicant any longer, but it is interesting to read how Mr SE took in the Australian community, and not only the Australian community but the Australian judiciary—advocates on behalf of the individual—by lying through his teeth throughout the process as to who he was. We can talk about that because the Legal and Constitutional References Committee actually went into the detention centre, talked to the person in question, took evidence from him and accepted the lies we were told, with his advocate present. Mr Sadiq Elmi arrived in this country in 1997 and made an application for protection that was refused. His appeal to the RRT was refused. I think he made about five or six requests to the minister to exercise his discretion, which were all refused. He was about to be removed from Australia when he convinced the pilot of the aircraft taking him out of Melbourne that he should not be removed. He then made application to the High Court of Australia. His advocates went off to the United Nations. The United Nations Commissioner for Human Rights requested non-removal from Australia and the person was taken off an aircraft out of Perth. The minister allowed Mr Sadiq Elmi to make a second application for refugee status. When, under the natural justice provisions of application for protection in Australia, Mr Sadiq Elmi was shown that the department knew he was not who he said he was and that, therefore, he was not entitled to refugee status, he withdrew his application and made arrangements to go somewhere else.

I make this point to the committee: they have heard evidence from many detainees, and not everything they were told during the course of their visits to the detention centres was in fact true. If they want to know what truth is, perhaps they should look at the case of Mr Sadiq Elmi and see how individuals like that will seek to twist and take advantage of Australia’s humanitarian program. (Time expired)

Senate adjourned at 7.33 p.m.

DOCUENTs

Tabling

The following documents were tabled by the Clerk:


Sydney Airport Demand Management Act—Slot Management Scheme Amendment Determination 2001 (No. 1).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Aviation: Personal Flotation Devices
(Question No. 2985)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 4 October 2000:

(1) To what standard must the Australian aviation personal flotation devices (PFDs) comply.

(2) Since January 1 1999, on how many occasions has the Civil Aviation Safety Authority (CASA) inspected PFDs carried on high capacity regular passenger transport (RPT) operators.

(3) Since 1 January 1999, have any high capacity RPT operators been found to be in breach of the standards required for PFDs; if so, in each case: (a) who was the operator; (b) what was the nature of the breach; and (c) what action did CASA take as a result of the breach.

(4) Since 1 January 1999, on how many occasions has CASA inspected PFDs carried in low capacity RPT operators.

(5) Since 1 January 1999, have any low capacity RPT operators been found to be in breach of the standards required for PFDs; if so, in each case: (a) who was the operator; (b) what was the nature of the breach; and (c) what action did CASA take as a result of the breach.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Australian aviation personal flotation devices (PDF) are currently required to comply with Civil Aviation Order (CAO) 103.13 Equipment Standards - Life Jackets.

CAO 103.13 requires that a life jacket carried in Australian aircraft as required by CAO 20.11, must be an inflatable type meeting the standard specified by the Federal Aviation Administration Technical Standard Order TSO-C13e or later amendment. A specification approved by the Civil Aviation Authority of the United Kingdom is also acceptable. In addition, a whistle is required in other than an infant life jacket.

(2) CASA performs audits on High Capacity Regular Public Transport Operators in accordance with the surveillance objectives outlined in Compliance Management Instruction 00/08 (Version 2).

As part of CASA’s safety systems approach and normal audit activities, personal flotation devices are inspected. These devices are also checked during ramp inspections.

A copy of Compliance Management Instruction 00/08 (Version 2) has been provided to the Table Office.

(3) CASA does not believe it would be appropriate to provide the level of operational detail regarding operators, as requested by Senator O’Brien. In addition, CASA holds the view that disclosure of information on the outcomes of an audit process could prejudice an operator’s commercial interests and could also prejudice CASA’s ability to obtain information from other operators during the course of normal investigations where compulsory extraction powers are not used.

CASA can confirm however that all matters raised with operators of High Capacity Regular Public Transport, involving the issue of Non Compliance Notices and Aircraft Survey Reports relating to personal flotation devices have been addressed.

(4) CASA performs audits on Low Capacity Regular Public Transport Operators in accordance with the surveillance objectives outlined in Compliance Management Instruction 00/10 (Version 2).

As part of CASA’s safety systems approach and normal audit activities, personal flotation devices are inspected. These devices are also checked during ramp inspections.

A copy of Compliance Management Instruction 00/10 (Version 2) has been provided to the Table Office, however, CASA wishes to note that Compliance Management Instruction 00/10 (Version 2) is currently being reviewed in accordance with the Compliance Management Instruction review process.

(5) CASA does not believe it is appropriate to provide the level of operational detail regarding operators, as requested by Senator O’Brien. In addition, CASA holds the view that disclosure of information on the outcomes of an audit process could prejudice an operator’s commercial interests and
could also prejudice CASA’s ability to obtain information from other operators during the course of normal investigations where compulsory extraction powers are not used.

CASA can confirm however that all matters raised with operators of Low Capacity Regular Public Transport, involving the issue of Non Compliance Notices and Aircraft Survey Reports relating to personal flotation devices have been addressed.

**Saibai Island Council**

*(Question No. 3236)*

**Senator Harris** asked the Minister representing the Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs, upon notice, on 20 December 2000:

With reference to the Saibai Island Council:

1. Did Assets North provide some accounting support to the council and report, on 14 March 2000, that the financial statements were not in order as the financial service officer had tried to implement an accrual accounting system and then reported on a cash basis, but included depreciation as a cost against the council’s cash operations; if so, what happened to the cash equivalent to the depreciation.

2. Were stock items also double-counted in the operations monthly budget comparisons; if so: (a) what effect did this have on the accountability of the council; and (b) why was the audit report not qualified to clearly state that the process of preparation was flawed.

3. Were members of the public denied access to copies of the minutes of council meetings that included status reports of the council’s financial situation; if so, what action will be taken by the Aboriginal and Torres Strait Islander Commission (ATSIC).

4. Was funding in the order of $500 000 for a community hall supplied to the Saibai Island Council by the Island Coordinating Council, the Torres Strait Regional Authority and the Queensland Government; if so: (a) Was the council asked to accept tenders offered through a consulting engineer; (b) was the engineer appointed by the council after a competitive tendering process; (c) did the engineer provide a report and recommendations on all the tenders offered for the hall project; (d) was the lowest or second lowest tender accepted; (e) was the list of tenders sent to the financial services officer and not the council clerk; (f) did the financial services officer put that matter to council without any consultation with the clerk; (g) did the council only offer one page letters of acceptance as if in final acceptance of the contract; (h) was the consulting engineer directed by the clerk (on his return to the community) to complete detailed drawings and specifications in the usual manner expected in the building trade; and (i) did the consulting engineer point out to the council that his preferred contractor could not undertake the project for four months, putting the council at risk of losing funding and therefore being in breach of contract.

5. Do outstanding debts in the order of $113 000, being for lack of payments from local persons for housing, now show in the council’s accounts; if not: (a) how were they written off and on whose authority; and (b) why was any write off not subject to an audit comment.

6. What moneys were or are owed to government agencies by Mr Waia.

7. Did the government announce in early 1998, that Saibai Island would have a housing program of some 32 new houses and 39 major upgrades along with minor maintenance of remaining stock; if so: (a) Why did Aboriginal and Torres Strait Islander Housing (ATSIH) rush in to ensure that only their design book would be used to reproduce small houses designed for southern climates when clearly the islanders had just begun a design and build program that took into account islander family needs; (b) why was the designer of the four houses on Saibai continually persecuted for designing appropriate and affordable housing in the Indigenous communities, usually well under the rates offered for the ATSIH’s inappropriate designs; (c) why would the Queensland ATSIH group not heed the Premier’s comments, after visiting Saibai, that appropriate housing would be built under the new programs, which would result in local jobs, training and participation.

8. Did the council dismiss a drainer/plumber when $50 000 per year on basic housing maintenance was being provided in the budget but not spent on that expenditure item for want of skilled and semi-skilled workers: if so: (a) why was the drainer/plumber dismissed when a new sewage treatment works was being designed for Saibai Island; (b) why would he be dismissed when the island water storage was being upgraded; and (c) why would he be dismissed when the Queensland De-
partment of Natural Resources was continually saying the water supply management had been poor in terms of progressive maintenance rather than crisis maintenance.

(9) Will the necessary action be taken to ensure that the use of ATSIC funds is accountable.

(10) Was a training program on Saibai Island curtailed when there were many opportunities available for employment; if so, why.

(11) Was the Ocean 2000 strategy put into place in the Torres Strait given that major policies were adopted by the Federal Government as a result of the Ocean 2000 research; if not, why not.

(12) Were fishing resources ever mapped or made available to the islanders who wanted to protect native fishing grounds.

(13) Was the research into the area cancelled; if so, why.

(14) Did researchers fail to finish the research or did they cancel the contract in default of non-payment for their work.

(15) Did the Torres Strait Regional Authority provide funding to small fishermen to set up basic facilities when no research into the potential catch, nor any catchment management plan, had been put in place; if so, why.

Senator Hill—The answer to the honourable senator’s question is as follows:

The Torres Strait Regional Authority has provided the following advice:

(1) Assets North have neither offered nor provided accounting support and were not performing contractual duties for the Saibai Island Council on the dates stated. The Queensland Audit Office (QAO) required that the Saibai Island Council report on a cash basis for the year 1999/2000. Depreciation for the year would not have been recorded until close of business 30 June 2000. There is no cash equivalent to the depreciation under accounting principles.

(2) (a) Stock was not ‘double-counted’. The Saibai Island Council maintains an itemised list of office equipment and stationery and the Saibai Canteen’s stock is checked twice daily.

(2) (b) I am advised that the Auditors have now finalised the 1999/2000 Audit Report. However, the Queensland Audit Office has still not yet released the document to the organisation. In preliminary discussions with officers of the Saibai Island Council there have been no indications that qualifications will be made in the Audit report in relation to accountability.

(3) On the basis of consultations with available past and present Councillors and staff, the Saibai Island Council is not aware of any occasions on which a member of the public has been denied copies of the Council’s minutes, with or without financial statements. However, there have been occasions where members of the public have requested copies of minutes from a Council meeting still in progress. Only after these minutes are endorsed as true and correct by a subsequent Council meeting are they supplied to the applicant.

(4) Funds were provided by the Torres Strait Regional Authority (TSRA) and the Queensland Government. The Island Coordinating Council (ICC) managed the funds.

(4) (a) Yes. An advertisement was placed in the local media and seven tenders were received, submitted through the consulting engineer who was the appointed project manager.

(4) (b) No. The ICC selected the consulting engineer to be the Project Manager on the basis of:

- Professional qualifications and a good reputation arising from previous work in the region;
- The work being deemed urgent due to the requirements of funding time-lines;
- Value for money; and
- The Project Manager finalising other projects on the island, thereby reducing travel and accommodation expenses.

The TSRA subsequently endorsed the appointment under the current finance regulations and procurement of assets and services procedures.

(4) (c) Yes. The consulting engineer provided a report on all the tenderers.

(4) (d) Yes. The second cheapest tenderer was selected after consideration of the consulting engineer’s report, which outlined effective performance in remote communities and a good appreciation of the working conditions in this remote island.
(4) (e) No. Tenders closed on 30 November 1998 and the list of tenders received was forwarded to the Council Clerk by facsimile on the same day. After clarification of some tender issues with the three lowest tenderers, the consulting engineer faxed his Tender Report to the Council. The report was addressed to the Chairman, as is usual practice for all correspondence to Council.

(4) (f) As the Council Clerk was not on the island, the Financial Services Officer, who was taking the minutes in his absence, presented the incoming mail for Council's consideration.

(4) (g) Council’s acceptance of the contract was conveyed to the contractor by the consulting engineer as per accepted procedure and usual industry practice. It is common in the industry to issue one-page Letters of Acceptance, as long as they clearly refer to the tender documents and any post-tender correspondence relating to specific aspects of the tender documents which might affect either party to the agreement.

(4) (h) The consulting engineer’s management contract required comprehensive plans and specifications for the building to be prepared before tenders were called.

(4) (i) The contract was let at the end of December 1998 and the successful tenderer proposed to commence work in March to avoid construction on the Island during the wet season. The funding was not at risk.

(5) There is no outstanding debt in the order of $113,000 owed to the Saibai Island Council by local persons for housing or any other reason. There have been two debts written off by the Saibai Island Council, neither of which amount near to a figure of $113,000. Both write-offs were properly and legally minuted and did not attract adverse Audit comment.

(6) “Waia” is a common name in the Torres Strait. However, if the question refers to the current Chairman of the Saibai Island Council, Mr. Terry Waia, the information available to the TSRA is that there is no money owed by Mr Waia to either the Saibai Island Council, the TSRA or the ICC nor have any amounts been written-off in respect of Mr Terry Waia.

(7) Yes. In 1998 the Queensland Government announced a major housing infrastructure program for Saibai Island. However, the number of houses to be built or renovated under the program will depend on market costs and Council’s decisions about the mix of new housing and major renovations.

(7) (a) Aboriginal and Torres Strait Islander Housing’s designs were assessed by the Saibai Island Council to be the most appropriate for tropical conditions. These designs were adopted in consultation with the families on the Council’s housing list. These families chose the designs and requested alterations to fit their specific needs. The Saibai Island Council is not aware of any Saibai Islander, or any Torres Strait Islander group, designing houses for Saibai Island.

(7) (b) Neither the TSRA nor the Saibai Island Council have received any notification or complaint about ‘persecution’ of a ‘designer of four houses’ on Saibai Island.

(7) (c) The ATSI Housing program on Saibai Island will result in local jobs, training and participation. The program fully utilises the CDEP program and workforce. The Saibai Island Council now owns and operates the Saibai Island Construction Pty. Ltd., currently employing seven building trades apprentices with five more due to start in 2001. This has been achieved in full cooperation between the Council and State and Commonwealth agencies.

(8) The matter is the subject of possible litigation and it would be inappropriate for the Saibai Island Council to make any comments relating to it.

(9) The Torres Strait Regional Authority (TSRA) is the Commonwealth’s primary indigenous funding body in the Torres Strait Region. The TSRA has a high level of accountability, not only having to meet the same accountability requirements as other Commonwealth agencies, but also to be subject to the scrutiny of the Office of Evaluation and Audit, an independent office separate from the Australian National Audit Office which is able to report directly to the Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs.

(10) Council records indicate that no training program has been curtailed in the past four years.

(11) The Oceans 2000 strategy will prepare and deliver Regional Marine Plans around the Australian coastline in consultation with all stakeholders. The Torres Strait is an identified region, but as yet has not been approached by the Oceans Office to develop implementation arrangements. The
timing of the involvement of the Torres Strait region in the strategy is a matter for the Oceans Office.

The Island Coordinating Council (ICC) and the TSRA have developed the Torres Strait Marine Strategy, defining policies on management of marine resources for State and Federal agencies. The Oceans Office has been provided with a copy of this document, which is publicly available on the TSRA website. Copies have also been provided to all Island Councils, stakeholders in the fishing industry and educational institutions.

(12) Yes. Islanders are routinely involved with the Torres Strait Fisheries Scientific Advisory Committee (TSFSAC). Feedback mechanisms to islander fishermen on all aspects of exploitation and conservation of fishery stocks (including closures) are currently being restructured by the (Islander) Fisheries Task Force which is funded by the TSRA and comprised of Islander representatives.

(13) The research programs recommended by the TSFSAC are ongoing, funded by allocations made by the Protected Zone Joint Authority (PZJA), representing the Ministers of the Queensland Department of Primary Industries portfolio and the Federal portfolio for Agriculture, Fisheries and Forestry, and managed by the Australian Fisheries Management Authority (AFMA).

(14) The TSRA is unaware of the cancellation of any TSFSAC research. However, further inquiries on this issue may be better addressed by AFMA.

(15) There is a catchment management plan in existence provided by AFMA. There are ongoing research programs recommended by the TSFSAC.

A total of 98 loans have been made to small fishermen since 1994-95 under the TSRA’s Business Funding Scheme (BFS). The BFS aims to increase the economic independence of Torres Strait Islander and Aboriginal people of the region by facilitating the acquisition, ownership and development of commercially viable enterprises in accordance with the principles of sustainable economic development, including conservation and management of marine resources. The BFS has commercial funding criteria similar to those applied by commercial lending institutions. Furthermore, one of the conditions of the loans to small fishermen is that the fishermen must be licensed. The commercial fishing license, obtained through the Queensland Boating and Fisheries Patrol, requires that fishermen comply with the various seasonal bans on both marine species and equipment used, bag and size limits, and so forth, outlined under the catch management plan.

Fishing: Southern Bluefin Tuna
(Question No. 3563)

Senator Greig asked the Minister representing the Minister for Forestry and Conservation, upon notice, on 5 April 2001:

(1) Will the Australian Government formally oppose any increase in the existing total allowable catch of 11 750 tonnes for Southern Bluefin Tuna at the upcoming meeting of the Commission for the Conservation of Southern Bluefin Tuna, for either research or new quota for new members.

(2) Will the Australian Government formally oppose allocation of an experimental fishing quota, the sale of which would be used to fund the rest of the scientific research program.

Senator Hill—The Minister for Forestry and Conservation has provided the following answer to the honourable senator’s questions:

(1) Australia’s position remains that any increase in the existing total allowable catch of southern bluefin tuna must be based on rigorous and robust scientific research and analysis.

(2) Australia has pressed strongly for the establishment of a Scientific Research Program (SRP) under the control of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). A SRP for the CCSBT was adopted unanimously by the CCSBT in April this year. The elements of the SRP are based on robust fisheries science and represent best practice in this area.

Australian Residents Awaiting Deportation
(Question No. 3585)

Senator Bartlett asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 17 May 2001:
(1) (a) Exactly how many people who have been granted Australian residency are currently being detained awaiting deportation after completion of their sentences for criminal offences; and (b) how many in each state.

(2) What are the nationalities of these people.

(3) (a) What was the average length of sentence originally handed down to these people; and (b) what is the average duration of detention beyond that sentence currently served by these people.

(4) How many people in this situation have been released following appeals to the Administrative Appeals Tribunal (AAT) since January 2000.  
   (a) What legal resources are available to these people for their appeals to the AAT; and (b) what interpreter resources are available.

Senator Ellison—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator’s question:

(1) (a) As at 18 May 2001, there are 47 people in this category. Each of these people is either subject to a deportation order under s253 of the Migration Act 1958 (the Act) or removal action following cancellation of their residence visa under s501 of the Act.
   (b) NSW - 25, VIC - 5, QLD - 10, WA - 4, SA - 3, other states nil.

(2) Vietnamese - 30, New Zealanders - 3, Japanese - 1, Yugoslavian - 1, Polish - 1, Chilean - 1, German - 2, Turkish - 2, Romanian - 2, Cuban - 1, Cambodian - 1, Iranian - 2.

(3) (a) Of the people currently in custody, sentences range from 13 years to 18 months imprisonment with an average of 7.25 years.
   (b) Detention beyond the custodial portion of their sentences range from 1 month to 36 months with an average of 17 months.

(4) Since January 2000 there have been 23 people in this situation who have been released from detention following appeals to the AAT.

(5) (a) Section 256 of the Act specifies that detainees must be provided reasonable access to legal assistance on request. My Department complies with its obligations under the Act affording all reasonable facilities for obtaining legal advice at the request of a person in immigration detention. Legal advice where a person chooses to appeal to the AAT in these circumstances is a matter for the individual. In some cases a detainee may seek legal aid. Provision of assistance is then a matter for the relevant Legal Aid Commission.
   (b) Where needed, the AAT arranges for and meets the cost of interpreter resources for people making appeals. The AAT obtains these interpreter resources primarily through the Translating and Interpreting Service (TIS) of the Department of Immigration and Multicultural Affairs.